

Notes for Guidance - Taxes Consolidation Act 1997

Finance Act 2022 edition

Part 2

Charge to Tax

December 2022



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Part 2 Charge to Tax

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PART 2 THE CHARGE TO TAX

Overview

Part 2 provides for the imposition of the basic charge to income tax (*Chapter 1*), corporation tax (*Chapter 2*) and capital gains tax (*Chapter 3*). *Chapter 1* sets out the charge to income tax and the extension of that charge to profits derived from activities/employments undertaken on the Continental Shelf. It also sets out the standard and higher rates of income tax and the income bands to which those rates apply. In addition, the various Schedules and Cases which set out the sources of income on which the tax is charged are described. *Chapter 2* imposes the charge to corporation tax at both the standard rate and the reduced rate. The charge to corporation tax is also extended to income of companies derived from the Continental Shelf. *Chapter 3*, in addition to providing for the basic charge to capital gains tax, sets out the persons chargeable and the extent of that charge.

CHAPTER 1 *Income tax*

12 The charge to income tax

Income tax is charged on all income (in the section described as property, profits or gains) described or comprised in 4 Schedules, namely, Schedules C (*section 17*), D (*section 18*), E (*section 19*) and F (*section 20*).

13 Extension of charge to income tax to profits and income derived from activities carried on and employments exercised on the Continental Shelf

Summary

A charge to income tax is imposed on profits/gains from exploration or exploitation activities carried on in the State's area of the Continental Shelf and from dealings in rights arising from such activities. An income tax charge is also imposed on certain emoluments of employees working on the Continental Shelf.

Details

Definitions

“designated area” is a term used in the Continental Shelf Act, 1968, under section 2 of which the Government has power to make orders to designate areas of the sea bed outside the territorial waters of the State in which the State has exploration and exploitation rights. (1)

“exploration or exploitation activities” means activities carried on in connection with the exploration or exploitation of so much of the sea bed and subsoil and their natural resources as is situated in the State (that is, within the territorial waters of the State) or in a designated area.

“exploration or exploitation rights” means rights to, rights to interests in, or rights to the benefit of, assets generated as a result of exploration or exploitation activities. For example, a foreign exploration concern undertaking prospecting surveys/searches in the

State's area of the Continental Shelf has created an asset (namely, the results of the survey) which it could then sell on to say another foreign concern for development/exploitation.

Profits or gains from exploration or exploitation activities or rights

By treating, for income tax purposes, profits/gains from exploration or exploitation activities carried on in a designated area, or from exploration or exploitation rights, as profits/gains from activities or property in the State, the section effectively extends the State's jurisdiction, for income tax purposes, to include Continental Shelf areas which are designated areas. For example, mining oil in a designated area of the Irish Continental Shelf is to be treated in the same way as if the mining were carried on in the State. It is to be noted, in the case of exploration/exploitation rights, that the charge to tax is not qualified with reference to the place where the underlying transaction takes place. In the earlier example, the profits from the sale of the survey results would be chargeable to tax even where the contract for the sale was executed outside the state. (2)

Profits/gains arising to a non-resident person from exploration or exploitation activities carried on in the State (that is, in Irish territorial waters) or in a designated area as well as profits/gains derived from or exploration or exploitation rights are treated as profits/gains of a trade carried on in the State through a branch or agency. This ensures that the profits of non-residents in relation to such activities and dealings are automatically chargeable to income tax. (3)

Where a non-resident holder of a licence or lease issued under the Petroleum and Other Minerals Development Act, 1960 engages another non-resident company to do the actual exploration work, the latter company may have no ties with this country and there may be no agent in whose name an assessment might be made. In such cases, the licence or lease holder is to be treated as the agent of the person carrying on the exploration work for the purposes of assessment to tax. This enables **section 1034** to be applied. **Section 1034** ensures that a non-resident may be assessed and charged in the name of any agent, etc, in the same manner as the non-resident would be charged if he/she were resident. (Under **Schedule 1** the licence or lease holder may also be called on to pay the appropriate tax). It is to be noted that the situation of an actual licence or lease holder doing the actual exploration or exploitation work is not explicitly catered for. In such a case it may be taken that there will be an agent or some other authorised person in whose name an assessment may be made under **section 1034**. (4)

Emoluments from office or employment on Continental Shelf

Emoluments of non-resident employees working on the State's area of the Continental Shelf who are remunerated wholly or partly in the State are brought within the charge to income tax. (5)

Miscellaneous

Supplementary provisions for this section are contained in **Schedule 1**. (6)

14 Fractions of a pound and yearly assessments

Income tax is charged for every fractional part of one euro but is not charged on an amount lower than one cent. The assessment and charge to income tax is made for a year known as a "year of assessment" (which is defined in **section 2**).

15 Rate of charge

Summary

This section sets out the rates at which income tax is to be charged and the bands of income to which these rates are to be applied for the year 2023 and subsequent years of assessment. The section provides for a graduated charge to income tax on an individual's taxable income on the basis set out in the Table to the section.

Part 1 of the Table sets out the rates applicable to single persons, widowed persons without children and married persons/civil partners assessed to tax as single persons,

Part 2 sets out the rates applicable to those who qualify for the single person child carer credit, and

Part 3 sets out the rates applicable to married persons and civil partners assessed to tax on their own and their spouses'/civil partners' combined incomes.

Details

Subject to the graduated charge to income tax applied to individuals (other than individuals acting in a fiduciary or representative capacity) by **subsection (2)**, income tax at the standard rate of 20 per cent is chargeable for the year 2023 and subsequent years of assessment on all persons (for example, individuals, trustees, executors, etc.) within the charge to income tax. (1)

A graduated charge to income tax applies on an individual's taxable income on the basis set out in the Table to the section. **Part 1** of the Table sets out the rates applicable to single persons, widowed persons without children and married persons/civil partners assessed to tax as single persons. **Part 2** sets out the rates applicable to those who qualify for the single person child carer credit. **Part 3** sets out the rates applicable to married persons and civil partners assessed to tax on their own and their spouses'/civil partners' combined incomes in accordance with **section 1017**. The Table may be summarised as follows: (2)

	Rate Band	Rate
Part 1		
Single persons, etc.	€40,000	20% standard rate
	Balance	40% higher rate
Part 2		
Single person child carer	€44,000	20% standard rate
	Balance	40% higher rate
Part 3*		
Married couples/Civil Partners	€49,000	20% standard rate
	Balance	40% higher rate

*Two income married couples/civil partners can get an increase of up to €31,000 giving them a combined standard rate band of €80,000. (3)

“specified income” in relation to **subsection (3)** means total income after deducting from such income any deduction attributable to a specific source of income and any relevant interest within the meaning of **Chapter 4 of Part 8** (i.e., interest liable to Deposit Interest (4)

Retention Tax).

Where all or any of the widened standard rate band results from income which is subject to tax under PAYE, then that increased band will only be used in accordance with the PAYE provisions of the Act in calculating the tax to be deducted from that income. This is to ensure that the increase in the standard band beyond €49,000, provided by *subsection (3)* is not transferable between the spouses/civil partners. (5)

16 Income tax charged by deduction

In computing a person's total income for any year — (1)

- payments received under deduction of tax at the standard rate are treated as the income of that year, and
- charges paid under deduction of tax at the standard rate are allowed as deductions for that year.

This rule applies even where the payments or charges accrue in whole or in part before or after the year in question.

Income tax is chargeable at the standard rate only on so much of a person's income as represents charges from which income tax is deductible. (2)

17 Schedule C

Summary

Schedule C provides for the deduction of income tax at source from certain interest, annuities, dividends or shares of annuities payable in the State out of public revenue.

Details

Definitions

The definitions of “banker”, “coupons”, “coupons for any foreign public revenue dividends”, “dividends”, “foreign public revenue dividends”, “public revenue” and “public revenue dividends” in *section 32* apply for the purposes of Schedule C. (1)

The Schedule C charge

Tax under Schedule C is charged —

- on profits arising from public revenue dividends (dividends in the context of Schedule C means interest, annuities, dividends and shares of annuities) payable in the State in any year of assessment. Public revenue includes the public revenue of the Irish Government and of any foreign Government and also the revenue of any public authority or institution in any foreign country (for example, interest on U.K. government stocks);
- in respect of public revenue dividends (other than dividends payable out of the public revenue of the State) payable elsewhere than in the State where a banker or other person in the State obtains the payment of the dividends by means of coupons received from another person;
- on the proceeds of the realisation by a banker in the State of coupons for any public revenue dividends (other than dividends payable out of the public revenue of the State) payable elsewhere than in the State which the banker pays to, or to the account of, any person;
- on the purchase price paid by a dealer in coupons for coupons for any public revenue dividend (other than dividends payable out of the public revenue of the State) payable elsewhere than in the State, except where the purchase is made from

a banker or another dealer in coupons.

The Schedule C charge does not extend to annuities which are not of a public nature.

The tax is to be charged on every full euro of the annual profits, etc, charged.

The obligation to withhold tax does not apply to a banker by virtue only of the banker clearing a cheque or arranging to have a cheque cleared. (3)

18 Schedule D

Summary

Income tax is charged under Schedule D in respect of a number of sources of income which are classified into 5 separate Cases. A charge to tax under Schedule D or one of its constituent Cases may also be imposed by a provision of the Income Tax Acts other than this section.

Details

The Schedule D charge

Tax under Schedule D is charged on the annual profits/gains arising or accruing — (1)1

- to any person residing in the State from any kind of property whatever, whether the property is situated in the State or elsewhere; (1)1(a)(i)
- to any person residing in the State from any trade, profession or employment, whether carried on in the State or elsewhere; (1)1(a)(ii)
- to any non-resident person, whether a citizen of Ireland or not, from any property whatever in the State or from any trade, profession or employment exercised in the State; and (1)1(a)(iii)
- to any non-resident person, whether a citizen of Ireland or not, from the sale of any goods, wares or merchandise manufactured or partly manufactured by such person in the State. (1)1(a)(iv)

Tax under Schedule D is also charged on all interest of money, annuities and other annual profits/gains not charged under Schedule C or E and not specially exempt from tax. (1)1(b)

The tax in each case is to be charged for every one euro of the annual amount of the profits/gains. (1)1

Profits/gains arising from an office, employment or pension, however, are not to be charged to tax under Schedule D unless they are chargeable to tax under Case III of that Schedule. (1)2

The 5 Cases

The income sources chargeable to tax under Schedule D are classified into 5 cases. (2)

Case I charges tax in respect of any trade and in respect of profits/gains arising out of lands, etc used for quarrying, mining, waterworks, docks, fishing, tolls, ferries, fairs, markets, etc.

Case II charges tax in respect of any profession not contained in any other Schedule.

Case III charges tax on —

- interest, annuities and other annual payments, excluding any payment chargeable under Case V (in effect the Case III charge only arises where the interest, annuity or other annual payment is not liable to Irish tax at source);
- profits from discount transactions (a discount arises on the purchase/sale of

Government stock, promissory notes, bills of exchange, and the Case III charge arises on the difference between the cost of the instrument and the amount realised on sale or maturity. Certain discounts are exempt from tax – see *sections 45, 46 and 48*. Discounts received or given in the ordinary course of trade are not included in the Case III charge);

- interest on Government stocks, excluding interest on such stocks charged under Schedule C;
- interest on any securities issued, or deemed within the meaning of *section 36* to be issued, under the authority of the Minister for Finance, in cases where such interest is paid without deduction of tax (for example, Irish Government stocks issued under the authority of the Minister for Finance and stocks of semi-State companies);
- interest from foreign securities, excluding interest on such securities charged under Schedule C; and
- income from foreign possessions (for example, income from a foreign employment and profits from businesses carried on wholly abroad. In the case of a foreign employment, the Case III charge does not include earnings (including any amount in the form of expenses payments received or benefits-in-kind derived) from the employment to the extent that those earnings are attributable to the performance in the State of the duties of the employment. Such earnings are, by virtue of *paragraph 2* of Schedule D and *paragraph 3* of Schedule E, chargeable to tax under Schedule E.

The Case III charge on interest from foreign securities and income from foreign possessions is modified in the case of non-domiciled persons and Irish citizens not ordinarily resident in the State so that the charge is confined to the sums actually remitted to the State (see *section 71*). It should also be noted that certain foreign pensions are exempt from the Case III charge where the pension would have been exempt from tax in the country of origin had the person receiving it continued to reside in that country (*section 200*). The Case III charge is extended by *section 55* to gains on strips of securities where a Case I charge does not arise and by *section 57* to benefits in kind received in respect of foreign employments

Case IV charges tax in respect of any annual profits or gains not within any other Case of Schedule D and not charged by virtue of any other Schedule.

Income, etc within the Case IV charge may be divided into 2 categories, namely, the miscellaneous income not within any other Case or Schedule and the income statutorily directed to be charged under Case IV.

Income within the first category has been decided by case law. Examples include profits of a casual nature, profits from hire of moveable assets (for example, farmer hiring machinery for isolated jobs), letting of premises where landlord/tenant relationship does not exist (for example, halls for dances, meetings, etc), shipping fees, green fees, casual literary fees, certain copyright royalties.

Instances where a Case IV charge has been imposed by statute include profits from unlawful activities (*section 58*), income from which tax is deducted at source (*section 59*), post-cessation receipts of a trade/profession (*section 91*), mining rents and gains from dealings in leases and conveyances (*Chapter 8 of Part 4*), DIRT interest (*Chapter 3 of Part 8*), certain balancing charges (*Part 9*), refunds of pension contributions and excessive commutation payments under pension schemes (*Chapter 1 of Part 30*), withdrawal of various tax reliefs (for example, BES/film relief, etc), various anti-avoidance provisions countering the transfer of assets abroad, conversion of income into capital and schemes connected with the payment of interest on loans (*Part 33*),

maintenance payments (*section 1025*).

Case V charges tax on rent in respect of land or premises in the State and on receipts for easements (that is, any right, privilege or benefit in, over or derived from any land or premises in the State such as the right to erect advertising boards).

Schedule D charge may also be imposed by other provisions

This section is without prejudice to any other provision of the Income Tax Acts directing tax to be charged under Schedule D or under one or other of the Cases mentioned in *subsection (2)*. This allows a Schedule D charge or a charge under one of its constituent Cases to be imposed by way of a provision other than the actual Schedule or Case. Examples of such charges are to be found in *Chapter 1* of *Part 4* (Schedule D – supplementary charging provisions). (3)

19 Schedule E

Summary

Schedule E charges income tax in respect of every public office or employment of profit and every annuity, pension or stipend payable out of the public revenue of the State (apart from annuities chargeable under Schedule C) and also in respect of all other offices, employments and pensions which would have been chargeable under Schedule D but for *paragraph 2* of that Schedule.

Details

Definitions

“annuity” and “pension” include respectively an annuity and a pension paid voluntarily and an annuity and pension capable of being discontinued. (1) *par 1*

The Schedule E charge

Tax under Schedule E is charged in respect of every public office or employment of profit and in respect of every annuity, pension or stipend payable out of the public revenue of the State (apart from annuities charged under Schedule C). The tax is charged for every euro of the annual amount of the Schedule E source. *par 2*

Tax under Schedule E is also charged in respect of any office, employment or pension the profits/gains arising or accruing from which would be chargeable to tax under Schedule D but for *paragraph 2* of that Schedule. That paragraph removed offices, employments and pensions from the Schedule D charge unless liable to tax under Case III of that Schedule. *par 3*

The charging provisions of Schedule E are without prejudice to any other provision of the Income Tax Acts directing tax to be charged under that Schedule. The principal provisions directing that tax be charged under Schedule E are to be found in *Chapters 3* and *4* (benefit in kind) and *5* (miscellaneous charging provisions) of *Part 5* and *Part 17* (profit sharing schemes). *par 4*

Finally, the Schedule applies *subsection (2)* and *sections 114* and *115* (which provide rules as to permissible deductions for Schedule E purposes) and *section 925* (which provides for special assessment rules for Schedule E) for the purposes of tax charged under the Schedule. *par 5*

Tax under Schedule E is to be paid in respect of all public offices and employments of profit in the State. In addition to the public offices and employments actually listed, “public office or employment of profit in the State” has been held by the courts to be an office or employment which owes its existence to Irish law. (2)

20 Schedule F

Summary

Income tax is charged under Schedule F on dividends paid and other distributions made by Irish resident companies.

Details

Definitions

For the purposes of the charge to income tax under Schedule F, “distribution” has the meaning assigned to it by *Chapter 2* of *Part 6* together with the extension of that meaning provided for by *sections 436, 436A, 437, 816(2)(b)* and *817*. This is the same meaning as “distribution” has for the purposes of the Corporation Tax Acts (see *section 4(1)*). It should be noted, therefore, that this definition applies for all the purposes of the Corporation Tax Acts but for the purposes of the Income Tax Acts applies only for the purposes of charging to income tax under Schedule F distributions made by a resident company. (1) *par 1*

The Schedule F charge

Income tax is chargeable under Schedule F for any year of assessment on dividends/distributions made in that year by an Irish resident company (apart from dividends/distributions which are exempt from a charge to income tax). For income tax purposes, all such distributions are to be treated as income, regardless of the manner in which they are to be dealt with in the hands of the recipient. (1) *par 2*

A double charge to income tax under Schedule F and some other provision of the Income Tax Acts is prevented by providing that a distribution chargeable to tax under Schedule F is not chargeable under any other provision of the Income Tax Acts. (2)

CHAPTER 2 *Corporation tax*

21 The charge to corporation tax and exclusion of income tax and capital gains tax

Summary

Corporation tax is charged on the profits of companies for a financial year.

The standard rate of corporation tax is —

- 20 per cent for the financial year 2001,
- 16 per cent for the financial year 2002,
- 12½ per cent for the financial year 2003 onwards.

However, it is to be noted that *section 21A* provides that a 25 per cent rate of corporation tax is charged for the financial year 2000 onwards on certain profits of companies. Under *Part 14*, before 1 January 2011, certain income of companies consisting of income from the sale of goods (manufacturing income) was charged at an effective rate

of 10 per cent. Also, **section 644B** provides for an effective 20 per cent rate of corporation tax on income from dealing in residential development land.

In general, a company within the charge to corporation tax in respect of a given source of income is not within the charge to income tax in respect of that same income. Also, where a company is within the charge to corporation tax in respect of a gain on a disposal there will not be a charge to capital gains tax in respect of that gain.

Details

Charge to corporation tax

Corporation tax is charged on the profits of companies for a financial year. (1)

The rate of tax is —

- 32 per cent for the financial year 1998,
- 28 per cent for the financial year 1999,
- 24 per cent for the financial year 2000,
- 20 per cent for the financial year 2001,
- 16 per cent for the financial year 2002, and
- 12½ per cent for the financial year 2003 and each subsequent year.

Shipping activities

Profits from qualifying shipping activities arising to a company carrying on a qualifying shipping trade (see notes to **section 407** for explanations of these terms) are taxable at the rate of 12.5 per cent in the financial years 2001 and 2002. Likewise, tonnage tax profits are taxable in 2002 at the rate of 12.5 per cent (see notes to **Part 24A**). (1A)

Exclusion of income tax

Income tax is not chargeable on the income of a company (apart from income arising to it in a fiduciary or representative capacity) if — (2)

- the company is resident in the State, or
- the income is, where it arises to a non-resident company, chargeable to corporation tax.

A company's obligation under **section 24** to deduct income tax from charges and to account for that tax to the Revenue is not affected by this provision.

[In the case of a non-resident company, corporation tax is charged by virtue of **section 25** on the income and chargeable gains of the company where the income or gains are attributable to a branch or agency in the State. Any other income arising in the State and any other chargeable gains accruing to a non-resident company are chargeable to income tax or capital gains tax, as the case may be, instead of corporation tax.]

Exclusion of capital gains tax

A company is not chargeable to capital gains tax on any gains accruing to it but is instead chargeable to corporation tax in respect of such gains. However, by virtue of **section 649**, development land gains accruing to a company are chargeable to capital gains tax and not corporation tax. (3)

21A Higher rate of corporation tax

Summary

This section provides that a higher rate of corporation tax, namely, 25 per cent, is to be charged for the financial year 2000 and subsequent financial years on certain profits of companies. The profits in question are income chargeable under the following Cases of Schedule D —

- Case III (for example, interest not taxed at source, interest on Government securities, foreign income),
- Case IV (for example, royalties, miscellaneous income), and
- Case V (that is, rental income from land and buildings in the State).

Also included are profits from working scheduled minerals, mineral compounds or mineral substances, working minerals, petroleum activities, and dealing in or developing land other than profits from construction operations (which is taxable at the standard corporation tax rate) and the disposal of “residential development land” (which under **section 644B** is taxable at an effective rate of 20 per cent). However, the higher rate of corporation tax does not apply to any part of a company’s income which previously qualified for “manufacturing relief” (that is, income qualifying for taxation at an effective rate of 10 per cent).

Details

Definitions

“construction operations” are any of the operations referred to in the definition of that term in **section 530(1)** (which provides definitions for the scheme of tax deduction from payments made to subcontractors in the construction, forestry and meat processing industries), other than operations which are part of, or related to —

- the drilling for or extraction of minerals, oil, natural gas, or
- the exploration for, or exploitation of, natural resources.

“dealing in or developing land” is to be construed in accordance with **Chapter 1 of Part 22** which contains special provisions relating to the taxation of profits and gains from dealing in or developing land. In particular refer to the guidance notes on **section 640** for elaboration on the construction of this term.

“excepted operations” is as any one or more of the following activities, namely, dealing in or developing land, excluding construction operations; working scheduled minerals, mineral compounds or mineral substances; working minerals; and petroleum activities.

“excepted trade” is a trade which consists only of trading operations or activities which are excepted operations. In the case of a trade consisting partly of excepted operations and partly of other operations or activities, the part of the trade consisting of excepted operations, which is treated as a separate trade under **subsection (2)**, is also an excepted trade.

“exempt development” is a development within Class 1 of Part 1 of the Second Schedule to the Local Government Planning and Development Regulations, 1994 which complies with the conditions and limitations related to that class and which are set out in the Regulations. This consists of the extension of a dwelling house by the construction or erection of an extension to the rear of the dwelling house or by the conversion for use as part of the dwelling house of any garage, store, shed or other similar structure attached to the rear or side of the dwelling house. The conditions are that the total floor area of any such extension cannot exceed 23 square metres.

“land” includes the foreshore and land covered by water, while “dry land” is land not

permanently covered by water.

“minerals” is based on the definition of that term in section 3 of the Minerals Development Act, 1940, while “petroleum” has the same meaning as in section 2(1) of the Petroleum and Other Minerals Development Act, 1960.

“petroleum activities”, “petroleum exploration activities”, “petroleum extraction activities” and “petroleum rights” are based on definitions of similar terms in **section 684(1)** which defines terms for the purposes of the special taxation regime for Irish oil and gas exploration and production set out in **Chapter 2 of Part 24**.

“qualifying land” means land—

- on which a building or structure has been constructed by or for the company, and
- which has been fully developed by the company.

Land is regarded as fully developed by a company at the time of the disposal if, on the basis of a snapshot of the position at that time, it is reasonable to expect that there will be no further development of the land over the next 20 years except for any non-material development which the purchaser of the building might carry out for that person’s use or enjoyment of the building concerned.

Such a development would not be regarded as material if the development is—

- exempt from the requirement to seek planning permission (see definition of “exempt development”), or
- a development which results in an increase in floor area of the building of no more than 20 per cent.

“working”, in relation to minerals, is based on the definition of that term in section 2(1) of the Minerals Development Act, 1979.

Deemed separate trades

If a trade consists partly of excepted operations and partly of other activities, each part is treated as a separate trade for the purposes of the section, and a just and reasonable apportionment of receipts and expenses is to be made between the two parts. (2)

Charge to the higher rate

Corporation tax is charged at the rate of 25 per cent for the financial year 2000 and subsequent financial years on the profits of companies which consist of income chargeable under Case III, IV or V of Schedule D or of income of an excepted trade. (3)(a)

However, the 25 per cent rate does not apply to foreign dividends chargeable under Case III which by virtue of **section 21B** are chargeable to tax at the 12½ per cent rate.

As a general rule charges on income are not allowed in calculating income from a particular source, but are deducted from the profits of a company. If this rule were to be applied in the case of a company with an excepted trade, the amount charged to tax at the higher rate would be excessive. Accordingly, the general rule is modified so that charges on income paid wholly and exclusively for the purposes of an excepted trade which is taxed at the higher rate are to be deducted in calculating the income from that trade. (3)(b)

Exclusion of income from “manufacturing activities” and certain “insurance business” from higher rate charge

The 25 per cent rate does not apply to the profits of a company for any accounting period to the extent that those profits consist of income of trades of non-life insurance, reinsurance and life business (in so far as it is attributable to shareholders of the company). (4)

Exception for work carried out in financial year 2000

For the financial year 2000 construction operations do not include demolition, service installation and other preparatory work (other than laying foundations) to residential development. The effect of this is that income from such activities does come within the scope of the 25 per cent rate for the year 2000, but the tax concerned may then be reduced to a 20 per cent effective rate. (5)

21B Tax treatment of certain dividends

Summary

This section provides that certain foreign dividends received by companies will be chargeable to tax at the 12.5% rate of corporation tax instead of at the 25% rate. Where dividends do not qualify to be charged at the 12.5% rate, they will continue to be charged at the 25% rate.

The dividends concerned are dividends received by a company out of the trading profits of a non-resident company that is resident, in an EU Member State, in a country with which Ireland has a double tax treaty in force, in a country with which Ireland has signed a double tax treaty which has yet to come into force, in a country which has ratified the Joint Council of Europe\OECD Convention on Mutual Assistance in Tax Matters or in a non-treaty country where the company is owned directly or indirectly by a quoted company.

The section provides that once a dividend is identified by the paying company as paid out of specified profits (which could be trading or non-trading), the rate of tax is determined by reference to the trading or non-trading nature of those specified profits.

Trading profits of non-resident companies will be allowed to pass up through tiers of companies by way of dividend payments so that, when ultimately paid to a company within the charge to corporation tax in the State, that company will be taxed on the dividends received by it at the 12.5% rate.

The section also provides a “**safe harbour**” that allows the full amount of a dividend received by a company to be charged at the 12.5% rate where two conditions are met, notwithstanding that a part of the dividend may not be paid out of trading profits:

- The **first condition** is that 75% of the dividend paying company’s profits must be trading profits, either trading profits of that company or dividends received by it out of trading profits of lower tier companies that are resident in EU Member States, in countries with which Ireland has a double tax treaty in force or in countries with which Ireland had signed a double tax treaty which has yet to come into force or in a country which has ratified the Convention on Mutual Assistance in Tax Matters or in a non-treaty country where the company is owned directly or indirectly by a quoted company.
- The **second condition** is an asset condition that must be satisfied on a consolidated basis by the company receiving the dividend and all companies that are its subsidiaries. The aggregate value at the end of the period concerned of the trading assets of those companies must not be less than 75% of the aggregate value of all of their assets.

A special rule also applies in the case of companies that are **portfolio investors** that receive a dividend from a company resident in an EU Member State, a country with which Ireland has a tax treaty in force, a country with which Ireland has signed a tax treaty which has yet to come into force, a country that has ratified the Convention on Mutual Assistance in Tax Matters or a non-treaty country where the company is owned

directly or indirectly by a quoted company. A portfolio investor is an investor that holds no more than 5% of the dividend paying company. Such investors may treat a dividend received as being paid out of trading profits of the dividend paying company so as to be taxable at the 12.5% rate in Ireland.

The section exempts from corporation tax certain foreign dividends received by portfolio investors where the dividends form part of the trading income of the company.

Details

Definitions

“Profits” of a company for a period is defined as the profits of the company according to its Profit and Loss Account, or its Income Statement, for the period. A Profit and Loss Account is likely to be relevant where the company’s accounts are prepared under local generally accepted accounting principles. Where a company uses International Financial Reporting Standards (IFRS) in the preparation of its accounts, the profits will appear in the Income Statement that, under IFRS, is the equivalent of the Profit and Loss Account. (I)(a)

Where a company is required to present a Profit and Loss Account or Income Statement to its shareholders at its AGM, the profits are to be taken as the profits according to that Profit and Loss Account or Income Statement.

A situation where the company is not required to present its Profit and Loss Account, or Income Statement at its AGM is provided for. In such a situation, the profits are to be taken as the profits according to the Profit and Loss Account, or Income Statement, prepared by the company based on an accounting framework that is recognised where the company is incorporated as presenting a fair view of the profits of the period concerned.

“Relevant territory” is defined as an EU Member State, a country with which Ireland has a double tax treaty in force, a country with which Ireland has signed a double tax treaty which has yet to come into force or a country which has ratified the Convention on Mutual Assistance in Tax Matters (referred to in *section 826(IC)*). It includes the State. The inclusion of the State is relevant where a dividend is paid by an Irish company to its parent company in a Member State or a country with which Ireland has a tax treaty and is then paid on as a dividend to that company’s parent in the State.

“Trading profits” are defined as the aggregate of two amounts.

The first amount is the proportion of the company’s profits that arise from trading. These are defined as so much of the profits of the company as are, on a just and reasonable basis, attributable to the carrying on of a trade by the company.

The second amount is so much of the profits of the company as are attributable to the amount of dividends received by the company that are treated under the section as being trading profits of the company. This will be an “after tax” amount. These are dividends received by the company out of trading profits of other companies in relevant territories.

The final words of the definition provide that trading profits do not include amounts attributable to the profits of an excepted trade under *section 21A*, or to dividends paid out of such profits. An excepted trade is a trade of dealing in or developing land, a trade of working minerals or a trade consisting of petroleum activities. The profits of such a trade are subject to tax at the 25% corporation tax rate. Dividends from such activities should also be subject to tax at that rate.

Interpretation rules

References in the section to companies by which dividends are paid refer only to (I)(b)(i)

companies that are resident in relevant territories or companies the principal class of shares of which, or where the company is a 75% subsidiary of another company, that principal class of shares of that other company, are substantially and regularly traded on a stock exchange.

A dividend received by the company that is paid out of trading profits of another company will be treated as being received out of trading profits. The same will apply to a dividend that is paid out of income of a company that is treated under the section as trading profits. This covers income that consists of a dividend received by a company out of trading profits of another company and which is being paid on as a dividend to a third company. (1)(b)(ii)

The period out of the profits of which a dividend is to be treated as paid is set out. There are three scenarios: (1)(b)(iii)

- if the dividend is paid for a specified period, the dividend will be treated as paid out of the profits of that period, (1)(b)(iii)(I)
- if the dividend is not paid for a specified period but out of specified profits, the dividend will be treated as being paid out of the period in which those profits arose, (1)(b)(iii)(II)
- if the dividend is neither paid for a specified period, nor out of specified profits, the dividend will be treated as paid out of profits of the last period for which accounts of the company were made up that ended before the payment of the dividend. (1)(b)(iii)(III)

Rules are provided for a situation where a dividend that is treated as paid for a particular period exceeds the distributable profits for that period. The rules provide that where, in the case of a period identified under *paragraph (b)(iii)* as the period for which a dividend is paid, the total dividend exceeds the profits available for distribution, the excess is to be treated as paid out of the profits of the company for the immediately preceding period (or so much of those profits as have not already been distributed, or treated as distributed). A dividend paid that exceeds distributable profits can be brought back through years in this way to determine the period that it is to be treated as paid for. (1)(b)(iv)

The provisions of *sections 412 to 418* apply for the purposes of determining whether a company is a 75% subsidiary of another company. (1)(c)

Additional rules

This paragraph determines the appropriate proportion of a dividend that is treated as paid out of trading profits. Where the dividend is paid out of specified profits, the proportion of the dividend chargeable at 12.5% is a proportion of the dividend equal to the proportion of the trading profits included in the specified profits. Where the dividend is paid out of profits of a period (determined in accordance with *subsection (1)(b)*), the proportion of the dividend chargeable at 12.5% is a proportion of the dividend equal to the proportion the trading profits included in the period of the profits of which the dividend is paid are of the profits of the period. (2)(a)

In certain cases, a dividend paid by a company for a period can be treated as being paid out of trading income notwithstanding that some of it may come out of other income of the company, including non-trading income of the company and dividends received by it from companies that are not resident in a relevant territory. This will apply where two conditions are met. These are the profits condition and the assets condition. (2)(b)

The profits condition requires that not less than 75% of the profits of the dividend paying company must consist of trading profits. It should be noted that this 75% test can be met by the company's own profits from trading or by a combination of such profits and dividends, received by that company from companies resident in relevant territories out (2)(b)(i)

of trading profits of those companies, that are treated as trading profits of the dividend paying company.

The subparagraph provides a “safe harbour” provision. It applies to a dividend paid by a company resident in a relevant territory or in a non-treaty country where the company is owned directly or indirectly by a quoted company to a company that is within the charge to corporation tax in the State. Once the 75% income and asset tests are met, the dividends will qualify to be taxed at the 12.5% rate irrespective of the source of the dividends. The asset condition requires that 75% of the assets of the dividend-receiving company and all companies of which it is a parent (with a holding threshold of 5% applying for this purpose in accordance with *section 626B*) are trading assets. In calculating whether this condition is met no account is to be taken of assets of any of those companies that consist of shares held by it in another of those companies or loans made by one of those companies to another of those companies. (2)(b)(ii)

Applicability

The circumstances in which the section applies are set out. It applies where a company receives a dividend chargeable to tax under Case III of Schedule D and the dividend is paid to it by another company out of its trading profits. A dividend is chargeable under Case III where it is received from a non-resident company. A dividend received from an Irish resident company is not chargeable under Case III but is regarded as franked investment income and is exempt from further tax in the hands of the receiving company. (3)

Portfolio investors

Special rules apply in the case of portfolio investors. Dividends from portfolio investments that are chargeable to tax under Case III are treated as paid out of trading profits and are taxable at 12.5%. Dividends from portfolio investments that would otherwise be included as trading receipts of a trade are given the same treatment as franked investment income and are exempt from corporation tax. A portfolio investor is an investor with a holding of less than 5% in the dividend-paying company. (4)

Claims

Where a company proves that the section applies and makes a claim in that behalf, *section 21A(3)* (which applies the 25% rate of corporation tax to certain income of companies – including in particular income of companies that is chargeable under Case III of Schedule D) is not to apply to dividends received by a company from another company out of trading income of the other company. A company must be able to demonstrate that they are entitled to the benefits of the section. If they can demonstrate this they will be entitled to take the benefits under self-assessment. In the event of an audit they may be required to prove that they meet the conditions of the section. (5) & (6)

A claim under the section is to be included with a company’s annual return of profits for the accounting period concerned.

22 Reduced rate of corporation tax for certain income

[This section was repealed by section 72(2) of the Finance Act 1999 with effect from 1 January 2000.]

22A Reduction of corporation tax liability in respect of certain trading income

[This section was deleted by section 54 and paragraph 3 of Schedule 1 to the Finance Act 2012.]

This section previously provided for a rate of 12½ per cent to apply to the trading income (other than trading income taxable at the 10 or 25 per cent rates) of a company where that trading income did not exceed €254,000 in a year. The measure was given by way of a reduction in corporation tax in order to arrive at a net effective rate of 12½ per cent. Where the trading income was between €254,000 and €317,500, marginal relief applied.

23 Application of section 13 for purposes of corporation tax

Section 13, which imposes a charge to income tax on profits or gains from exploration or exploitation activities carried on in the State's area of the Continental Shelf and from dealings in rights arising from such activities, applies also for the purposes of corporation tax.

23A Company residence

Summary

This section contains rules concerning the tax residence of companies which are incorporated in the State. These rules were fundamentally revised in Finance Act 2014. Section 43 of Finance Act 2014 substituted a new section for section 23A to provide that an Irish incorporated company will be regarded as resident for tax purposes in the State. The alignment of company residence with the treatment of company residence that is provided for in double taxation treaties is continued. Where for the purposes of a double taxation treaty, a company is regarded as resident in the treaty country and not resident in the State, the company shall be regarded as not resident in the State for tax purposes.

The new incorporation rule for determining the tax residence of a company incorporated in the State will apply to companies incorporated on or after 1 January 2015. For companies incorporated in the State before this date, a transition period will apply until 31 December 2020 and section 23A as it was before the 2014 Finance Act amendment will continue to apply (see Company Residence Rules for companies incorporated before 1 January 2015: Pre Finance Act 2014 provisions below). Where, in the case of a company incorporated in the State before 1 January 2015, there is both a change in ownership and a major change in the nature and conduct of the business of the company in the relevant period (as defined in section 43(2) of Finance Act 2014), the company will become resident in the State from the date of the change in ownership and the provisions of the new section 23A will apply from that date.

The new section 23A also clarifies that the application of the general common law rule of company residence to companies that are not incorporated in the State remains unaffected. Accordingly, a company that is incorporated in a foreign jurisdiction but that is centrally managed and controlled in the State will continue to be treated as resident in the State for tax purposes.

The following is a brief summary of the new rules on company residence:

General Rule

A company that is incorporated in the State will be regarded as resident for tax purposes (1) in the State.

Companies regarded for the purposes of a tax treaty as resident in a territory other than the State

Incorporation in the State does not result in a company being tax resident in the State if the company is regarded as resident in a territory other than the State and not resident in the State for the purposes of a tax treaty. In such a case, the tax treaty provisions override the general rule. (2)

Companies that are not incorporated in the State

A company that is incorporated in a foreign jurisdiction and is centrally managed and controlled in the State will be resident in the State for tax purposes. (3)

Transition period for companies incorporated before 1 January 2015

Section 23A as substituted by Finance Act 2014 has effect from 1 January 2015. However, with regard to companies incorporated before 1 January 2015, the substituted section has effect:

- (i) after 31 December 2020, or
- (ii) from the date, after 31 December 2014, of a change in ownership of the company where there is a major change in the nature or conduct of the business of the company within the relevant period,

whichever is the earlier.

“relevant period” as referred to in (ii) above, means a period beginning on the later of 1 January 2015 or the date which occurs one year before the date of the change in ownership of the company and ending 5 years after the date of that change in ownership

Accordingly, for companies incorporated before 1 January 2015, the new residence rules in section 23A as substituted by Finance Act 2014, will apply after 31 December 2020, unless there is both a change of ownership of the company and a change in the nature or conduct of the business within the relevant period, in which case the new residence rules will apply from the date of the change of ownership. Where there is an on-going business in the company (i.e. with no major change), the transitional period to the end of 2020 will continue to apply even if ownership changes before that time.

For the purposes of the references to a change in ownership, Schedule 9 (other than paragraph 4) of the Taxes Consolidation Act 1997 (TCA) will apply as if references in Schedule 9 to sections 401 or 679(4) of the TCA were references to the commencement provisions in Finance Act 2014, section 43(2)(b) and (c). This means that there will be a change in the ownership of a company if –

- A single person acquires more than 50% of the ordinary share capital of the company,
- 2 or more persons each acquire a holding of 5% or more of the ordinary share capital of the company and those holdings together amount to more than 50% of the ordinary share capital of the company, or
- 2 or more persons each acquire a holding of the ordinary share capital of the company, and the holdings together amount to more than 50% of the ordinary

share capital of the company, but disregarding a holding of less than 5% unless it is an addition to an existing holding and the 2 holdings together amount to 5% or more of the ordinary share capital of the company.

Paragraph 4 of Schedule 9 states that a transaction or circumstance taking place before the change in ownership shall not be taken into account in determining whether there is any subsequent change in ownership. This paragraph will not apply for the purposes of references to a change in ownership of a company, so that such a transaction or circumstance can be taken into account.

“a major change in the nature or conduct of the business of a company” means –

- (i) a major change in the nature or conduct of a trade, within the meaning of section 401(1)(a) or (b), carried on by the company. This includes:
 - a major change in the type of property dealt in, or services or facilities provided, in the trade, or
 - a major change in customers, outlets or markets of the trade.
- (ii) the commencement by the company of a new trade, or
- (iii) a major change arising from the acquisition by the company of property or of an interest in, or right over, property.

In relation to (iii) above, a major change in the business of the company could arise if there was a major change in the type or range of assets held by the company. For example, if a company holding assets such as a deposit account or shares were to acquire intangible assets for licensing to other companies, this could constitute a major change in the business of the company.

Company residence rules for companies incorporated before 1 January 2015: Pre Finance Act 2014 provisions.

Prior to Finance Act 2014, the general rule for determining company residence was the common law rule by virtue of which a company is resident in the State for tax purposes if the central management and control of the company is in the State. This rule applied prior to the Finance Act 2014 changes and continues to apply to companies that are incorporated in other jurisdictions. Statutory anti-abuse provisions supplementing this general rule were included in the ‘old’ section 23A that was applicable before the change in Finance Act 2014.

This section provided that in certain specific circumstances a company would, by virtue of being incorporated in the State, be regarded as resident in the State for tax purposes. Broadly, section 23A provided that where a company is incorporated in Ireland and neither it, nor any company related to it, carries on a trade in Ireland, the company would be regarded as resident in the State for tax purposes, unless it would be treated as not being so resident for the purposes of a double taxation treaty.

This specific incorporation rule did not apply where the company is a 'relevant company' that carries on a trade in the State or is related to a company that carries on a trade in the State. A 'relevant company' is a company that either:

- is ultimately controlled by persons resident in the EU (including Ireland) or in a country with which Ireland has concluded a double taxation treaty, or
- is, or is related to, a company the principal class of the shares of which is substantially and regularly traded on one, or more than one, recognised stock exchange in an EU Member State or in a tax treaty country.

The 'old' Section 23A provided that a company which is regarded, for the purposes of a tax treaty, as resident in a territory other than the State and not resident in the State, was to be treated as not resident in the State for tax purposes.

The 'old' Section 23A also provided that where by reason of a mismatch of residence rules with a treaty-partner country, an Irish-incorporated company would neither be resident in that country nor in the State and, accordingly, would not otherwise be resident in any country, the company will be treated as resident in the State. This provision was introduced in section 39 of Finance (No. 2) Act 2013 and addressed a mismatch situation where an Irish-incorporated company that is managed and controlled in a treaty-partner country is not regarded as resident for tax purposes in any territory because (i) the company is not resident in the treaty-partner country, as it is not incorporated in that country, and (ii) the company is not resident in the State, as it is not managed and controlled in the State.

Details

The detailed provisions of the 'old' section 23A (i.e. before the change in Finance Act 2014) are set out hereunder.

Definitions

“arrangements” refers to tax treaties between the Government and the authorities of another territory. **(1)(a)**

“relevant company” is a company —

- which is under the ultimate control of persons resident in an EU Member State or a country with which Ireland has a tax treaty, or
- which is, or is related to, a company the principal class of shares of which are substantially and regularly traded on a recognised stock exchange in an EU Member State or a country with which Ireland has a tax treaty.

“relevant territory” is either an EU Member State (including Ireland) or a country with which Ireland has a tax treaty.

“tax” means (in the context of a person being resident in a territory other than the State for the purposes of “tax”) tax which corresponds to Irish income tax or corporation tax.

A company is regarded as related to another company if one is a 50 per cent subsidiary of the other or both are 50 per cent subsidiaries of a third company. A company is **(1)(b)(i)**

regarded as a 50 per cent subsidiary of another company if and so long as at least 50 per cent of its ordinary share capital is owned directly or indirectly by that other company. **Section 9** rules are applied to clarify the links to direct, indirect and beneficial ownership. **Sections 412** to **418** are applied to ensure that companies have a real relationship and not just one which can be manipulated by the issue of shares. These sections require that the company which holds the required number of shares must also be entitled to the same proportion of dividends, and assets on a winding up, of the company in which the shares are held.

In considering whether a company is a relevant company, “control” is construed in accordance with **section 432**. Under that section a person has control of a company if the person has, or is entitled to acquire — **(1)(b)(ii)**

- the majority of the issued share capital or voting power in the company,
- such rights as would entitle the person to more than 50 per cent of distributions made by the company, or
- such rights as would entitle the person to more than 50 per cent of assets of the company on its winding up.

Also under that section, rights of a person and the person’s associates can be aggregated to determine whether a company is controlled by “five or fewer participators”. In adapting that section for the purposes of this section, the expression “five or fewer participators” is replaced by —

- “persons who are resident in a relevant territory” when considering whether a company is controlled by residents of a relevant territory, and
- “persons who are not resident in a relevant territory” when considering whether a company is controlled by persons who are not resident in a relevant territory.

General rule

The general rule by virtue of which a company is resident in the State for tax purposes if the central management and control of the company is in the State, is supplemented by an incorporation rule so that a company which is incorporated in the State is regarded as resident in the State for corporation tax and capital gains tax purposes. Consequently, such a company is taxable in the State on its worldwide income and gains. The existing general rule that a company which is managed and controlled in the State is resident in the State continued to apply alongside the supplementary provisions of the ‘old’ section 23A. **(4)**

Exceptions

Incorporation in the State does not in itself result in a company being tax resident in the State if the company is a relevant company and either the company itself or a related company carries on a trade in the State. **(3)**

In addition, incorporation in the State does not result in a company being tax resident in the State if the company is treated under a tax treaty as resident in a territory other than the State and as not being resident in the State. In such a case, the tax treaty provisions override the general rule. **(4)**

Notwithstanding subsection (3), where an Irish incorporated company that is managed and controlled in a treaty partner country would not otherwise be regarded as resident for tax purposes in any territory for the reason that — **(5)**

- the company would not be resident for tax purposes in the treaty partner country because it is not incorporated in that country, and
- the company would not be resident in the State for tax purposes because it is not managed and controlled in the State,

then the company will be regarded as resident in the State for tax purposes.

Subsection (5) applies from 24 October 2013 for companies incorporated on or after that date and from 1 January 2015 for companies incorporated before 24 October 2013.

23B Residence of SE or SCE

Summary

This section provides that an SE or SCE that has its registered office in the State will be treated as being resident in the State for tax purposes. This is similar to the general rule for companies that is set out in *section 23A*, which provides that a company that is incorporated in the State will be resident for tax purposes in the State. The rules in *section 23A* are subject to some exceptions. Those exceptions also apply in the case of an SE and an SCE.

Details

Transfer of registered office by an SE or SCE

An SE or SCE that transfers its registered office out of the State is not to be regarded as causing the SE or SCE to cease to be resident in the State. The Regulations covering an SE or SCE require the entity to have its head office in the same Member State as its registered office. As head office broadly equates to place of management and control, it is likely that the SE or SCE will be managed and controlled where its registered office is. The move of registered office from the State to another Member State does not of itself cause the SE or SCE to cease to be resident in the State. However, the accompanying move of head office is likely to involve management and control ceasing to be in the State and, consequently, the company ceasing to be resident in the State. (1) & (2)

24 Companies resident in the State: income tax on payments made or received

Summary

Certain payments made (for example, annuities or other annual payments) by a resident company must be paid under deduction of income tax at the standard rate. Where a resident company receives an annual payment from which income tax has been deducted, the tax deducted from the payment is allowed as a credit against the company's corporation tax liability for the accounting period in which that payment is taken into account.

Details

Deduction of tax

Certain payments (for example, annuities or other annual payments) made by a resident company are not treated as paid out of profits or gains brought into charge to income tax and therefore *section 237* (which entitles the payer to deduct and retain income tax on the payment) cannot apply. Accordingly, *section 238* applies to such payments and (1)

under that section the company is obliged to deduct tax at the standard rate of income tax and account to the Revenue for the tax so deducted. The rules in *section 239* apply for accounting to the Revenue for income tax deducted from such payments.

The right or obligation to deduct income tax from any payment is not affected by the fact that the recipient is a company not chargeable to income tax in respect of the payment.

Set off of tax deducted

Where a resident company receives a payment on which it bears income tax by deduction, the income tax is to be set against any corporation tax assessed on the company for the accounting period in which that payment is taken into account for corporation tax purposes. Accordingly, the company, unless wholly exempt from corporation tax, will not be able to claim repayment of income tax until the corporation tax liability for the accounting period has been determined. There is, however, a separate provision in *section 239(7)* which enables a company which receives in any accounting period payments which have borne income tax to claim to have that tax set against the income tax which it would have to deduct and pay to the Revenue on payments it makes in the accounting period. (2)

Persons acting on behalf of companies

The section also applies to payments received by a person acting on behalf of or in trust for a company, but not to payments received by the company as agent or trustee for another person. (3)

25 Companies not resident in the State

Summary

This section lays down the scope of the charge to corporation tax in the case of non-resident companies. A non-resident company is not within the charge to corporation tax unless it carries on a trade in the State through a branch or agency or is in receipt of rental income or gains from Irish property. Where a non-resident company so carries on a trade, the company is chargeable not only on trading income arising directly or indirectly through or from the branch or agency but also on any other income arising from property or rights used by or held by or for the branch or agency and on any chargeable gains attributable to the branch or agency. Income tax deducted from income forming part of a non-resident company's income chargeable to corporation tax is to be set off against any corporation tax liability on that income. Accordingly, the income tax so deducted is not repayable until the corporation tax liability for the accounting period concerned has been determined.

A non-resident company which does not carry on a trade in the State through a branch or agency, or is not in receipt of rental income or gains from Irish property, is chargeable to income tax in respect of income arising from other sources within the State. Where a non-resident company has a branch or agency within the State, it is to be charged to income tax and not to corporation tax on income which is neither attributable to the branch or agency nor rental income or gains from Irish property. Similarly, capital gains tax is levied on the chargeable gains of a non-resident company where it has no branch or agency in the State or where, if it has a branch or agency in the State, the gains are not attributable to the branch or agency. However, where a non-resident company is chargeable to corporation tax on income from Irish properties under Case V, any chargeable gains attributable to those properties will be chargeable to corporation tax.

Details

Certain non-resident companies within the charge to corporation tax

Subject to **subsection 2A**, a non-resident company is not within the charge to corporation tax unless it carries on a trade in the State through a branch or agency. Where it does so, the company is chargeable to corporation tax on all its chargeable profits wherever arising, subject to any express exceptions provided for in the Corporation Tax Acts. Examples of the “exceptions provided for” include **sections 726(2)** and **727(1)** which require that distributions by resident companies to a non-resident life assurance company are to be taken into account in computing the liability of the latter company to corporation tax. (1)

Chargeable profits

The chargeable profits of a non-resident company carrying on a trade in the State through a branch or agency are — (2)

- any trading income arising directly or indirectly through or from the branch or agency,
- any income from property or rights used by, or held by or for, the branch or agency (for example, patent royalties received by the branch), and
- chargeable gains attributable to the branch or agency.

In the case of chargeable gains, the mechanism used to bring those gains within the charge to corporation tax is to bring into charge all chargeable gains accruing to a non-resident company which apart from the Corporation Tax Acts would be chargeable to capital gains tax and to exclude gains on the disposals of assets which were not used in or for the purposes of the trade of the branch or agency and which were not used, held or acquired for the purposes of the branch or agency.

Distributions received by such a non-resident company from resident companies are excluded as distributions and are not within the charge to corporation tax by virtue of **section 129**. **Subsection (1)** provides for exceptions to this rule and the note on that subsection gives examples of when distributions from resident companies may be taken into account in computing the corporation tax liability of a non-resident company carrying on a trade through a branch or agency.

A non-Irish resident company that is within the charge to tax on profits or gains under Case V of Schedule D will be chargeable to corporation tax on those profits or gains. A gain or loss on the disposal of an asset by a non-resident company, the profits or gains from which were chargeable to tax under Case V of schedule D, or would have been chargeable to tax but for an insufficiency of profits or gains, is within the charge to corporation tax. The exception to this rule is where a gain is realised on the disposal of development land in which case the gain or loss is within the charge to capital gains tax. This subsection applies to profits or gains accruing on or after 1 January 2022. (2A)

Set off of tax deducted

Subject to **section 729** (which makes special provisions for overseas life assurance companies), where a non-resident company receives a payment under deduction of income tax and the payment forms part of its income for the purposes of corporation tax, the income tax deducted from the payment is to be set off against the company’s corporation tax liability for the accounting period in which the payment falls. Accordingly, although by virtue of **section 21(2)(b)** the payment is not chargeable to income tax, the company, unless wholly exempt from corporation tax, is not entitled to claim repayment of the income tax until the corporation tax liability for the particular (3)

accounting period has been determined.

25A Attribution of profits to a branch

Summary

This section provides for the application of an OECD-developed mechanism, known as the ‘Authorised OECD Approach’, for the attribution of income to a branch or agency of non-resident companies carrying on a trade in the State through such a branch or agency and applies for chargeable periods commencing on or after 1 January 2022.

The ‘Authorised OECD Approach’ seeks to attribute to a branch (or agency) the profits that it would have earned at arm’s length if it were a legally distinct and separate enterprise performing the same or similar functions under the same or similar conditions. Therefore, it incorporates separate entity and arm’s length principles. The aim of the ‘Authorised OECD Approach’ is to apply to intra-company ‘dealings’ the transfer pricing principles that apply to inter-company transactions.

Details

Definitions

Key definitions include:

(1)

‘authorised OECD approach guidance’ means the guidance on the attribution of profits to permanent establishments set out in the 2010 Report on the Attribution of Profits to Permanent Establishments approved for publication by the Council of the OECD on 22 July 2010, supplemented by the whole or part of such additional guidance on the attribution of profits to permanent establishments, published by the OECD on or after the date of the passing of the Finance Act 2021, as may be designated by the Minister for Finance.

‘Article 7 of the OECD Model Tax Convention’ means the provisions contained in Article 7 of the Model Tax Convention on Income and on Capital published by the OECD on 21 November 2017.

‘branch’, in relation to a company which is not resident in the State, means a branch or agency through which the company carries on a trade in the State.

‘medium enterprise’ and ‘small enterprise’, for the purposes of the section, have the same meaning as that provided for by *section 835F*, and ‘small or medium-sized enterprise’ shall be construed accordingly. The definitions of ‘medium enterprise’ and ‘small enterprise’ in *section 835F* are closely based on the category of micro, small and medium-sized enterprises as set out in the Annex to the EU Commission Recommendation of 6 May 2003.

A small enterprise is an enterprise that, on a group basis, employs fewer than 50 employees and whose annual turnover and/or annual total assets does not exceed €10 million.

A medium enterprise is an enterprise that, on a group basis, employs fewer than 250 employees and which has an annual turnover not exceeding €50 million and/or annual total assets not exceeding €43 million and which is not a small enterprise as defined. Certain modifications to the definitions contained in the Annex apply for the purposes of defining a medium enterprise and a small enterprise in an Irish context

Application of the authorised OECD approach

For the purposes of *section 25(2)* the ‘relevant branch income’ shall be an amount that is attributable to the branch in accordance with *subsections (3) and (4)*. ‘Relevant branch

(2)

income’ is the amount of any trading income arising directly or indirectly through or from a branch and any income from property or rights used by, or held by or for, the branch.

Subsection (3) is derived from Article 7(2) of the OECD Model Tax Convention. Under this provision, the branch is effectively hypothesised as a separate company independent of the company of which it is a part. Dealings are recognised between the branch and the other parts of the company. The relevant branch income attributable to the branch is the income it would have earned in respect of such dealings if it were treated as a separate and independent company engaged in the same or similar activities under the same or similar conditions, while taking into account the functions performed, assets used and risks assumed by the company (of which the branch is a part), through the branch and through other parts of the company. (3)

For the purposes of attributing relevant branch income to a branch, **subsection (3)** shall be construed to ensure, as far as is practicable, consistency between— (4)(a)

- the effect which is to be given to **subsection (3)**, and
- regardless of whether such double taxation relief arrangements actually apply, the effect which would be given if double taxation relief arrangements incorporating paragraph 2 of Article 7 of the OECD Model Tax Convention were to be applied, in accordance with the authorised OECD approach guidance, to the computation of so much of the profits as are attributable to the branch that comprise relevant branch income.

For the purpose of determining the effect which would be given if double taxation relief arrangements incorporating paragraph 2 of Article 7 of the OECD Model Tax Convention were to be applied, in accordance with the authorised OECD approach guidance, references to ‘Transfer Pricing Guidelines for Multinational Enterprises and Tax Administrations’ and ‘the Guidelines’ in the authorised OECD approach guidance shall be construed, as far as is practicable, as references to the transfer pricing guidelines within the meaning of **section 835D**. (4)(b)

Relevant branch records documentation requirements

Subsection (7) contains the documentation requirements to be satisfied.

A non-resident company carrying on a trade in the State through a branch or agency is obliged to have available such records as may reasonably be required for the purposes of determining whether the relevant branch income of the company has been computed in accordance with this section. These records are referred to as ‘relevant branch records’ in the section. (7)(a)

Subsection (7)(b) provides that the relevant branch records shall include – (7)(b)

- a description of the business of the company, including its organisational structure, business strategy and key competitors,
- a description of the business of the branch, including its organisational structure, business strategy and key competitors,
- a functional and factual analysis which contains such information as may reasonably be required for the purposes of determining—
 - the existence, characterisation and terms of any dealings between the branch and other parts of the company, and
 - the appropriate attribution of assets, risks and free capital to the branch,

- calculations supporting the attribution of free capital to the branch based on the functional and factual analysis referred to above,
- in relation to each of the dealings between the branch and other parts of the company, accounting records and contemporaneous documents which support the existence of such dealings,
- a description of the transfer pricing method used in respect of each of the dealings between the branch and other parts of the company and the reasons for selecting the transfer pricing method,
- details of the tested party used, if applicable, and an explanation of the reasons for selection,
- in respect of each of the dealings between the branch and other parts of the company, a list and a description of selected comparable uncontrolled transactions (internal or external), if any, and information on relevant financial indicators for independent enterprises relied on in attributing the relevant branch income to the branch, including a description of the comparable search methodology and the source of such information, and
- in respect of each of the dealings between the branch and other parts of the company, information and allocation schedules showing how the transfer pricing method has been used to determine the relevant branch income attributable to the branch.

For the purposes of **subsection (7)** references to ‘functional and factual analysis’ and ‘free capital’ shall be construed in accordance with the authorised OECD approach guidance, and ‘transfer pricing method’, ‘tested party’, ‘selected comparable uncontrolled transactions (internal or external)’, ‘relevant financial indicators for independent enterprises’ and ‘comparable search methodology’ shall be construed in accordance with the transfer pricing guidelines (within the meaning of **section 835D**). (7)(c)

Relevant branch records documentation must be prepared by a company no later than the date on which a tax return for the chargeable period is required to be delivered and must be provided to Revenue within 30 days of a request by a Revenue officer made in writing. (8)

Exclusions from relevant branch records documentation requirements

Companies which are small enterprises for an accounting period are not required to maintain relevant branch records in respect of that accounting period. In addition, companies which are medium-sized enterprises for an accounting period and the relevant branch income attributable to the branch of the company in that accounting period is less than €250,000 are also not required to maintain relevant branch records for such accounting periods. (7)(d)

Penalties

Where a company fails to comply with a request to provide relevant branch records within 30 days of a written request, a fixed penalty of €4,000 will apply. (9)

Where the company is not a small or medium-sized enterprise, the fixed penalty is increased from €4,000 to €25,000 plus €100 for each day that the failure continues.

Relevant branch adjustment

Subsection (10) provides for protection from tax geared penalties, provided certain conditions are satisfied.

- ‘Relevant branch adjustment’ means the amount of any difference between– (10)(a)
- the amount of chargeable profits included in a return delivered by or on behalf of a company on or before the specified return date for an accounting period, and
 - the amount of chargeable profits that should have been included in the return delivered by or on behalf of the company on or before the specified return date for the accounting period,

which arose by virtue of the chargeable profits, included in the return delivered by or on behalf of the company, not being computed in accordance with this section.

A relevant branch adjustment will not be taken into account in determining whether a penalty referred to in *section 1077F(2)* for a careless default applies to the company (or in computing the amount of such a penalty) where the company – (10)(b)

- has fulfilled the requirements of the section to prepare, and provides upon request, relevant branch records within the specified timeframes; and (10)(c)
- the records provided are accurate and demonstrate that, notwithstanding the relevant branch adjustment, the company has made a reasonable effort to comply with the requirements of this section in determining the relevant branch income attributable to the branch.

The rules in *section 886(3) and 886(4)* that apply in respect of the obligation to keep certain records also apply to relevant branch records. (11)

Exclusion certain life assurance business

This section shall not apply to so much of the trade of an overseas life assurance company (within the meaning of *section 706*) as is life assurance business written on or before 31 December 2000, which is taxable under an aggregate system known as the I-E (or income less expenses) system business i.e. not new basis business (within the meaning of *section 730A*). (12)

Small and Medium-sized enterprises (“SMEs”)

This section does not currently apply to a company for an accounting period where the company is a small or medium-sized enterprise for that accounting period. *Section 25A* shall apply to a small or medium-sized enterprise for accounting periods commencing on or after such day as the Minister for Finance may appoint by order.

26 General scheme of corporation tax

Summary

The general scheme of corporation tax is that (subject to specific exceptions) the tax applies to the profits of a company wherever arising. Corporation tax is charged on the profits arising in a financial year but the tax is assessed on the company by reference to accounting periods with the amount chargeable being apportioned on a time basis, where necessary, between the financial years in which the accounting period falls.

Details

Scope of charge

A company is, subject to specific exceptions, chargeable to corporation tax on all its (1)

profits (that is, its income and chargeable gains) wherever arising. Examples of specific exceptions are profits of non-resident companies other than those arising to an Irish branch or agency of such a company (*section 25(1)*), income which is exempt from income tax and therefore also exempt from corporation tax by virtue of *section 76(6)*, and distributions received from Irish resident companies (*section 129*).

The charge to corporation tax is extended to any profits accruing for the benefit of a company under a trust or arising to the company as a partner in a partnership. The charge also extends to profits arising in the winding up of a company. A company is not chargeable in respect of profits accruing to it as a trustee, except to the extent of its own beneficial interest in such profits. (2)

Assessment by reference to accounting periods

Assessments to corporation tax are made by reference to accounting periods (defined in *section 27(2)*). The tax, however, is charged on the profits arising in a financial year. The rate of tax, therefore, is determined by the financial year or years in which the accounting period falls. For this purpose the amount of the profits arising in an accounting period are where necessary apportioned between the financial years in which the accounting period falls. This apportionment of profits is made on a time basis by virtue of *section 4(6)*. (3)

In the context of *subsection (3)*, a special transitional measure was provided to deal with the case of accounting periods ending on or after 1 April, 1997 but before 1 January, 1998. In such a case, the apportionment rule in *subsection (3)* applies as if the period 1 January, 1996 to 31 March, 1997 (15 months) and the period 1 April, 1997 to 31 December, 1997 (9 months) were each a financial year. The effect of this treatment is to divide certain accounting periods into 2 parts instead of an unnecessary 3 for the purposes of determining the rates of tax to be applied. (4)

Example

A company had a 12 month accounting period ending on 30 June, 1997.

The accounting period straddled the following 3 periods —

- 1 July, 1996 to 31 December, 1996 which period fell into the financial year 1996 when the corporation tax rate was 38 per cent,
- 1 January, 1997 to 31 March, 1997 when the rate of tax was also 38 per cent but the period fell into the financial year 1997, and
- 1 April, 1997 to 30 June, 1997 which also fell into the financial year 1997 but when the rate of tax was 36 per cent.

By deeming the period 1 July, 1996 to 31 March, 1997 to be a financial year it is possible to divide the accounting period into 2 for the purposes of *subsection (3)*, as follows —

- 1 July, 1996 to 31 March, 1997 during which period the rate of corporation tax was 38 per cent, and
- 1 April, 1997 to 30 June, 1997 which period had a rate of 36 per cent,

and, for the purposes of the charge to tax, the company's profits is apportioned as to three quarters to the first period and as to one quarter to the second period.

27 Basis of, and periods for, assessment

Summary

This section provides that a company is to be assessed and charged to corporation tax for every accounting period on all its profits arising in that period. The section also contains rules for determining when an accounting period begins and ends for the purposes of corporation tax.

Details

Assessment and charge to corporation tax

Except as otherwise provided by the Corporation Tax Acts, a company is assessed and charged to corporation tax for every accounting period on all profits arising in that period whether or not they are received in, or remitted to, the State. The exceptions include the exclusion from corporation tax of profits not attributable to an Irish branch or agency of a non-resident company (*section 25(2)*), the corporation tax exemptions contained in *Chapters 2* and *3* of *Part 7*, the exemptions imported into corporation tax from income tax by virtue of *section 76(6)* (most of these are set out in *Chapter 3* of *Part 7* and are now expressed as applying for the purposes of the Tax Acts) and the exemption for profits arising to a life assurance company from investments and deposits of so much of its life assurance fund and separate annuity fund as is attributable to its pension business (*section 717(1)*). (1)

Rules relating to start/end of an accounting period

An accounting period begins — (2)

- when a company comes within the charge to corporation tax, or
- when an accounting period ends without the company then ceasing to be within the charge to corporation tax.

An accounting period ends on the earliest of the following — (3)

- the expiration of 12 months from the beginning of the accounting period,
- the ending of a period (not exceeding 12 months) for which a company makes up its accounts or, if there is a period for which it does not make up accounts, the ending of that period,
- the company beginning or ceasing to trade or to be within the charge to corporation tax in respect of its trade or (if more than one) of all its trades,
- the company beginning or ceasing to be resident in the State, and
- the company ceasing to be within the charge to corporation tax.

Starting business: coming within the charge to tax

A resident company if not otherwise within the charge to corporation tax is treated as coming within that charge at the time it commences to carry on business. (4)

Determination of accounting period

The Revenue Commissioners are authorised to determine which accounting date is to apply where a company carrying on more than one trade makes up accounts for those trades to different dates and does not make up accounts for the whole of its activities. (5)

Dormant companies

Where a dormant company makes a chargeable gain or incurs an allowable loss, an accounting period is treated as beginning at the time of the gain or loss and the gain or loss is treated as accruing in that accounting period. This accounting period will end according to the rules set out earlier. Allowable capital losses incurred in the years 1974–75 or 1975–76 (that is, allowable losses for the purposes of capital gains tax) may be carried forward under *paragraph 19* of *Schedule 32* and treated as allowable losses incurred by the company while within the charge to corporation tax. (6)

Companies winding up

An accounting period ends and a new one begins when a company commences to be (7)(a)

wound up. Thereafter an accounting period ends on the expiration of 12 months from the beginning of the winding up or at the completion of the winding up. These rules apply to the exclusion of the rules set out above concerning the start/end of accounting periods.

The date a winding up commences is —

(7)(b)

- the date when the resolution for the winding up of the company is passed by the company,
- the date of the presentation of the winding up petition to the court if no winding up resolution has previously been passed by the company and provided a winding up order is made on the petition, or
- the date of the doing of any other act for a like purpose in the case of a winding up otherwise than under the Companies Act, 2014.

Uncertain accounting periods

Where, because a company has failed to make returns or supply accounts or other information, it is not possible to determine an accounting period in accordance with the above rules, the inspector is authorised to make an assessment for such period not exceeding 12 months as appears to him/her appropriate. The period so chosen by the inspector is treated as an accounting period of the company unless — (8)

- the inspector on obtaining further facts sees fit to revise it, or
- the company on appeal against the assessment in relation to some other matter discloses the true accounting periods.

Where on appeal the company shows the true accounting periods, the assessment for the accounting period chosen by the inspector still has effect for the period to which it relates as if it were an assessment or assessments for the true accounting periods. Further assessments can then be made for such other period or periods constituting the true accounting periods which would have been allowed to have been made at the time the original assessment was made.

CHAPTER 3 *Capital gains tax*

28 Taxation of capital gains and rate of charge

Summary

The charge to capital gains tax arises in respect of gains accruing to a person in a year of assessment on the disposal of assets. The capital gains tax rate is, subject to exceptions, 33 per cent.

Details

The charge to capital gains tax arises in respect of chargeable gains accruing on the disposal of assets. Such gains are computed in accordance with the provisions of the Capital Gains Tax Acts. The charge extends to individuals, companies and unincorporated bodies of persons. (1)

The tax is assessed and charged for years of assessment in respect of chargeable gains accruing in those years. (2)

Subject to exceptions provided for in the Capital Gains Tax Acts, for example, a 40 per cent rate of tax on the disposal of — (3)

- certain foreign life assurance policies (*section 594*), and

- units in certain offshore funds (*section 747A*),
- the rate of capital gains tax is 33 per cent.

29 Persons chargeable

Summary

This section specifies the persons chargeable to capital gains tax and the extent to which they are chargeable.

A person resident or ordinarily resident in the State is chargeable to capital gains tax on gains arising on disposals of assets wherever situated. However, such a person who is not domiciled in the State is, in the case of gains from the disposal of assets situated outside the State, chargeable only on the amount of the gains received in the State, and losses arising on such disposals are not allowable losses.

A person who is neither resident nor ordinarily resident in the State is chargeable only in respect of gains made on the disposal of certain assets. The assets concerned are —

- assets of a business carried on by such a person in the State and, in the case of overseas life assurance companies doing business in the State, assets outside the State that are used to back the Irish branch’s liabilities.
- interests in land, buildings or minerals situated in the State,
- exploration or exploitation rights in the Continental Shelf, and
- unquoted shares which derive their value from any of these assets.

[It should be noted that by virtue of *section 21(3)*, a company is chargeable to corporation tax in respect of its chargeable gains (other than development land gains) and not to capital gains tax.]

Details

Definitions and construction

“designated area” is a term used in the Continental Shelf Act, 1968, under section 2 of which the Government has power to make orders to designate areas of the sea bed outside the territorial waters of the State in which the State has exploration and exploitation rights. (1)

“exploration or exploitation rights” is given the same meaning as in *section 13*.

“shares” is given an extended meaning so as to include stock and securities.

“security” includes an unsecured loan, and interest paid by a company on an unsecured loan or other consideration given by the company for such a loan is treated as if it were paid or given in respect of a security issued for the loan by the company.

Anti-avoidance

Where cash or other assets are transferred to a company to ensure that the value of shares is derived mainly from land and buildings or exploration or exploitation rights in the Continental Shelf, the value of such assets is ignored in determining the value of the shares where the transfer of the assets concerned was done for the purpose of avoiding a capital gains tax charge. (1A)

Persons resident or ordinarily resident

A person resident or ordinarily resident in the State for a year of assessment is liable to capital gains tax on chargeable gains accruing to him/her in that year. Thus, the scope of the charge on such a person extends to chargeable gains on assets situated abroad as well as to those situated in the State. An individual's residence and ordinary residence are to be determined in accordance with **Part 34**. (2)

Persons neither resident nor ordinarily resident

A person neither resident nor ordinarily resident in the State is chargeable to capital gains tax only on gains arising on the disposal of certain specified assets. The specified assets are — (3)

- land in the State,
- minerals in the State, including rights and interests in minerals and other assets in relation to mining or minerals or the searching for minerals (these assets are referred to in this note as mineral assets),
- assets associated with a trade carried on in the State by the non-resident through a branch or agency, and
- assets situated outside the State of an overseas life assurance company that are held in connection with the life company's trade in the State that is carried on through a branch or agency (i.e. overseas assets used to back the Irish branch's liabilities).

By virtue of **subsection (1)**, the charge is extended to gains from dealings in unquoted shares which derive their value or the greater part of their value from land or mineral assets in the State. This ensures that the charge to tax is not avoided where dealings in such assets are made not by direct sale but through the medium of share transactions. This extension of the charge does not apply to quoted shares.

Persons resident or ordinarily resident but non-domiciled

In the case of a resident or ordinarily resident individual who is not domiciled in the State, the charge to capital gains tax on chargeable gains arising from the disposal of assets situated outside the State is based on the actual amount of the gain received in the State. Any such amount received is treated as a gain accruing when it is received in the State. This limitation on the charge is known as "the remittance basis of assessment". Losses accruing to such an individual on the disposal of assets situated outside the State are not allowable losses. (4)

For the purpose of the remittance basis of assessment, gains paid, used or enjoyed in the State or in any manner or form transmitted or brought to the State are treated as having been received in the State. Also **section 72** which treats income used outside the State in payment of debts as, in certain cases, received in the State applies to the similar use of capital gains made outside the State. Thus, an individual who is not domiciled in the State but is resident or ordinarily resident in the State is chargeable on any capital gains (5)

arising outside the State and used in the payment of a debt in the same way as if the individual had remitted the gains to the State.

Any amounts received, or treated under *subsection (5)* as received, in the State on or after 24 October 2013 which are derived from the proceeds of the disposal of any assets on which chargeable gains accrue and which are transferred outside the State by an individual referred to in *subsection (4)* to his or her spouse or civil partner will be treated for the purpose of that subsection as if they had been received in the State by the individual concerned. (5A)

Extension of charge to Continental Shelf

The State's jurisdiction for capital gains tax purposes is extended to gains derived from the disposal of exploration or exploitation rights in the State's area of the Continental Shelf (these assets are referred to in this note as Continental Shelf assets). Any such gains are treated as gains accruing on the disposal of assets situated in the State. By virtue of *subsection (1)*, this charge is extended to gains from dealings in unquoted shares which derive their value or the greater part of their value from Continental Shelf assets. This ensures that the charge to tax is not avoided where dealings in such assets are made not by direct sale but through the medium of share transactions. This extension of the charge does not apply to quoted shares. (6)

Gains on mineral assets and Continental Shelf assets

Chargeable gains arising to a person who is neither resident nor ordinarily resident in the State on the disposal of mineral assets or Continental Shelf assets are treated as being gains from the disposal of assets used for the purposes of a trade carried on by that person in the State through a branch or agency. Under this provision the resident agent of a person who is neither resident nor ordinarily resident may be charged to capital gains tax on the gains of that person. (7)

Appeal procedure

A right of appeal to the Appeal Commissioners is provided on any decision of the Revenue Commissioners on any question as to domicile or ordinary residence arising under the Capital Gains Tax Acts. The appeal is made via a notice in writing to the Revenue Commissioners which must be made within 2 months after the date of the notice of the decision. The appeal is heard and determined by the Appeal Commissioners in the manner provided for in **Part 40A**. (8)

29A Temporary non-residents

Summary

This section counters the avoidance by an individual of capital gains tax by means of going offshore temporarily, or by becoming dual-resident. The section only seeks to impose a tax charge on an Irish domiciled individual who disposes of certain assets while outside the current capital gains tax charge. An individual could fall outside the capital gains tax charge —

- either by leaving the State to take up tax residence elsewhere, or
- by arranging his or her affairs so that, while continuing to be resident in the State, he or she is also resident in another jurisdiction and that jurisdiction has sole taxing rights under the relevant Double Taxation Agreement.

However, if the person is, for more than 5 years, not, under normal rules, within the

charge to capital gains tax, then a tax charge cannot arise under this section.

The assets concerned are a holding in a company which, when the person ceases to be chargeable in the State, is 5% or more by value of the issued share capital of the company or has a value in excess of €500,000.

If a person disposes of all or part of such assets during a period of less than 5 years during which he or she is outside the charge to tax under normal rules, the person will be liable to capital gains tax on this disposal as if the person had disposed of those assets, or that part of those assets, before he or she ceased to be chargeable in the State.

Whereas the gain on the deemed disposal arises before the individual ceases to be taxable in the State, the gain is required to be included in the individual's return and the tax in respect of it accounted for, in the year in which the individual again becomes taxable in the State. Credit will be given in respect of any foreign tax payable on the actual disposal of the assets where such tax is payable in a territory with which Ireland has a double taxation treaty.

Details

The definition of “intervening year”; “relevant assets”; “year of departure” and “year of return” are set out. These definitions have to be read in the context of the provisions of *paragraphs (b) and (c)*. (1)(a),(b),(c)

Therefore, “year of departure in relation to an individual” means the last year of assessment for which the individual is both —

- resident in the State (see *section 819*), and
- liable to tax in the State on a disposal of relevant assets on each day of that year,

before the year for which the individual ceases to come within either or both of those criteria.

Under normal capital gains tax rules, an individual is liable to capital gains tax on gains accruing on the disposal of assets if the individual is resident or ordinarily resident in the State. However, this right to tax can be negated by the terms of a Double Taxation Agreement. What the definition of year of departure identifies is the last year for which the individual, is resident and the right to tax the individual on disposal throughout the year is not negated by the provisions of any relevant Double Taxation Agreement.

The definition of “year of return in respect of an individual” is described within *subsection (2)* and is essentially the first year of assessment for which the individual is both —

- resident in the State, and
- liable to tax in the State in respect of a disposal, on each day of that year of relevant assets,

immediately after a year of assessment for which the individual did not satisfy either or both of those criteria.

The definition of “intervening year in relation to an individual” is any year of assessment falling within the period commencing on the first day of the year immediately following the year of departure and ending on the last day of the year of assessment immediately preceding the year of return.

An individual's "relevant assets" are shares in a company, or rights to acquire shares in a company being shares or rights which the individual beneficially owned on the last day of the year of the individual's departure the market value of which on that day —

- is equal to, or greater than, 5% of the value of the issued share capital of the company, or
- exceeds €500,000.

The charging provisions of the section apply to an individual who has relevant assets (2) and —

- who was domiciled and resident in the State and could be taxed on a disposal of relevant assets, and
- who ceases for a period (the intervening years) of not more than 5 years to be taxable in the State on a disposal of relevant assets before again (for the year of return) becoming resident and taxable on a disposal of relevant assets.

The charge arises by deeming the relevant assets or any part of them that were disposed of in the intervening years, to have been disposed of and reacquired at their market value on the last day of the year of departure. (3)

Where the market value of the relevant assets on the day they were disposed of is greater or less than the market value of those assets on the last day of the year referred to in *subsection (3)*, that greater or lesser market value will be substituted for the market value on the last day of that year. (3A)

Credit for foreign tax (if any) paid in respect of the actual disposal of the relevant assets or any part of them is allowable against the capital gains tax liability on the deemed disposal if there is a Double Tax Agreement with the foreign jurisdiction concerned. The amount of credit is limited so that the amount of capital gains tax payable by the individual in respect of other disposals cannot be reduced. (4)

The capital gains tax liability on the deemed disposal is to be treated, for self-assessment purposes, as if it arose in the year of return. (5)

Commencement

The provisions of *section 29A* apply to an individual who ceases for the year of assessment 2003 or a subsequent year of assessment to be both —

- resident (within the meaning of *section 819*), and
- taxable on a disposal of relevant assets on each day of that year.

The section, therefore, does not apply to an individual who emigrates before 1 January 2003.

The section also does not apply to an individual who, before 24 February 2003, has ceased to be taxable on a disposal of relevant assets on each day in 2003 even though the individual is resident for that year as could happen, for example, if the individual became dual resident before that date and taxing rights belonged solely to the foreign jurisdiction.

30 Partnerships

In the case of a partnership, chargeable gains accruing to the partners on the disposal of partnership assets are apportioned between the partners and assessed and charged on them separately and not on the partnership itself. Any partnership dealings in assets are treated as dealings by the partners and not by the partnership as such.

[Cases where taxpayers do not accept the inspector's apportionment of the gains and cases involving gains on the transfer of interests in partnership assets between partners

should be submitted to the Office of the Chief Inspector of Taxes]

31 Amount chargeable

Capital gains tax is charged on the aggregate amount of all chargeable gains accruing to a person for the year of assessment after deducting any allowable losses of that year and any unrelieved losses for an earlier year (but excluding losses incurred before the year 1974–75).