

Preferential payments in a winding up

621. (1) In this section the “relevant date” means—

(a) where the company is ordered to be wound up, the date of the appointment (or first appointment) of a provisional liquidator or, if no such appointment was made, the date of the winding-up order, unless, in either case, the company had commenced to be wound up voluntarily before that date, and

(b) where paragraph (a) does not apply, the date of the passing of the resolution for the winding up of the company.

(2) In a winding up there shall be paid in priority to all other debts—

(a) the following rates and taxes:

(i) all local rates due from the company at the relevant date and having become due and payable within the period of 12 months before that date;

(ii) each tax assessable on, in relation to, or by the company under the Taxes Consolidation Act 1997 in respect of, or apportioned on a time basis to, a period ending on or before the relevant date, for which the tax concerned is due and payable, but the particular period (in respect of which priority under this subparagraph for the tax concerned is claimed) shall not be of more than 12 months' duration;

(iii) any amount due at the relevant date in respect of sums which an employer is liable under Part 18D or Chapter 4 of Part 42 of the Taxes Consolidation Act 1997 and regulations thereunder to deduct from emoluments to which that Part or Chapter applies paid by that employer during the period of 12 months next ended on or before the relevant date reduced by any amount which that employer was under that Part or Chapter and regulations thereunder liable to repay during that period, with the addition of interest payable under section 991 of that Act;

(iv) any tax and interest for which the company is liable under the Value-Added Tax Consolidation Act 2010 in relation to taxable periods which shall have ended within the period of 12 months next ended before the relevant date;

(v) any local property tax that the company is liable to remit to the Revenue Commissioners under section 74 of the Finance (Local Property Tax) Act 2012 during the period of 12 months next ended before the relevant date and any interest payable in relation to that tax under section 149 of that Act;

(vi) an amount of local property tax payable, under section 16 of the Finance (Local Property Tax) Act 2012, by the company at the relevant date to the extent that such tax is payable in respect of any one liability date (within the meaning of section 2 of that Act) falling before the relevant date and any interest payable in relation to that tax under section 149 of that Act,

(b) all wages or salary—

(i) whether or not earned wholly or in part by way of commission, or

(ii) whether payable for time or for piece work,

of any employee in respect of services rendered to the company during the period of 4 months before the relevant date,

(c) all accrued holiday remuneration becoming payable to any employee (or, in the case of the person's death, to any other person in his or her right) on the termination of the employee's employment before or by the effect of the winding up order or resolution,

(d) unless the company is being wound up voluntarily merely for the purposes of reconstruction or of amalgamation with another company—

(i) all amounts due in respect of contributions which are payable during the 12 months before the relevant date by the company as the employer of any persons under the Social Welfare Acts, and

(ii) all amounts due in respect of contributions which would have been payable under the provisions of section 13 (2)(d) of the Social Welfare Consolidation Act 2005 by the company as the employer of any persons in respect of any remuneration in respect of any period of employment during the 12 months before the relevant date even if such remuneration is paid after the relevant date,

(e) unless the company is being wound up voluntarily merely for the purposes of reconstruction or of amalgamation with another company, all amounts due from the company in respect of damages and costs or liability for damages and costs, payable to a person employed by it in connection with an accident, being an accident occurring—

(i) before the relevant date, and

(ii) in the course of the person's employment with the company,

save to the extent that the company is not effectively indemnified by insurers against such damages and costs,

(f) all sums due to any employee pursuant to any scheme or arrangement for the provision of payments to the employee while he or she is absent from employment due to ill health,

(g) any payments due at any time by the company pursuant to any scheme or arrangement for the provision of superannuation benefits to or in respect of employees of the company whether such payments are due—

(i) in respect of the company's contribution to that scheme or under that arrangement, or

(ii) in respect of such contributions payable by the employees to the company under that scheme or

arrangement which have been deducted from the wages or salaries of employees.

(3) Subsection (2) is in addition to any other enactment providing for the priority of a particular debt or sum in a winding up.

(4) Subject to subsection (5), and notwithstanding anything in subsection (2)(b), the sum to which priority is to be given under subsection (2)(b) shall not, in the case of any one claimant, exceed €10,000.

(5) Where a claimant under subsection (2)(b) is a farm labourer who has entered into a contract for payment of a portion of his or her wages in a lump sum at the end of the year of hiring, he or she shall have priority in respect of the whole of such sum, or such part thereof as the court may decide to be due under the contract, proportionate to the time of service up to the relevant date.

(6) Where any payment has been made—

(a) to any employee of a company, on account of wages or salary, or

(b) to any employee or, in the case of his or her death, to any other person in his or her right, on account of accrued holiday remuneration, or

(c) to any employee while he or she is absent from employment due to ill health or pursuant to any scheme or arrangement for the provision of superannuation benefit to or in respect of him or her,

out of money advanced by some person for that purpose, the person by whom the money was advanced shall, in a winding up, have a right of priority in respect of the money so advanced and paid up to the amount by which the sum, in respect of which the employee or other person in his or her right, would have been entitled to priority in the winding up has been diminished by reason of the payment having been made.

(7) The foregoing debts shall—

(a) rank equally among themselves and be paid in full, unless the assets are insufficient to meet them, in which case they shall abate in equal proportions, and

(b) so far as the assets of the company available for payment of general creditors are insufficient to meet them, have priority over the claims of holders of debentures under any floating charge created by the company, and be paid accordingly out of any property comprised in or subject to that charge.

(8) Subject to the retention of such sums as may be necessary for the costs and expenses of the winding up, the foregoing debts shall be discharged forthwith so far as the assets are sufficient to meet them, and in the case of debts to which priority is given by subsection (2)(d), formal proof of them shall not be required except in so far as is otherwise provided by rules of court.