

Deduction from payments due to defaulters of amounts due in relation to tax. FA88 s73(1) (b) to (16) and (18); FA92 s241(a) to (d) 1002.—(1) (a) In this section, except where the context otherwise requires—

“the Acts” means—

(i) the Customs Acts,

(ii) the statutes relating to the duties of excise and to the management of those duties,

(iii) the Tax Acts,

(iv) the Capital Gains Tax Acts,

(v) the Value-Added Tax Act, 1972 , and the enactments amending or extending that Act,

(vi) the Capital Acquisitions Tax Act, 1976 , and the enactments amending or extending that Act, and

(vii) the Stamp Act, 1891, and the enactments amending or extending that Act,

and any instruments made thereunder;

“additional debt”, in relation to a relevant person who has received a notice of attachment in respect of a taxpayer, means any amount which, at any time after the time of the receipt by the relevant person of the notice of attachment but before the end of the relevant period in relation to the notice, would be a debt due by the relevant person to the taxpayer if a notice of attachment were received by the relevant person at that time;

“debt”, in relation to a notice of attachment given to a relevant person in respect of a taxpayer and in relation to that relevant person and taxpayer, means, subject to paragraphs (b) to (e), the amount or aggregate amount of any money which, at the time the notice of attachment is received by the relevant person, is due by the relevant person (whether on that person's own account or as an agent or trustee) to the taxpayer, irrespective of whether the taxpayer has applied for the payment (to the taxpayer or any other person) or for the withdrawal of all or part of the money;

“deposit” means a sum of money paid to a financial institution on terms under which it will be repaid with or without interest and either on demand or at a time or in circumstances agreed by or on behalf of the person making the payment and the financial institution to which it is made;

“emoluments” means anything assessable to income tax under Schedule E;

“financial institution” means a holder of a licence issued under section 9 of the Central Bank Act, 1971 , or a person referred to in section 7(4) of that Act, and includes a branch of a financial institution which records deposits in its books as liabilities of the branch;

“further return” means a return made by a relevant person under subsection (4);

“interest on unpaid tax”, in relation to a specified amount specified in a notice of attachment, means interest that has accrued to the date on which the notice of attachment is given under any provision of the Acts providing for the charging of interest in respect of the unpaid tax, including interest on an undercharge of tax which is attributable to fraud or neglect, specified in the notice of attachment;

“notice of attachment” means a notice under subsection (2);

“notice of revocation” means a notice under subsection (10);

“penalty” means a monetary penalty imposed on a taxpayer under a provision of the Acts;

“relevant period”, in relation to a notice of attachment, means, as respects the relevant person to whom the notice of attachment is given, the period commencing at the time at which the notice is received by the relevant person and ending on the earliest of—

(i) the date on which the relevant person completes the payment to the Revenue Commissioners out of the debt, or the aggregate of the debt and any additional debt, due by the relevant person to the taxpayer named in the notice, of an amount equal to the specified amount in relation to the taxpayer,

(ii) the date on which the relevant person receives a notice of revocation of the notice of attachment, and

(iii) where the relevant person or the taxpayer named in the notice—

(I) is declared bankrupt, the date the relevant person or the taxpayer is so declared, or

(II) is a company which commences to be wound up, the relevant date within the meaning of section 285 of the Companies Act, 1963, in relation to the winding up;

“relevant person”, in relation to a taxpayer, means a person whom the Revenue Commissioners have reason to believe may have, at the time a notice of attachment is received by such person in respect of a taxpayer, a debt due to the taxpayer;

“return” means a return made by a relevant person under subsection (2) (a) (iii);

“specified amount” has the meaning assigned to it by subsection (2) (a) (ii);

“tax” means any tax, duty, levy or charge which in accordance with any provision of the Acts is placed under the care and management of the Revenue Commissioners;

“taxpayer” means a person who is liable to pay, remit or account for tax to the Revenue Commissioners under the Acts.

(b) Where a relevant person is a financial institution, any amount or aggregate amount of money, including interest on that money, which at the time the notice of attachment is received by the relevant person is a deposit held by the relevant person—

(i) to the credit of the taxpayer for the taxpayer's sole benefit, or

(ii) to the credit of the taxpayer and any other person or persons for their joint benefit,

shall be regarded as a debt due by the relevant person to the taxpayer at that time.

(c) Any amount of money due by the relevant person to the taxpayer as emoluments under a contract of service shall not be regarded as a debt due to the taxpayer.

(d) Where there is a dispute as to an amount of money which is due by the relevant person to the taxpayer, the amount in dispute shall be disregarded for the purposes of determining the amount of the debt.

(e) In the case referred to in paragraph (b), a deposit held by a relevant person which is a financial institution to the credit of the taxpayer and any other person or persons (in this paragraph referred to as “the other party or parties”) for their joint benefit shall be deemed (unless evidence to the contrary is produced to the satisfaction of the relevant person within 10 days of the giving of the notices specified in subsection (2) (e)) to be held to the benefit of the taxpayer and the other party or parties to the deposit equally, and accordingly only the portion of the deposit so deemed shall be regarded as a debt due by the relevant person to the taxpayer at the time the notice of attachment is received by the relevant person and, where such evidence is produced within the specified time, only so much of the deposit as is shown to be held to the benefit of the taxpayer shall be regarded as a debt due by the relevant person to the taxpayer at that time.

(2) (a) Subject to subsection (3), where a taxpayer has made default whether before or after the passing of this Act in paying, remitting or accounting for any tax, interest on unpaid tax, or penalty to the Revenue Commissioners, the Revenue Commissioners may, if the taxpayer has not made good the default, give to a relevant person in relation to the taxpayer a notice in writing (in this section referred to as “the notice of attachment”) in which is entered—

(i) the taxpayer's name and address,

(ii) (I) the amount or aggregate amount, or

(II) in a case where more than one notice of attachment is given to a relevant person or relevant persons in respect of a taxpayer, a portion of the amount or aggregate amount,

of the taxes, interest on unpaid taxes and penalties in respect of which the taxpayer is in default at the time of the giving of the notice or notices of attachment (the amount, aggregate amount, or portion of the amount or aggregate amount, as the case may be, being referred to in this section as “the specified amount”), and

(iii) a direction to the relevant person—

(I) subject to paragraphs (b) and (c), to deliver to the Revenue Commissioners, within the period of 10 days from the time at which the notice of attachment is received by the relevant person, a return in writing specifying whether or not any debt is due by the relevant person to the taxpayer at the time the notice is received by the relevant person and, if any debt is so due, specifying the amount of the debt, and

(II) if the amount of any debt is so specified, to pay to the Revenue Commissioners within the period referred to in clause (I) a sum equal to the amount of the debt so specified.

(b) Where the amount of the debt due by the relevant person to the taxpayer is equal to or greater than the specified amount in relation to the taxpayer, the amount of the debt specified in the return shall be an amount equal to the specified amount.

(c) Where the relevant person is a financial institution and the debt due by the relevant person to the taxpayer is part of a deposit held to the credit of the taxpayer and any other person or persons to their joint benefit, the return shall be made within a period of 10 days from—

(i) the expiry of the period specified in the notices to be given under paragraph (e), or

(ii) the production of the evidence referred to in paragraph (e)(II).

(d) A relevant person to whom a notice of attachment has been given shall comply with the direction in the notice.

(e) Where a relevant person which is a financial institution is given a notice of attachment and the debt due by the relevant person to the taxpayer is part of a deposit held by the relevant person to the credit of the taxpayer and any other person or persons (in this paragraph referred to as “the other party or parties”) for their joint benefit, the relevant person shall on receipt of the notice of attachment give to the taxpayer and the other party or parties to the deposit a notice in writing in which is entered—

(i) the taxpayer's name and address,

(ii) the name and address of the person to whom a notice under this paragraph is given,

(iii) the name and address of the relevant person, and

(iv) the specified amount,

and which states that—

(I) a notice of attachment under this section has been received in respect of the taxpayer,

(II) under this section a deposit is deemed (unless evidence to the contrary is produced to the satisfaction of the relevant person within 10 days of the giving of the notice under this paragraph) to be

held to the benefit of the taxpayer and the other party or parties to the deposit equally, and

(III) unless such evidence is produced within the period specified in the notice given under this paragraph—

(A) a sum equal to the amount of the deposit so deemed to be held to the benefit of the taxpayer (and accordingly regarded as a debt due to the taxpayer by the relevant person) shall be paid to the Revenue Commissioners, where that amount is equal to or less than the specified amount, and

(B) where the amount of the deposit so deemed to be held to the benefit of the taxpayer (and accordingly regarded as a debt due to the taxpayer by the relevant person) is greater than the specified amount, a sum equal to the specified amount shall be paid to the Revenue Commissioners.

(3) An amount in respect of tax, interest on unpaid tax or a penalty, as respects which a taxpayer is in default as specified in subsection (2), shall not be entered in a notice of attachment unless—

(a) a period of one month has expired from the date on which such default commenced, and

(b) the Revenue Commissioners have given the taxpayer a notice in writing (whether or not the document containing the notice also contains other information being communicated by the Revenue Commissioners to the taxpayer), not later than 7 days before the date of the receipt by the relevant person or relevant persons concerned of a notice of attachment, stating that if the amount is not paid it may be specified in a notice or notices of attachment and recovered under this section from a relevant person or relevant persons in relation to the taxpayer.

(4) If, when a relevant person receives a notice of attachment, the amount of the debt due by the relevant person to the taxpayer named in the notice is less than the specified amount in relation to the taxpayer or no debt is so due and, at any time after the receipt of the notice and before the end of the relevant period in relation to the notice, an additional debt becomes due by the relevant person to the taxpayer, the relevant person shall within 10 days of that time—

(a) if the aggregate of the amount of any debt so due and the additional debt so due is equal to or less than the specified amount in relation to the taxpayer—

(i) deliver a further return to the Revenue Commissioners specifying the additional debt, and

(ii) pay to the Revenue Commissioners the amount of the additional debt,

and so on for each subsequent occasion during the relevant period in relation to the notice of attachment on which an additional debt becomes due by the relevant person to the taxpayer until—

(I) the aggregate amount of the debt and the additional debt or debts so due equals the specified amount in relation to the taxpayer, or

(II) paragraph (b) applies in relation to an additional debt, and

(b) if the aggregate amount of any debt and the additional debt or debts so due to the taxpayer is greater than the specified amount in relation to the taxpayer—

(i) deliver a further return to the Revenue Commissioners specifying such portion of the latest additional debt as when added to the aggregate of the debt and any earlier additional debts is equal to the specified amount in relation to the taxpayer, and

(ii) pay to the Revenue Commissioners that portion of the additional debt.

(5) Where a relevant person delivers, either fraudulently or negligently, an incorrect return or further return that purports to be a return or further return made in accordance with this section, the relevant person shall be deemed to be guilty of an offence under section 1078.

(6) (a) Where a notice of attachment has been given to a relevant person in respect of a taxpayer, the relevant person shall not, during the relevant period in relation to the notice, make any disbursements out of the debt, or out of any additional debt, due by the relevant person to the taxpayer except to the extent that any such disbursement—

(i) will not reduce the debt or the aggregate of the debt and any additional debts so due to an amount that is less than the specified amount in relation to the taxpayer, or

(ii) is made pursuant to an order of a court.

(b) For the purposes of this section, a disbursement made by a relevant person contrary to paragraph (a) shall be deemed not to reduce the amount of the debt or any additional debts due by the relevant person to the taxpayer.

(7) (a) Sections 1052 and 1054 shall apply to a failure by a relevant person to deliver a return required by a notice of attachment within the time specified in the notice or to deliver a further return within the time specified in subsection (4) as they apply to a failure to deliver a return referred to in section 1052.

(b) A certificate signed by an officer of the Revenue Commissioners which certifies that he or she has examined the relevant records and that it appears from those records that during a specified period a specified return was not received from a relevant person shall be evidence until the contrary is proved that the relevant person did not deliver the return during that period.

(c) A certificate certifying as provided by paragraph (b) and purporting to be signed by an officer of the Revenue Commissioners may be tendered in evidence without proof and shall be deemed until the contrary is proved to have been so signed.

(8) Where a relevant person to whom a notice of attachment in respect of a taxpayer has been given—

(a) delivers the return required to be delivered by that notice but fails to pay to the Revenue Commissioners within the time specified in the notice the amount specified in the return or any part of that

amount, or

(b) delivers a further return under subsection (4) but fails to pay to the Revenue Commissioners within the time specified in that subsection the amount specified in the further return or any part of that amount,

the amount specified in the return or further return or the part of that amount, as the case may be, which the relevant person has failed to pay to the Revenue Commissioners may, if the notice of attachment has not been revoked by a notice of revocation, be sued for and recovered by action or other appropriate proceedings at the suit of an officer of the Revenue Commissioners in any court of competent jurisdiction.

(9) Nothing in this section shall be construed as rendering any failure by a relevant person to make a return or further return required by this section, or to pay to the Revenue Commissioners the amount or amounts required by this section to be paid by the relevant person, liable to be treated as a failure to which section 1078 applies.

(10) (a) A notice of attachment given to a relevant person in respect of a taxpayer may be revoked by the Revenue Commissioners at any time by notice in writing given to the relevant person and shall be revoked forthwith if the taxpayer has paid the specified amount to the Revenue Commissioners.

(b) Where in pursuance of this section a relevant person pays any amount to the Revenue Commissioners out of a debt or an additional debt due by the relevant person to the taxpayer and, at the time of the receipt by the Revenue Commissioners of that amount, the taxpayer has paid to the Revenue Commissioners the amount or aggregate amount of the taxes, interest on unpaid taxes and penalties in respect of which the taxpayer is in default at the time of the giving of the notice or notices of attachment, the first-mentioned amount shall be refunded by the Revenue Commissioners forthwith to the taxpayer.

(11) Where a notice of attachment or a notice of revocation is given to a relevant person in relation to a taxpayer, a copy of such notice shall be given by the Revenue Commissioners to the taxpayer forthwith.

(12) (a) Where in pursuance of this section any amount is paid to the Revenue Commissioners by a relevant person, the relevant person shall forthwith give the taxpayer concerned a notice in writing specifying the payment, its amount and the reason for which it was made.

(b) On the receipt by the Revenue Commissioners of an amount paid in pursuance of this section, the Revenue Commissioners shall forthwith notify the taxpayer and the relevant person in writing of such receipt.

(13) Where in pursuance of this section a relevant person pays to the Revenue Commissioners the whole or part of the amount of a debt or an additional debt due by the relevant person to a taxpayer, or any portion of such an amount, the taxpayer shall allow such payment and the relevant person shall be acquitted and discharged of the amount of the payment as if it had been paid to the taxpayer.

(14) Where in pursuance of this section a relevant person is prohibited from making any disbursement out of a debt or an additional debt due to a taxpayer, no action shall lie against the relevant person in any court by reason of a failure to make any such disbursement.

(15) Any obligation on the Revenue Commissioners to maintain secrecy or any other restriction on the disclosure of information by the Revenue Commissioners shall not apply in relation to information contained in a notice of attachment.

(16) A notice of attachment in respect of a taxpayer shall not be given to a relevant person at a time when the relevant person or the taxpayer is an undischarged bankrupt or a company being wound up.

(17) The Revenue Commissioners may nominate any of their officers to perform any acts and discharge any functions authorised by this section to be performed or discharged by the Revenue Commissioners.