Stamp Duties Consolidation Act 1999

(as amended by subsequent Acts up to and including the Finance Act 2011)

Notes for Guidance

Revenue
Cáin agus Custaim na hÉireann
Irish Tax and Customs

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 9 LEVIES 2

OVERVIEW 2

SECTION 123 CASH CARDS 2

SECTION 123A DEBIT CARDS 4

SECTION 123B CASH, COMBINED AND DEBIT CARDS 6

SECTION 123C PRELIMINARY DUTY: CASH, COMBINED AND DEBIT CARDS 7

SECTION 124 CREDIT CARDS AND CHARGE CARDS 8

SECTION 124A PRELIMINARY DUTY: CREDIT AND CHARGE CARDS 12

SECTION 124B CERTAIN PREMIUMS OF LIFE ASSURANCE 13

SECTION 125 CERTAIN PREMIUMS OF INSURANCE 15

SECTION 125A LEVY ON AUTHORISED INSURERS 17

SECTION 125B LEVY ON PENSION SCHEMES 19

SECTION 126 CERTAIN STATEMENTS OF INTEREST 24

SECTION 126A LEVY ON CERTAIN FINANCIAL INSTITUTIONS 25

SECTION 126B ASSESSMENT OF DUTY CHARGED ON STATEMENTS 28

PART 9 LEVIES

Overview

This Part imposes a number of levies. The levies are imposed on cash cards, combined cards, debit cards, credit card accounts and charge cards, non-life insurance premiums, "section 84" loans and on certain financial institutions.

Additional Guidance Notes entitled "Stamp Duty on Financial Cards" in relation to the operation of sections 123, 123A, 123B and 124 are also available on the Revenue website www.revenue.ie.

Section 123 Cash cards

Summary

This section imposes a stamp duty of €10 on a cash (ATM) card and €20 on a combined (ATM/Debit) card. The duty is payable by a bank or building society in respect of each cash card or combined card which is valid during the accounting period. Banks and building societies are required to submit statements with details of those cards to the Revenue Commissioners and to accompany the statement with payment of the duty. Banks and building societies may pass on the charge to their customers. ***The section only applies to statements that are required to be delivered for accounting periods ending (or deemed to end) on or before 31 December 2005 - for later years see section 123B.***

Because the duty is a stamp duty other appropriate provisions of this Act apply, in particular:

- ***section 14(3)*** which enables the Revenue Commissioners to mitigate penalties payable in respect of late payment of duty,
- ***section 126B*** which enables an appeal against an assessment to duty (the internal review procedures set out in Statement of Practice SP-GEN/2/99 (Revised January 2005) also apply), and
- ***section 152*** which enables the Revenue Commissioners to refund duty in certain circumstances - but also see ***section 159A*** as regards the time limit for making a refund claim and ***section 159B*** as regards interest that may be payable on such refunds.

Details

"bank", "building society", "card account", "cash card", "combined card" and "promoter" are self-explanatory. ***(1)***

"accounting period" has the same meaning as it has for the purposes of section 27 of the Taxes Consolidation Act 1997 (i.e. the accounting period of the bank or building society), but where such accounting period commences after 31 December 2004 and ends after 31 December 2005, it shall be deemed, for the purposes of this section, to be an accounting period ending on 31 December 2005.

"due date", in relation to an accounting period, means—

(a) in the case of any year prior to the year 2005, the date of the end of the

accounting period ending in that year, and

(b) in the case of the year 2005, the date of the end of the accounting period, or each of them, if there is more than one, ending in that year.

Banks and building societies must deliver, in each year, a statement to the Revenue Commissioners showing the number of cards issued by them at any time and which are valid at any time during an accounting period. The statement must be delivered within one month of the due date in relation to each accounting period (see ***subsection (1)***). ***(2), (3)***

Cards which—

- are not used during the accounting period,
- are issued in respect of a deposit account, the average of the daily positive balance of which does not exceed €12.70, or
- are a replacement for cards of the same type which have already borne the duty,

are not liable to the duty[1].

A stamp duty of €10 is imposed in respect of each cash card and €20 in respect of each combined card included in the statement provided for under ***subsection (2)***. Where the statement is for an accounting period deemed to end on 31 December 2005, the rate of stamp duty for each cash card is calculated by multiplying 1/12 of €10 by the number of months in the accounting period, and for combined cards, the rate of stamp duty is calculated by multiplying 1/12 of €20 by the number of months in the accounting period. ***(4)(a), (b)***

Where there are 3 months in an accounting period, the minimum rate of duty is €2.50 for each cash card and where there are 9 months in an accounting period, the minimum rate of duty is €7.50 for each cash card. For combined cards these amounts are doubled. ***(4A)***

The statement must be accompanied by the amount of duty payable. ***(5)***

Banks and building societies must provide all necessary information to the Revenue Commissioners relating to the liability to duty. ***(6)***

Interest at the rate of 0.0219 per cent per day (see ***section 159D***) is chargeable, in addition to the duty, if the statement is not delivered by the due date or if duty is paid late. In addition, if the duty is not paid within one month of the due date a penalty of €380 per day is also payable for each day the duty remains unpaid after the one month period. ***(7)***

This subsection enables the Revenue Commissioners to enforce delivery of the statement. ***(8)***

Banks and building societies may pass on the duty and any interest payable to the account-holder. ***(9)***

If the card is liable to duty under ***section 124*** then it will not also be liable to duty under this section. ***(10)***

---

[1] The exemption contained in the Diplomatic Relations and Immunities Act, 1967, applies to cash cards and combined cards (see **Appendix 5**).

If a bank or building society changes its accounting period and, as a result of the change, a charge to duty would be avoided in the calendar year in which the change occurred, then the duty will be charged in the year of the change (i.e. the year in which the charge would be avoided) as if the change had not taken place. Duty will thereafter be payable in the normal way one month after the end of the accounting period. ***(11)***

This section only applies to statements that are required to be delivered for accounting periods ending on or before 31 December 2005. ***(12)***

Section 123A Debit cards

Summary

This section imposes a stamp duty of €10 on debit (e.g. laser) cards. The duty is payable by a bank or building society in respect of each debit card which is valid during the accounting period. Banks and building societies are required to submit details of those cards to the Revenue Commissioners and to accompany those details with the payment of the duty. They may pass on the charge to their customers. ***The section only applies to statements that are required to be delivered for accounting periods ending (or deemed to end) on or before 31 December 2005 - for later years see section 123B.***

Because the duty is a stamp duty other appropriate provisions of this Act apply, in particular:

- ***section 14(3)*** which enables the Revenue Commissioners to mitigate penalties payable in respect of late payment of duty,

- ***section 126B*** which enables an appeal against an assessment to duty (the internal review procedures set out in Statement of Practice SP-GEN/2/99 (Revised January 2005) also apply), and

- ***section 152*** which enables the Revenue Commissioners to refund duty in certain circumstances – but also see ***section 159A*** as regards the time limit for making a refund claim and ***section 159B*** as regards interest that may be payable on such refunds.

Details

"bank", "building society", "card account", "debit card", and "promoter" are self-explanatory. ***(1)***

"accounting period" has the same meaning as it has for the purposes of section 27 of the Taxes Consolidation Act 1997 (i.e. the accounting period of the bank or building society), but where such accounting period commences after 31 December 2004 and ends after 31 December 2005, it shall be deemed, for the purposes of this section, to be an accounting period ending on 31 December 2005.

"due date" is the date on which the charge to duty is calculated. For the year 2002, the due date is the date of the end of the accounting period of the bank or building society ending in 2002 provided that date is on or after 5 December 2002. For the year 2003 and 2004, the due date is the date of the end of the accounting period of the bank or building society ending in the relevant year. For the year 2005, the due date is the end of the accounting period, or each of them, where there is more than one, ending in that year.

Banks and building societies must deliver a statement to the Revenue Commissioners showing, the number of cards issued by them at any time and which— ***(2)***

- for the year 2002, are valid at any time during the period from 5 December 2002 to the due date (i.e. the date of the end of an accounting period ending in 2002 which falls on or after 5 December 2002);
- for the year 2003, are valid at any time during the accounting period ending in the year 2003, but not before 5 December 2002 where that date falls within that accounting period;
- for the year 2004, are valid at any time during the accounting period ending in that year;
- for the year 2005, are valid at any time during the accounting period, or each of them, where there is more than one, ending in that year.

The statement must be delivered for due dates falling in the year 2002 (i.e. on or after 5 December 2002), within two months of the due date and for due dates falling in the year 2003, 2004 and 2005 within one month of the due date.

Cards which — ***(3)***

- are not used during the accounting period (see ***subsection (2)***),
- are issued in respect of a deposit account, the average of the daily positive balance which does not exceed €12.70, or
- are a replacement for cards of the same type which have already borne the duty,

are not liable to duty[2].

A stamp duty of €10 is imposed in respect of each debit card included in the statement provided for under ***subsection (2).*** Where the statement is for an accounting period deemed to end on 31 December 2005, the rate of duty for each debit card included in such statement is calculated by multiplying 1/12 of €10 by the number of months in the accounting period subject to a minimum duty of €2.50 for a 3 month accounting period and €7.50 for a 9 month accounting period. ***(4), (4A)***

The statement must be accompanied by the amount of duty payable. ***(5)***

Banks and building societies must provide all necessary information to the Revenue Commissioners relating to the liability to duty. ***(6)***

Interest at the rate of 0.0219% per day (see ***section 159D***) is chargeable, in addition to the duty, if the statement is not delivered by the due date or if duty is paid late. In addition, if the duty is not paid within two months of a due date falling in the year 2002 or within one month of a due date falling in the year 2003, 2004 and 2005, a penalty of €380 per day is also payable for each day the duty remains unpaid after the relevant two month period or one month period, as may be appropriate. ***(7)***

This subsection enables the Revenue Commissioners to enforce delivery of the statement. ***(8)***

---

[2] The exemption contained in the Diplomatic Relations and Immunities Act 1967, applies to debit cards (see **Appendix 5**).

Banks and building societies may pass on the duty and any interest payable to the account-holder. ***(9)***

If the card is liable to duty under ***section 124*** then it will not also be liable to duty under this section. ***(10)***

If a bank or building society changes its accounting period and, as a result of the change, a charge to duty would be avoided in the calendar year in which the change occurred, then the duty will be charged in the year of the change (i.e. the year in which the charge would be avoided) as if the change had not taken place. Duty will thereafter be payable in the normal way one month after the end of the accounting period. ***(11)***

This section only applies to statements that are required to be delivered for accounting periods ending on or before 31 December 2005. ***(12)***

Section 123B Cash, combined and debit cards

Summary

This section, which imposes a stamp duty of €2.50 (€5 for year ended 31 December 2007 – previously €10) on both cash (ATM) and debit (e.g. laser) cards, €2.50 (€5 for year ended 31 December 2007 – previously €10) on combined (ATM/Debit) cards where only one of the functions of the card is used in the year and €5 (€10 for year ended 31 December 2007 – previously €20) on combined (ATM/Debit) cards where the two functions of the combined card are used in the year, replaces ***sections 123*** and ***123A*** for "due dates" falling after 31 December 2005. The duty is payable by a bank or building society in respect of each cash, combined and debit card issued at any time and which is valid on 31 December in each year, ***commencing with the year 2006***. Banks and building societies are required to submit details of those cards to the Revenue Commissioners and to accompany those details with the payment of the duty. They may pass on the charge to their customers.

Because the duty is a stamp duty other appropriate provisions of this Act apply, in particular:

- ***section 14(3)*** which enables the Revenue Commissioners to mitigate penalties payable in respect of late payment of duty,
- ***section 126B*** which enables an appeal against an assessment to duty (the internal review procedures set out in Statement of Practice SP-GEN/2/99 (Revised January 2005) also apply), and
- ***section 152*** which enables the Revenue Commissioners to refund duty in certain circumstances – but also see ***section 159A*** as regards the time limit for making a refund claim and ***section 159B*** as regards interest that may be payable on such refunds.

Details

"bank", "building society", "card account", "cash card", "combined card", "debit card" and "promoter" are self-explanatory. ***(1)***

A bank or building society must deliver a statement to the Revenue Commissioners within one month of the end of each year, ***commencing with the year 2006,*** showing the number of cash cards, combined cards and debit cards issued at any time by the bank or building society and which are valid on 31 December in that year. ***(2)***

Cards which — *(3)*

- are not used during the year,
- are issued in respect of a deposit account, the average of the daily positive balance which does not exceed €12.70

are not liable to duty[3].

In relation to cards included in the statement provided for under ***subsection (2),*** a stamp duty of €2.50 is imposed in respect of each cash card and debit card, €2.50 for each combined card where only one of the functions of the card is used in the year, and €5 for each combined card where the two functions of the combined card are used in the year. *(4)*

The statement must be accompanied by the amount of duty payable. *(5)*

Banks and building societies must provide all necessary information to the Revenue Commissioners relating to the liability to duty. *(6)*

Interest at the rate of 0.0219 per cent per day (see ***section 159D***) is chargeable, in addition to the duty, on the unpaid duty from the date the duty was required to be paid to the date the duty is paid. A penalty of €380 per day is also payable for each day the duty remains unpaid after the relevant one month period. *(7)*

This subsection enables the Revenue Commissioners to enforce delivery of the statement. *(8)*

Banks and building societies may pass on the duty and any interest payable to the account holder. *(9)*

If the card is liable to duty under ***section 124*** then it is not liable to duty under this section. *(10)*

Section 123C Preliminary duty: cash, combined and debit cards

Summary

This section caters for the preliminary payment of the stamp duty on cash, combined and debit cards to be made by financial institutions on 15 December of each year, commencing on 15 December 2008. This preliminary payment of stamp duty is based on 80% of the financial institution's stamp duty liability in relation to those cards for the previous year. However, the preliminary payment due on 15 December 2008 only is based on 40% of the financial institution's stamp duty liability in relation to the cards for the year 2007.

Details

The definitions of "accountable person", "base period", "chargeable period", "due date", "preliminary duty" and "specified statement" are self-explanatory. *(1)*

The section applies to an accountable person who is obliged to submit a statement under ***section 123B*** in respect of the preceding year (the first preceding year is the *(2)*

---

[3] The exemption contained in the Diplomatic Relations and Immunities Act 1967, applies to cash, combined and debit cards (see **Appendix 5**).

year 2007).

An accountable person must submit a statement in respect of the preliminary duty not later than 15 December in the year, commencing with the year 2008. ***(3)***

Where a business is taken over after the expiration of a preceding year and prior to a due date, the person who has taken over the business must make a return under this section in respect of the due date concerned. ***(4)***

Preliminary duty is charged on the statement required to be delivered to the Revenue Commissioners. ***(5)***

The statement must be accompanied by the stamp duty payable on the statement. ***(6)***

An accountable person must provide all necessary information to the Revenue Commissioners relating to the liability to duty. ***(7)***

In the case of failure by an accountable person to deliver a statement by the due date, interest is chargeable on the unpaid stamp duty in accordance with ***section 159D*** from the due date until the date of payment of the duty. A penalty of €380 for each day the duty remains unpaid is also payable. ***(8)***

This subsection enables the Revenue Commissioners to enforce delivery of the statement. ***(9)***

Any preliminary duty paid that becomes overpaid following the delivery of a statement under ***section 123B*** in respect of the chargeable period falling after the due date will be repaid by the Revenue Commissioners. ***(10)***

Where a business is taken over in the period after a due date and before the end of the next chargeable period under ***section 123B***, the person who takes over the business may deduct the preliminary duty from the statement to be submitted under ***section 123B*** for that chargeable period where the preliminary duty has been paid by the person who sold the business. ***(11)***

An accountable person may not claim the stamp duty, interest or penalty imposed under the section as a deduction in the computation of any tax or duty payable by the accountable person. ***(12)***

Section 124 Credit cards and charge cards

Summary

This section imposes a stamp duty of €30 (for year ending 1 April 2008 and subsequent years – previously €40) on credit card accounts and charge cards.

The duty is payable by a bank in respect of each credit card account maintained by that bank at any time during the 12 month period ending on 1 April in a year. For the 12 month period ending on 1 April 2006 and each subsequent 12 month period, “replacement accounts” are excluded from this charge.

The duty is payable by a promoter (see ***subsection (2)(a)***) in respect of every charge card issued or renewed by that promoter at any time during the 12 month period ending on 1 April in a year. For the 12 month period ending on 1 April 2006 and each subsequent 12 month period, ***certain*** “replacement cards” issued on “replacement accounts” are excluded from this charge (see ***subsection (2)(d)***).

Banks and promoters are required to submit details of chargeable and non-chargeable credit card accounts and chargeable and non-chargeable charge cards to the Revenue Commissioners and to accompany those details with the payment of the duty in respect of the chargeable credit card accounts and charge cards. Banks and promoters may pass on the charge to their customers.

The section may be looked at as comprising 3 parts i.e.

- ***subsection (1)*** relating to the duty on accounts maintained by banks in respect of credit cards;
- ***subsection (2)*** relating to the duty on charge cards; and
- the remaining subsections dealing with matters common to both credit card accounts and charge cards.

Because the duty is a stamp duty other appropriate provisions of this Act apply, in particular:

- ***section 14(3)*** which enables the Revenue Commissioners to mitigate penalties payable in respect of late payment of duty,
- ***section 126B*** which enables an appeal against an assessment to duty (the internal review procedures set out in Statement of Practice SP-GEN/2/99 (Revised January 2005) also apply), and
- ***section 152*** which enables the Revenue Commissioners to refund duty in certain circumstances – but see also ***section 159A*** as regards the time limit for making a refund claim and ***section 159B*** as regards interest that may be payable on such refunds.

Details

Subsection (1) deals with credit cards which are issued to individuals. ***(1)***

"account", "account holder", "bank" and "credit card" are self-explanatory.

"letter of closure" means a letter, in such form as the Revenue Commissioners may specify, issued during a relevant period by a bank to an account holder in relation to an account which has been closed during that period confirming that the account holder has accounted for the amount of stamp duty—

- which the bank is required to pay in respect of the account for the relevant period, or
- which another bank (i.e. a different bank) is required to pay for the relevant period in respect of another account which has been closed during that period.

"relevant period" means a 12 month period ending on 1 April in any year commencing with the 12 month period ending on 1 April 2006.

"replacement account" means an account that is opened and maintained by a bank in the name of an account holder during a relevant period—

- where an account in the name of the account holder was, during the relevant period, closed by the bank (which can include a branch of the same bank), or

- where the account holder has, during the relevant period, furnished to the bank a letter of closure issued by another bank (i.e. a different bank) in relation to an account in the name of the account holder which was closed during that period.

To be within the charge the card must be issued to an individual who has an address in the State. A card issued by a foreign bank to such an individual comes within the charge while a card issued by any bank to a person outside the State does not. Cards issued to enable cash only to be obtained are outside the charge[4]. ***(1)(a)***

A bank must furnish a statement to the Revenue Commissioners within 3 months of 1 April each year showing the number of accounts maintained by the bank at any time during the 12 month period ending on 1 April in the relevant year. For the 12 month period ending 1 April 2006 and each subsequent 12 month period, details of chargeable accounts and non-chargeable "replacement accounts" should be shown on the statement. ***(1)(b)***

Each account that is not a "replacement account" is chargeable with a stamp duty of €30. ***(1)©, (d)***

A bank may not issue a letter of closure to an account holder during a relevant period for an account that has been closed during that period unless the bank has received a stamp duty of €30 from the account holder for the account for that period or has received a letter of closure from the account holder in relation to another account closed with a different bank during the same period. A letter of closure may only be used once to treat an account as a replacement account. ***(1)(e), (f)***

A bank may only issue one letter of closure in respect of an account and may only issue a duplicate letter to an account holder, to whom the original letter of closure issued, where the bank is satisfied that the original letter of closure has been lost or destroyed. Any duplicate must state that it is a duplicate of an original letter of closure. ***(1)(g)***

Subsection (2) deals with charge cards which are issued to individuals having an address in the State. A charge card issued by a foreign bank to such an individual comes within the charge while a charge card issued by any promoter to a person outside the State does not[5]. Cards issued to enable cash only to be obtained are within the charge. ***(2)***

"account", "account holder", "charge card", "company charge card" and "supplementary card" are self-explanatory. Because they are excluded from the definition of "charge card" in-house cards are not within the charge to duty. "In-house" means something which pertains to the internal affairs of a business as opposed to that business's relations with persons external to itself. An "in-house" card may only be used to purchase goods and services of the person issuing the card. An example of a card which is not an "in-house" card is a card which may be used to buy petrol at a petrol station but which may also be used to buy goods from the shop on the forecourt even though that shop is not owned by the person who owns the petrol station. ***(2)(a)***

"letter of closure" means a letter, in such form as the Revenue Commissioners may specify, issued during a relevant period by a promoter to an account holder in respect of an account which has been closed during the period—

---

[4] The exemption contained in the Diplomatic and Immunities Act 1967 applies to credit cards – (see **Appendix 5**).

[5] The exemption contained in the Diplomatic and Immunities Act 1967 applies to charge cards – (see **Appendix 5**).

- confirming that the account holder has accounted for stamp duty on the charge cards in respect of which the promoter is liable for the relevant period and stating the number of such charge cards, and

- confirming, where it is the case, that the account holder has, during the relevant period, accounted for stamp duty on the charge cards in respect of which another promoter (i.e. a different promoter) is liable for the relevant period and stating the number of such charge cards.

"relevant period" means a 12 month period ending on 1 April in any year commencing with the 12 month period ending on 1 April 2006.

"replacement account" means an account which is opened and maintained by a promoter in the name of an account holder during a relevant period—

- where an account in the name of the account holder was previously closed by the promoter (which can include a branch of the same promoter) during the same period, or

- where the account holder has furnished to the promoter, during the relevant period, a letter of closure issued by another promoter (i.e. a different promoter) in relation to an account in the name of the account holder which was closed in that period.

"replacement card" means a charge card in relation to a replacement account.

Subsection (2) also deals with company charge cards and supplementary cards which are issued to persons other than individuals or to employees of such persons. The persons concerned must have an address in the State. ***(2)***

A promoter must within 3 months of 1 April in any year deliver a statement to the Revenue Commissioners showing the number of charge cards, company charge cards and supplementary cards issued or renewed by him or her and expressed to be valid at any time during the twelve month period ending on 1 April in the relevant year. For the 12 month period ending on 1 April 2006 and each subsequent 12 month period, details of chargeable cards and non-chargeable "replacement cards" should be shown on the statement. Each charge card and only ***excess*** replacement charge cards (see ***subsection (2)(d)***) are chargeable with a stamp duty of €30. ***(2)(b), (c)***

Where a replacement account replaces an account maintained by the same promoter, and where the number of charge cards issued on the replacement account exceeds the number of charge cards on the original account, only each ***excess*** replacement card is chargeable to stamp duty. Similarly, where a replacement account replaces an account maintained by another promoter, and where the number of charge cards issued on the replacement account exceeds the aggregate number of charge cards stated in the letter of closure in relation to that other account, only each ***excess*** replacement card is chargeable to stamp duty. ***(2)(d)***

A promoter may only issue a letter of closure during a relevant period for an account that has been closed during that period, if the account holder has accounted for the amount of stamp duty which the promoter is required to pay, in respect of the charge cards to which the account relates, for that period. ***(2)(e)***

A letter of closure may only be used once to treat an account as a replacement account. ***(2)(f)***

A promoter may only issue one original letter of closure in respect of an account and ***(2)(g)***

may only issue a duplicate letter to an account holder to whom the original letter issued where the promoter is satisfied that the original letter of closure has been lost or destroyed. Any duplicate letter must state that it is a duplicate of the original letter of closure.

The remaining subsections are common to all cards, whether credit, charge or company or supplementary charge cards. ***(3) – (7)***

The Revenue Commissioners may obtain from banks and promoters whatever information they need to ensure that the correct amount of duty is paid. ***(3)***

The bank or promoter must pay the duty at the same time as the relevant statement is delivered. ***(4)***

Interest at the rate of 0.0219 per cent per day (see ***section 159D***) is chargeable, in addition to the duty, if the statement is not delivered by the due date or if duty is paid late. In addition, if the duty is not paid within 3 months from the due date a penalty of €380 for each day the duty remains unpaid after the 3 month period will also be payable for each day the duty remains unpaid. ***(5)***

A bank or promoter must retain the original letter of closure or any duplicate letter of closure received from a credit card account holder or charge card holder for a period of 4 years from the date of receipt of such letter. ***(5A)***

In the case of an account which is maintained in the name of more than one person, a letter of closure may only be issued to one person named on that account. ***(5B)***

This subsection enables the Revenue Commissioners to enforce delivery of the statement. ***(6)***

A bank or promoter may pass on the duty and any interest payable to its customers. ***(7)***

Section 124A Preliminary duty: credit and charge cards

Summary

This section caters for the preliminary payment of the stamp duty on credit card accounts and charge cards to be made by financial institutions on 15 December of each year, commencing on 15 December 2008. This preliminary payment of stamp duty is based on 80% of the financial institution's stamp duty liability in relation to those cards for the previous year.

Details

The definitions of "accountable person", "base period", "chargeable period", "due date", "preliminary duty" and "specified statement" are self-explanatory. ***(1)***

The section applies to an accountable person who is obliged to submit a statement under ***section 124*** in respect of the preceding year (the first preceding year is the 12 months period ending 1 April 2008). ***(2)***

An accountable person must submit a statement in respect of the preliminary duty not later than 15 December in the year, commencing with the year 2008. ***(3)***

Where a business is taken over after the expiration of a preceding year and prior to a due date, the person who has taken over the business must make a return under this section in respect of the due date concerned. ***(4)***

Preliminary duty is charged on the statement required to be delivered to the Revenue Commissioners. ***(5)***

The statement must be accompanied by the stamp duty payable on the statement. ***(6)***

An accountable person must provide all necessary information to the Revenue Commissioners relating to the liability to duty. ***(7)***

In the case of failure by an accountable person to deliver a statement by the due date, interest is chargeable on the unpaid stamp duty in accordance with ***section 159D*** from the due date until the date of payment of the duty. A penalty of €380 for each day the duty remains unpaid is also payable. ***(8)***

This subsection enables the Revenue Commissioners to enforce delivery of the statement. ***(9)***

Any preliminary duty paid that becomes overpaid following the delivery of a statement under ***section 124*** in respect of the chargeable period falling after the due date will be repaid by the Revenue Commissioners. ***(10)***

Where a business is taken over in the period after a due date and before the end of the next chargeable period under ***section 124***, the person who takes over the business may deduct the preliminary duty from the statement to be submitted under ***section 124*** for that chargeable period where the preliminary duty has been paid by the person who sold the business. ***(11)***

An accountable person may not claim the stamp duty, interest or penalty imposed under the section as a deduction in the computation of any tax or duty payable by the accountable person. ***(12)***

Section 124B Certain premiums of life assurance

Summary

This section provides for a levy of 1% on life assurance premiums. For each quarter, commencing with the quarter ending on 30 September 2009, an insurer must deliver to the Revenue Commissioners a statement showing the assessable amount for the insurer for the quarter. The statement must be accompanied by the amount of stamp duty payable. The assessable amount due in the quarter ending 30 September 2009 is that as is comprised of premiums received on or after 1 August 2009 in respects of contracts of insurance whenever entered into by an insurer.

Because the duty is a stamp duty other appropriate provisions of this Act apply, in particular:

- ***section 14(3)*** which enables the Revenue Commissioners to mitigate penalties payable in respect of late payment of duty,
- ***section 126B*** which enables an appeal against an assessment to duty (the internal review procedures set out in Statement of Practice SP-GEN/2/99 (Revised January 2005) also apply), and
- ***section 152*** which enables the Revenue Commissioners to refund duty in certain circumstances – but see also ***section 159A*** as regards the time limit for making a refund claim and ***section 159B*** as regards interest that may be payable on such refunds.

Details

"assessable amount" means the gross amount received by an insurer by means of premiums in a quarter for policies of insurance in the classes of insurance listed below and referred to in Annex 1 (to Directive 2002/83/EC of the European Parliament and of the Council of 5 November concerning life assurance) to the extent that the risks to which those policies of insurance are located in the State being risks deemed* to be located in the State in accordance with ***section 61*** of the Stamp Duties Consolidation Act 1999 (but excluding amounts received in respect of pension business and amounts received in the course of or by means of reinsurance): ***(1)***

- Class I - Life assurance and contract to pay annuities on human life.
- Class II - Contracts of insurance to provide a sum on marriage or on the birth of a child.
- Class III - Class I policies which are linked to investment funds.
- Class IV - Permanent health insurance.
- Class V - Tontines i.e. associations of subscribers which are established to benefit the beneficiaries of a subscriber on the death of that subscriber.
- Class VI - Capital redemption operations i.e. in return for a single (or periodic) payment agreed in advance, the policy holder will have a right to a specified sum for a specified period in the future.

*The risk is deemed to be located in the State if the policyholder has his or her habitual residence in the State, or where the policy holder is a legal person other than an individual, or if the policy holder's head office or branch to which the policy relates is situated in the State.

"branch " means an agency or branch of a policy holder or any permanent presence of a policy holder in the State even if that presence does not take the form of an agency or branch but consists merely of an office managed by the policyholder's own staff or by a person who is independent but has permanent authority to act for the policyholder in the same way as an agency.

"due date" for each "quarter" is —

(a) 25 April, for the quarter ended 31 March,

(b) 25 July, for quarter ended 30 June,

(c) ©25 October, for quarter ended 30 September, and

(d) 25 January, for the quarter ended 31 December.

"insurer" means —

(e) a person who is the holder of an assurance licence under the Insurance Act 1936,

(f) the holder of an authorisation within the meaning of the European Communities (Life Assurance) Framework Regulations 1994 (S.I. No. 360 of 1994), or

(g) the holder of an official authorisation to undertake insurance in Iceland, Liechtenstein or Norway, pursuant to the EEA Agreement within the meaning of the Agreement on the European Economic Area signed at Oporto on 2 May 1992, as adjusted by all subsequent agreements to that Agreement, who is carrying on the business of life assurance in the State.

"premium" takes its meaning from the Insurance Act 1936 and means "any money or money's worth payable or paid to any person who carries on an assurance business and who in consideration of such money or money's worth undertakes any liability under any policy, bond or certificate".

An insurer shall in each quarter deliver to the Revenue Commissioners a statement, not later than the due date, showing the assessable amount for the insurer for the quarter. ***(2)***

Stamp duty at a rate of 1% is chargeable on the assessable amount shown in the statement. ***(3)***

The statement must be accompanied by the amount of stamp duty payable. ***(4)***

Insurers must furnish to the Revenue Commissioners whatever information they require to ensure that the correct amount of duty is paid. ***(5)***

Interest at the rate of 0.0219 per cent per day (by reference to ***section 159D)*** is chargeable, in addition to the duty, on the unpaid duty from the due date to the date the duty is paid. A penalty of €380 per day is also payable for each day the duty remains unpaid. ***(6)***

Where during any accounting period but before a due date, an insurer ceases to carry on a business and another person acquires the whole, or substantially the whole, of the business, the insurer will not be obliged to make the statement to the Revenue Commissioners on the due date. Instead, the statement is required to be made by the successor. If the successor is already obliged to make a statement, the successor must include details of the business acquired in its return. Otherwise, the successor is obliged to make a statement in lieu of the insurer. ***(7)***

This subsection enables the Revenue Commissioners to enforce delivery of the statement. ***(8)***

Section 125 Certain premiums of insurance

Summary

This section imposes a stamp duty of 3 per cent on the gross amount received by an insurer in respect of certain non-life insurance premiums. The exceptions are re-insurance, voluntary health insurance, marine, aviation and transit insurance, export credit insurance and certain dental insurance contracts. The 3 per cent rate of duty applies to premiums received on or after 1 June 2009 in respect of offers of insurance or notices of renewal of insurance issued by an insurer on or after 8 April 2009. In relation to notices of renewal or offers of insurance issued prior to 8 April 2009 stamp duty at a rate of 2 per cent applies.

Because the duty is a stamp duty other appropriate provisions of this Act apply, in particular:

- ***section 14(3)*** which enables the Revenue Commissioners to mitigate penalties

payable in respect of late payment of duty,

- ***section 126B*** which enables an appeal against an assessment to duty (the internal review procedures set out in Statement of Practice SP-GEN/2/99 (Revised January 2005) also apply), and

- ***section 152*** which enables the Revenue Commissioners to refund duty in certain circumstances – but see also ***section 159A*** as regards the time limit for making a refund claim and ***section 159B*** as regards interest that may be payable on such refunds.

Details

"assessable amount", "excluded amount" and "quarter" are self-explanatory.

In determining the amount on which duty is payable (i.e. the assessable amount) no account is to be taken of excluded amounts. The definition of "excluded amount" includes— ***(1)***

- an amount received in the course or by means of reinsurance;

- a premium received in respect of the various classes of business which are identified by reference to the classification which appears in the Annex to the First Council Directive 73/239/EEC of 24 July, 1973 (OJ No L228 of 16 August, 1973). Those classes of business are:

    - Class 4. Railway rolling stock – all damage to or loss of,

    - Class 5. Aircraft – all damage to or loss of,

    - Class 6. Ships – all damage to or loss of river, canal, lake or sea vessels,

    - Class 7. Goods in transit – all damage to or loss of goods in transit including merchandise, baggage and all other goods,

    - Class 11. Aircraft liability – all liability arising out of the use of aircraft including carrier's liability,

    - Class 12. Liability for ships – all liability arising out of the use of vessels on sea, lakes, rivers or canals including carrier's liability.

    - the following classes, in so far as they relate to the insurance of passengers in marine and aviation vehicles and to carriers liability insurance respectively:

        - Class 1. Accident, including industrial injury and occupational diseases;

        - Class 10. Motor vehicle liability;

        - Class 14. Credit, in so far as it relates to export credit;

- a premium received in respect of health insurance business (being health insurance business within the meaning of section 2 of the Health Insurance Act 1994);

- a premium received in respect of insurance contracts entered into on or after 25 March 2004, the sole purpose of which is the provision of dental services other

than those involving surgical procedures carried out in a hospital by way of in-patient services within the meaning of section 2(1) of the Health Insurance Act 1994.

The definition of "insurer" covers authorisations granted under the Regulations implementing the First, Second and Third Non-Life Insurance Directives. Thus, foreign-based insurers may be within the charge to duty to the extent that they receive premiums in respect of risks located in the State.

"premium" is assigned the meaning it has in the Insurance Act 1936, i.e. "…any money or money's worth payable or paid to any person who carries on an assurance business and who in consideration of such money or money's worth undertakes any liability under any policy, bond or certificate".

An insurer[6] must furnish to the Revenue Commissioners, within 30 days from the end of each quarter, a statement in writing showing the assessable amount for that quarter. ***(2)***

Stamp duty at the rate of 3% is chargeable on the assessable amount shown in the statement. ***(3)***

The statement must be accompanied by the amount of duty payable. ***(4)***

The Revenue Commissioners may obtain whatever information they require to ensure that the correct amount of duty is paid. ***(5)***

On failure to lodge the statement by the due date or to pay the duty within the time specified, interest is chargeable, in addition to the duty, at the rate of 0.0219 per cent per day (see ***section 159D***) from the end of the relevant quarter. ***(6)***

This subsection enables the Revenue Commissioners to enforce delivery of the statement. ***(7)***

Section 125A Levy on authorised insurers

Summary

This section provides for the collection of a levy on health insurance companies based on the number of lives covered by policies underwritten by them. The levy is set at €160 in respect of each adult life and €53 in respect of each child life (under 18 years of age) for contracts entered into or renewed before 1 January 2010. In relation to contracts entered into or renewed on or after 1 January 2010 a levy of €185 in respect of each adult life and €55 in respect of each child life is set and in relation to contracts entered into or renewed on or after 1 January 2011 a levy of €205 in respect of each adult life and €66 in respect of each child life is set. The levy is not being imposed on Restricted Membership Undertakings, on outpatient/GP products, on cash plans, on certain international contracts or on contracts relating solely to the charge for public hospital in-patient services. The levy is to be paid to the Revenue Commissioners on 30 September in each of the years 2009, 2010 in respect of the first and second accounting periods, on 21 September 2011 in respect of the third accounting period and on 21 January 2012 in respect of the fourth accounting period.

---

[6] In the case of co-insurance the leading insurer is responsible for the delivery of the statement and payment of the duty. However, if the leading insurer does not come within the definition set out in the European Communities (Co-Insurance) Regulations 1983, then each co-insurer is responsible for delivering a statement and paying the duty in respect of the portion of the gross premium received by that co-insurer.

Details

The section contains definitions of "accounting period", "authorised insurer", "due date", "excluded contract of insurance", "first accounting period", "fourth accounting period", "in-patient indemnity payment" "insured person", "relevant contract", "restricted membership undertaking", "second accounting period" and "third accounting period" which are self-explanatory. ***(1)***

An authorised insurer must for each accounting period deliver to the Commissioners a statement not later that the due date which is— ***(2)***

- 30 September 2009 for accounting period commencing on 1 January 2009 and ending on 31 July 2009,
- 30 September 2010 for accounting period commencing on 1 August 2009 and ending on 31 July 2010,
- 21 September 2011 for accounting period commencing on 1 August 2010 and ending on 31 July 2011, and
- 21 January 2012 for accounting period commencing on 1 August 2011 and ending on 31 December 2011.

The statement for each of the accounting periods must include the number of insured persons aged less than 18 years, and aged 18 years and over, on 1 January in the first, second and third accounting period and on 1 August 2011 in the fourth accounting period, in respect of whom a relevant contract is renewed or entered into during the accounting period in question.

Where the relevant contract was renewed or entered into before 1 January 2010, a stamp duty of — ***(3)(a)***

- €53 for each insured person aged less than 18 years, and
- €160 for each insured person aged 18 years or over,

is imposed on the authorised insurer.

Where the relevant contract was renewed or entered into on or after 1 January 2010 and before 31 December 2010, a stamp duty of — ***(3)(b)***

- €55 for each insured person aged less than 18 years, and
- €185 for each insured person aged 18 years or over,

is imposed on the authorised insurer.

Where the relevant contract was renewed or entered into on or after 1 January 2011, a stamp duty of —

- €66 for each insured person aged less than 18 years, and
- €205 for each insured person aged 18 years or over,

The statement must be accompanied by the amount of duty payable. ***(4)***

An authorised insurer must furnish to the Revenue Commissioners such information ***(5)***

as they require for the purposes of the section.

In the case of failure to deliver a statement by the due date, interest is chargeable on the unpaid stamp duty in accordance with ***section 159D*** from the due date to the date the duty is paid. A penalty of €380 for each day the duty remains unpaid is also payable. ***(6)***

Where during any accounting period but before a due date, an authorised insurer ceases to carry on a business and another person acquires the whole, or substantially the whole, of the business, the authorised insurer will not be obliged to make the statement to the Revenue Commissioners on the due date. Instead, the statement is required to be made by the successor. If the successor is already obliged to make a statement, it must include details of the business acquired in its return. Otherwise, the successor is obliged to make a statement in lieu of the authorised insurer. ***(7)***

This subsection enables the Revenue Commissioners to enforce delivery of the statement. ***(8)***

An authorised insurer may not claim the duty or any interest or penalty paid as a deduction in the computation of any other tax or duty which is payable by the authorised insurer. ***(9)***

Where a person during an accounting period switches from one authorised insurer to another and the first authorised insurer is required to include insured persons on that insurers' statement for that accounting period, the second authorised insurer may exclude those insured persons who are required to be included on the first insurer's statement from the statement required to be delivered by the second authorised insurer for the same accounting period. ***(10)***

This subsection makes similar provision to that made in ***subsection (10)*** where an insured person is deleted from one contract of insurance and takes out a contract of insurance in his or her own right during the same accounting period. ***(11)***

The Revenue Commissioners may make assessments in relation to the duty due on foot of the levy should the need arise. ***(12)***

This subsection prevents a contract being taken out for more than one year to avoid payment of the levy. Such contract is deemed to be a yearly contract for each year covered by the contract. ***(13)***

Section 125B Levy on Pension schemes

Summary

This section provides for the collection of a levy on pension schemes in the years 2011, 2012, 2013 and 2014. The levy is charged at 0.6% on the value of the assets in a scheme on the 30 June in each year. [An exception may apply, as set out in the definition of "chargeable amount", to defined benefit occupational pension schemes and small self-administered schemes, as respects the assets of such schemes held other than by way of contracts of assurance.]

The levy is payable to the Revenue Commissioners on 25 September in each year and the statement, together with the payment, must be made electronically.

Details

Definitions are provided for certain terms used in this section. Most of these definitions are self-explanatory: ***(1)***

"Administrator" is defined in relation to a scheme (defined later) as meaning the trustees or "other persons having the management of the assets of the scheme". It is usual that the trustees of a scheme would hand over the management of the scheme and the scheme assets to professional administrators and/or investment managers. It is administratively desirable that such administrators/investment managers should value the assets, determine the liability to the levy and make the necessary return and payment. The definition goes on to put beyond doubt that it includes within its terms:

- An administrator of a retirement benefits scheme,
- An insurer carrying on a business of granting retirement annuity contracts and annuity contracts providing death in service benefits,
- An administrator of a Personal Retirement Savings Account.

"Assets" is defined to include all property, including investments, deposits, debts and contracts of assurance, held for the purposes of a scheme, other than excluded assets. Contracts of assurance are included so that there will be no doubt that the value of such contracts will be an asset of a scheme for the purposes of determining a chargeable amount under subsection (2). However, where the trustees of a retirement benefit scheme hold such contracts the levy will be charged not on the trustees but on the insurer who holds the investments backing the contract.

"Chargeable Amount" is the amount on which the levy of 0.6% is to be calculated. It is defined as the aggregate market value of the assets of a pension scheme (and in the case of land the market value is to be calculated net of any outstanding borrowings used to acquire the land) on a fixed valuation date of 30 June in each of the years 2011, 2012, 2013 & 2014, subject to the exception provided for in paragraph (b) of the definition. In essence, all pension scheme assets held in the form of contracts of assurance and all defined contribution occupational pension scheme assets will be valued for levy purposes on 30 June in each of the four years 2011 to 2014.

An exception to the fixed valuation date will apply in the case of defined benefit occupational pension schemes and small self-administered schemes, as respects the assets of such schemes held other than by way of contracts of assurance. In these cases, the administrator may choose to value the assets at 30 June in each year or, where it has been customary to prepare accounts to an appropriate accounting standard to a different date, to use the valuation of the assets on the last day of the most recent scheme accounting period ended in the preceding 12 months.

Note the 30 June valuation date reflects the fact that most Life Companies value unit funds etc. backing contracts of assurance at the end of each quarter and so avoids such companies having to undertake an additional valuation if any other date was chosen, thus avoiding added administrative costs which might otherwise be passed on to trustees and scheme members.

"Chargeable Person" is defined to mean an insurer, in relation to a contract of assurance and an administrator, in relation to any other assets of a scheme.

'Contract of Assurance' means:

(a) a contract of assurance linked to pension business (as described in section 706(3) of the Taxes Consolidation Act 1997) undertaken by pension schemes with Life Companies, and

(b) any other policy or contract of assurance undertaken by the administrator of a retirement benefit scheme with Life companies. This brings with the definition what is called "investment only" business between pension schemes and Life Companies. The only exception to this is in relation to Small Self-Administered Schemes who hold trustee investment plans with Life Offices – the case has been made that in such cases the trustees of the scheme should remain responsible for the levy and the

legislation provides accordingly.

"Due Date" is the date by which the levy is to be paid to the Revenue Commissioners by the chargeable person and is a fixed date of 25 September in each of the four years 2011 to 2014.

"Excluded Assets" are assets that will not be subject to the levy. Essentially they are assets that represent the liabilities of an occupational pension scheme in respect of benefits to members whose employment, in the case of active members, is and always was exercised wholly outside the State, or in the case of deferred or retired members, whose employment always had been exercised outside the State. The exclusion applies, therefore, whether the member is still employed or has left the employment but with deferred benefits retained in the scheme, or is actually retired and in receipt of pension benefits from the scheme, once the employment is and always was exercised out side the State.

This exclusion is designed primarily to ensure that the assets attributable to those members of certain Irish approved pension funds who are based wholly abroad, primarily in the United Kingdom, are not subject to the levy.

Assets of pension funds that are referable to individuals who are, or were, temporarily assigned to work abroad are not exempt from the levy.

"Insurer" means an insurance undertaking within the meaning of the European Communities (Life Assurance) Framework Regulations 1994 (S.I. No. 360 of 1994).

"Market Value" has the same meaning as in Section 548 of the Taxes Consolidation Act 1997 – which generally provides that market value is the price that an asset might reasonably be expected to fetch on an arm's length sale in the open market. The only exception applies in relation to assets that are Land – in such cases the definition of "chargeable amount" provides that any outstanding borrowing used to acquire the land may be deducted from the market value.

"Member", is defined as any person admitted to membership of a retirement benefits scheme under the rules of the scheme;

"one member scheme" means, in effect, a single member Small Self-Administered Scheme – Small Self-Administered Schemes are the only retirement benefit schemes in respect of which Revenue approval requires the delivery of annual scheme accounts to Revenue.

"Pension Fund", in relation to an insurer, is defined in accordance with section 706(2) of the Taxes Consolidation Act 1997 (which in the normal course would relate to the insurer's pension business) but expanded to include "investment only" business as well (as per the definition of contract of assurance). The relevance of this term is in relation to subsection (12)(a) where insurers are permitted to treat the levy as a disbursement from their "pension funds" and adjust accordingly the benefits under any contract.

"Scheme" essentially includes:

- a retirement benefits scheme, approved by Revenue under the Taxes Consolidation Act 1997 or under any other enactment (including any enactment that is repealed) – the latter ensures that schemes approved under now repealed legislation are also caught.

- an annuity contract or a trust scheme or part of a trust scheme approved under section 784 (which relates primarily to retirement benefits under

retirement annuity contracts) or section 785 (which relates to annuities providing for death in service benefits) of the TCA 1997 – but excluding "vested" annuity contracts. As regards the latter, there are certain older type deferred annuity contracts where the annuity becomes payable automatically as part of the contract, as opposed to an open market purchase option that applies in more modern annuity contracts. The definition clarifies that once an annuity is vested, which in most cases arises when the tax-free lump sum is taken, it is no longer subject to the levy.

· a personal retirement savings account contract - other than a "vested" PRSA, i.e. a PRSA in respect of which a lump sum, to which paragraph (a) of section 787G(3) of the Act of 1997 applies, has been paid or made available to the PRSA contributor.

However, as regards retirement benefit schemes, it does not include a scheme in respect of which-

(a) the trustees have passed a resolution to wind-up the scheme, and

(b) the employer is insolvent, for the purposes of the Protection of Employees (Employers' Insolvency) Act 1984.

"valuation date" means the appropriate date under paragraphs (a) or (b) of the definition of "chargeable amount" used to value the scheme assets. This definition has relevance to subsection (12)(b) in the context of the option provided to scheme trustees to reduce benefits to members

A chargeable person must provide no later than the due date, in electronic format, a statement to Revenue of the chargeable amount on which the levy is calculated for each year 2011, 2012, 2013 & 2014. ***(2)***

The stamp duty is 0.6% of the chargeable amount included in the statement mentioned in subsection (2). ***(3)***

The stamp duty is to be paid by the chargeable person on delivery to Revenue of the statement mentioned in subsection (2) and the payment, like the statement, must be made electronically. ***(4)***

This subsection provides- ***(5)***

(a) that a chargeable person who is liable to pay the levy is entitled to dispose of or appropriate scheme assets for the purposes of meeting the amount of the levy payable. Such action by the chargeable person does not affect the Revenue Commissioner's approval of a scheme, and

(b) that where a chargeable person, who is not a trustee, for example a Life Office in respect of insurance contracts held as assets of a scheme, pays the levy through the disposal or appropriation of scheme assets that the trustees must allow that course of action and that the chargeable person is acquitted and discharged as regards any such disposal.

There is an explicit protection for a chargeable person from any court action by reason of having paid the levy by way of disposal or appropriation of scheme assets. ***(6)***

It is put beyond doubt- ***(7)***

(a) that the chargeable person and the trustees of a scheme are both jointly and severally liable for payment of the levy, and

(b), that this joint and several liability of the chargeable person and the trustee also

applies in the particular circumstances of one member Small Self-Administered Schemes, where both the member and the administrator are trustees of the scheme.

This subsection is a standard provision that provides that failure to deliver the necessary statement, or to pay the stamp duty by the due date, will result in: ***(8)***

(i) an interest charge, and

(ii) a daily penalty of €380,

for each day the stamp duty remains unpaid.

This subsection is also a standard provision that provides for the situation where a chargeable person, who is liable to deliver a statement and pay the stamp duty, ceases to carry on business prior to a due date and the business is taken over by a successor. ***(9)***

If the successor was a chargeable person in his/her own right before taking over the business of another chargeable person, the successor must include, in the statement to be delivered by him /her, the chargeable amount in respect of the business taken over. It also provides that if the successor was not a chargeable person in his /her own right before taking over of a business, the successor must nevertheless deliver the statement due to be delivered in respect of the business taken over.

This subsection is again a standard provision providing for enforcement by the Revenue Commissioners where there is default by a chargeable person in the delivery of a statement. ***(10)***

This provides that the stamp duty charged by the section cannot be claimed as a deduction or a credit in computing any other tax or duty for which the chargeable person is liable. ***(11)***

This subsection provides that, notwithstanding any provision of any enactment or any rule of law, or anything in the rules of a scheme, or in the terms and conditions of a contract that might otherwise restrict the adjustment of scheme benefits, if ***(12)***

(a) a chargeable person who is an insurer, pays the levy in respect of a contract of assurance, the levy amount shall be deemed to be a necessary disbursement from the pension fund of the insurer and the insurer may pass on the levy to the insured person by adjusting any benefits payable under the contract; any such action on the part of the insurer will not prejudice Revenue approval of the contract as a retirement annuity contract.

(b) a chargeable person who is an administrator pays the levy in respect of the assets of a scheme or if the levy in respect of any assets of the scheme is paid by some other chargeable person (e.g. an insurer in respect of assets of the scheme that are held in the form of contracts of assurance), any such payment shall be deemed to be a necessary disbursement from the scheme assets and the trustees may pass on the levy by adjusting any benefits payable currently or prospectively to any scheme member. Paragraph (b) also provides that, should the option of reducing scheme benefits be taken, it must essentially be applied in an equitable fashion across the different classes of scheme members that could include active, deferred and retired members. In no case may the reduction in an individual member's or class of member's benefits exceed the member's or class of member's share of the levy. Any action on the part of the trustees to adjust scheme benefits will not prejudice Revenue approval of the retirement benefits scheme.

The Commissioners have authority to review any case where assets are disposed of by administrators or trustees in order to pay the levy to ensure that any such disposals are in keeping with or needed in order to pay the levy. It also gives the Commissioners ***(13)***

oversight authority to review instances where benefits are adjusted as a result of the payment of the levy to ensure that any such adjustment is made in accordance with the requirement of the levy legislation and, in particular, with the requirements of subsection (12)(b) which stipulates that, as respects any member of a scheme, the adjustments must ensure that any diminution in value of the benefits shall not exceed the amount of the levy on the assets attributable to the schemes liabilities in respect of that member.

As regards the latter function, it also allows the Revenue Commissioners to consult with appropriate experts, where necessary.

Section 126 Certain statements of interest

Summary

This section imposes a levy on the amount of interest received by a company in respect of certain loans i.e. so-called "section 84" loans.

The general scheme of the section is that a company which has made a loan to another company on a "section 84" basis must furnish statements of interest received to the Revenue Commissioners. A statement must be furnished within 30 days of the 31 January and 31 July in each year in respect of the relevant interest received by the lender during the 6 month period ending on each of those dates. Stamp duty is levied at the rate of 12% on the amount of the interest received. The duty is payable on the delivery of the statement, that is, within 30 days from the end of each 6 month period.

Because the duty is a stamp duty other appropriate provisions of this Act apply, in particular:

- ***section 14(3)*** which enables the Revenue Commissioners to mitigate penalties payable in respect of late payment of duty,

- ***section 152*** which enables the Revenue Commissioners to refund duty in certain circumstances – but see also ***section 159A*** as regards the time limit for making a refund claim and ***section 159B*** as regards interest that may be payable on such refunds.

Details

The purpose of this section is to recoup some of the corporation tax which had been avoided through the use of "section 84" loans. Section 84 of the Corporation Tax Act, 1976 (now section 130 of the Taxes Consolidation Act, 1997), was introduced to combat an avoidance scheme whereby a company which received a loan from another company could obtain tax relief on its interest payments. Simply stated, section 84 deemed such interest payments to be distributions and, therefore, not tax deductible. However, another provision, in section 2 (now section 129 of the Taxes Consolidation Act, 1997) of the same Act, exempted from corporation tax dividends or other distributions received by one Irish resident company from another.

By exploiting the definition of "distributions" it was possible for a company to reduce its liability for corporation tax. Expressing the interest on a loan at a rate per cent plus a minuscule percentage of the company's profits was sufficient to convert the interest into a distribution. The result was that one company could lend money to another and have the repayment of interest on the loan so structured that the interest received was not taxable in the hands of the lender. The attraction of structuring the loan in this way for the borrower lay in the fact that the lender passed on some of its profit on the loan to the borrower in the form of a lower interest rate. This benefit outweighed the cost to the borrower of having to pay corporation tax on the

distribution because the typical "section 84" borrower is one who suffers little or no corporation tax.

"corporation tax", "Corporation Tax Acts", "relevant interest" and "relevant period" are self-explanatory. The definition of "relevant interest" refers to a number of subparagraphs in section 130(2)(*d*) of the Taxes Consolidation Act, 1997. The subparagraphs referred to are: ***(1)(a)***

- subparagraph (ii) - this treats interest as a distribution where the security for the loan is convertible (or has a right of conversion) into shares,
- subparagraph (iii)(I) - this treats interest as a distribution where the rate or level of the interest is to any extent dependent on the results of the business of the borrower, and
- subparagraph (v) - this treats interest as a distribution where the security for the loan is connected with the holding by the lender of some shares in the borrower.

Where the account of the borrowing company is debited with an amount of relevant interest, the amount so debited is treated as received by the lender. This is to counter any arguments as to whether an amount so debited could be regarded as within the strict meaning of the word "received". ***(1)(b)***

The lender must deliver a statement of the relevant interest to the Revenue Commissioners within 30 days of the end of each 6 month period ending on 31 January and 31 July. ***(2)***

Stamp duty at a rate of 12% is chargeable on the amount of the relevant interest shown in the statement. ***(3)***

Where, however, the interest received on foot of the security (or loan) is less than 6% p.a. throughout the period for which the interest is payable (which will be normally be 6 months but may be less for an initial payment or for a final payment in respect of a loan), the rate of duty is 8%. ***(4)***

The statement must be accompanied by the amount of duty payable. ***(5)***

The Revenue Commissioners may obtain whatever information they need to ensure that the correct amount of duty is paid. ***(6)***

On failure to deliver the statement by the due date or to pay the duty interest is chargeable, in addition to the duty, at the rate of 2.5% per month or part of a month from the expiration of the relevant period. ***(7)***

This subsection enables the Revenue Commissioners to enforce delivery of the statement. ***(8)***

A lender may not claim the duty paid as a deduction in the computation of any other tax or duty which is payable by the lender. ***(9)***

Section 126A Levy on certain financial institutions

Summary

This section provides for an annual contribution from certain financial institutions in the years 2003, 2004 and 2005, which is payable in each of those years on 20 October.

The contribution by an institution is 50 per cent of the DIRT payable by the institution in 2001 subject to a "ceiling". The "ceiling", which is determined on a group basis means that the contribution from any group does not exceed 0.15% of the aggregate group amount of average deposits of Irish residents in 2001 (excluding Government deposits and inter-financial institutions deposits). Although the figure on which the ceiling is based is described in the legislation, it is notified to each institution by the Central Bank.

Because the duty is a stamp duty other appropriate provisions of this Act apply, in particular:

- ***section 14(3)*** which enables the Revenue Commissioners to mitigate penalties payable in respect of late payment of duty,

- ***section 152*** which enables the Revenue Commissioners to refund duty in certain circumstances – but see also ***section 159A*** as regards the time limit for making a refund claim and ***section 159B*** as regards interest that may be payable on such refunds.

Details

"appropriate tax" is given the same meaning as in section 256 of the Taxes Consolidation Act 1997, i.e. deposit interest retention tax. ***(1)(a)***

"assessable amount" is defined in relation to a person as the relevant retention tax for that person (see definition of "relevant retention tax" below).

"average relevant deposits" is defined in relation to a company and is relevant for the purposes of the ceiling on the contribution to be made by institutions. The amount for each institution is specified by the Central Bank in a notice given to each institution. It is defined as an amount equal to the average of end-month amounts of non-Government deposits of Irish residents for each of the calendar months in 2001.

"company" has the same meaning as in section 4 of the Taxes Consolidation Act 1997, i.e. any body corporate which includes a building society.

"non-Government deposits of Irish residents" is defined in relation to a company and is also relevant for the purposes of the ceiling on the contribution to be made by institutions. It means the amount specified as such in returns made before 4 December 2002 by the company concerned to the Central Bank in accordance with Central Bank legislation.

"due date" is the date for payment of the annual contribution by the financial institutions in each of the years 2003, 2004 and 2005. The payments are due in each year on 20 October.

"group assessable amount" is relevant to the ceiling on a group's contribution. It is the aggregate of the assessable amount for each company that is a member of the group concerned on the due date in question.

"group relevant deposits" is also relevant to the ceiling on a group's contribution. It is the aggregate of the average relevant deposits (see above) of companies that are members of the group concerned on the due date in question.

"group stamp duty" is the aggregate of the stamp duty payable under this section by companies that are members of the group concerned on the due date in question –

apart from the ceiling.

"relevant person" is a person who is required to make the special contribution, i.e. a person who was obliged to pay deposit interest retention tax in 2001. Deposit interest retention tax is, under ***paragraph (i)*** of the definition, DIRT payable under section 258 of the Taxes Consolidation Act 1997 or, under ***paragraph (ii)***, DIRT payable under section 259 of that Act on account of such tax.

"relevant retention tax" is the amount of DIRT payable in 2001 and is the basis of charge to the annual contribution. It consists of three elements and is described by way of the formula A+B-C. It is—

- **DIRT actually paid** in 2001 under section 258(3) of the Taxes Consolidation Act 1997, or under section 258(4) or 259(4) on account of DIRT (this is A in the formula),

- **Plus** DIRT that should have been paid in 2001 but which was paid after 2001 (this is B in the formula),

- **Less** DIRT paid in 2001 but which should have been paid before 2001. The fact that this DIRT is an arrear for earlier years must be confirmed by having been agreed as such by a Revenue officer at or before the time it was paid.

"year 2001" is defined as the 12 months to 31 December 2001.

Two companies will be regarded as members of a group if one is a 51% subsidiary of the other (i.e. more than 50% of the ordinary share capital of one company is owned directly or indirectly by the other company). ***(1)(b)***

A company and all of its 51% subsidiaries are regarded as forming a group of companies. A sub-group is not regarded as a group for the purposes of the section but as part of the bigger group. Where a company is not a member of a group, it is to be regarded for the purposes of the ceiling on the contribution as being a group consisting of a single company. This ensures that the ceiling will apply to it.

A person is obliged to make a statement to the Revenue Commissioners showing the assessable amount for the person and any amount apportioned to the person under ***subsection (7)***. Amounts apportioned to a person under ***subsection (7)*** reduce the amount required as an annual contribution so as to make the contribution subject to a ceiling. A statement must be made to Revenue by 20 October in each of the years 2003, 2004 and 2005. ***(2)***

Where, between 1 January 2001 and a due date, a relevant person (i.e. a person who paid DIRT in 2001) ceases to carry on a business in the course of which DIRT was payable in 2001 **and** another person acquires the whole, or substantially the whole, of that business, the relevant person will not be obliged to make the statement to the Revenue Commissioners on the due date. Instead, the statement is required to be made by the successor. If the successor is already obliged to make a statement, it must include the details in its return. Otherwise, it is obliged to make a statement in lieu of the relevant person. ***(3)***

Where a further succession takes place before a due date, the person who succeeds to the business assumes the responsibility for the making of a statement to the Revenue Commissioners in place of the person from whom the business was acquired. Similar rules apply for a subsequent succession and for any further successions to a business. ***(4), (5)***

A relevant person is obliged to pay to the Revenue Commissioners an amount equal to 50% of the assessable amount at the time at which the statement is to be made to ***(6)***

the Revenue Commissioners.

A ceiling on the contribution, given on a group basis, means that the amount of the contribution to be charged under ***subsection (6)*** can be reduced. The reduction for a group will be an amount equal to the excess of "group stamp duty" (defined in ***subsection (1)(a)*** as the aggregate of the contribution that would otherwise be paid by all companies who, at the due date for payment of the levy, are members of the group concerned) over 0.15% of the "group relevant deposits". The excess is apportioned between the members of the group according to the amount of DIRT that each paid. However, the members of the group can jointly elect to apportion the amount on any basis that they specify. Once an amount has been apportioned to a company, the contribution requirement for that company is reduced by that amount. ***(7)***

The contribution must be paid by a relevant person on delivery of the statement to the Revenue Commissioners. ***(8)***

A relevant person must furnish to the Revenue Commissioners such information as they require for the purposes of the section. ***(9)***

In the case of failure to deliver a statement by the due date, by way of penalty, interest is chargeable on the stamp duty at the rate of 0.0273 per cent per day (see ***section 159D)*** from the due date until the date of payment of the duty and by means of a further penalty, an amount equal to 1 per cent of the stamp duty for each day, from 20 October in the relevant year, for as long as the stamp duty remains unpaid. Each penalty is recoverable in the same manner as if it were part of the stamp duty. Enforcement measures in relation to the delivery of a statement are also provided for. ***(10), (11)***

A financial institution may not claim the stamp duty or any penalty imposed under the section as a deduction in the computation of any tax or duty payable by that institution. ***(12)***

Section 126B Assessment of duty charged on statements

Summary

This section allows the Revenue Commissioners to make assessments in relation to the duty due on ATM, debit, combined cards, on charge cards and credit card accounts, on the insurance levy, and on the pensions levy should the need arise.

Details

Section 126B contains definitions most of which are self-explanatory. ***(1)***

"relevant person" means—

(a) a bank or building society within the meaning of section 123, 123A or 123B of the Stamp Duties Consolidation Act 1999 (duty on ATM, debit and combined cards),

(b) an accountable person within the meaning of section 123C or 124A of the Stamp Duties Consolidation Act 1999 (these sections were inserted into the stamp duty code by section 123 of the Finance Act 2008) (preliminary duty on ATM, debit, combined and charge cards and credit card accounts),

© a bank or promoter within the meaning of section 124 of the Stamp Duties Consolidation Act 1999, (duty on credit card accounts and charge cards),

(d) an insurer within the meaning of section 124B of the Stamp Duties Consolidation Act 1999 (levy on life insurance premiums),

(e) an insurer within the meaning of section 125 of the Stamp Duties Consolidation Act 1999 (levy on non-life insurance premiums), or

(f) a chargeable person within the meaning of section 125B of the Stamp Duties Consolidation Act 1999 (levy on pension schemes).

The Revenue Commissioners have the power to make a written assessment where a statement that is required to be delivered by a relevant person is not delivered or is delivered but is not correct. ***(2) & (3)***

Subject to an assessment being appealed, the duty assessed and any interest and penalty in relation to the duty is payable to the Revenue Commissioners. In addition, where the required statement is submitted after an assessment has been raised, the Revenue Commissioners can substitute a revised assessment. ***(4)***

A relevant person, who is dissatisfied with an assessment, may appeal the assessment to the Appeal Commissioners. An appeal may only be lodged following payment of the stamp duty in conformity with the assessment. A person intending to appeal must give notice in writing to the Revenue Commissioners of their intention to appeal within 30 days of the date of the assessment. ***(5)***

Subject to the provisions of the section, the appeal provisions in Chapter 1 of Part 40 of the Taxes Consolidation Act 1997 apply to an appeal taken under this section. ***(6)***

The Revenue Commissioners may make a correcting assessment where an assessment already made is incorrect or incomplete. ***(7)***

The Revenue Commissioners may make an assessment of additional duty payable in circumstances where it comes to notice that the duty already paid on an assessment is insufficient. ***(8)***

Where an assessment is appealed and becomes final and conclusive the date on which the duty should have been originally paid is the date from which any interest and penalties are payable. ***(9)***

The duty charged (and any interest and penalty) on any statement delivered by a relevant person to the Revenue Commissioners is recoverable by them. See Chapters 1A, 1B and 1C of Part 42 of the Taxes Consolidation Act 1997 in relation to recovery of duty (including interest and penalties on the duty) that becomes due and payable on or after 1 March 2009. ***(10)***