

Income tax on payments by resident companies. CTA76 s151(1) to (13) (apart from subsection (8)(c)); FA90 s49 239.—(1) In this section, “relevant payment” means—

(a) any payment from which income tax is deductible and to which subsections (3) to (5) of section 238 apply, and

(b) any amount which under section 438 is deemed to be an annual payment.

(2) This section shall apply for the purpose of regulating the time and manner in which companies resident in the State—

(a) are to account for and pay income tax in respect of relevant payments, and

(b) are to be repaid income tax in respect of payments received by them.

(3) A company shall make for each of its accounting periods in accordance with this section a return to the inspector of the relevant payments made by it in that period and of the income tax for which the company is accountable in respect of those payments.

(4) A return for any period for which a return is required to be made under this section shall be made within 9 months from the end of that period.

(5) Income tax in respect of any payment required to be included in a return under this section shall be due at the time by which preliminary tax (if any) for the accounting period for which the return is required to be made under subsection (3) is due and payable, and income tax so due shall be payable by the company without the making of any assessment; but income tax which has become so due may be assessed on the company (whether or not it has been paid when the assessment is made).

(6) Where it appears to the inspector that there is a relevant payment which ought to have been but has not been included in a return, or where the inspector is dissatisfied with any return, the inspector may make an assessment on the company to the best of his or her judgment, and any income tax due under an assessment made by virtue of this subsection shall be treated for the purposes of interest on unpaid tax as having been payable at the time when it would have been payable if a correct return had been made.

(7) Where in any accounting period a company receives any payment on which it bears income tax by deduction, the company may claim to have the income tax on that payment set against any income tax which it is liable to pay under this section in respect of payments made by it in that period, and any such claim shall be included in the return made under subsection (3) for the accounting period in question, and (where necessary) income tax paid by the company under this section for that accounting period and before the claim is allowed shall be repaid accordingly.

(8) (a) Where a claim has been made under subsection (7), no proceedings for collecting tax which would be discharged if the claim were allowed shall be instituted pending the final determination of the claim, but

this subsection shall not affect the date when the tax is due, and when the claim is finally determined any tax underpaid in consequence of this subsection shall be paid.

(b) Where proceedings are instituted for collecting tax assessed, or interest on tax assessed, under subsection (5) or (6), effect shall not be given to any claim under subsection (7) made after the institution of the proceedings so as to affect or delay the collection or recovery of the tax charged by the assessment or of interest on that tax.

(9) Income tax set against other tax under subsection (7) shall be treated as paid or repaid, as the case may be, and the same tax shall not be taken into account both under this subsection and under section 24 (2).

(10) (a) Where a company makes a relevant payment on a date which does not fall within an accounting period, the company shall make a return of that payment within 6 months from that date, and the income tax for which the company is accountable in respect of that payment shall be due at the time by which the return is to be made.

(b) Any assessment in respect of tax payable under this subsection shall be treated as relating to the year of assessment in which the payment is made.

(c) Subsection (11) shall not apply to an assessment under this subsection.

(11) (a) Subject to subsection (10)(b), income tax payable (after income tax borne by the company by deduction has been set, by virtue of any claim under subsection (7), against income tax which it is liable to pay under subsection (5)) in respect of relevant payments in an accounting period shall, for the purposes of the charge, assessment, collection and recovery from the company making the payments of that tax and of any interest or penalties on that tax, be treated and described as corporation tax payable by that company for that accounting period, notwithstanding that for all other purposes of the Tax Acts it is income tax.

(b) Tax paid by a company which is treated as corporation tax by virtue of this subsection shall be repaid to the company if it would have been so repaid under subsection (7) had it been treated as income tax paid by the company.

(c) Any tax assessable under one or more of the provisions of this section may be included in one assessment if the tax so included is all due on the same date.

(12) Nothing in this section shall be taken to prejudice any powers conferred by the Tax Acts for the recovery of tax by means of an assessment or otherwise.

(13) (a) The Revenue Commissioners may, by regulations made for the purposes mentioned in subsection (2), modify, supplement or replace any of the provisions of this section, and references in the Corporation Tax Acts and in any other enactment to this section shall be construed as including references to any such regulations and, without prejudice to the generality of the foregoing, such regulations may, in relation to tax charged by this section, modify any provision of the Tax Acts relating to returns, assessments, claims or appeals, or may apply any such provision with or without modification.

(b) Regulations under this subsection may—

(i) make different provision for different descriptions of companies and for different circumstances, and may authorise the Revenue Commissioners, where in their opinion there are special circumstances justifying it, to make special arrangements as respects income tax for which a company is liable to account or the repayment of income tax borne by a company;

(ii) include such transitional and other supplemental provisions as appear to the Revenue Commissioners to be expedient or necessary.

(c) Every regulation made under this subsection shall be laid before Dáil Éireann as soon as may be after it is made and, if a resolution annulling the regulation is passed by Dáil Éireann within the next 21 days on which Dáil Éireann has sat after the regulation is laid before it, the regulation shall be annulled accordingly, but without prejudice to the validity of anything previously done thereunder.