Notes for Guidance - Taxes Consolidation Act 1997

Finance Act 2022 edition

Schedules

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Revenue
Cáin agus Custaim na hÉireann
Irish Tax and Customs

Notes for Guidance - Taxes Consolidation Act 1997

Finance Act 2022 edition

Schedule 1

[*Sections 13 and 567(4)*]

Supplementary Provisions Concerning the Extension of Charge to Tax to Profits and Income Derived from Activities Carried on and Employments Exercised on the Continental Shelf

Overview

This Schedule applies in relation to income tax charged by virtue of ***section 13*** or to corporation tax charged by virtue of that section as it is applied to corporation tax by ***section 23***. The provisions of this Schedule also apply for the purposes of ***section 567(3)*** which treats the holder of a licence under the Petroleum and other Minerals Development Act, 1960, as an agent for the purposes of assessment to capital gains tax, where exploration or exploration activities are carried on on behalf of that person by another person.

Information

The licence holder under the Petroleum and Other Minerals Development Act, 1960 is obliged, on notice by an inspector, to provide information necessary to charge income/corporation tax on profits, and income tax on emoluments, from activities on the Continental Shelf. The notice must specify a time limit for the furnishing of the information which must not be less than 30 days. ***par 1***

Collection

The licence holder is made formally responsible and liable for payment of the income/corporation tax due (plus interest) where there is difficulty in collecting it from the assessee. Where tax remains unpaid 30 days after it is due, the Revenue Commissioners may serve a notice on the licence holder requiring that person to pay any tax charged on a non-resident in respect of profits from activities authorised by the licence together with any interest due under ***section 1080***. The licence holder has 30 days from the service of the notice to pay the tax. The licence holder is given the right to recover tax so paid from the person on whom the assessment was made as a simple contract debt in any court of competent jurisdiction. ***par 2***

These collection procedures do not apply in the case of income tax on emoluments as in such cases there will be a local paying agent to pay wages, etc and recourse should be had to the agent in respect of the tax due. ***par 3***

The collection procedures do not apply where the profits/gains arise out of a contract made before 16 May, 1973, except where the person assessed is connected with the licence holder or the contract is altered after that date. ***par 4***

The Revenue Commissioners may issue a certificate exempting a licence holder from the collection procedures where the person who is or may become liable to income/corporation tax which if remaining unpaid could be recovered from the licence holder under the provisions of this Schedule satisfies the Revenue Commissioners that the person will comply with that person's tax obligations. ***par 5***

Such certificates may be cancelled by the Revenue Commissioners by notice in writing from a date not earlier than 30 days after service of the notice. ***par 6***

A reference in this Schedule to a ***licence*** granted under the Petroleum and Other Minerals Development Act, 1960 also refers to a ***lease*** granted under that Act. ***par 7***

Schedule 2

[*Sections 33, 61* and *62*]

Machinery for Assessment, Charge and Payment of Tax Under Schedule C and, in Certain Cases, Schedule D

Overview

This Schedule sets out the machinery for the assessment, charge and payment of tax under Schedule C and, in certain limited circumstances, Schedule D.

PART 1

Interpretation of Parts 2 to 4

The meaning of certain terms which are defined in ***section 32*** (namely "banker", "coupons", "dividends", "public revenue", "public revenue dividends" and "foreign revenue dividends") are applied for the purposes of ***Part 4*** of this Schedule, except that for the purposes of ***Part 4***, the term "dividends" includes any interest, dividend or other annual payment payable out of or in respect of stocks, shares or securities of any non-resident body of persons (that is, foreign dividends). However, such foreign dividends do not include payments made out of taxed income which has suffered tax deducted at source under ***section 237*** or ***238***. ***par 1***

"chargeable person" is defined as one of the following: ***par 1A***

(a) a person entrusted with the payment of dividends payable to any person in the State out of any public revenue;

(b) a person in the State entrusted with payment of dividends to which ***Chapter 2*** of ***Part 4*** applies (i.e. foreign dividends and interest);

(c) a banker or other person in the State who obtains payment of dividends chargeable under Schedule C or of foreign dividends chargeable under Schedule D;

(d) a banker in the State who sells or otherwise realises coupons such that the proceeds of sale or realisation are chargeable to income tax under Schedule C or Schedule D (in the case of foreign dividends);

(e) a dealer in the state who purchases coupons in such manner that the purchase price is chargeable to income tax under Schedule C or ScheduleD (in the case of foreign dividends).

"specified dividend income" is defined as one of the following:

(a) the amount of dividends which are payable to any person in the State out of any public revenue;

(b) the amount of dividends to which ***Chapter 2*** of ***Part 4*** applies (i.e. foreign dividends and interest);

(c) the amount of dividends received by a "*chargeable person"* in such circumstances that the dividends are chargeable to income tax under *Schedule C* or *Schedule D* (in the case of foreign dividends);

(d) the proceeds of the sale or realisation of coupons where those proceeds are chargeable to income tax under *Schedule C* or *Schedule D* (in the case of foreign dividends),

(e) the price paid on purchase of coupons where such price paid on purchase is chargeable to income tax under Schedule C or under Schedule D (in the case of foreign dividends).

PART 2

Part 2 *was deleted by section 38 of the Finance Act 2012.*

PART 3

Part 3 *was deleted by section 38 of the Finance Act 2012.*

PART 4

Public revenue dividends, dividends to which Chapter 2 of Part 4 applies, proceeds of coupons and price paid on purchase of coupons

A "chargeable person" must, from the 1st January 2021, on making a payment of "specified dividend income", deduct encashment tax, at the rate of 25% from the payment. ***par 14(1)***

Prior to the 1st January 2021 encashment tax was deducted at the rate of 20%.

The provision to deduct encashment tax is made subject to ***Chapter 2*** of ***Part 3*** so as to enable interest paid on Irish Government bonds to continue to be paid free of withholding tax in accordance with the provisions of that Chapter.

The encashment tax deducted is deemed to be a payment of income tax by the person entitled to the "specified dividend income" and is to be allowed by those persons on receipt of the balance of the dividends. ***par 14(2)***

The requirement to deduct encashment tax does not apply, from the 1st January 2021, to a payment of "specified dividend income" that is beneficially owned by a company. ***Par 14(3)***

A "chargeable person" is required to make a return to the Collector General, within 46 days of the end of the year of assessment, of all encashment tax deducted from "specified dividend income". ***par 15(1)***

The encashment tax deducted by the "chargeable person" is due at the time that the return is to be made to the Collector General. ***par 15(2)(a)***

The encashment tax deducted by the "chargeable person" should be paid to the Collector General without the making of an assessment. ***par 15(2)(b)***

For the purposes of securing collection of the encashment tax or any interest due on the encashment tax, an assessment may be made by the inspector where the encashment tax or any part of the encashment tax is not paid on time.

par 15(3)

Section 16 Finance Act 2020, which is subject to a commencement order, provides that the encashment tax return prescribed by the Revenue Commissioners should include the following:

- the name and address of the person to whom the payment of the "specified dividend income" is made, ***par 15(3)(a)***
- the amount and type of the payment, ***par 15(3)(b)***
- the amount of income tax deducted from the payment, ***par 15(3)(c)***
- a declaration to the effect that the return is correct and complete." ***Par 15(3)(d)***

An inspector may make estimated assessments where a "chargeable person". ***par 16(1)***

- has not made a return, or
- has made a return that includes an incorrect amount of encashment tax, or
- has made a return with which the inspector is dissatisfied.

The due date for any tax contained in the assessment is, for the purposes of interest on unpaid tax, the date on which the tax should have been paid if a correct return had been made in due time.

The due date for the payment of tax in respect of which an assessment has been issued is one month after the issue of the notice of assessment. ***par 16(2)***

However that due date cannot displace an earlier due date which would have been applicable under ***Paragraph 15***.

Any tax overpaid on determination of an appeal against such an assessment is to be repaid. ***par 16(3)***

If an item is incorrectly included on a encashment tax return the inspector may make any necessary assessments, adjustments or set-offs to secure the correct tax liabilities of the "chargeable person" (and, if necessary, of the beneficial owner of the dividend income). ***par 17***

Section 16 Finance Act 2020, which is subject to a commencement order, provides that a "chargeable person" is to keep a separate account in respect of each person entitled to receive "specified dividend income". ***par 18(1)***

The separate accounts should contain-

- the name and address of each person entitled to receive the "specified dividend income", ***par 18(1)(a)***
- the amount and type of the "specified dividend income" payments made to each person, ***par 18(1)(b)***
- the amounts of income tax deducted on the "specified dividend income" payments, ***par 18(1)(c)***

and

- in the case of public revenue dividends, details of the public revenue from which the dividends were paid. ***par 18(1)(d)***

A chargeable person is required to: ***par 18(2)***

(1) retain the records referred to above for a period of 6 years from the day the payment was made and

(2) on being required by notice in writing, make such records available to the inspector within the time period specified in the notice.

The provisions of ***section 898N*** apply to encashment tax as if a reference in ***section 898N*** to: ***par 19***

(a) "books, records or other documents" were a reference to books and records for the purposes of ***Schedule 2,*** ***par 19(a)***

(b) an "authorised officer" were a reference to a "Revenue officer" as defined in ***section 898B*** ***par 19(b)***

and

(c) to a "paying agent" as defined in ***section 898B*** were a reference to a "chargeable person". ***par 19(c)***

The provisions of the Income Tax Acts relating to the assessment, appeal and collection of income tax apply to the assessment, collection and recovery of encashment tax. ***par 20***

Interest is payable at the rate of 0.0274 per cent per day or part of a day on the late payment of encashment tax which is payable without the making of an assessment. ***par 21(1)***

The payment and procedural provisions of ***section 1080*** which apply to interest on assessed taxes are applied to interest payable on encashment tax. ***par 21(2)***

Where an assessment to encashment tax is made, the provisions of ***section 1080*** are to apply with the omission of ***subsection (2)(b).*** ***par 21(3)***

Subsection (2)(b) deals with the date from which interest is payable in a case where there is an appeal against an income tax assessment. This provision is not required in the case of an assessment to encashment tax as the due date of payment of interest in such a case is set out in ***paragraph 15.*** The provisions of ***paragraph 15*** apply whether or not there is an appeal against an assessment to encashment tax.

Where: ***par (22)***

(a) encashment tax in respect of the proceeds of sale or realisation of any coupon or in respect of the purchase price of any coupon has been accounted for by any banker or dealer in coupons, and ***par (22)(a)***

(b) the Revenue Commissioners are satisfied that encashment tax has also been deducted from the dividends payable on those coupons, ***par (22)(b)***

then that encashment tax is to be repaid.

PART 5

Relief from obligation to pay tax on certain interest, dividends and other annual payments in the case of persons entrusted with payment

Where any interest, dividends or other annual payments payable out of any foreign public revenue or in respect of stocks, funds, shares, or securities of any non-resident body of persons, are entrusted for payment by a person in the State to any other person in the State, the Revenue Commissioners may relieve the person so entrusted from the obligation to retain tax from that payment. ***par 23***

Where such relief is granted the Revenue Commissioners may prescribe any condition they feel is necessary to ensure that the assessment and payment of any income tax assessable and payable in respect of such interest, dividends or other annual payments is so assessed and paid. ***par 24***

A letter signed by a Secretary or an Assistant Secretary of the Revenue Commissioners or a notice published in Iris Oifigiúil stating that the Revenue Commissioners have exercised any or all of their powers conferred on them by this Part is sufficient evidence that they have done so. ***par 25***

Where a person is relieved from their obligation to retain income tax from a payment of interest, dividends or other annual payments, the income tax assessable and payable in respect of that payment is assessable on, and payable by, the recipient under the appropriate Case of Schedule D. ***par 26***

Paragraph 27 *was deleted by Section 38 of the Finance Act 2012.* ***par 27***

The obligation to deduct tax at source is disapplied in certain circumstances: Where any interest, dividends or other annual payments payable out of any foreign public revenue or in respect of stocks, funds, shares, or securities of any non-resident body of persons, are entrusted for payment by a person in the State to an investment undertaking within the gross-roll-up taxation regime, then the obligation imposed on the person so entrusted to retain tax from the payment is disapplied. ***par 28***

Schedule 2A

[*Section 172A*]

Dividend Withholding Tax

This Schedule sets out the details of the declarations which must be furnished by non-liable persons to companies, qualifying intermediaries or, as the case may be, authorised withholding agents if such persons are to obtain exemption from the charge to dividend withholding tax (DWT) on relevant distributions imposed by ***Chapter 8A*** of ***Part 6***.

The details of the required declarations differ slightly depending on the category of person involved, viz —

- company resident in the State ***par 3***
- pension scheme ***par 4***
- qualifying fund manager or qualifying savings manager ***par 4A***
- qualifying employee share ownership trust ***par 5***
- collective investment undertaking ***par 6***
- persons entitled to exemption from income tax under Schedule F ***par 6A***
- charity ***par 7***
- approved athletic or amateur sports body ***par 7A***
- designated stockbroker operating special portfolio investment account ***par 7B***
- qualifying non-resident person, not being a company ***par 8***
- qualifying non-resident person, being a company ***par 9***
- PRSA administrator ***par 10***
- exempt unit trust ***par 11***
- PEPP provider. ***par12***

In particular, it should be noted that a declaration made by a non-resident person (not being a company) must (***paragraph 8(f)*** refers) be accompanied by a certificate of tax residence from the tax authority in the country of the person's residence. This certificate is (***paragraph 2*** refers) effective only for the period from the date of issue until 31 December in the fifth year following the year in which the certificate was issued. Consequently, if title to exemption from DWT is to be maintained, the certificate will have to be renewed at the end of such period.

With regard to relevant distributions received by non-resident companies from Irish resident companies on or after 3 April 2010 the requirement to include a non-resident and/or an auditor's certificate with an appropriate declaration of entitlement to exemption is removed. Instead non-resident companies need only provide a current declaration and certain information to the dividend paying company or intermediary to claim exemption from DWT in accordance with ***paragraph 9***. The declaration must be a current declaration within the meaning of ***paragraph 2A*** at the time of the making of the relevant distribution. Declarations/certificates provided by qualifying non-resident companies before 3 April 2010 for the purposes of claiming exemption from DWT will remain valid until their current expiry date has passed.

In addition, if the qualifying non-resident person is a trust, the declaration must (***paragraph 8(g)*** refers) be accompanied by a certificate signed by the trustee or trustees of the trust showing the names and addresses of the beneficiaries and settlors of the trust and a written notice from the Revenue Commissioners stating that they have noted the contents of the certificate.

Paragraph 12 provides a series of conditions to be made by a Pan-European Personal Pension Product (PEPP) provider regarding the administration of a PEPP on behalf of a PEPP beneficiary.

Schedule 2B

[*Section 739B*]

Investment Undertakings Declarations

This Schedule sets out the details of the declarations that must be furnished by collective fund investors who are non-resident and certain resident entities (such as life assurance companies, charities and certain entities in the IFSC), in order to avoid the deduction of tax on payments to them by such a fund. The collective funds in question are referred to in ***Chapter 1A*** of ***Part 27*** as "investment undertakings".

The details of the required declarations differ slightly depending on the category of the entity involved, viz —

- pension schemes ***par 2***
- company carrying on life business ***par 3***
- investment undertakings ***par 4***
- an investment limited partnership within the meaning of ***section 739J*** ***par 4A***
- special investment scheme ***par 5***
- unit trust ***par 6***
- charity ***par 7***
- qualifying management company and specified company ***par 8***
- qualifying fund manager or qualifying savings manager ***par 9***
- PRSA administrator ***par 9A***
- credit unions ***par 9B***
- non-resident on acquisition of units ***par 10***
- non-corporate person ***par 11***
- by investment undertaking to Collector-General ***par 12***
- intermediary of non-resident entities ***par 13***
- intermediary of certain resident entities ***par 14***
- PEPP provider ***par15***

Schedule 2C

[*Sections 739B, 739K and 739U*]

Irish Real Estate Funds: Declarations

Section 739K(1) defines a specified person for the purposes of Chapter 1B. A number of persons are specifically excluded from being specified persons provided that the appropriate declaration form has been provided to the IREF immediately before the IREF taxable event. This Schedule sets out the details of the declarations that must be furnished by such persons in order to avoid the deduction of tax on payments to them by such a IREF.

The details of the required declarations differ slightly depending on the category of the specified person involved, viz —

- pension scheme *par 2*
- PRSA administrator regarding PRSAs *par 3*
- investment undertaking *par 4*
- company carrying on life business *par 5*
- charity *par 6*
- credit unions *par 7*
- qualifying company *par 8*
- qualifying intermediaries regarding Approved Retirement Fund (ARF) or Approved Minimum Retirement Funds (AMRF) *par 9*
- PRSA administrator regarding PRSAs and vested PRSAs *par 10*
- qualifying intermediaries regarding certain specified persons in ***section 739K(1)*** *par 11*
- PEPP provider regarding PEPPs and vested PEPPs. *par 12*

Schedule 3

[*Section 201*]

Reliefs in Respect of Income Tax Charged on Payments on Retirement, etc

Overview

This Schedule provides certain reliefs from the charge to tax imposed under ***section 123*** which are supplementary to the exemptions and reliefs provided for by ***section 201***.

PART 1
Interpretation and preliminary

The term "the relevant capital sum in relation to an office or employment" means an amount equal to the value, at the date of termination of the employment, of any lump sum (not chargeable to income tax) actually received on the termination of the office or employment plus the value of lump sums (not chargeable to income tax) which are receivable and lump sums (not chargeable to income tax) which, if an option or right to commute a pension or a part of a pension in favour of a lump sum were exercisable, may be received at some future date. *par 1*

Irrespective of whether or not an option or right to commute a pension in favour of a lump sum is actually exercised, the amount equal to the value, at the date of termination of the employment, of any lump sum which could be received in the future by the exercise of the option or right is to be taken into account for the purposes of determining the relevant capital sum in relation to the office or employment.

If it is permissible under the rules of a pension scheme for an individual to surrender irrevocably an option or right to commute a pension or part of a pension in favour of a lump sum and the individual has done so at the date of termination of the employment, the amount equal to the value of the lump sum at that date is not taken into account in calculating the relevant capital sum in relation to the office or employment.

The amount of "the standard capital superannuation benefit" is determined by first calculating one-fifteenth of the average annual taxable emoluments from the office or employment for the last 3 years of service before the relevant date, then multiplying that amount by the number of complete years of service and then deducting from the resultant amount the relevant capital sum in relation to the office or employment.

References in the Schedule to a "payment in respect of which income tax is chargeable under ***section 123*** " are references to the net amount of the payment after deduction of the basic exemption given under ***section 201*** or the appropriate proportion of it. ***par 2***

References to "the amount of income tax to which a person is or would be chargeable" are references to tax chargeable either by assessment or deduction. This provision is necessary for the purposes of top-slicing relief provided for in ***paragraph 10***. ***par 3***

Relief can only be given under this Schedule where a claim is made under ***section 201***. ***par 4***

Relief under this Schedule is not available in respect of any annual payments out of which the taxpayer is entitled to deduct tax. ***par 5***

PART 2

Relief by reduction of sums chargeable

Instead of deducting the basic exemption from the payment chargeable to tax under ***section 123*** as is provided for by ***section 201(5)***, the amount of the "standard capital superannuation benefit" (referred to as "SCSB") for the office or employment concerned may be deducted in determining the amount so chargeable. ***par 6***

Where more than one payment is made in respect of the same office or employment or in respect of different offices or employments held under the same or associated employers, all such payments are aggregated and, where made in respect of different employments, the SCSB in respect of the various employments are likewise aggregated. This ensures that only one basic exemption is obtained in such circumstances. ***par 7(a)***

The calculation of the SCSB might give different amounts at the dates of different events. A double allowance of any part of the SCSB is prevented and the amount to be taken into account is the highest of the amounts. ***par 7(b)***

A claimant for relief under ***section 201*** may, if it is more beneficial to him/her than a claim for the SCSB and if he/she has not in the previous 10 years of assessment made a claim under ***section 201***, have the basic exemption provided for in ***section 201*** increased by the lesser of — ***par 8***

- €10,000, and
- the excess (if any) of €10,000 over the relevant capital sum in relation to the employment (that is, the value of tax-free lump sums the claimant receives, will receive, and may receive in the future should he/she exercise an option to commute a pension in favour of a lump sum).

In other words the increased exemption is, in effect, reduced euro for euro by reference to the value of such tax-free lump sums.

Where there has been some foreign service but not sufficient to give complete exemption ***par 9*** under ***section 201***, the proportion which the length of the foreign service bears to the length of total service of the net amount which would otherwise be chargeable is to be exempt.

Paragraph 9 ceased to have effect from the passing of the Finance Act 2013 effective from 27 March 2013. ***Par 9A***

PART 3

Relief by reduction of tax

This paragraph provides what is referred to as "top slicing relief". The "top-slicing relief" is designed to limit the tax on chargeable sums to the highest slice (or top slice) of the claimant's income which would, but for the relief, attract tax at the claimant's highest rate of tax. The effect of top slicing relief is to charge tax on the chargeable sum at a special rate. This special rate is the average rate of tax on the claimant's taxable income for the 3 tax years preceding the tax year for which the lump sum is treated as income. Effect is given to the relief by application of the formula — ***par 10***

$$A \times \frac{(P \times T)}{I}$$

A = the claimant's income tax liability (including the tax liability on the chargeable amount) for the tax year in which the payment is treated as income less the tax liability of the claimant excluding the tax liability on the chargeable amount).

P = the chargeable amount of the lump sum.

T = the aggregate of the tax paid by the claimant for the 3 tax years before the tax year for which the lump sum is treated as received.

I = the aggregate of the claimant's taxable income for those 3 years.

The tax which would otherwise by payable on the chargeable sum is then reduced by he amount determined by the formula.

Where in a single tax year a taxpayer gets 2 or more lump sum payments in respect of the same office or employment which have to be top-sliced, the payments are treated for the purposes of top-slicing as a single payment equal to their aggregate. ***par 11***

Where in a single tax year a taxpayer gets 2 or more lump sum payments in respect of different offices or employments which have to be top-sliced, the payments are treated as if made for the same office or employment and, accordingly, for the purpose of top-slicing are aggregated and treated as a single payment. ***par 12***

Top Slicing relief ceased to apply to any payment of €200,000 or more, to which ***section 123*** applies, made on or after 1 January 2013. This limit is determined without reference to any exemption or deduction provided for in ***section 201***. ***par 13(a)***

For the purposes of determining whether the limit of €200,000 has been reached, ***paragraphs 11*** and ***12*** apply in aggregating any payments made. ***Par 13(b)***

Notwithstanding section 201, ***paragraph 10,*** granting Top Slicing Relief, ceased to apply to any payments which were made on or after 1 January 2014, and which were chargeable to tax under section 123. ***Par 14***

Schedule 4

[*Section 227*]

Exemption of Specified Non-Commercial State Sponsored Bodies from Certain Tax Provisions

This Schedule lists the non-commercial State sponsored bodies granted exemption (income or corporation tax) under ***section 227*** in respect of income which would otherwise be chargeable under Case III, IV or V of Schedule D. The exemption does not extend to deposit interest chargeable under ***Chapter 4*** of ***Part 8***.

1. Agency for Personal Service Overseas.
1.A The Approved Housing Bodies Regulatory Authority.
2. Beaumont Hospital Board.
3. Blood Transfusion Service Board.
4. Board for Employment of the Blind.
5. An Bord Altranais.
6. An Bord Bia — The Irish Food Board.
7. The National Tourism Development Authority.
8. An Bord Glas.
9. An Bord Iascaigh Mhara.
10. Bord na Gaeilge.
11. Bord na Leabhar Gaeilge.
12. Bord na Radharcmhastóirí.
13. An Bord Pleanála.
14. Bord Scoláireachtaí Comalairte.
15. An Bord Tráchtála – The Irish Trade Board.
16. An Bord Uchtála.
17. Building Regulations Advisory Body.
18. *[deleted]*
18A. The Courts Service.
19. CERT Limited.
20. The Chester Beatty Library.
20A. Child and Family Agency.
20B. Children’s Health Ireland.
21. An Chomhairle Ealaíon.
22. An Chomhairle Leabharlanna.
22A. An Cohmairle Oidhreachta – The Heritage Council.
23. Coiste An Asgard.
24. Combat Poverty Agency.
25. Comhairle na Nimheanna.
26. The Health Service Executive.
26A. Commission for Communications Regulation.
27. Cork Hospitals Board.

27A. A County Enterprise Board.

27B. The Credit Union Restructuring Board

28. Criminal Injuries Compensation Tribunal.

29. Dental Council.

30. Drug Treatment Centre Board.

31. Dublin Dental Hospital Board.

32. Dublin Institute for Advanced Studies.

33. *[deleted]*

34. Economic and Social Research Institute.

35. Employment Equality Agency.

35A. Enterprise Ireland.

36. Environmental Protection Agency — An Ghníomhaireacht um Chaomhnú Comhshaoil.

37. Eolas — The Irish Science and Technology Agency.

38. Federated Dublin Voluntary Hospitals.

39. Fire Services Council.

39A. The Food Safety Authority of Ireland.

40. An Foras Áiseanna Saothair.

41. Forbairt.

42. Forfás.

43. The Foyle Fisheries Commission.

44. Garda Síochána Appeal Board.

45. Garda Síochána Complaints Board.

46. *[deleted]*

47. Health Research Board — An Bord Taighde Sláinte.

47A. The Health and Social Care Professionals Council

48. Higher Education Authority.

49. *[deleted]*

50. Hospitals Trust Board.

51. The Independent Radio and Television Commission – An Coimisiún um Raidio agus Teilifís Neamhspleách.

52. The Industrial Development Agency (Ireland).

53. The Industrial Development Authority.

53A. The Institute of Public Health in Ireland Limited.

53AB. Inland Fisheries Ireland.

54. Institiúid Teangeolaíochta Éireann.

55. Institute of Public Administration.

55A. The Irish Auditing and Accounting Supervisory Authority.

56. The Irish Film Board.

57. The Irish Medicines Board.

57A. The Irish Sports Council.

58. The Labour Relations Commission.

59. Law Reform Commission.

60. The Legal Aid Board.

61. Leopardstown Park Hospital Board.

62. Local Government Computer Services Board – An Bord Seirbhísí Ríomhaire Rialtais Aitiúil.
63. Local Government Staff Negotiations Board – An Bord Comhchaibidlí Foirne Rialtais Aitiúil.
64. The Marine Institute.
65. Medical Bureau of Road Safety – An Lia-Bhiúró um Shábháiltacht ar Bhóithre.
66. The Medical Council.
67. The National Authority for Occupational Safety and Health – An tÚdarás Náisiúnta um Shábháilteachta agus Sláinte Ceirde.
68. National Cancer Registry.
69. The National Concert Hall Company Limited – An Ceoláras Náisiúnta.
69A. National Consultative Committee on Racism and Interculturalism.
70. National Council for Educational Awards.
71. National Council for the Elderly.
72. The National Economic and Social Council.
73. The National Economic and Social Forum.
74. National Health Council.
74A. The National Milk Agency.
74AA. The National Oil Reserves Agency Designated Activity Company.
74AB. National Qualifications Authority of Ireland.
75. *[deleted]*
76. National Rehabilitation Board.
77. The National Roads Authority — An tÚdarás um Bóithre Náisiúnta.
78. National Safety Council — Comhairle Sábháiltacht Náisiúnta.
79. National Social Services Board.
79A. National Transport Authority.
80. *[deleted]*
81. *[deleted]*
81A. Occupational Safety and Health Institute of Ireland.
82. Office of the Data Protection Commissioner.
83. The Pensions Board.
83A. The Personal Injuries Assessment Board.
83B. The Pharmaceutical Society of Ireland.
84. Postgraduate Medical and Dental Board.
84A. The Private Residential Tenancies Board.
85. The Radiological Protection Institute of Ireland.
86. The Refugee Agency.
87. Rent Tribunal.
88. Royal Hospital Kilmainham Company.
89. Saint James's Hospital Board.
90. Saint Luke's and St Anne's Hospital Board.
91. Salmon Research Agency of Ireland Incorporated.
91A. Science Foundation Ireland.
91B. Sport Ireland.
92. Shannon Free Airport Development Company Limited.

92A. The Sustainable Energy Authority of Ireland.
93. *[deleted]*
94. *[deleted]*
95. *[deleted]*
96. Tallaght Hospital Board.
96A. The Teaching Council.
97. Teagasc.
98. Temple Bar Renewal Limited.
98A. Tourism Ireland Limited.
99. Údarás na Gaeltachta.
100. Western Development Commission.

Schedule 4A

[*Section 285A*]

This Schedule, in the following table, lists the 10 classes of technology, a description of each and the minimum amount that must be spent in each class, in order to qualify for accelerated capital allowances under **section 285A** in respect of expenditure incurred on certain energy efficient equipment**.** ***Section 17 Finance Act 2016 extended the accelerated capital allowances to non-incorporated businesses for expenditure incurred on or after 1 January 2017.***

Note: ***Schedule 4A*** was substituted by section 44 of the Finance Act 2010 with effect from 10 May 2010 [Commencement Order SI No. 196/2010 refers]. The effect of the making of this Order was to increase the classes of technology from 7 to 10.

TABLE		
(Class of Technology) (1)	(Description) (2)	(Minimum Amount) (3)
Motors and Drives	Electric motors and drives designed to achieve high levels of energy efficiency.	€1,000
Lighting	Lighting equipment and systems designed to achieve high levels of energy efficiency.	€3,000
Building Energy Management Systems	Building energy management systems designed to achieve high levels of energy efficiency.	€5,000
Information and Communications Technology (ICT)	ICT equipment and systems designed to achieve high levels of energy efficiency.	€1,000

Heating and Electricity Provision	Heating and electricity provision equipment and systems designed to achieve high levels of energy efficiency.	€1,000
Process and Heating, Ventilation and Air-conditioning (HVAC) Control Systems	Process and heating, ventilation and air-conditioning (HVAC) equipment and systems designed to achieve high levels of energy efficiency.	€1,000
Electric and Alternative Fuel Vehicles	Electric and alternative fuel vehicles and equipment designed to achieve high levels of energy efficiency.	€1,000
Refrigeration and Cooling Systems	Refrigerating and cooling equipment and systems designed to achieve high levels of energy efficiency.	€1,000
Electro-mechanical Systems	Electro-mechanical equipment and systems designed to achieve high levels of energy efficiency.	€1,000
Catering and Hospitality Equipment	Catering and hospitality equipment and systems designed to achieve high levels of energy efficiency.	€1,000

Schedule 5

[*Section 322*]

Description of Custom House Docks Area

This Schedule describes the Custom House Docks Area for the purposes of the scheme of reliefs provided by ***Chapter 1*** (***sections 322*** to ***329***) of ***Part 10***. It should be noted that under ***section 322*** the Minister for Finance may make orders to extend the Custom House Docks Area beyond the area as set out in this Schedule.

Schedule 6

[*Section 330*]

Description of Temple Bar Area

This Schedule describes the Temple Bar Area for the purposes of the scheme of reliefs provided by ***Chapter 2*** (***sections 330*** to ***338***) of ***Part 10***.

Schedule 7

[*Section 339*]

Description of Certain Enterprise Areas

This Schedule describes 3 enterprise areas, namely, areas in Cherry Orchard/Gallanstown and Finglas areas of Dublin and the Rosslare Harbour area of Co. Wexford, for the purposes of the reliefs provided by ***sections 343*** and ***345***. It should be noted that under ***section 340*** the Minister for Finance may by order designate other areas to be enterprise areas for the purposes of those reliefs.

Schedule 8

[*Section 351*]

Description of Qualifying Resort Areas

This Schedule describes the qualifying resort areas for the purposes of the scheme of reliefs provided by ***Chapter 4*** (***sections 351*** to ***359***) of ***Part 10***. The areas in question are areas in Kilkee and Lahinch (Co. Clare), Clonakilty and Youghal (Co. Cork), Bundoran (Co. Donegal), Salthill (Co. Galway), Ballybunion (Co. Kerry), Clogherhead (Co. Louth), Achill and Westport (Co. Mayo), Bettystown, Laytown and Mosney (Co. Meath), Enniscrone (Co. Sligo), Tramore (Co. Waterford), Courtown (Co. Wexford) and Arklow (Co. Wicklow).

Schedule 8A

[*Section 351*]

Description of Qualifying Rural Areas

This Schedule describes the areas which are to be qualifying rural areas for the purposes of the scheme of reliefs provided by ***Chapter 8*** (***sections 372L*** to ***372T***) of ***Part 10***. The areas in question are the entire counties of Leitrim and Longford and the listed District Electoral Divisions of Cavan, Roscommon and Sligo.

Schedule 8B

[*Section 372AW*]

Description of Qualifying Mid-Shannon areas

Overview

This Schedule sets out the qualifying mid-Shannon areas for the purposes of the mid-Shannon Corridor Tourism Infrastructure Investment Scheme which is contained in ***Chapter 12*** of ***Part 10***. Under that scheme, capital allowances are available for the construction and refurbishment of certain registered holiday camps and certain other tourism infrastructure facilities. The qualifying areas involved are certain District Electoral Divisions in the counties of Clare, Galway, Offaly, Roscommon, Tipperary and Westmeath which are listed in the respective parts of the Schedule. The schedule has 6 Parts.

Part 1 lists the qualifying mid-Shannon areas of Clare;

Part 2 lists the qualifying mid-Shannon areas of Galway;

Part 3 lists the qualifying mid-Shannon areas of Offaly;

Part 4 lists the qualifying mid-Shannon areas of Roscommon;

Part 5 lists the qualifying mid-Shannon areas of Tipperary;

Part 6 lists the qualifying mid-Shannon areas of Westmeath.

Schedule 9

[*Sections 401* and *679(4)*]

Change of Ownership of Company: Disallowance of Trading Losses

Overview

This Schedule sets out the rules for determining whether there is a change in the ownership of a company for the purposes of ***section 401***. The Schedule also applies to supplement ***section 679(4)*** which deals with unrelieved losses of an exploration company.

Change in ownership of company ***par 1***

There is a change in the ownership of a company if —

- a single person acquires more than 50 per cent of the ordinary share capital of the company, or
- if 2 or more persons each acquire a holding of 5 per cent or more of the ordinary share capital of the company and the total of these holdings amount to more than 50 per cent of the ordinary share capital of the company.

In considering acquisitions by 2 or more persons, holdings of less than 5 per cent are to be disregarded unless they are in addition to an existing holding and the 2 holdings together amount to 5 per cent or more of the ordinary share capital of the company.

In identifying a relevant change in ownership, holdings at 2 points in time separated by not more than 3 years may be compared. A holder at the end of such a period is regarded as having acquired what that holder did not hold at the beginning of such period irrespective of intermediate acquisitions and disposals. The period of 3 years contemplated in the ***par 2*** shareholding comparison test may not necessarily coincide with the 3 years in which the change in the nature of the trade may be identified, but the 2 periods must overlap. Permission is given for the comparison of holdings to be made in percentage terms to cover changes in capital structure (for example, as a result of a bonus issue). The possibility of "loss buyers" circumventing the provisions by dispersing the holdings which constitute a relevant change in ownership throughout a family or partnership or through groups of companies is countered. Shares acquired by inheritance or by way of an unsolicited gift are, however, to be left out of account in determining a relevant change in ownership.

If the possibility exists for the normal medium for exercising control over a company by way of holdings of ordinary share capital to be superseded by the holding of other kinds of share capital (including preference shares) or by a special kind of power, then such non-usual means are to be taken into account in place of ordinary share capital. ***par 3***

Where relief has been restricted under ***section 401*** or ***679(4)*** by reference to a relevant change in ownership, circumstances before that change cannot be taken into account in determining whether a subsequent change in ownership has taken place. ***par 4***

Groups of companies

A change in ownership of a 75 per cent subsidiary within a group is to be disregarded if the parent-subsidiary 75 per cent relationship still exists after the change. Where, however, there is a change in ownership of a company which has a 75 per cent subsidiary, there is also deemed to be a change in ownership of the 75 per cent subsidiary. The provisions remain fully applicable to loss-bearing companies entering or leaving a group and to loss-bearing companies within a group where there is a change in the ownership of the parent company. ***par 5***

Provisions as to ownership

All references to ownership are to be construed as references to beneficial ownership. The provisions of ***section 9(5)*** to ***(10)*** are to be applied in determining the amount of the ordinary share capital of one company owned by a second company through another company. ***par 6***

Time of change in ownership

As regards contracts made after 16 May, 1973, the time when the contract is made or the benefit assigned is to be treated as the date of the acquisition of the shares. ***par 7***

Information

The registered owner of shares and securities when required by notice in writing from an inspector is to provide to the inspector the names and addresses of the persons who are the beneficial owners of the shares and securities registered in that person's name. ***par 8***

Schedule 10

[*Section 507 (Part 16 (BES))*]

Relief for Investment in Corporate Trades: Subsidiaries

Overview

This Schedule contains provisions adapting the Business Expansion Scheme (***Part 16***) in the context of subsidiaries.

Finance for trade of subsidiary

It is a general requirement (***section 489***) that money raised through the issue of eligible shares must be applied for the purposes of a qualifying trade which the company carries on or intends to carry on. This requirement is modified in a case where a qualifying company has one or more qualifying subsidiaries. In such a case the proceeds of the share issue may be applied for the purpose of a qualifying trade which a subsidiary carries on or intends to carry on or partly for such a purpose and partly for a qualifying trade undertaken by the holding company issuing the shares. ***par 1***

The provisions of ***sections 488(1)*** and ***489(1)(c)***, ***(7)***, ***(8)*** and ***(11)*** apply when the qualifying trade is carried on by a subsidiary company.

Individuals qualifying for relief

The various restrictions which apply to individuals who are connected in various ways with a company are applied to individuals who are correspondingly connected with companies which become subsidiaries of that company at any time during the relevant period (the relevant period here has the same meaning as in ***section 493***). ***par 2(1)***

Subsidiary companies are included in the references (other than the first such reference) to companies in ***subsections (2)***, ***(4)*** and ***(6)*** of ***section 493*** (which deals with individuals qualifying for relief). Consequently an individual is deemed to be connected with a company if the employees, partners or directors relationship (***section 499(2)***) is with a subsidiary of that company instead of with the company itself or if he/she has more than 30 per cent of the capital (including loan capital) or voting power (***section 493(4)***) of that subsidiary or if he/she would be entitled to receive more than 30 per cent of the assets (***section 498(6)***) of that subsidiary company available for distribution to equity holders in a winding up.

In addition, if during the relevant period an individual is connected with a trading subsidiary, within the meaning of ***subsections (2)***, ***(4)*** and ***(6)*** of ***section 493*** before or after the company has become a subsidiary of the holding company issuing the shares for which he/she has subscribed, he/she is nonetheless treated as connected with the holding company. Such connection would result in denial or withdrawal of relief.

Also an individual who has had at any time in the relevant period control of a company which subsequently becomes a subsidiary of the qualifying company before the end of the relevant period is treated as connected with the company and accordingly is disqualified from obtaining the relief. ***par 2(2)(a)***

Also an individual who has, or is entitled to acquire, any loan capital of a subsidiary of a qualifying company is treated as being connected with the qualifying company and accordingly is not entitled to obtain relief. ***par 2(2)(b)***

The definitions of “loan capital” and “entitled to acquire” in ***subsections (5)*** and ***(9)*** of ***section 493*** apply. ***par 2(3)***

Value received

The rules which apply when a claimant (***section 499***) or another member of the company (***section 501***) has received value from the company apply where he/ she has received value from a subsidiary of that company. ***par 3***

The provisions of ***section 499(9)*** and ***501(5)*** apply to subsidiaries. This secures that the receipt of value from a company which leads to a reduction in the relief includes the receipt of value from a subsidiary of that company. The reduction in relief referred to could involve total withdrawal of relief already given. ***par 3(1)***

The provisions of ***section 501(1)*** are also applied to subsidiaries. This secures that the ***par 3(2)*** repayment to, or redemption or repurchase from, any member of the share capital of a company which at any time during the relevant period (the reference here is to be taken as the reference to the relevant period within the meaning of ***section 501***) is a subsidiary of the qualifying company is to be treated for the purposes of ***section 501*** as if it were a repayment, redemption or repurchase of shares in the company itself. Consequently, there would be a receipt of value by that member which would result in a reduction (or withdrawal) of relief otherwise due to a claimant.

Information

Subsections (4) and ***(5)*** of ***section 505*** (which deals with the provision of information) apply to subsidiary companies. This secures that an inspector may request information from “the person concerned” if he/she considers that there are any arrangements or schemes under which the subsidiary would cease to be a qualifying subsidiary. An example of such an arrangement or scheme would be an agreement to transfer the shares in, or control of, the subsidiary at some future date in the event of certain specified conditions being fulfilled. ***par 4***

Schedule 11

[*Section 510*]

Profit Sharing Schemes

Overview

This Schedule contains provisions relating to profit sharing schemes (***Chapter 1*** of ***Part 17***). ***Part 1*** is concerned with the interpretation of the Schedule. The remaining Parts cover the approval and withdrawal of approval of such schemes (***Part 2***), the conditions which the shares issued under the scheme must meet (***Part 3***), the criteria which apply to individuals to render them ineligible to participate in such a scheme (***Part 4***), and the provisions relating to the trust instrument (***Part 5***).

PART 1
Interpretation

The term “control” has the same meaning as in ***section 432***. ***par 1***

A company is a member of a consortium owning another company if it is one of not more than 5 companies which between them beneficially own not less than 75 per cent of the other company’s ordinary share capital and each of them beneficially owns not less than 5 per cent of that capital. ***par 2***

PART 2
Approval of schemes

Approval of schemes

A company which has established a profit sharing scheme which complies with the conditions in ***subparagraphs (3)*** and ***(4)*** may apply to the Revenue Commissioners for approval of the scheme. The Revenue Commissioners are to approve the scheme — ***par 3(1)***

- if they are satisfied that the conditions in ***paragraph 4*** concerning the persons who are eligible to participate in the scheme are complied with, and
- unless the scheme contains features which are neither essential nor reasonably incidental to the purpose of providing employees and directors with shares.

A scheme is not to be approved unless the Revenue Commissioners are satisfied that the terms of the scheme complies with the matters set out in ***section 511***.

A company which controls one or more other companies may set up a scheme which extends to some or all of those companies. A scheme of this kind is called a "group scheme". A "participating company" in a group scheme is the company which has established the scheme or a company over which that company has control and to which the scheme is expressed to extend. ***par 3(2)***

The scheme must provide for the establishment of a trust constituted under the laws of the State and administered by trustees resident in the State. Out of moneys paid to them by the company which has established the scheme (or, in the case of a group scheme, paid to them by a participating company) the trustees must purchase or subscribe for shares which satisfy the conditions of ***Part 3*** of this Schedule. They must perform their functions in accordance with a trust instrument whose terms must comply with ***Part 5*** of this Schedule. The shares which are purchased or subscribed for must be formally allocated to individuals who are not ineligible to participate in the scheme by virtue of ***Part 4*** of the Schedule. ***par 3(3)***

The scheme must provide that the total initial market value of the shares allocated to any one participant in a year of assessment must not exceed €12,700 or, where ***section 515(1)(b)*** applies, €38,100. ***par 3(4)***

An application for approval must be made in writing and must contain such particulars and be supported by such evidence as the Revenue Commissioners may require. ***par 3(5)***

Participation in the scheme must be open at any time to every person who — ***par 4(1)***

- as respects a scheme approved before 10 May, 1997, is a full-time director or employee of the company which has established the scheme or, in the case of a group scheme, of a participating company,
- as respects a scheme approved on or after 10 May, 1997, is an employee (full-time or part-time) or full-time director of the company which has established the scheme, or in the case of a group scheme, of a participating scheme,
- has been such a director or employee at all times during a period not exceeding 3 years ending at that time (in other words all such directors and employees must have service with the company for a qualifying period which must not be longer than 3 years), and
- is chargeable to tax under Schedule E in respect of his/her office or employment.

All directors or employees who satisfy the above conditions must be eligible, subject to ***Part 4*** of the Schedule, to participate in the scheme on "similar terms".

In approving a scheme the Revenue Commissioners must be satisfied that — ***par 4(1A)***

- there are no features of the scheme (other than what is already permitted by the legislation) which have or would have the effect of discouraging any eligible employee, subject to ***subparagraph (1B)***, from actually participating in the scheme, and
- where the company seeking approval is a member of a group of companies that approval of such company would not result in benefits being conferred wholly or mainly on the higher or highest paid directors and employees in the group of companies.

A "group of companies" is defined as a company and any other companies of which it has control or with which it is associated.

A company will be treated as associated with another company where it could be reasonably be considered that —

- both companies act in pursuit of a common purpose,

- any person or group(s) of persons, having a reasonable commonality of identity, have or had the means or power, either directly or indirectly, to determine the trading operations carried on or to be carried on by both companies, or
- both companies are under the control of any person or group(s) of persons having a reasonable commonality of identity.

Subparagraph (1B) qualifies the existing ***subparagraph (1)*** which requires that, in general, every person who is an employee or director of the company is eligible to be a participant in the APSS and has been so employed for a period of up to 3 years at that time. In order to be a participant in a scheme established by a relevant company (which is defined in ***paragraph 1*** of ***Schedule 12*** the person must also have been an employee of a company in the companies' group on the day the trust was established. In addition, service in companies to which ***paragraph 11A(3)(b)*** of ***Schedule 12*** refers will also count as service for the purposes of the qualifying period. ***par 4(1B)***

The Revenue Commissioners must be satisfied that there are no arrangements (very widely defined) that make provision for a loan(s), or any form of credit, to be made to some or all of the individuals who are eligible to participate in a scheme. This condition applies to schemes that are approved on or after 4 February 2010 and is related to the anti-avoidance provision in ***paragraph 8B*** prohibiting shares in certain service companies. ***par 4(1C)***

The question whether a scheme is open to all participants on "similar terms" can only be finally determined by reference to the rules of the scheme. However, if the number of shares to be allocated to the participants in a scheme varies by reference to the levels of their remuneration, their length of service or similar factors, that does not necessarily mean that the participants are not to be regarded as eligible to participate on similar terms. ***par 4(2)***

Withdrawal of approval

The Revenue Commissioners may withdraw approval of a scheme, where — ***par 5(1)***

- a participant is in breach of any of his/her obligations – in this regard a breach of an obligation occurs where the participant —
  - does not allow the trustees to hold his/her shares for the retention period,
  - does not pay the trustees the appropriate amount of income tax, where ownership of the shares is transferred to the participant before the release date,
  - instructs the trustees to dispose of his/her shares before the release date at a price other than for best consideration,
- there is, with respect to the operation of the scheme, any contravention of any of the provisions of ***Chapter 1*** of ***Part 17***, the scheme itself, or the terms of the scheme trust,
- the shares used in a scheme receive different treatment from other shares of the same class (in particular, they must not receive different treatment in respect of dividend rights, repayment rights, restrictions attaching to the shares and bonus or rights issues),
- any of the conditions relating to the participants cease to be met, or
- the trustees fail, on or after 24 December 2008, to provide information requested under ***section 510(7)*** or information required to be delivered under ***section 510(8)***.

The withdrawal of approval may take effect from the time any of such events first occurs or from such later time as the Revenue Commissioners specify.

If an alteration is made to the terms of an approved scheme or to its trust deed, approval automatically ceases from the date of the alteration unless the alteration is itself approved by the Revenue Commissioners. ***par 5(2)***

While scheme shares are to be accorded the same treatment in the matter of dividend rights as other shares of the same class, this is not to be taken as meaning that there are grounds ***par 5(3)*** for withdrawal of approval if newly issued shares do not rank for the next dividend on the same basis as shares of the same class already in issue.

Appeals

A company has a right to appeal to the Appeal Commissioners where the Revenue Commissioners fail to approve a scheme or an alteration to a scheme or withdraw approval of a scheme. The appeal is made by notice in writing to the Appeal Commissioners. The appeal must be made within 30 days after the date the notice of the decision in relation to the scheme. The appeal is heard and determined in the manner provided for in Part 40A of the Tax Acts. ***par 6***

PART 3

Conditions as to the shares

Subject to ***paragraphs 8A*** and ***8B***, the shares must form part of the ordinary share capital of — ***par 8***

- the company which has established the scheme,
- a company controlling that company, or
- a company which either is, or has control of, a company which —
  - is a member of a consortium owning either the company which has established the scheme or a company having control of that company, and
  - beneficially owns at least 15 per cent of the ordinary share capital of the company so owned, or
- a company which issued the shares to an Employee Share Ownership Trust in an exchange to which ***section 586*** applies, and which then passed these shares onto the trustees of the approved scheme.

Any reference to "shares" in ***paragraph 8(d)*** includes a reference to shares acquired by the trustees of the Employee Share Ownership Trust as a result of a company reorganisation to which ***section 584*** applies which replaced — ***par 8A***

- shares, or
- specified securities,

the Employee Share Ownership Trust previously acquired as a result of an exchange of shares to which ***section 586*** applies.

The shares must not be shares in a service company (as defined in ***subparagraph (2)***) or in a company that has control of a service company, where the company is under the control of a person or persons referred to in ***subparagraph (2)(a)(i)***. This restriction is intended to counter a tax avoidance scheme that involves salary sacrificing, the making of loans to employees and the use of shares in certain types of service companies. It applies to an appropriation of shares made by the trustees of an approved profit sharing scheme on or after 4 February 2010. ***par 8B(1)***

Essentially a service company is one whose business consists wholly or mainly of the provision of the services of persons employed by it to associated companies or partnerships. Detailed rules are set out for determining if a company or partnership is associated with a service company. ***par 8B(2)***

The shares must be — ***par 9***

- shares of a class quoted on a recognised stock exchange,
- shares in a company which is not under the control of another company, or
- shares in a company (other than a close company) whose shares are quoted on a

recognised stock exchange,

The shares must be — ***par 10(1)***

- fully paid up,
- not redeemable, and
- not subject to any restrictions other than restrictions attaching to all shares of the same class.

As respects a scheme approved on or after 10 May, 1997, a requirement in the company's articles of association requiring an employee or director to dispose of his/her shares on leaving the company is an exception to the general rule that all scheme shares must not be subject to restrictions, other than those which attach to all shares of the same class. ***par 10(2)(a)***

Also as respects a scheme approved on or after 10 May, 1997, any requirement requiring a former employee or director who acquires scheme shares, to dispose of them on acquisition, is also an exception to the general rule that all scheme shares must not be subject to restrictions, other than those which attach to all shares of the same class. ***par 10(2)(b)***

These exceptions to the general rule that all scheme shares must not be subject to restrictions, other than those applying to all shares of the same class, do not apply unless — ***par 10(3)***

- any disposal required by the restriction is by means of a cash sale which complies with the terms specified in the articles of association, and
- the articles of association contain general provisions requiring, any person disposing of shares of the same class to dispose of those shares for cash.

Furthermore, these exceptions must not require any person, before the release date, to dispose of his/her beneficial interest in shares the ownership of which has not been transferred to him/her. ***par 10(4)***

If a company whose shares are being used in a scheme has more than one class of issued ordinary share capital at the time that the shares are acquired by the trustees, the majority of the issued shares of the class used in the scheme must be held by persons other than — ***par 11***

- persons who acquired their shares in pursuance of a right conferred on them or an opportunity afforded to them as directors or employees of any company and not as a result of an offer to the public,
- trustees holding shares on behalf of persons who acquired their beneficial interests in the shares in pursuance of such a right or opportunity,
- in a case where shares are those of a company which is under the control of a company (other than a close company) and whose shares are quoted on a recognised stock exchange, and the former is not the company which established the scheme, companies which have control of the former company or of which the former company is an associated company.

Some of the rules governing the conditions as to the shares which may be held and passed through an approved scheme must be changed if securities other than ordinary shares are to be used. ***par 11A***

- ***Paragraphs 8*** to ***11*** of ***Schedule 11*** are disapplied in the case of shares which are specified securities. The subsequent subparagraphs set out a new set of rules for such securities. ***par 11A(1)***
- The provisions of the existing ***subparagraphs (b)*** and ***(c)*** of ***paragraph 9*** of ***Schedule 11*** are effectively restated to ensure that these specified securities must be issued by a company not under the control of another company. This means that as in the case of ordinary shares, the issuer of the specified securities must, in effect, be the "top" company of the group. ***par 11A(2)***
- The existing provisions contained in ***paragraph 10*** of ***Schedule 11*** are restated for specified securities. This allows restrictions to apply to these securities in particular circumstances (for example an obligation to sell them back to the company upon ***par 11A(3),***

retirement etc.). ***(4) & (5)***

PART 4

Individuals ineligible to participate

A scheme must not allow shares to be allocated to an individual at a particular time unless at that time or within the preceding 18 months he/she was a director or employee of the company which has established the scheme (or a participating company in the case of a group scheme). ***par 12***

One exception to the rule in ***paragraph 12*** above is that shares may be allocated to an individual at any time if those shares were transferred to the trustees of an employee share ownership trust (ESOT) (within the meaning of ***section 519***) and the individual is at that time or was within the previous 30 days a beneficiary (within the meaning of ***paragraph 11*** or ***paragraph 11A***, as the case may be, of ***Schedule 12***) of the ESOT. ***par 12A***

Shares may not be allocated to an individual any time in a year of assessment if, in that particular year of assessment, shares have already been allocated to him/her under another approved scheme established by — ***par 13***

- the same company,
- a company which controls or is controlled by that company or which is controlled by a company which also controls that company, or
- a company which is a member of a consortium owning that company, or which is owned in part by that company as a member of a consortium.

Provision is made for an appropriation of shares under the terms of more than one approved scheme in the year of assessment in which a company takeover takes place. ***par 13A***

In these circumstances, an individual, who has had shares appropriated to him or her under the terms of an approved scheme established by a company, may also have ***shares*** appropriated to him or her under the terms of an approved scheme from a second company in the same year of assessment. This is only possible if the second company has acquired control of or was part of a consortium which acquired ownership of the first company under a scheme of reconstruction or amalgamation (within the meaning of ***section 587***) and only in the year the takeover takes place. ***par 13A(1)***

The rules in relation to excess or unauthorised shares as set out in ***section 515*** and the limits of €12,700 and €38,100, (***paragraph 3(4)*** of ***Schedule 11***), apply as if the two companies were one company. This means that the same aggregate limits continue to apply in this takeover situation as apply to a single company. ***par 13A(2)***

These provisions are applied to appropriations of shares by trustees of an approved scheme as on and from the date of the passing of the Finance Act, 2000. ***par 13A(3)***

The provisions of ***paragraph 13***, which prevent appropriations from 2 APSS's established by the same company in the same year, are qualified in the case of appropriations from a relevant company (defined in ***paragraph 1*** of ***Schedule 12***). ***Paragraph 13B*** effectively allows appropriations from a relevant company to be ignored in determining whether ***paragraph 13*** applies. However, provision is also made to ensure that the value of all shares appropriated by such a company in a particular year for the purposes of ***section 515*** will be taken into account to ensure that the €12,700 (or €38,100) limit of appropriations per year is not breached. ***par 13B***

Shares may not be allocated at any time to an individual if, at that time he/she has, or at any time within the preceding 12 months he/she had, a material interest in a close company which is either the company whose shares are to be allocated or is a member of a consortium which owns that company. ***par 14(1)***

The term "close company" includes any company which would be a close company but for the fact that it is not such a company because —

- it is resident outside the State, or
- it is a company with quoted shares which is deemed not be a close company because not less than 35 per cent of the voting shares are held by the public.

A "close company" is broadly, a company which is under the control of 5 or less participators or any number of participators who are directors (***section 430***). ***par 14(3)(a)***

A person has a material interest in a company if he/she owns more than 15 per cent of the ordinary share capital of the company. Similarly, in applying the definition of "associate" in ***section 433*** to the determination of whether a person has a material interest in a company — ***par 14(3)(b)***

- in a case where the scheme in question is a group scheme, a reference to all the participating companies should be substituted for the first reference to the company in ***paragraph (c)(ii)*** of ***section 433(3)***, and
- the reference to 5 per cent should be replaced by a reference to 15 per cent.

PART 5
Provisions as to the trust instrument

The trust instrument must provide that the trustees are to give notice in writing to participants of an allocation of shares to them as soon as practicable after the shares have been allocated. This notice should specify the number and description of the shares and their initial market value. ***par 15***

The trustees must be prohibited by the trust instrument from disposing during the period of retention, of any shares which have been allocated to participants except in the circumstances mentioned in ***section 511(6)(a)***, ***(b)*** or ***(c)***. ***par 16(2)***

The trustees must be prohibited by the trust instrument from disposing of any shares after the period of retention and before the release date except —

- at the direction of the participant or of any person in whom the beneficial interest in the participant's shares is for the time being vested, and
- by a transaction which would not involve a breach of the participant's obligations under ***section 511(4)(c)*** or ***(d)***.

The trustees must be required by the trust instrument, subject to any such direction as is referred to in ***section 513(3)***, to pay over to the participant any money or money's worth including any dividends or other income received by them in respect of or by reference to any of the participant's shares. Sums of money referred to in ***section 511(4)(c)*** are excluded. Money's worth consisting of new shares arising from a reconstruction or amalgamation referred to in ***section 514*** is also excluded. The trust instrument must also place an obligation on the trustees to deal only pursuant to a direction given by or on behalf of a participant (or by a person in whom the beneficial interest in the participant's shares is for the time being vested) with any right conferred in respect of any of his/her shares to be allotted other shares, securities or rights of any description. ***par 17***

The trust instrument must impose an obligation on the trustees to maintain such records as may be necessary to enable them to fulfil their obligations under ***Chapter 1*** of ***Part 17***. The instrument must also require the trustees to provide participants with information relevant to any income tax liability they may incur in connection with disposals of scheme shares. ***par 18***

Schedule 12

[*Section 519*]

Employee Share Ownership Trusts

Overview

This Schedule contains the rules governing the constitution of an employee share ownership trust (ESOT) which the Revenue Commissioners may approve for the purposes of the reliefs outlined in ***section 519***. These rules govern the approval process, the appointment of trustees, the eligibility of beneficiaries and the functions of trustees.

Interpretation

A company falls within the founding company's group at a particular time if — ***par 1***

- it is the founding company, or
- at that time, it is controlled by the founding company and is included as a group company covered by the trust.

This also applies where the founding company is a relevant company.

The paragraph also provides for meanings of "ordinary share capital", "relevant company", "securities", "associate", "control" and "material interest".

Approval of qualifying trusts

Subject to the conditions set out in ***paragraphs 6*** to ***18*** being satisfied, the Revenue Commissioners are to approve a trust as a qualifying ESOT where a "founding company" has established an ESOT. ***par 2(1)***

Where the "founding company" seeking approval is a member of a group of companies, the Revenue Commissioners will not approve such a trust unless they are satisfied that the trust does not and would not have the effect of conferring benefits wholly or mainly on the directors or higher or highest paid employees of a group of companies. ***par 2(2)(a)***

A "group of companies" is defined for this purposes as a company and any company over which it has control or with which it is associated. ***par 2(2)(b)***

A company is treated as associated with another company where it could reasonably be considered that —

- both companies act in pursuit of a common purpose,
- any person or group(s) of persons, having a reasonable commonality of identity, have or had the means or power, either directly or indirectly, to determine the trading operations carried on or to be carried on by both companies, or
- both companies are under the control of any person or group(s) of persons having a reasonable commonality of identity.

Withdrawal of approval

The Revenue Commissioners have the right to withdraw approval in circumstances where — ***par 3(1)***

- one or more of the conditions in ***paragraphs 6*** to ***18*** are contravened,
- shares acquired by trustees receive different treatment from other shares of the same class (in particular, they must not receive different treatment in respect of dividend rights, repayment rights, restrictions attaching to the shares and bonus or rights issues), or

- the trustees fail, on or after 24 December 2008, to provide information requested under ***paragraph 3(4)*** or information required to be delivered under ***paragraph 3(5)***.

Withdrawal of approval may be effective on the first occurrence of such circumstance or such later time as the Revenue Commissioners may specify.

An approval automatically ceases where there is an unapproved alteration to the terms of the trust. ***par 3(2)***

While shares acquired by the trust are to be accorded the same treatment in the matter of dividend rights as other shares of the same class, this is not to be taken as meaning that there are grounds for withdrawal of approval if newly issued shares do not rank for the next dividend on the same basis as shares of the same class already in issue. ***par 3(3)***

The Revenue Commissioners may request from any person such information as they think necessary to enable them determine whether to approve or withdraw approval of an ESOT and to determine a beneficiary's tax liability under an ESOT. ***par 3(4)***

With effect from 2009 onwards, the trustees of a trust are obliged to automatically furnish the same information referred to in the above paragraph to the Revenue Commissioners in respect of each calendar year. This return of information is required by 31 March in the year following the year in question. Failure to do so will result in penalties as set out in ***sections 1052*** and ***1054***, as appropriate. ***par 3(5)***

Appeals

A company has a right of appeal to the Appeal Commissioners where the Revenue Commissioners do not approve an ESOT or an alteration to the terms of the trust or where they withdraw approval of the ESOT. The appeal is made by notice in writing to the Appeal Commissioners. The appeal must be made within 30 days after the date the notice of the decision in relation to the ESOT. The appeal is heard and determined in the manner provided for in Part 40A of the Tax Acts. ***par 4(1)***

Delegation of functions

The Revenue Commissioners may nominate officers to perform acts and discharge functions authorised by the Schedule on their behalf. ***par 5***

General

The trust must be established under a deed known as the trust deed by the "founding company" which at the time the trust is established is not under the control of another company. The timing of the establishment of the ESOT in the case of the TSB required a moderation of the rule in those particular circumstances. ***par 6***

Trustees

The trust deed must provide for the establishment of a body of trustees which must be one of 3 possible trust structures which comply with ***paragraph 8***, ***9*** or ***10***. ***par 7***

In the case of an ESOT established by a relevant company any reference in ***paragraph 8***, ***9*** or ***10*** to an employee or director means one who was so employed on the day the ESOT was established and is, at that time an employee or director of a company referred to in ***paragraph 11A(3)(b)***. ***par 7A***

The first trust structure may provide for the majority of trustees to be employee representatives. In such circumstances, the trust deed appoints the initial trustees, and contain rules for the retirement, removal, appointment of replacement and additional trustees. ***par 8(1)***

The trust deed must provide that at any time during which the trust subsists that there must ***par 8(2)*** be at least 3 trustees who are resident in the State and of whom —

- one trustee must be a professional trustee (a trust corporation, a solicitor or member of another professional body approved by the Revenue Commissioners),
- a majority of the trustees must not be, or ever have been, directors of the founding company or of a group company,
- a majority of the trustees must be representatives of the employees of the founding company or a group company and who have or have never had a material interest in any such company. Such trustees must be selected by a majority of employees of the founding company or a group company at the time of selection.

The second trust structure provides for equal employee/company representation in addition to an outside trustee) must provide that the trust deed appoints the initial trustees and contain rules for retirement, removal, appointment of replacement and additional trustees. ***par 9(1)***

There must be at least 3 trustees who are resident in the State and of whom — ***par 9(2) to (7)***

- at least one trustee must be a professional trustee (that is, a trust corporation, solicitor, or member of another professional body approved by the Revenue Commissioners) who must not be an employee or director of the founding company or of a group company, and who —
  - when appointed as an initial trustee was selected by persons who were later appointed as the initial non-professional trustees, or
  - when appointed as a replacement or additional trustee was selected by persons who at the time of selection were the non-professional trustees,
- at least 2 trustees must be non-professional trustees at least half of whom must be employees of the founding company or of a company who have never had a material interest in any such company, and who must be selected either by a process under which all the employees of that company or those companies are (in so far as is reasonably practicable) given the opportunity to stand for selection and to vote for those standing or by persons elected to represent those persons.

The third trust structure is a single trustee. This single trustee must be a company (called "the trust company") resident in the State, controlled by the founding company and must provide for the appointment of the initial trustee and contain rules for the removal and appointment of a replacement trustee. ***par 10(1) & (2)***

Such a trust company must have a board of directors composed in the same manner as the trustees of the trust structure described in ***paragraph 9***. ***par 10(3) to (8)***

Beneficiaries

The trust deed must contain provisions as to the beneficiaries under the trust in accordance with the rules set out in ***subparagraphs (2)*** to ***(9)***. ***par 11(1)***

These rules provide that — ***par 11(2) to (10)***

- all employees and full-time directors of the founding company or a group company, who have been such for a qualifying period of not more than 3 years and who are chargeable to income tax under Schedule E must be eligible to be beneficiaries under the ESOT (a "full-time director" is a director who has worked for the company concerned for at least 20 hours a week ignoring holidays and sick leave),
- former employees and directors of the founding company or a group company may be beneficiaries (for up to 20 years from the time they have ceased employment or the company has ceased to be a group company) where the following conditions are satisfied —
  - the person must have been an employee or director of the founding company

which established the ESOT or a company within the founding company's group —

- during a qualifying period, and
- on the date the ESOT was established, within 9 months prior to that date or at any time in the 5 years beginning with that date,

- at all times in the 5 years (or such lesser period as allowed by the Minister for Finance) since the ESOT was established, 50 per cent (or such lesser percentage as allowed by the Minister for Finance) of the securities held by the trustees were pledged as security for borrowings, and
- the ESOT has been established for more than 20 years,

- former employees and directors of the founding company or a group company (where within the previous 18 months they have ceased employment or the company has ceased to be a group company) may also be beneficiaries,
- employees and directors cannot be, beneficiaries if they have, or had within the previous 12 months, a material interest in the company,
- provision may be made for a "charity" to be a beneficiary in the absence such other eligible beneficiaries in circumstances where the trust is being wound up,
- apart from such beneficiaries no other person may be a beneficiary,
- any Ministerial Order proposed to be made under ***subparagraph (2B)(d)*** requires the prior approval of Dáil Éireann.

Where an ESOT has been established by a relevant company the provisions of ***paragraph 11A*** apply as regards the beneficiaries. These alternative paragraphs are concerned with who may be a beneficiary of the ESOT. ***par 11A***

Where an ESOT is established by a relevant company, this paragraph and not ***paragraph 11*** applies. ***par 11A(2)***

The beneficiaries of the ESOT must be set out in the trust deed.

To be a beneficiary of such an ESOT a person must be one of the following: ***par 11A(3)***

(*a*) employees and directors of a company within the relevant company's group on the day of establishment of the trust,

(*b*) an employee or director at the relevant time of —

(i) a company which, at any time since the establishment of the trust, was within the founding company's group. In this case the parent company of a group will, after it has taken over a relevant company, become the founding company,

(ii) any company within a group of companies which has acquired control of the company referred to in ***subclause (i)***,

(iii) a company to which an employee or director referred to in ***clause (a)*** has been transferred along with a transfer of business, and

(iv) a company in a group of companies into which a transfer of business referred to in ***subclause (iii)*** has taken place.

(The purpose of these categories of employee or director is to allow the person to continue to be a beneficiary of the ESOT where that person has moved "involuntarily" as part of various take-over arrangements.)

(*c*) such an employee for a qualifying period,

(*d*) in the case of a director, employed for more than 20 hours per week, and

(*e*) chargeable to tax under Schedule E.

The trust deed may include persons as beneficiaries who would qualify under ***par***

subparagraph (3) but for ***clause (e)***. ***11A(4)***

The trust deed may include certain other persons as beneficiaries of the trust provided — ***par 11A(5)***

(*a*) they were employees or directors of a company within the relevant company's group on the day the trust was established or at any time within 9 months prior to that day, in the case of former employees of the Irish National Petroleum Corporation Limited.

(*b*) the person was for a qualifying period an employee or director in accordance with ***subparagraph (3)(b)***,

(*c*) they have left such a company,

(*d*) at least 50% of the securities in the trust have been pledged as security for a loan for at least the 5 years since the trust was established.

[The Minister for Finance may, by order, reduce the 5 years or 50%.], and

(*e*) a period of not more than 20 years has elapsed since the trust was established.

The trust deed may include a person as a beneficiary if — ***par 11A(6)***

(*a*) the person was an employee or director of a company in the relevant company's group on the day the trust was established or at any time within 9 months prior to that day, in the case of former employees of the Irish National Petroleum Corporation Limited.

(*b*) the person was an employee or director in accordance with ***subparagraph (3)(b)*** for a qualifying period,

(*c*) the person has ceased to be such an employee or director, and

(*d*) a period of not more than 18 months has elapsed since the person left such a company.

Subparagraph (5) or ***(6)*** must apply to everyone who qualifies under it. ***par 11A(7)***

A charity may be a beneficiary if no other person qualifies under ***subparagraph (3), (4), (5)*** or ***(6)***. ***par 11A(8)***

A qualifying period is defined for the purpose of ***subparagraph (3)*** as the period of less than 3 years, which must be stated in the trust deed and which ends at the time in question. ***par 11A(9)***

A qualifying period is defined for the purpose of ***subparagraph (5)*** or ***(6)*** as the same period as applicable to ***subparagraph (3)*** and which ends when the person ceased the respective employment or directorship. ***par 11A(10)***

Anyone who does not conform to ***subparagraph (3), (4), (5), (6)*** or ***(8)*** is excluded from being a beneficiary. ***par 11A(11)***

Anyone who has, at that time or at any time within the previous year had a material interest in a company referred to in ***subparagraph (3)(b)***, and in the appropriate case this also includes a material interest in TSB Bank, is also excluded from being a beneficiary.

Any period which a person spends as an employee or director of TSB Bank will also be taken into account in determining whether the qualifying period requirement has been satisfied since TSB Bank itself is not included in the definition of relevant company or relevant company's group. ***par 11A(13)***

A charity is defined as a body established for charitable purposes only. ***par 11A(14)***

Any order reducing the 5 year period or 50% of shares encumbered referred to in ***subparagraph (5)(d)*** must be laid before Dáil Éireann and cannot come into effect until a resolution to that effect has been passed. ***par 11A(15)***

Trustees' functions

The trust deed must make provision for the functions of trustees and in particular the following general functions — ***par 12***

- to receive sums from the founding company and other sums, by way of loan or otherwise,
- to acquire securities,
- to grant rights to acquire shares to beneficiaries under the ESOT,
- to transfer securities or sums (or both) to beneficiaries under the ESOT,
- to pay sums or transfer securities to the personal representatives of deceased beneficiaries,
- to transfer securities to the trustees of profit sharing schemes approved under ***Part 2*** of ***Schedule 11***,
- pending transfer, to retain and manage the securities by exercising voting rights or otherwise.

Sums

The trust deed must require that money received by the trustees must be expended within the "expenditure period" only for one or more "qualifying purposes" and must, while it is retained by them, be kept as cash or in an account with a relevant deposit taker (within the meaning of ***section 256***). ***par 13(1) to (3)***

"expenditure period" is the 9 month period starting, where the sum is received from the founding company or a group company, from the end of the accounting period in which the sum was expended by the company, and in any other case, the day the sum is received.

"qualifying purposes" are —

- acquiring shares in the company which established the trust or specified securities using dividends on other specified securities,
- repaying borrowings,
- paying —
  - interest on borrowings,
  - a sum to a beneficiary of the ESOT,
  - a sum to the personal representatives of a deceased beneficiary,
  - expenses of running the ESOT.

The trust deed must provide that for the purpose of deciding whether a sum has been expended the trustees are to be treated as having expended money (paid to them) in the order in which that money is received by them. ***par 13(4)***

The trust deed must provide that where trustees pay sums to beneficiaries at the same time all sums must be paid on similar terms and that similar terms may include terms which vary in relation to beneficiaries according to their levels of remuneration, length of service or similar factors. ***par 13(5) & (6)***

Securities

The trust deed must provide that the securities acquired by the trustees must be shares in the founding company which are fully paid up, not redeemable and not subject to any restrictions other than restrictions which attach to all shares of the same class or an authorised restriction (in connection with cessation of employment). A restriction on shares imposed by a company's articles of association which — ***par 14(1) to (3)***

- requires directors or employees of a company or a company controlled by that company to dispose of their shares when they cease to be directors or employees, and

- requires persons who are not, or have ceased to be, such directors or employees to dispose of, on acquisition, shares which they have acquired in pursuance of rights or interests obtained by such directors or employees,

is an authorised restriction provided the disposal is by way of sale for money on terms specified in the articles of association, and the articles also contain general provisions whereby any person disposing of shares of the same class (whether or not held or acquired in the manner outlined above) may be required to dispose of them by way of sale for money on terms specified in the articles of association.

The trust deed must provide that the shares in the founding company may not be acquired by the trustees at more than market value or at a time when the company is controlled by another company other than where the founding company is a company into which a trustee savings bank has been reorganised. ***par 14(4) & (5)***

The trustees may acquire securities other than shares in the founding company, if — ***par 15***

- they are securities acquired by the trustees as a result of a reorganisation or reduction of share capital in accordance with ***section 584***, or
- they are securities issued to the trustees on an exchange basis in circumstances as outlined in ***section 586*** (that is, company amalgamations).

The trust deed must provide that securities are transferred to beneficiaries on qualifying terms and that the transfer must take place within 20 years of their acquisition by the trustees. ***par 16(1) & (3)***

The qualifying terms are that securities must be offered to all persons who are beneficiaries under the ESOT at the time of transfer and that the transfer must be made on similar terms to all persons who have accepted the offer. Similar terms may include terms which vary in relation to beneficiaries according to their levels of remuneration, length of service or similar factors.

The trust deed must provide that for the purposes of deciding whether particular securities are transferred are treated as having transferred securities acquired by them earlier before securities acquired by them later. ***par 16(4)***

Other features

The trust shall not contain features which are not essential or reasonably incidental to the purpose of acquiring or transferring sums and securities to employees and directors and transferring securities to the trustees of profit sharing schemes approved under ***Part 2*** of ***Schedule 11***. ***par 17***

The trust deed must provide that the trustees acquire, transfer or retain securities when, in relation to those securities, respectively — ***par 18(1)***

- they become entitled to them,
- another person becomes entitled to them, or
- they remain entitled to them.

If the trust deed provides that the trustees may acquire securities other than shares in the founding company in a case of amalgamation or of reorganisation or reduction of share capital then it must provide for an exception to the rule that the trustees acquire securities when they become entitled to them. Instead, the deed must provide that the trustees be treated as acquiring the securities at the same time as they acquired the exchanged shares or the original shares, as may be the case. ***par 18(2)***

The trust deed must provide that where the trustees agree to acquire securities then the trustees, in the case of acquisition, become entitled to them when the agreement is made or if the agreement is conditional when the condition(s) is/ are satisfied and not on a later ***par 18(3)(a)*** acquisition.

The trust deed must provide that where trustees agree to transfer securities then the person receiving them becomes entitled to them when the agreement is made and not on a later transfer. ***par 18(3)(b)***

Schedule 12A

[*Section 519A*]

Approved Savings-Related Share Option Schemes

Overview

This Schedule sets out the conditions which must be complied with if a savings-related share option scheme is to be approved by the Revenue Commissioners. The conditions govern the type of company, eligibility, type of shares, exercise of rights, acquisition of shares and the share price.

Interpretation

The question of whether one company is controlled by another is to be determined in accordance with ***section 432***. ***par 1***

A company is a member of a consortium owning another company if it is one of not more than 5 companies which between them beneficially own not less than 75 per cent of the other company's ordinary share capital and each of them beneficially owns not less than 5 per cent of that capital.

The paragraph also provides meanings of "approved", "associated company", "bonus date", "control", "full-time director", "grantor", "group scheme", "market value", "savings-related share option scheme", "scheme shares", "shares" and "specified age" for the purposes of the Schedule.

Approval of schemes

A company which has established a savings-related share option scheme may apply to the Revenue Commissioners for approval of the scheme. The application must be made in writing and must contain such particulars and be supported by such evidence as the Revenue Commissioners may require. The Revenue Commissioners shall approve the scheme if they are satisfied that it meets the requirements of the Schedule. ***par 2(1) & (2)***

A company which controls one or more companies may set up a scheme which extends to some or all of those companies. A scheme of this kind is called "a group scheme". ***par 2(3)***

A "participating company" in a group scheme is the company which has established the scheme or a company over which that company has control and to which the scheme is expressed to extend. ***par 2(4)***

The scheme is required to indicate what is the "specified age" (between 60 and pensionable age) for the purposes of the scheme. ***par 2(5)***

The Revenue Commissioners are constrained from approving a scheme which contains features which are neither essential nor reasonably incidental to the purpose of providing for employees benefits in the nature of rights to acquire shares. ***par 3(1)***

The Revenue Commissioners must be satisfied that there are no features of the scheme (other than what is already permitted by the legislation) which have or would have the effect of discouraging any eligible employee from actually participating in the scheme and, ***par 3(2)*** where the company seeking approval is a member of a group of companies, that approval of such company would not result in benefits being conferred wholly or mainly on the higher or highest paid directors and employees in the group of companies.

"group of companies" is defined for the purposes of ***subparagraph (2)*** as a company or any company over which it has control, or with which it is associated. A company is treated as associated with another company where it could be reasonably be considered that— ***par 3(3)***

(i) both companies act in pursuit of a common purpose,

(ii) any person or group(s) of persons, having a reasonable commonality of identity, have or had the means or power, either directly or indirectly, to determine the trading operations carried on or to be carried on by both companies, or

(iii) both companies are under the control of any person or group(s) of persons having a reasonable commonality of identity.

Withdrawal of approval

The Revenue Commissioners may withdraw their approval of a savings-related share option scheme where any of the requirements of the Schedule cease to be complied with or the grantor fails to provide information as requested under ***paragraph 6***. The tax relief applicable by virtue of ***section 519A(3)*** shall continue to apply as if the scheme were still approved to rights obtained before the withdrawal of approval which are exercised after withdrawal of approval. ***par 4(1)***

An unapproved alteration of an approved scheme will invalidate the approval with effect from the date of the alteration. ***par 4(2)***

Appeals

Where the Revenue Commissioners refuse to approve a scheme, refuse to approve an alteration in a scheme, withdraw approval of a scheme or refuse to decide that a condition subject to which approval was given is satisfied, the company has a right to appeal the decision in relation to the scheme to the Appeal Commissioners. The appeal must be made within 30 days after the date of the notice of the decision in relation to the scheme. The appeal is heard and determined in the manner provided for in Part 40A of the Tax Acts. ***par 5***

Information

The Revenue Commissioners may by notice in writing require a person to furnish them, within not less than 30 days, such information as they consider necessary to enable them to determine whether to approve or to withdraw approval of a scheme, to determine a participant's liability to tax under a scheme or to enable them to administer the scheme and any alteration of the terms of a scheme. ***par 6***

With effect from 2009 onwards, the trustees of an approved scheme are obliged to automatically furnish the same information to the Revenue Commissioners in respect of each calendar year. This return of information is required by 31 March in the year following the year in question. Failure to do so will result in penalties as set out in ***sections 1052*** and ***1054***, as appropriate. ***par 6A***

The Revenue Commissioners may nominate any of their officers to perform acts and discharge functions authorised by the Schedule, on their behalf. ***par 7***

Eligibility

A person is not eligible to participate in a scheme, that is to obtain and exercise rights under it, if that person has, or at any time within the preceding 12 months had, a material interest in a close company which is either the company whose shares may be acquired under the scheme or a company having control of that company or is a member of a consortium which owns that company. ***par 8(1)***

The term "close company" includes any company which would be a close company but for the fact that it is not such a company because — ***par 8(2)***

- it is resident outside the State, or
- it is a company with quoted shares which is deemed not to be a close company under ***section 431***.

A "close company" has the meaning assigned to it by ***section 430***. ***par 8(3)***

A person has a material interest in a company if he/she owns more than 15 per cent of the ordinary share capital of the company. Similarly, in applying the definition of "associate" in ***section 433*** to the determination of whether a person has a material interest in a company —

- in a case where the scheme in question is a group scheme, a reference to all the participating companies should be substituted for the first reference to the company in ***paragraph (c)(ii)*** of ***section 433(3)***, and
- the reference in ***paragraph (c)(ii)*** to 5 per cent should be replaced by a reference to 15 per cent.

Participation in the scheme, subject to the material interest test in ***paragraph 8***, must be open to every person, that is, to obtain and exercise rights under it, on similar terms who — ***par 9(1)***

- is an employee or full-time director of the company which has established the scheme or, in the case of a group scheme, of a participating company,
- has been a director or employee at all times during a qualifying period (which must not exceed three years), and
- is chargeable to tax under Schedule E in respect of his/her office or employment.

"Similar terms" may include terms which vary in relation to participants according to their level of remuneration, length of service or similar factors. ***par 9(2)***

Except where provided by ***paragraph 20*** or pursuant to a provision referred to in ***paragraph 22(1)(e)*** or ***(f)***, a person shall not be eligible to participate unless he/she is an employee or director of the company establishing the scheme or, in the case of a group scheme, of a participating company. ***par 9(3)***

Conditions as to the shares

The shares which can be acquired under an approved savings-related share option scheme must satisfy the requirements of ***paragraphs 11*** to ***15***. ***par 10***

The shares must form part of the ordinary share capital of — ***par 11***

- a company which has established the scheme,
- a company which has control of that company, or
- a company which either is or has control of a company which —
  - is a member of a consortium owning either the company which has established the scheme or a company having control of that company, and
  - beneficially owns not less than 15 per cent of the ordinary share capital of the company so owned.

The shares must be — ***par 12***

- shares of a class quoted on a recognised stock exchange,
- shares in a company which is not under the control of another company, or
- shares in a company which is under the control of another company (other than a close company or a company which would be a close company if resident in the State) whose shares are quoted on a recognised stock exchange.

The shares must be fully paid up, not redeemable and not subject to any restrictions other ***par 13*** than those attaching to all shares of the same class or an authorised restriction (in connection with cessation of employment).

A restriction on shares imposed by a company's articles of association which —

(i) requires directors or employees of a company or a company controlled by that company to dispose of their shares when they cease to be directors or employees, and

(ii) requires persons who are not, or have ceased to be, such directors or employees to dispose of, on acquisition, shares which they have acquired in pursuance of rights or interests obtained by such directors or employees,

is an authorised restriction provided the disposal is by way of sale for money on terms specified in the articles of association, and the articles also contain general provisions whereby any person disposing of shares of the same class (whether or not held or acquired in the manner outlined at (i) and (ii) above) may be required to dispose of them by way of sale for money on terms specified in the articles of association.

In determining whether scheme shares are subject to any restrictions, any contract, agreement, arrangement or condition restricting the freedom of a participator in a scheme to dispose of the shares or an interest in them, or to dispose of the proceeds of their sale, or to exercise any right conferred by the shares, or resulting in any disadvantage to him/her or to a connected person, following sale or exercise is regarded as such a restriction. Any contract, agreement, arrangement or condition with provisions similar in purpose and effect to those provisions of the Model Code set out in the Listing Rules of the Irish Stock Exchange are not included. ***par 14(1) & (2)***

If a company, whose shares are being used in a scheme, has more than one class of issued ordinary share capital, the majority of the issued shares of the class used in the scheme must be held by — ***par 15***

- persons other than persons who acquired their shares in pursuance of a right conferred on them or an opportunity afforded to them as directors or employees of the company setting up the scheme or any other company and not as a result of any offer to the public;
- persons other than trustees holding shares on behalf of persons who acquired their beneficial interests in the shares in pursuance of such a right or opportunity;
- in a case where the shares are "unquoted" but are shares of a company which is under the control of a company (other than a close company) whose own shares are "quoted", persons other than companies which have control of the first-mentioned company or companies of which the first-mentioned company is an associated company.

Exchange provisions

A scheme may contain provisions to permit an option holder to exchange options in the following circumstances where the acquiring company — ***par 16(1)***

- obtains control of the company whose shares are scheme shares following a general offer to acquire the whole of one or more classes of the company's shares,
- obtains control of a company whose shares are scheme shares in pursuance of a compromise or arrangement sanctioned by the court under section 453 of the Companies Act 2014, or
- becomes bound or entitled to acquire shares in a company whose shares are scheme shares under section 457 of the Companies Act 2014.

In such circumstances, a participant in a scheme may within an "appropriate period" release "old rights for "new rights" in the acquiring company or a company falling within ***paragraph 11(b)*** or ***11(c)***.

The "appropriate period" is — ***par 16(2)***

- a period of 6 months commencing when control has been obtained and when any condition attaching to the offer is satisfied,
- a period of 6 months commencing when the court sanctions the compromise or arrangement, or
- the period during which the acquiring company remains bound or entitled.

The shares for which the new rights are granted must satisfy the requirements of ***paragraphs 11*** to ***15*** and must be exercisable in the same manner as the old rights. The value and aggregate subscription price of the new rights on acquisition must be exactly the same as the value and aggregate subscription price of the old rights on disposal. ***par 16(3)***

For the purposes of ***section 519A*** and this Schedule and for the purposes of the continued application of the provisions of the scheme the new rights shall be regarded as granted at the time of the old rights. ***par 16(4)***

Exercise of rights

The scheme must provide for the shares to be paid for only with the repayments (i.e. contributions and bonus) payable and any interest under the certified contractual savings scheme as defined in ***section 519C(4)***. ***par 17***

Other than in the circumstances outlined in ***paragraphs 19*** to ***22***, rights must not be capable of being exercised before the bonus date which is the date on which the repayments are due to be paid. For the purposes of ***paragraph 17*** and ***paragraph 18***, at the time when the rights are obtained, the individual must decide whether repayments to be used to buy the shares are to include the bonus or not and where repayments are to include the bonus whether it is to be the maximum bonus payable on the earliest date the maximum bonus is payable or in relation to any other bonus the earliest date that that bonus is payable. ***par 18***

If a person holding rights to acquire shares dies before the bonus date, the scheme must provide for those rights to be exercised within twelve months of the date of death. If the death occurs within six months after the bonus date, the scheme must provide for the rights to be exercised within twelve months of the bonus date. ***par 19***

If a person having obtained rights to acquire shares ceases to hold the eligible office or employment for the following reasons — ***par 20***

- injury,
- disability,
- redundancy, or
- retirement on reaching the specified age,

the scheme must provide for those rights to be exercised within six months of cessation.

If such a person ceases for any reason other than the above reasons —

- within 3 years of obtaining rights, the scheme must provide for those rights to lapse except in an instance outlined in ***paragraph 22(1)(e)***;
- more than 3 years after obtaining the rights, the scheme must provide for them to lapse or to be exercised, if at all, within 6 months of cessation.

If a person continues to work after reaching the specified age the scheme must provide that that person may exercise the rights within 6 months of reaching that age. ***par 21***

The scheme may also provide for the following — ***par 22(1)***

- If any person obtains control of a company, whose shares are scheme shares, as a result of making —
  - a general offer to acquire the whole of the issued ordinary share capital of the company on condition that if it is satisfied the person making the offer will have control of the company, or

  - a general offer to acquire all the shares in the company which are of the same class as the scheme shares,

  then rights obtained under the scheme to acquire shares in the company may be exercised within six months of the time when the person making the offer has obtained control of the company, and any condition subject to which the offer is made has been satisfied.
- If, under section 453 of the Companies Act 2014, the court sanctions a compromise or arrangement proposed for the purposes of, or in connection with, a plan for reconstructing a company whose shares are scheme shares, or its amalgamation with any other company or companies, rights obtained under the savings-related share option scheme to acquire shares in the company may be exercised within six months of the court sanctioning the compromise or arrangement.
- If, under section 457 of the Companies Act 2014, any person becomes bound or entitled to acquire shares in a company whose shares are scheme shares, rights obtained under the scheme to acquire shares in the company may be exercised at any time when that person remains so bound or entitled.
- If a company, whose shares are scheme shares, passes a resolution for voluntary winding up, rights obtained under a scheme to acquire shares in the company may be exercised within six months of the passing of the resolution.
- If a person ceases to hold an eligible office or employment because —

  - that office or employment is in a company of which the grantor ceases to have control, or

  - that office or employment relates to a business or part of a business which is transferred to a person who is neither an associated company of the grantor nor a company of which the grantor has control,

  rights under the scheme held by that person may be exercised within six months of cessation.
- If, at the bonus date, a person having obtained rights under the scheme holds an office or employment in a company which is not a participating company but which is an associated company of the grantor, or a company of which the grantor has control, those rights may be exercised within six months of the bonus date.

For the purposes of ***paragraph 22*** a person shall be deemed to have obtained control of a company if he/she and others acting in concert have together obtained control of it. ***par 22(2)***

The rights obtained under a scheme must not be transferable or be capable of being exercised later than 6 months after the bonus date except where, under ***paragraph 19***, a person’s rights may pass to a person’s estate and be exercised within one year of death or if death occurs within 6 months after the bonus date, be exercised within 12 months of the bonus date. ***par 23***

For the purposes of ***paragraph 20*** or ***22(1)(e)*** no person shall be treated as ceasing to hold an office or employment until that person ceases to hold an office or employment in the company which established the scheme or in any company controlled by that company or in any associated company. ***par 24***

Acquisition of shares

Contributions made by a participant under a certified contractual savings scheme must be sufficient to secure, as nearly as possible, the repayment of an amount equal to the sum required to pay for as many shares as the option gives the person the right to acquire, repayment being determined by reference to ***paragraph 18***. ***par 25(1)***

The total contributions by a participant, at minimum, cannot be more than €12 per month and, at maximum, cannot exceed €500 per month. ***par 25(2)***

Share price

The price at which shares may be acquired on the exercise of rights must be stated at the time those rights are obtained and must be not less than 75 per cent of the market value of the shares of the same class at that time or at an earlier time or times agreed in writing between the Revenue Commissioners and the company which has established the scheme. The scheme may provide for such variation of the subscription price as may be necessary to take account of any variation in the share capital of which the scheme shares form part. ***par 26***

Options, etc

For the purposes of the material interest test in ***section 437(2)*** as applied by ***paragraph 8(3)(b)(ii)*** of this Schedule a right to acquire shares shall be taken as the right to control the shares. ***par 27(1)***

The shares which are attributable to an individual by the application of ***paragraph 27(3)*** of this Schedule are to be taken into account for the material interest test in determining whether an individual's right to acquire shares exceeds a particular percentage of the company's ordinary share capital. ***par 27(2)***

If shares attributed to an individual consist of or include shares over which that individual has a right to acquire and the circumstances are such that if the right was exercised the shares acquired would be new shares which the company has to issue in the event of exercise of the right, then, for the purposes of determining, prior to the exercise of that right, whether the shares attributed to the individual exceed a particular percentage of the ordinary share capital, such ordinary share capital is to be increased by the number of new shares referred to above. ***par 27(3)***

Schedule 12B

[*Section 519C*]

Certified Contractual Savings Schemes

Application

The Schedule has effect for the purposes of ***section 519C***. ***par 1***

Specifications by Minister for Finance

The Minister for Finance may specify the requirements to be imposed in respect of certified contractual savings schemes within the meaning of ***section 519C(4)(c)***. The Minister for Finance may determine which classes of persons should enter into savings contracts under a scheme, may specify the level of contribution to be made and may specify the sum to be paid or repaid to individuals. ***par 2***

The Minister for Finance may withdraw a specification made under ***section 519C(4)(c)*** on the operation of a scheme to be effective from a particular date. Where this happens any certification made by the Revenue Commissioners in accordance with the specification is deemed to have been withdrawn on the same date. Contracts entered into or the operation of a scheme prior to the withdrawal of a specification are not affected. Appropriate notification of changes must be issued by the Revenue Commissioners to the qualifying savings institutions. ***par 3***

The Minister for Finance may vary a specification made under ***section 519C(4)(c)*** on the operation of a scheme to be effective from a particular date. Where this happens any certification made by the Revenue Commissioners in accordance with the specification before the variation is deemed to have been withdrawn on the same date. Contracts entered ***par 4*** into or the operation of the scheme prior to the variation of the specification are not affected. Appropriate notification of the changes must be issued by the Revenue Commissioners to the qualifying savings institutions. The Revenue Commissioners may certify a scheme as fulfilling the requirements obtaining after the variation of the specification by the Minister for Finance.

Information

The Revenue Commissioners may by notice in writing require a person to furnish them, within not less than 30 days, such information as they consider necessary to enable them to determine whether to certify or to withdraw certification of a scheme, to determine a participant's liability to tax under a scheme or to enable them to administer the scheme and any alteration of the terms of a scheme. ***par 5***

The Revenue Commissioners may nominate officers to perform acts and discharge functions authorised by the Schedule, on their behalf. ***par 6***

Schedule 12C

[*Section 519D*]

Approved Share Option Schemes

Overview

This Schedule sets out the conditions which must be complied with if a share option scheme is to be approved by the Revenue Commissioners. The Schedule is to be read in conjunction with ***section 519D*** and the conditions govern the type of company, eligibility, type of shares, exercise of rights, acquisition of shares and the share price.

To be approved by the Revenue Commissioners, schemes must be open to all employees and must provide that employees be eligible to participate in the scheme under similar terms. Under the similar terms rule the options may be granted by reference to remuneration, length of service or other similar factors.

In order to assist companies in the retention of those employees who are vital to the companies' success but who, because of their skills and experience are highly mobile, the scheme may, however, contain a "key employee" element where options can be granted which do not meet the similar terms conditions, provided at least 70 per cent of the total number of shares over which rights are granted under the scheme in any year are made available to all employees on similar terms. Employees cannot participate in both elements of the scheme in the same year. There will be no limit on the number or value of shares that can be covered by tax efficient options.

Shares used in the scheme must form part of the ordinary share capital of the company and, in general, must not be subject to restrictions that do not apply to other shares of the same class.

Details

Interpretation

The following definitions are used in ***Schedule 12C***. ***par 1(1)***

"approved" in relation to a scheme means where approval has been granted by Revenue in accordance with the rules as laid down in paragraph 2 of this Schedule;

"associated company" has the same meaning as in ***section 432***;

"auditor" has, for a company, the same meaning as the person or persons appointed under section 160 of the Companies Act, 1963, or under the law of the state in which it is incorporated and which corresponds to that section;

"control" has the same meaning assigned to it by ***section 432***;

"full-time director" means a company director who devotes most or all of his or her time to the service of the company

"grantor" is defined in paragraph 2(1) of this Schedule and means the company which applies for approval of a share option scheme under the Schedule;

"group scheme" is defined in paragraph 2 of this Schedule and means a scheme which is expressed to extend to all or any of the companies under the control of the grantor;

"key employee or director" means an employee or director who has special skills, qualifications or experience which the company certifies are vital to the company for its success;

"market value" has the same meaning as in ***section 548***;

"participating companies" is defined in ***paragraph 2*** and means the companies within a group scheme;

"scheme shares" are defined in ***paragraphs 12*** to ***16***;

"shares" includes stock.

Section 10 which is concerned with the definition of "connected person", is applied for the purposes of this Schedule. ***par 1(2)***

The provisions of ***paragraph (3)(c)(ii)*** of ***section 433*** are applied in the case where the scheme is a group scheme, but substituting a reference to all the participating companies for the first reference to company in that paragraph. ***par 1(3)***

The following definition of "a member of a consortium" is used for the purposes of the Schedule. ***par 1(4)***

(*a*) A company will be treated as a member of a consortium owning another company if it is one of not more than 5 companies which between them own not less than 75% of the other company's ordinary share capital and where each owns at least 5% of that company, and

(*b*) the definitions of "associated company" and "control" as set out in ***section 432*** will apply to the question of whether one company controls another company.

Approval of schemes

On receipt of an application from a company ("the grantor") which has established a share option scheme, the Revenue Commissioners will approve the scheme if they are satisfied that it fulfils the requirements of the Schedule. ***par 2(1)***

An application for approval of a share option scheme is to be made in writing and is to contain such particulars and be supported by such evidence as the Revenue Commissioners may require. ***par 2(2)***

A company which has control of another company or companies may set up a scheme which extends to all or any of those companies which it controls. A scheme of this kind is called a "group scheme". ***par 2(3)***

In a "group scheme", the "grantor" or any other company in the scheme will be known as a "participating company". ***par 3(1)***

The Revenue Commissioners will not approve a share option scheme under the Schedule if they are of the opinion that there are features in the scheme which do not seem essential or reasonably incidental to providing for full-time directors or employees to acquire shares under the scheme.

The Revenue Commissioners must be satisfied that there are no features of the approved scheme other than those which are required to satisfy the requirements of the Schedule, and which do not discourage any employees from participating in the scheme. ***par 3(2)(a)***

The Revenue Commissioners must be satisfied that the scheme does not limit the beneficiaries of the scheme to the directors or employees with higher or highest levels of remuneration within the company or group of companies. ***par 3(2)(b)***

A "group of companies" is defined as the company itself and any other companies over which it has control or with which it is associated. ***par 3(3)***

A company will be treated as associated with another company where it could be reasonably be considered that — ***par 3(4)***

(*a*) both companies act in pursuit of a common purpose,

(*b*) any person or group(s) of persons, having a reasonable commonality of identity, have or had the means or power, either directly or indirectly, to determine the trading operations carried on or to be carried on by both companies, or

(*c*) both companies are under the control of any person or group(s) of persons having a reasonable commonality of identity.

The Revenue Commissioners may withdraw approval of a share option scheme where any of the requirements of the Schedule cease to be complied with or where the grantor fails to provide information as requested by the Revenue Commissioners under paragraph 20. The withdrawal of approval may be from that date or any such later date as the Revenue Commissioners specify. ***par 4(1)***

Any approval given by the Revenue Commissioners will be invalid with effect from the date of any change to the Scheme where the Revenue Commissioners have not been approved the alteration. ***par 4(2)***

Recourse to appeal provisions is available where the Revenue Commissioners — ***par 5***

- fail to approve a scheme or an alteration of a scheme,
- withdraw approval for a scheme, or
- fail to give a ruling in relation to whether the conditions of a scheme have been satisfied.

The appeal is made by notice in writing to the Appeal Commissioners. The appeal must be made within 30 days after the date of the notice the decision in relation to the scheme. The appeal is heard and determined in the manner provided for in Part 40A of the Tax Acts.

The Revenue Commissioners may nominate any of its officers to carry out any of the functions authorised by this Schedule. ***par 6***

Eligibility

A person may not obtain rights under a scheme —

(*a*) unless he is at that time either an employee or director of the company which established the scheme, or a participating company in the case of a group scheme, or ***par 7(1)***

(*b*) where a person has, or has had in the previous 12 months, held a material interest in a close company —

(i) whose shares may be acquired by the exercise of options acquired under the scheme, or

(ii) which has control of such of a company or is a member of a consortium owning such a company.

The scheme may allow an individual, who has ceased to be an employee or director of the grantor company or a group company, to exercise rights obtained under the scheme, despite having ceased to be an employee or director. ***par 7(2)***

The scheme must allow any director or employee, at any time, to obtain and exercise rights, with some limitations — ***par 8(1)***

(*a*) that the individual is an employee or full-time director of the company which established the scheme, or in the case of a group scheme, of a participating company,

(*b*) that the individual has been an employee or director of the company at all times for a qualifying period not exceeding three years, and

(*c*) that the individual is chargeable to tax under Schedule E in respect of his/her office or employment.

Subject to the provisions for key employees set out in ***paragraph 9***, every person eligible to participate in the scheme shall do so on similar terms. ***par 8(2)***

For the purposes of the similar terms provision in ***subparagraph (2)***, the fact that — ***par 8(3)***

(*a*) the rights to be obtained by persons participating in the scheme vary or are different —

(i) in the year of assessment in which the person commences to hold the office or employment by virtue of which they are entitled to participate in the scheme, or

(ii) according to levels of remuneration, years of service or similar factors,

or

(*b*) a person is not entitled to receive rights within a stated period of his or her normal retirement date,

shall not be regarded as meaning that those persons are not eligible to participate in the scheme on similar terms.

The scheme may allow for key employees and directors to obtain rights under the scheme which do not satisfy the general rule of similar terms. ***par 9(1)***

The conditions applicable in relation to the key employees or directors in any year of assessment, are — ***par 9(2)***

(*a*) that the total number of shares allocated to this part of the scheme cannot exceed 30 per cent of the overall number of shares over which rights have been granted under the terms of the scheme, and

(*b*) any individual receiving entitlement under the key employee provision in a year of assessment cannot benefit under the general employee scheme in the same year.

For the purposes of ***paragraph 7 —***

(*a*) in deciding whether a company is a close company, the provisions relating to whether a company is not resident in the State (***section 430(1)(a)),*** and companies with quoted shares not treated as close companies (***section 431(3)*** to ***(7),*** inclusive), are disregarded, and ***par 10***

(*b*) the definition of material interest in ***section 437(2)*** and ***section 433(3)(c)(ii)*** is altered by increasing the percentage of the shares in a company which constitutes a material interest from 5 per cent to 15 per cent.

Scheme Shares

The shares ("the scheme shares") which can be acquired under an approved share option scheme must satisfy the requirements of paragraphs 12 to 16. ***par 11***

The scheme shares must form part of ordinary share capital of either — ***par 12***

(*a*) the company which established the scheme, (the grantor),

(*b*) a company which has control of that company, or (*c*) a company which either is or has control of a company which:

(i) is a member of a consortium owning either the company which established the scheme, or a company which has control of that company, or

(ii) beneficially owns not less than 75% of the ordinary share capital of the company so owned.

The scheme shares shall be — ***par 13***

(*a*) shares of a class quoted on a stock exchange, or

(*b*) shares in a company which is not under the control of another company, or

(*c*) shares in a company which is under the control of another company (other than a close company or a company which would be a close company if resident in the State) whose shares are quoted on a recognised stock exchange.

Further conditions are set out as to the nature of the scheme shares. The shares must be — ***par 14(1)***

(*a*) fully paid up,

(*b*) not redeemable, and

(*c*) not subject to any restrictions other than restrictions which are imposed on all shares of that class in accordance with the terms of subparagraph (2).

The scheme shares may be subject to certain restrictions imposed by the company's articles of association, namely — ***par 14(2)***

(*a*) that shares held by directors or employees in the company, or another company of which it has control, must be disposed of on cessation of the directorship or employment, and

(*b*) that shares acquired by virtue of rights of directors or employees, by persons who are not, or who have ceased to be, directors or employees in the company must be disposed of when they are so acquired.

The restriction in subparagraph (2) will not be authorised unless — ***par 14(3)***

(*a*) the disposal as provided for in the restriction is by way of sale for money on terms set out in the articles of association, and

(*b*) the articles also include general provisions whereby any person disposing of shares of the same class (whether or not held or acquired in the manner outlined at (a) and (b) in subparagraph (2) above) may be required to dispose of them by way of sale for money on terms specified in the articles of association.

In determining whether scheme shares which are or are to be acquired by a person are subject to any restrictions, any contract, agreement, arrangement or condition restricting such a person's freedom to dispose of the shares or an interest in them, or to dispose of the proceeds of the sale, or to exercise any right conferred by the shares, or resulting in any disadvantage to him or a connected person, following sale or exercise is regarded as such a restriction. ***par 15(1)***

A contract, agreement, arrangement or condition with provisions similar to those provisions similar in purpose and effect to those provisions of the Model Code set out in the Listings Rules of the Irish Stock Exchange is not regarded as such a restriction. ***par 15(2)***

If a company whose shares are being used in a scheme has more than one class of issued ordinary share capital, the majority of the issued shares of the class used in the scheme must be held by persons other than — ***par 16***

(*a*) persons who acquired their shares as a result of a right conferred on them or because of their position as directors or employees of any other company and not as a result of an offer to the public,

(*b*) trustees holding shares on behalf of persons who acquired their beneficial interest in the shares because of circumstances mentioned in ***paragraph (a)***,

(*c*) in cases where the shares are "unquoted" but are shares of a company which is under the control of a company (other than a close company) whose own shares are "quoted", persons other than companies which have control of the first-mentioned company or companies of which the first-mentioned company is an associated company.

Exchange provisions

Subsequent to a take-over of the ordinary share capital of a company which has established a scheme — ***par 17(1)***

(*a*) where control of the company is acquired by a general offer either —

(i) to acquire the whole of the issued ordinary share capital of the company where the person making the offer is made on a condition such that if it is satisfied the person making the offer will have full control of the company, or

(ii) to acquire all the shares in the company which are of the same class as the scheme shares,

(*b*) where control is acquired under a compromise or arrangement sanctioned by a court under section 201 of the Companies Act, 1963, or

(*c*) in circumstances under section 204 of the Companies Act 1963, where the company is bound or entitled to acquire shares, in a company whose shares are scheme shares,

an individual may, at any time in the appropriate period set out in ***subparagraph (2),*** release the rights obtained under the scheme in consideration of the grant of replacement rights which are equivalent to the old rights but relate to shares in a different company (either the acquiring company or an associated company).

The "appropriate period" for the purposes of ***subparagraph (1)*** is to be either — ***par 17(2)***

(*a*) where control of the company is acquired by a general offer for the shares a period of 6 months from the date of acquiring control,

(*b*) where control is acquired under a compromise or arrangement sanctioned by a court under section 201 of the Companies Act, 1963, a period of 6 months from the date of sanction by the court, or

(*c*) in circumstances under section 204 of the Companies Act 1963, where the company is bound or entitled to acquire the shares, the period under which the company is bound or entitled to acquire the shares.

New rights are not regarded as equivalent to old rights unless —

(*a*) the shares satisfy the criteria set out in paragraphs 12 to 16 for a qualifying scheme, ***par 17(3)***

(*b*) the new rights carry the same conditions in relation to exercise as the old scheme conferred on the old rights,

(*c*) the total market value of the old rights before release of those rights is equal to the new rights, and

(*d*) the cost to the participant in pursuance of the new rights is the same as that which would have been for the old rights.

Where any new rights are issued, subsequent to the take-over, they shall be treated as having been granted at a time when the corresponding old rights were granted. ***par 17(4)***

Transfer of rights

The rights obtained under a scheme must not be transferable, except that a person's rights may pass to his estate and be exercised within one year of his death. ***par 18(1)***

Where a personal representative exercises the right granted to a deceased person under the terms of an approved scheme, at a time when the scheme is approved, tax shall not be chargeable under the provisions of the Tax Acts in respect of any gain realised on the ***par 18(2)*** exercise of the right granted to the deceased individual.

Share price

The price at which shares may be acquired on the exercise of rights will be stated at the time those rights are obtained and must be not less than the market value of the shares of the same class at that time, or an earlier time if the Revenue Commissioners and the company establishing the scheme (the grantor) agree in writing, but the scheme may provide for such variation of the subscription price as may be necessary to take account of the variations in the share capital of which the scheme shares form part. ***par 19***

Information

The Revenue Commissioners, by way of notice in writing, require any person to furnish to them, in such defined time period (but no sooner than 30 days), such information as the Revenue Commissioners think necessary to perform their duties under this Schedule, and which it can be reasonably assumed is information available to the person so notified, including particular information — ***par 20(1)***

(*a*) to enable the Revenue Commissioners to determine—

(i) whether to approve a scheme application or withdraw an approval which has already been granted, or

(ii) the liability to income tax and/or capital gains tax of any individual who has participated in the scheme,

(*b*) in relation to the administration of the scheme and any alteration of the terms of a scheme.

The Revenue Commissioners, notwithstanding any provision included in ***subparagraph (1),*** may request the auditors of the company establishing the scheme to provide a certificate confirming that they are of the opinion that — ***par 20(2)***

(i) any rule included in the scheme in accordance with ***paragraphs 8*** and ***9*** have been complied with in relation to a year of assessment, or

(ii) in relation to any right obtained by an individual under the scheme before the scheme was approved under this Schedule, that the scheme would have satisfied the requirements of ***section 519D*** if the governing legislation had been in place at the time the rights were granted.

With effect from 2009 onwards, the trustees of an approved scheme are obliged to automatically furnish the same information as is referred to in ***paragraph 20(1)*** to the Revenue Commissioners in respect of each calendar year. This return of information is required by 31 March in the year following the year in question. Failure to do so will result in penalties as set out in ***sections 1052*** and ***1054***, as appropriate. ***par 20A***

Options etc.

In determining whether a person, or their associates, has a material interest in a company a right to acquire shares, shall be taken as a right to control those shares. ***par 21(1)***

The shares which are attributable to an individual by the application of ***subparagraph (3)*** are to be taken into account for the material interest test in determining whether an individual's right to acquire shares exceeds a particular percentage of the company's ordinary share capital. ***par 21(2)***

If shares attributed to an individual consist of or include shares over which that individual has a right to acquire and the circumstances are such that if the right was exercised the shares acquired would be new shares which the company has to issue in the event of exercise of the right, then, for the purposes of determining, prior to the exercise of that right, whether the shares attributed to the individual exceed a particular percentage of the ***par 21(3)*** ordinary share capital, such ordinary share capital is to be increased by the number of new shares referred to above.

Schedule 13

[*Section 521*]

Accountable Persons for Purposes of Chapter 1 of Part 18

This Schedule lists the main accountable persons for the purposes of the professional services withholding tax scheme provided for in ***Chapter 1*** of ***Part 18***.

1. A Minister of the Government.
2. A local authority within the meaning of the Local Government Act 2001 (as amended by the Local Government Reform Act 2014).
3. A body established under the Local Government Services (Corporate Bodies) Act, 1971.
4. [deleted]
5. Primary Care Reimbursement Service.
6. The Attorney General.
7. The Comptroller and Auditor General.
8. The Director of Public Prosecutions.
9. The Commissioner of Valuation.
10. The Chief Boundary Surveyor.
11. The Director of Ordnance Survey.
12. The Revenue Commissioners.
13. Public Appointments Service.
14. The Commissioners of Public Works in Ireland.
15. The Clerk of Dáil Éireann.
16. The Legal Aid Board.
17. An education and training board.
18. Teagasc.
19. [deleted].
20. [deleted]
21. Údarás na Gaeltachta.
22. The Industrial Development Agency (Ireland).
23. [deleted]
24. [deleted]
25. The National Tourism Development Authority.
26. An institution of higher education within the meaning of the Higher Education Authority Act, 1971.
27. [deleted]
28. [deleted].

29. A voluntary public or joint board hospital to which grants are paid by the Minister for Health and Children in the year 1988-89 or any subsequent year of assessment.
30. An authorised insurer within the meaning of ***section 470***.
31. [deleted]
32. An Bord Pleanála.
33. [deleted]
34. [deleted]
35. daa public limited company.

36. [deleted]
37. Blood Transfusion Service Board.
38. An Bord Bia.
39. Rásaíocht Con Éireann.
40. Ervia.
41. Bord Iascaigh Mhara.
42. Bord na Móna plc.
43. [deleted]
44. Coillte Teoranta.
45. [deleted]
46. Coras Iompair Éireann.
47. [deleted]
48. Electricity Supply Board.
49. Housing Finance Agency plc.
50. [deleted]
51. Irish National Petroleum Corporation Limited.
52. Irish National Stud Company Limited.
53. National Building Agency Limited.
54. National Concert Hall.
55. The Marine Institute.
56. [deleted]
57. [deleted]
58. An Post.
59. Radio Telefís Éireann.
60. [deleted]
61. Royal Hospital Kilmainham Company.
62. The Environmental Protection Agency.
63. [deleted]
64. [deleted]
65. The Irish Aviation Authority.
66. [deleted]
67. [deleted]
68. The National Roads Authority.
69. Temple Bar Properties Limited.
70. Fís Éireann - Screen Ireland
71. [deleted]
72. [deleted]
73. Pobal.
74. The Commissioner of Irish Lights.
75. [deleted]
76. The Heritage Council.
77. The Higher Education Authority.
78. [deleted]
79. Horse Racing Ireland.
80. The Labour Relations Commission.
81. [deleted]
82. The Pensions Authority.
83. The Commission for Communications Regulation
84. The Law Reform Commission.
85. [deleted]
86. [deleted]
87. [deleted]
88. [deleted]

89. National Standards Authority of Ireland.
90. Enterprise Ireland.
91. [deleted].
92. A Referendum Commission established by order made under section 2(1) of the Referendum Act, 1998.
93. The Office of the Ombudsman.
94. The Standards in Public Office Commission.
95. The Office of the Information Commissioner.
96. [deleted]
97. [deleted]
98. [deleted]
99. Western Development Commission.
100. [deleted]
101. [deleted].
102. Commission for Regulation of Utilities
103. [deleted]
104. [deleted]
105. [deleted].
106. Údarás Uchtála na hÉireann.
107. [deleted]
108. National Disability Authority.
109. Aquaculture Licences Appeal Board.
110. Office of the President.
111. Director of the Equality Tribunal.
112. [deleted]
113. [deleted]
114. [deleted]
115. Chief State Solicitor.
116. Central Statistics Office.
117. Commission to Inquire into Child Abuse.
118. [deleted].
119. Digital Hub Development Agency.
120. Citizens Information Board.
121. [deleted].
122. [deleted]
123. [deleted]
124. The Dublin Institute for Advanced Studies.
125. Pre-Hospital Emergency Care Council.
126. Sustainable Energy Ireland - The Sustainable Energy Authority of Ireland.
127. The Health Insurance Authority.
128. Commission for Aviation Regulation.
129. [deleted].
130. [deleted]
131. [deleted]
132. [deleted]
133. [deleted]
134. Mater and Children’s Hospital Development Ltd.
135. [deleted]
136. [deleted]
137. The Marine Casualty Investigation Board.
138. National Treasury Management Agency as regards the performance of functions by it conferred on, or delegated to, it by or under Part 2 of the National Treasury Management Agency (Amendment) Act 2000. (State Claims Agency).

139. [deleted]
140. The Personal Injuries Assessment Board.
141. The National Council for Curriculum and Assessment.
142. The State Examinations Commission.
143. [deleted]
144. National Treatment Purchase Fund Board.
145. The Mental Health Commission.
146. [deleted]
147. [deleted]
148. Health Products Regulatory Authority.
149. [deleted].
150. Oifig Choimisinéir na dTeangacha Oifigiúla.
151. The Health Service Executive.
152. Commission for Public Service Appointments.
153. [deleted]
154. National Council for Special Education.
155. National Library of Ireland.
156. An Education Support Centre Established under section 37 of the Education Act 1998.
157. [deleted]
158. The Road Safety Authority.
159. Grangegorman Development Agency.
160. Commission for Railway Regulation.
161. The Teaching Council.
162. EirGrid.
163. [deleted]
164. Irish Auditing and Accounting Supervisory Authority.
165. [deleted]
166. [deleted]
167. The Health Information and Quality Authority.
168. Teilifís na Gaeilge.
169. Food Safety Authority of Ireland.
170. [deleted]
171. Sea-Fisheries Protection Authority.
172. [deleted]
173. National Economic and Social Development Office.
174. The National Asset Management Agency or a company to which *section 616(1)(g) relates*
175. National Transport Authority.
176. The Medical Council
177. Irish Bank Resolution Corporation Limited.
178. Central Bank of Ireland.
179. Office of the Financial Services and Pensions Ombudsman.
180. Broadcasting Authority of Ireland.
181. Inland Fisheries Ireland.
182. [deleted].
183. The body known as the Credit Review Office established pursuant to guidelines issued under section 210 of the National Asset Management Agency Act 2009. 182. [deleted].
184. Health and Safety Authority.
185. Irish Takeover Panel.
186. The Pharmaceutical Society of Ireland.
187. Ombudsman for Children.

188. Health and Social Care Professional Council.
189. Qualifications and Quality Assurance Authority of Ireland.
190. Nursing and Midwifery Board of Ireland.
191. Garda Síochána Ombudsman Commission.
192. Credit Union Restructuring Board.
193. Child and Family Agency.
194. An tSeirbhís Oideachais Leanúnaigh agus Scileanna (SOLAS).
195. A regional assembly established by an order made under section 43(1) of the Local Government Act 1991.
196. Irish Human Rights and Equality Commission.
197. Competition and Consumer Protection Commission.
198. Regulator of the National Lottery.
199. Shannon Group plc.
200. Charities Regulatory Authority.
201. Policing Authority.
202. Educational Research Centre.
203. Sport Ireland.
204. A company to which section 7 of the Harbours Act 1996 applies.
205. Data Protection Commission.
206. A Director of Authorised Intervention under the Institutional Burials Act 2022
207. An Coimisiún Toghcáin.
208. Approved Housing Bodies Regulatory Authority.
209. The Land Development Agency.
210. Uisce Éireann.
211. Royal Irish Academy.

Schedule 14

[*Section 566*]

Capital Gains Tax: Leases

Overview

This Schedule provides rules for computing gains and losses on the granting of leases and on the assignment of leases. A short lease, which as for income tax is a lease granted for a term which does not exceed 50 years, is deemed to be a wasting asset, and a long lease, which is a lease granted for a term exceeding 50 years, becomes a short lease, and thus a wasting asset, when the remainder of its term is reduced to 50 years. While the rules deal mainly with leases of land, they extend, where applicable, to leases of property other than land. The rules cover such matters as leases given out of freehold for a premium, payments made in commutation of rent, for the waiver of the terms of a lease or for the surrender of a lease; the calculation of the proportion of cost to be allowed where there is a short sub-lease out of superior lease; and the adjustments required in the calculation of capital gains where part of a premium, or part of a payment which is deemed to be a premium, is chargeable to income tax or corporation tax under ***Chapter 8*** of ***Part 4***.

Interpretation

This paragraph defines the term "premium" as including any like sum whether payable to the immediate or superior lessor. It also provides that any sum (other than rent) paid on or in connection with the giving of a tenancy is presumed to have been paid by means of a premium, except in so far as it shown that other sufficient consideration has been given. It ***par 1*** should be remembered that the terms "lease", "lessor", "lessee" and "rent" are defined for the purposes of the Capital Gains Tax Acts in ***section 5***.

Leases of land as wasting assets: restriction of allowable expenditure

Summary

A lease of land which has 50 years or less to run (a short lease) is treated as a wasting asset. ***Paragraph 2*** sets out the rules for determining the proportion of the cost of acquiring the lease which may be set against the consideration received on the assignment of the lease. The cost is to be regarded as wasting away over the period of the lease at the rate set out in the Table at the end of the paragraph. Where a short lease is assigned, only the residue of the remaining expenditure which, in accordance with the Table, remains at the time of the assignment is to be deducted from the consideration received for the assignment.

Details

A lease is not to be regarded as a wasting asset until it has 50 years or less still to run. For this purpose the relevant lease is the head lease, that is, the asset the remainder of which is being disposed of. ***par 2(1)***

A special rule is needed to deal with the case where a lease is acquired subject to an existing sub-lease not at a rent for full value. In such a case, the head lease, even though a short lease, may not really be a wasting asset and its value may increase as the sub-lease draws towards an end. It is provided, therefore, that, if the head lease is subject to a sub-lease not at a rent for full value of the land and buildings on it and the value of the head lease at the end of the duration of the sub-lease (but estimated at the time when the head lease was acquired) is greater than the consideration paid for the head lease, the head lease is not to be treated as a wasting asset until the end of the sub-lease. ***par 2(2)***

Example

Short lease not treated as a wasting asset

A person, A, took a lease of a shop for 40 years in 1985 at a rent of €5,000 per annum. In 1995 A ceased business and sub-let the premises to B for 10 years at an annual rent of €8,000 per annum. In 2002, A sells his interest in the property to C and because it is expected that by the year 2005 the shop will fetch a rent of at least €11,000 per annum A obtains a price of €58,000 for the sale of his interest. C pays €58,000 for the interest which produces immediately a net income of only €3,000 per annum (rent receivable €8,000 less rent payable €5,000, in the expectation that after 3 years he will be able to increase his net income to €6,000 per annum (rent receivable €11,000 less rent payable €5,000). It is expected that the property will be worth €73,000 in the year 2005. In these circumstances the expenditure by C of €58,000 will not be regarded as commencing to waste until the year 2005 although in 2002 the lease has only 23 years to run.

The rate at which expenditure on a lease of land, which is a wasting asset, is deemed to waste away is to be determined in accordance with the Table at the end of the paragraph instead of at the uniform rate which normally applies to wasting assets (***section 560***). The percentage figures in the Table decrease in accordance with the normal decrease in the value of a lease with the passage of time, disregarding any change in the value of the property which is the subject of the lease. In general, the manner in which the expenditure is written off under the Table is more favourable to the taxpayer than the straight-line basis since at any point in the Table the residue of original cost will be larger than it would be on a straight-line basis. The figures in the Table are set out as percentages of the value of a 50-year lease. Thus, a 20-year lease is valued at 72.8 per cent of a 50-year lease whereas a 10-year lease is valued at 46.7 per cent of a 50-year lease. ***par 2(3)***

The rules for calculating the proportion of the cost of a short lease and of any further expenditure on improving the property which is to be excluded from the allowable expenditure in the computation of a gain on the disposal of a lease are laid down in mathematical form. The effect of the rule is that the expenditure is to be reduced by the ***par 2(4)*** amount by which it has wasted away up to the date of assignment.

The following example illustrates how the rules in ***subparagraphs (3)*** and ***(4)*** operate.

Example

X purchased for €80,000 a lease of land having 30 years to run and spent a further €8,000 on improvements after 5 years, which immediately became reflected in the value of the land. X sold her interest in the land 15 years after purchase for €70,000. The chargeable gain (disregarding indexation relief under ***section 556***) is computed as follows —

Amount realised on disposal of lease		€70,000
Cost	€80,000	
Restricted $\frac{P(1)-(3)}{P(1)}$ by the amount not allowable		
$80{,}000 \times \frac{87.3-61.6}{87.3} =$ 1,595	<u>€23,550</u>	<u>€56,450</u>
Expenditure on improvements	€8,000	€13,550
Restrict $\frac{P(2)-P(3)}{P(2)}$ by amount not allowable		
$8{,}000 \times \frac{81.2-61.6}{81.1}$	€1,924	€6,076
Chargeable gain		€7,474

(Under ***section 556*** the allowable cost of €56,450 indexed from the date of acquisition of the lease and the allowable expenditure of €6,076 on improvements from the date the expenditure was reflected in the nature of the lease.)

The rules set out in the paragraph are to apply even where the head lease was originally granted for a term longer than 50 years. It is made clear, however, that none of the expenditure on the head lease is to be treated as wasting away until the 50 year point is reached. Thus, if a long lease is assigned at a time when the remainder of its term exceeds 50 years, no restriction is to be made in the amount of the qualifying expenditure in calculating any gain or loss on the disposal. ***par 2(5)***

An asset is not to be treated as a wasting asset under this paragraph to the extent that the original purchase price or the expenditure on additions has qualified for capital allowances. Thus, if a person acquires, say, an interest in a factory under a short lease and there is a residue of expenditure at the time of acquisition which qualifies for industrial building allowances, there is no restriction of cost under this paragraph if he disposes of his interest at a later stage before the term of his lease expires. Any case arising under this subparagraph should be submitted to the office of the Chief Inspector of Taxes with a report of the facts, whether or not the person who acquired the interest incurs any further expenditure qualifying for industrial building allowances during that person's period of ownership of the lease. ***par 2(6)***

If the duration of a long lease is not an exact number of years, the percentage in the Table to the paragraph which is to be used is the appropriate percentage for the whole number of years involved plus one-twelfth of the difference between that percentage and the percentage for the next number of years for each odd month, counting an odd 14 days or more as one month. ***par 2(7)***

Premiums for leases

Summary

Paragraph 3 provides that where a premium is taken on the grant of a lease of land, the grant of the lease is treated as a part disposal of the entire interest in the property (whether freehold or leasehold) and, in calculating under the part disposal rules the interest which remains, account is to be taken of the value of the right to receive the rent reserved under the lease.

Details

Where a premium is taken for a lease of land, the granting of that lease is to be treated as a part disposal of the larger interest out of which the lease was granted. ***par 3(1)***

In applying the rule for apportioning expenditure in the case of a part disposal (see ***section 557***), the denominator of the apportionment fraction is to include, as part of the market value of the interest remaining undisposed of, the value of the right to receive rent under the lease. ***par 3(2)***

Example

A has a freehold house, previously let, which cost €100,000 (including allowable expenses). When A obtains vacant possession he grants a lease for 99 years at a premium of €120,000 and a rent of €1,000 per annum. Suppose that the value of the reversion at the time of the grant of the lease is virtually entirely the right to the rent and is valued at €10,000, that is, 10 years rent. Under the part disposal rules the chargeable gain is computed thus —

$$\text{Cost of} \quad 100{,}000 \times \frac{120{,}000}{120{,}000 + 10{,}000} = 92{,}308$$

The chargeable gain is, therefore —

Premium	€120,000
Acquisition cost attributable (disregarding indexation relief under section 556)	€92,308
Chargeable gain	€27,692

The acquisition cost has now been written down to €7,692 (that is, €100,00 – €92,308). If, therefore, the reversion is later sold for €10,000, then, disregarding indexation relief under ***section 556***) there will be a further chargeable gain of €2,308.

Payment during currency of lease treated as premium

Summary

Paragraph 4 provides that during the currency of a lease a payment is made in commutation of rent, or for the surrender of a lease, or for the variation or the waiver of the terms of a lease, the payment is to be treated as an additional premium for the grant of the lease and capital gains tax is to be charged on the amount of the payment.

Details

Any sum paid under the terms of a lease of land in commutation of rent or for the surrender of a lease is to be treated as a premium paid for the period in relation to which it is payable. ***par 4(1)***

Example

X gives Y a 30 year lease at a full economic rent of €5,000 per annum. A clause in the lease allows Y to commute the rent for a period of 5 years by paying €25,000 and he does so for the period coming between the sixth and the twelfth years. X is treated both for income tax and capital gains tax as having received a premium of €25,000 for the period of 5 years from the beginning of the seventh to the end of the eleventh year.

A similar rule is provided for any sums paid in consideration of the variation or waiver of any of the terms of a lease. ***par 4(2)***

In a case involving the commutation of rent or the variation or waiver of the terms of the lease (***note*** – not a case of surrender which is dealt with in ***subparagraph (5)***), the payment is to be treated as if it were part of the premium or other consideration given at the time when the lease was granted. Where the lessor is himself a lessee under a short lease, the payment is to be treated as made for the part of the period of the sub-lease to which it relates and, in the computation of the gain or loss on the sub-lease on any disposal by the lessor, of his interest, the payment is to be treated as additional expenditure dating from the date of payment and the appropriate percentage of that expenditure to be allowed is to be determined by reference to the Table in ***paragraph 2***. ***par 4(3)***

Where the payment is in commutation of rent or for the variation or waiver of the terms of the lease, and the lessor's own lease is either a freehold or a long lease, the gain on the lessor's disposal is to be recomputed and any necessary adjustment made by assessment, discharge or repayment. ***par 4(4)***

The following example illustrates the manner in which a payment for the variation or waiver of any of the terms of a lease is to be dealt with.

Example

A gives B a lease for 30 years. B is obliged to keep the property in good repair. They arrange a variation under which A becomes liable for the repairs for 5 years and he gets €2,000 as consideration. A is deemed for both income tax and capital gains tax purposes to have received a premium of €2,000 for those 5 years.

The consequences of this for capital gains tax depends on whether or not the landlord is himself a tenant under a short lease or the holder of a longer tenure, namely —

(a) landlord has freehold or long lease

The landlord and the tenant are treated as if the deemed premium had been (or had been part of) the original consideration received by the landlord for the lease. If a premium had been paid on the grant of the lease, the original gain or loss is recomputed (with any necessary adjustments of tax) to provide the proper apportionment of cost and to arrive at the correct charge.

(b) landlord has a short lease

The deemed premium is to be treated as paid for the part of the period of the sub-lease to which it relates and is not to be carried back to the start of the sub-lease, thus —

Payment for waiver	€2,000	
Charge to income under Case V of Schedule D	€2,000	
Less: $2{,}000 \times \frac{5-1}{50}$	€160	
Charge to income tax	€1,840	
Charge to capital gains tax —		
Payment for waiver	€2,000	
Allowable expenditure	Nil	(No premium on grant of sub-lease)
	€2,000	
Less: Charged to income		

tax

(see paragraph 6)	€1,840
Chargeable gain	€160

The tenant is regarded as having paid the sum in consideration of the grant of the part of the sub-lease covered by the period in respect of which the amount has been paid and in the event of a sub-letting by the tenant it is treated as expenditure by the tenant in enhancing the value of his part of the lease (under ***section 552(1)(b)***).

In a case where a landlord receives a payment for the surrender of a lease which is treated as a premium, such a payment, having been made in order to terminate the lease, cannot be treated as part of the original premium on the grant of the lease. It is provided, therefore, that the payment is to be treated as a premium paid under a separate transaction, that is, as if it were a disposal by the landlord of his interest in the lease and not as an addition to any other premium payable. ***par 4(5)***

Example

X gives Y a lease of land for 25 years at a rent of €5,000 per annum. X's interest (which is basically the right to receive rent) is valued at €100,000. After 5 years Y surrenders the lease for a payment of €20,000. X is treated as having disposed of his interest in the lease for €20,000. The surrender is a separate transaction (from the first disposal) and, accordingly, the full amount of €20,000 is a chargeable gain, subject to adjustment for the amount charged to income tax (€18,400 or 92 per cent of €20,000) so that the final charge to capital gains tax is €1,600.

Where the terms of a lease are varied or waived under a transaction not at arm's length, and in particular under a transaction entered into gratuitously, the amount to be taken into account for capital gains tax is the amount which would have had to be paid for the variation or waiver if the transaction had been at arm's length. This requires the insertion of a notional consideration equal to the market value which would properly apply, instead of the actual amount paid (if any). ***par 4(6)***

Subparagraph (4) applies for corporation tax as it applies for capital gains tax. ***par 4(7)***

Sub-leases out of short leases

Summary

Paragraph 5 sets out the rules for determining the proportion of the original cost of a short lease which is to be set against a premium received on the grant of a sub-lease out of that lease. When a sub-lease is granted out of a short lease the normal part disposal rules (***section 557***) do not apply. Instead, that part of the original expenditure which, under the Table in ***paragraph 2***, will waste away over the period of the sub-lease is to be deducted from the amount received for the sub-lease. Where the rent payable under the sub-lease is larger than the rent payable under the head lease so that the premium received for the sub-lease is smaller than it would otherwise have been, the amount to be allowed is the appropriate fraction of the cost of the head lease, being the proportion the actual premium bears to the full premium which would properly be payable.

Details

This paragraph applies in relation to short leases (a lease whose currency is 50 years or less). ***par 5(1)***

In computing the gain on the part disposal of a short lease (that is, either on the grant of a sub-lease out of the short lease for a period less than the remaining duration of the head lease or on the grant of a sub-lease out of a part only of the property included in the head ***par 5(2)*** lease), the allowable expenditure is to be computed as provided in this paragraph and the general rule for part disposals (in ***section 557***) is not to apply.

The part of the cost of the head lease which is to be set against the premium received on the grant of the sub-lease is to be that amount which will waste away over the duration of the sub-lease as calculated from the Table in ***paragraph 2***. This rule applies in the case where the premium is equal to or greater than the amount which would be obtainable if the rent under the sub-lease were the same as the rent under the head lease (referred to as the "full premium"). Where, however, the premium on the sub-lease is less than the full premium, for example, where a profit rent is taken so that the premium is lower than it would otherwise be, the part of the cost of the head lease is to be reduced to that proportion which the actual premium bears to the full premium. ***par 5(3)***

Example

Sub-lease out of short lease (at same rent)

In June 1990 a person takes a lease of property for a premium of €20,000 to run until 23 June, 2050. On 23 June, 2002 he gives a sub-lease for 20 years at the same rent as he pays under the main lease for a premium of €15,000. The grant of the sub-lease is a part disposal of the person's interest in the property which at that time has become a short lease. The chargeable gain (disregarding indexation relief under ***section 556***) is to be computed as follows —

Premium received		€15,000
Consideration given for the lease	€20,000	
Percentage applicable to lease		
of 48 years (from 2002 to 2050)	99.3	
Percentage applicable to lease		
of 28 years (from 2022 to 2050)	85.1	
Percentage applicable to period		
of sub-lease (20 years)	14.2	

Percentage applicable to original lease is 100.

Amount allowable is	$\frac{14.2}{100} \times 20{,}000$	€2,840
Gain		€12,160

The receipt of the premium of €15,000 will have given rise to an income tax charge on 19/50ths of the premium, that is, €5,700.

The amount chargeable to capital gains tax will, therefore, be adjusted in accordance with ***paragraph 6*** as follows —

Amount computed as above	€12,160
Less: Charged to income tax	€5,700
Amount chargeable to capital gains tax	€6,460

Sub-lease out of short lease (at higher rent)

If the facts were the same as in the example given but a higher rent was taken with a lower premium of, say, €10,000, the amount allowable would be reduced as follows by applying the fraction.

$$\frac{\text{Premium received}}{\text{Premium receivable with the same rent}}$$

that is $\frac{10{,}000}{15{,}000} \times 2{,}480 = \quad 1{,}893$

The gain (disregarding indexation relief) would then be —

Premium	€10,000
Less —	
Proportion of cost of original lease	€1,893
Gain	€8,107
Deduct —	
Charged to income tax	
19/50 x €10,000	€3,800
Amount chargeable to capital gains tax	€4,307

Where only part of the land comprised in the head lease is covered in the sub-lease, the part of the cost of the lease attributable to the premium on the sub-lease is to be determined by reference to the market value (at the time the sub-lease is given) of the part of the land comprised in the sub-lease and the whole of the land respectively. The balance of the cost is attributable to the interest in the undisposed part of the land. ***par 5(4)***

Example

Where only part of the land is covered in the sub-lease, the allowable cost is apportioned by reference to the fraction —

$$\frac{\text{market value of the part in the sub-lease}}{\text{market value of the whole}}$$

If this is equal to 1/3rd, this fraction is to be applied to the allowable cost. In the example given under ***subparagraph (3)*** the allowable cost was €2,840 and 1/3rd is €947 and the gain then would be —

Premium	€15,000.
Less allowable	€947.
	€14,053.
Less amount charged to income tax	€5,700.
Chargeable to capital gains tax	€8,353.

Exclusion of premiums taxed under Case V of Schedule D

Summary

Paragraph 6 provides for a deduction, in the computation of the amount of chargeable gains, for the part of premiums (and amounts treated as premiums) which is deemed to be rent and is charged to income tax as such under ***sections 98*** and ***100***. Thus, the paragraph ensures that sums which have been brought into charge to income tax are not charged again to capital gains tax.

Details

Where the interest out of which a lease is granted is not itself a short lease (that is, it is a freehold or a long lease), the computation of the chargeable gain is made under the normal rule for a part disposal. However, the amount chargeable to income tax under ***section 98*** is to be excluded from the consideration for the part disposal and, in order to achieve the ***par 6(1)*** correct mathematical result, is also to be excluded from the numerator of the fraction used for apportioning allowable expenditure in computing a chargeable gain on a part disposal (but not from the denominator).

Where a short lease is granted out of a short lease, the capital gains tax computation is to be made in the first instance under the rules relating to short leases on the basis of the full amount of the premium received and then from the gain so computed the amount charged to income tax under ***section 98*** is to be deducted. The resultant amount is the amount of chargeable gains to be assessed. The maximum deduction will be the amount of the gain, so that the deduction cannot convert a gain into a loss or increase a loss. ***par 6(2)***

Provision is made to exclude from the charge to capital gains tax any sum charged to income tax under Case V of Schedule D by virtue of the special rule in ***section 100*** for dealing with a sale of land subject to a right of reconveyance. The amount charged to income tax is to be excluded from the consideration for the part disposal and, in order to achieve the correct mathematical result, is also to be excluded from the numerator of the fraction used for apportioning allowable expenditure in computing a chargeable gain on a part disposal (but not from the denominator). ***par 6(3)(a)***

In the case where the interest disposed of is a short lease ***subparagraph (3)(a)*** does not apply. Instead, the amount charged to income tax under ***section 100*** is to be deducted from the gain as computed under ***subparagraph (2)***; but the maximum deduction will be the amount of the gain, so that the deduction cannot convert a gain into a loss or increase a loss. ***par 6(3)(b)***

References to a premium in ***subparagraphs (1)*** and ***(2)*** include any amount deemed to be a premium under ***subsection (3)*** or ***(4)*** of ***section 98***, being an amount in lieu of rent as consideration for the surrender of a lease or for the variation or waiver of the terms of a lease. ***par 6(4)***

The general rule (***section 551***) excluding sums chargeable to income tax from the consideration for a disposal of an asset does not prevent any amount being taken into account in a capital gains tax computation because it has been taken into account in a charge under Case V Schedule D. This provision is necessary to enable such an amount to be brought into the capital gains computation in the first instance before the part chargeable to income tax is excluded to give the final amount chargeable to capital gains tax. ***par 6(5)***

Example 1

(illustrating ***paragraph 6(1)*** – lease out of freehold or a long lease)

Suppose that a freehold property is acquired on 6 May, 1998 for €100,000. On 6 May, 2002 a lease for 21 years is granted at a premium of €25,000, and a rent of €8,000 per annum. The interest remaining undisposed of (the reversion) is valued at the time the lease is granted at €105,000.

The income tax liability on the premium is —

	Total premium	€25,000
Less:	Fraction under ***section 98(1)***,	
	$\frac{21-1}{50} \times \quad 25{,}000$	<u>€10,000</u>
	Chargeable to income tax	€15,000

The capital gains liability (disregarding indexation relief under ***section 556***) is —

	Total premium	€25,000
Less:	Chargeable to income tax	<u>€15,000</u>
		€10,000

Deduct: proportion of allowable expenditure, that is —

$100{,}000\text{ (cost)} \times \dfrac{10{,}000\text{ (premium less income charge}}{25{,}000\text{ (premium)} + 105{,}000\text{ (reversion)}}$	€7,692
Chargeable gain	€2,308

Example 2

$$€100{,}000(\text{cost}) \times \frac{€10{,}000(\text{premium less income charge})}{€25{,}000(\text{premium}) + 105{,}000(\text{reversion})}$$

(illustrating ***paragraph 6(2)*** – lease out of short lease and no gain or loss after adjustment for income tax charge)

Suppose that a lease having 21 years to run is acquired on 6 May, 1996 for €100,000. On 6 May, 2002, when the lease has 15 years to run, a 7 year lease is granted for a premium of €60,000 without any change of rent.

Calculate capital gains liability first —

Percentage from table	
Head lease (21 years)	74.6
Sub-lease (15 years left)	61.6
Sub-lease ending (8 years left)	39.4
Cost attributable to sub-lease —	
	€29,760
Chargeable gain (subject to adjustment) is —	
Premium	€60,000
Allowable cost (disregarding indexation relief under ***section 556***)	€29,760
Chargeable gain	€30,240
The amount chargeable to income tax is —	
Total premium	€60,000
Less: Fraction (***section 98(1)***)	
$600{,}000 \times \dfrac{7-1}{50}$	€7,200
Chargeable to income tax	€52,800

The income tax charge stands but as it exceeds the chargeable gain there is no capital gains tax liability, and there is no allowable loss.

Example 3

(illustrating ***paragraph 6(2)*** – lease out of short lease and gain after adjustment for income tax charge)

Suppose that in Example 2 the head lease had 49 years to run when it cost €100,000 and that one year later a sub-lease for 21 years is granted at a premium of €80,000.

Capital gains liability is as follows —

Percentages from table —

Head lease (49 years)	99.7

Sub-lease (48 years left)	99.3
Sub-lease ending (27 years left)	83.8

Cost attributable to sub-lease is —

$$100{,}000 \times \frac{93.3 - 83.8}{99.7} \quad \text{or } €15{,}550$$

Chargeable gain (subject to adjustment) is —

Premium	€80,000
Allowable cost (disregarding indexation relief under ***section 556***)	€15,550
Chargeable gain	€64,450
Total premium	€80,000
Less: Fraction $\frac{21-1}{50} \times 80{,}000$	€32,000
Chargeable to income tax	€48,000
The adjusted chargeable gain is —	
As above	€64,450
Less: income tax charge	€48,000
net chargeable gain	€16,450

Disallowance of premium treated as rent under superior lease

Summary

Paragraph 7 provides for an adjustment in the capital gains tax computation where a person who grants a sub-lease out of a lease which was acquired for a premium is given an allowance for income tax purposes under ***section 103(2)*** in respect of part of that premium. The allowance given for income tax purposes in the rents computation is to be set against the amount of any capital loss which the person concerned is treated as having made on the grant of the sub-lease and the loss is to be reduced by that allowance. The application of this rule cannot convert the loss into a gain or increase any gain.

The paragraph also sets out the effect on capital gains tax computations where, for income tax purposes, sums are treated as premiums or additional premiums under ***section 99*** (charge on assignment of lease granted at undervalue) and ***section 100*** (charge on sale of land with right to reconveyance).

Details

Provision is made for an adjustment of a capital loss where an allowance under ***section 103(2)*** is given for income tax purposes. That section provides that where a person who holds property under a superior short lease and who grants a sub-lease is liable to income tax on the rent received and on the appropriate proportion of the premium received, he is entitled to a deduction of a part of the premium which he paid to the superior landlord when he acquired his lease. That part of the premium is calculated by reference to the part of the premium already assessed on the superior landlord under ***section 98(1)*** and the amount so *par 7(1)* assessed is treated under ***section 103(2)*** as a rent payable (accruing from day to day) by the person granting the sub-lease spread over the period for which he holds the property under his superior lease. A proportion of the rent so deemed to be payable is then calculated by reference to the period of the sub-lease and the amount apportioned to the sub-lease is the deduction to which the sub-lessor is entitled in adjusting the income tax assessment on him. This subparagraph provides for a corresponding adjustment in the computation of a capital loss and the adjustment is made by reducing the loss incurred on the grant of the sub-lease. The adjustment is not, however, to convert a loss into a gain or to increase any gain.

Example

On 26 April, 1995 A grants B a lease for 21 years at a premium of €12,600 and a rent. On 26 April, 2002 (7 years later) B grants a sub-lease to C for 7 years at a premium of €2,000 without any change of rent.

(i) B's capital gain (subject to adjustment) is —

Percentages from Table in ***paragraph 2*** —	
Head lease (21 years)	74.6
Sub-lease granted (14 years left)	59.0
Sub-lease ends (7 years left)	35.4
Premium	€2,000
Part of consideration attributable to sub-lease	
$12{,}600 \times \frac{59-354}{74.6}$	€3,986
Capital loss	€1,986

(ii) The charge to income tax on A is —

Premium received from B	€12,600
Less $12{,}000 \times \frac{21-1}{50}$	€5,040
Charge to income tax	€7,560

(iii)The charge to income tax on B (subject to adjustment) is —

Premium received from C	€2,000
Less $2{,}000 \times \frac{7-1}{50}$	€240
Charge to income tax	€1,760

But, as against €1,760, B is entitled to a deduction under ***section 103(2)*** as follows —

Charged to A as rent	€7,650
21 year lease – annual deduction	€360
Total deduction for period of sub-lease	
(7 years @ €360 p.a.)	€2,520

B's final income tax position is therefore —

Amount originally chargeable	€1,760
Less ***section 103(2)*** deduction	€2,520
Loss for income tax	€760

(iv) B's final figure for capital gains tax is therefore —

Loss at (i) above	€1,986
Disallow ***section 103(2)*** deduction	€2,520
Chargeable gain	€534

But as this would convert the loss into a gain the final clause of ***subparagraph (1)*** comes into operation to give neither a chargeable gain nor an allowable loss. The result is that for capital gains tax purposes the transaction is treated as no gain and no loss but B gets full relief for the ***section 103(2)*** deduction of €2,520 by setting the income tax loss of €760 against other rents or by carry forward.

Under ***section 99***, where a lease is assigned at undervalue by a transaction not at arm's length, the market value is substituted for the consideration received in computing the amount chargeable to income tax as rent. This subparagraph ensures that ***section 551***, which provides for the exclusion from consideration in a capital gains tax computation of sums chargeable to income tax, is not to be taken as excluding from a capital gains computation the substituted amount under ***section 99***. ***par 7(2)***

Under ***section 100***, where an interest in land is sold on terms providing for it to be sold back (or leased back) to the vendor or a person connected with the vendor, an income tax charge is imposed on the vendor by treating as a premium the difference between the sale price and the price fixed for the resale back to the vendor. As the price on the resale may vary with the date, the section provides that the price to be taken is the lowest possible under the terms of the sale and that the vendor may, within 6 years after the reconveyance, be given an adjustment of the income tax assessment by reference to the facts as they eventually emerge. Where such adjustment is made, all necessary adjustments to the capital gains tax computation are to be made whether under this paragraph or ***paragraph 6***. ***par 7(3)***

Expenditure by lessee under terms of lease

Where a lessee of premises is obliged under the terms of a lease to carry out work on the premises, the amount by which the lessor's interest at the time when the lease was granted would have been increased, if the work had been done at that time, is treated under ***section 98(2)*** as a premium payable under the lease. Consequently, an appropriate part of that amount is charged to income tax on the lessor under Case V of Schedule D. ***Paragraph 8*** provides that the amount so charged to income tax is to be treated for capital gains tax purposes as allowable expenditure under ***section 552(1)(b)*** incurred at the time the lease was granted. ***par 8***

Duration of leases

Summary

Paragraph 9 provides rules for determining the duration of a lease in cases where the lease incorporates special clauses. It also provides, as a general principle, that the duration of a lease is to be determined by a reference to the facts known or ascertainable when the leaseholder acquired the lease, whether by grant or assignment.

Details

The following rules are to apply in ascertaining the duration of a lease for capital gains tax ***par 9(1)*** purposes.

Where a lease includes provision for the lessor to terminate the lease by notice, the lease is not to be treated as granted for a term extending beyond the earliest date on which it could be terminated by the notice. Thus, if a lease is granted for 30 years but with a provision that the landlord can terminate it by notice after 15 years, the lease is treated for capital gains tax as a 15 year lease. ***par 9(2)***

Where any of the terms of the lease (including one relating to forfeiture) or any other circumstances make it unlikely that the lease will last beyond a date falling before the expiry of the lease, the lease is not to be treated as having been given for a period ending after that date. In particular, where there is provision in the lease for an increase in rent after a given date or for the lessee's obligations to become more onerous, but with a right for the lessee to terminate the lease, and the lessee is likely to use the right, the lease will be deemed to have been given for a period ending on the date on which the lessee does so. These provisions and those in the following subparagraph are designed to prevent the real terms of a lease being artificially prolonged for capital gains tax purposes. ***par 9(3)***

Where the lease gives the lessee an option to extend its term, the duration of the lease is to be treated as extended for as long as it could be extended by the lessee but this provision is subject to any right of the lessor to determine the lease. ***par 9(4)***

As a general principle the duration of a lease is to be decided by reference to the facts, known or ascertainable, at the time when the lease was acquired or created. ***par 9(5)***

Leases of property other than land

Summary

Paragraph 10 extends certain of the provisions relating to leases of land to leases of property of any description (for example, leases of plant and machinery). It also provides the rule for determining the term of a lease of movable property which is a wasting asset.

Details

The rules relating to leases of land in respect of part disposals, payments treated as premiums, sub-leases out of short leases and the duration of leases are to apply to leases of property other than land. ***par 10(1)***

A lease of a wasting asset which is movable property is assumed to terminate not later than the end of the life of the wasting asset. This provision is directed against avoidance of capital gains tax by the grant of a lease in excess of the predictable life of the wasting asset. ***par 10(2)***

Schedule 15

[*Section 610*]

List of Bodies for Purposes of Section 610

PART 1

A gain is not a chargeable gain for the purposes of the Capital Gains Tax Acts if it accrues to any of the following bodies:

1. An unregistered friendly society whose income is exempt from income tax under ***section 211(1)***.

2. A registered friendly society whose income is exempt from income tax under ***section 211(1)***.
3. A registered trade union to the extent that the proceeds of the disposal giving rise to the gain or, if greater, the consideration for the disposal under the Capital Gains Tax Acts have/has been, or will be, applied solely for the purposes of its registered trade union activities.
4. A local authority or a joint body within the meaning of section 2(1) of the Local Government Act, 2001.
5. A body established under the Local Government Services (Corporate Bodies) Act, 1971.
6. The Central Bank of Ireland.
7. The Health Service Executive.
8. An education and training board.
9. Teagasc – The Agriculture and Food Development Authority.
10. The National Tourism Development Authority.
11. The Dublin Regional Tourism Organisation Limited.
12. Dublin Regional Tourism Authority Limited.
13. The South-East Regional Tourism Authority Limited.
14. South-West Regional Tourism Authority Limited.
15. The Western Regional Tourism Authority Limited.
16. The North-West Regional Tourism Authority Limited.
17. Midlands-East Regional Tourism Authority Limited.
18. Tramore Fáilte Limited.
19. The National Treasury Management Agency.
20. Eolas — The Irish Science and Technology Agency.
21. Forbairt.
22. Forfás.
23. The Industrial Development Agency (Ireland).
24. The Industrial Development Authority.
25. Shannon Free Airport Development Company Limited.
26. Údarás na Gaeltachta.
27. Horse Racing Ireland.
28. The company incorporated on the 1st day of December, 1994, as Irish Thoroughbred Marketing Limited.
29. The company incorporated on the 1st day of December, 1994, as Tote Ireland Limited.
30. A body designated under section 4(1) of the Securitisation (Proceeds of Certain Mortgages) Act, 1995.
31. The Dublin Docklands Development Authority and any of its wholly-owned subsidiaries.

31A. The Dublin Institute of Technology in respect of any disposal made by it to the Grangegorman Development Agency.

31B. The Grangegorman Development Agency.

32. The Interim Board established under the Milk (Regulation of Supply) (Establishment of Interim Board) Order, 1994 (S.I. No. 408 of 1994).
33. National Rehabilitation Board.
34. The National Pensions Reserve Fund Commission.

34A. A Commission investment vehicle (within the meaning given by section 2 of the National Pensions Reserve Fund Act 2000 (as amended by section 2 of the Investment of the National Pensions Reserve Fund and Miscellaneous Provisions Act 2009)).

34B. The National Pensions Reserve Fund.

35. National Development Finance Agency.

36. Tourism Ireland Limited.

37. *[Deleted by section 67 of the Finance Act 2012.]*

38. Any body established by statute for the principal purpose of promoting games or sports and any company wholly owned by such a body, to the extent that the proceeds of the disposal giving rise to the gain or, if greater, the consideration for the disposal under the Capital Gains Tax Acts have/has been, or will be, applied for that purpose.

39. The Courts Service.

40. The Irish Auditing and Accounting Supervisory Authority.

41. The Commission for Communications Regulation.

42. The Digital Hub Development Agency.

43. The National Asset Management Agency.

44. The Strategic Banking Corporation of Ireland or a subsidiary wholly owned by it or a subsidiary wholly owned by any such subsidiary.

45. Limerick Twenty Thirty Strategic Development Designated Activity Company, registered on 7 July 2008 (registered number 459652).

46. National Transport Authority.

47. Western Development Commission.

48. The National Standards Authority of Ireland.

PART 2

A gain is not a chargeable gain for the purposes of the Capital Gains Tax Acts if it accrues to any of the following bodies in respect of a disposal by that body of an asset to the Interim Board established under the Milk (Regulation of Supply) (Establishment of Interim Board) Order, 1994 (S.I. No. 408 of 1994):

1. The Dublin District Milk Board established under the Dublin District Milk Board Order, 1936 (S.R. & O., No. 254 of 1936).
2. The Cork District Milk Board established under the Cork District Milk Board Order, 1937 (S.R. & O., No. 91 of 1937).
3. The company incorporated on the 19th day of November, 1991, as Dairysan Limited.
4. The company incorporated on the 14th day of February, 1994, as Glenlee (Cork) Limited.

Schedule 16

[*Section 703*]

Building Societies: Change of Status

Overview

This Schedule, which is applied by ***section 703***, ensures neutral tax consequences on a conversion of a building society into a company. This is provided separately for capital allowances, financial assets, capital gains on assets vested in the successor company and capital gains in the case of members of the society.

Capital allowances

For capital allowances purposes, the trade of the building society is not regarded as having ceased. If the conversion of the society into a company was regarded as a cessation, a balancing allowance or charge would crystallise. The new company gets the capital allowances and charges that the society would have got if it had continued to carry on the trade. This includes the crystallisation of deferred balancing charges which first arose before the conversion. Finally, the conversion itself does not give rise to balancing allowance or charge. ***par 1***

Financial assets

On the conversion of the society the financial trading stock of the society (financial assets which are trading stock) is to be valued at its cost to the society. This means that the society will not become liable to tax on any unrealised profits on that stock. The vesting of the financial assets of the society (assets held to satisfy liquidity requirements) in the successor company is not regarded as a disposal by the society. However, the profit arising to the successor company when it disposes of these assets will be calculated for tax purposes by comparing their sale proceeds with the cost of the assets to the building society. ***par 2***

Capital gains: assets vested in the successor company, etc

The conversion is not treated as a disposal by the society, or as an acquisition by the successor company, of any assets which on conversion are vested in the successor company. For capital gains tax purposes, the successor company is treated as having acquired the assets at the time and for the consideration at which they were acquired by the building society and as having done all things done by the building society before the conversion. This ensures that unrelieved capital losses may be brought forward and that capital gains deferred by the society under the replacement of business assets provisions will not crystallise on the conversion. ***par 3***

Capital gains: shares, and rights to shares, in successor company

For the purposes of this paragraph — ***par 4(1)***

“free shares” are shares issued for no new consideration;

“member” means a person who is or was a member of the society and includes a member of any class or description;

“new consideration” does not include any amount paid out of the assets of the society or out of rights in the new company.

A right of a member of a building society to acquire shares in the successor company is treated for capital gains tax as an option. This applies where the right is to receive shares free or for less than their market value, or if the member is entitled to these shares in priority to other members. The effect of treating the acquisition of the right as an option is to ignore that transaction for tax purposes and to treat the acquisition of the right and the acquisition of the shares when the right is exercised as a single transaction. ***par 4(2)***

Where a member of a building society receives shares in the successor company, the cost for capital gains tax purposes is restricted to the amount of any new consideration paid by the person. The value of the shares on acquisition is to be taken to be the amount of any new consideration given. This ensures that on disposal of the shares, the gain is computed by reference to the actual amount (if any) paid for the shares. Where shares are acquired by the member pursuant to a right to acquire them either at less than market value or in priority to others, no part of the cost of the shares to the person can be attributed to the acquisition of the rights. ***par 4(3)***

Where the shares are issued to a trustee for transfer to the members of the society for no new consideration, and the shares are to be held in trust by the trustees, then — ***par 4(4) & (5)***

- the shares are regarded as having been acquired by the trustees for no consideration,
- the members' interest in the settled property is regarded as having been acquired at no cost and having no value at the time of acquisition, and
- when a member becomes absolutely entitled to shares as against the trustees the trustees are treated as disposing of the shares at a price that results in no gain/no loss and as re-acquiring the shares at that time as nominee of the member (that is, ***section 576(1)*** which provides that a chargeable gain would otherwise arise does not apply).

These provisions apply to a person becoming absolutely entitled as against the trustees even if that person, being a minor or for any other legal disability, might not in general law become so entitled. ***par 4(6)***

Where a building society demutualises it is required to make a return to the Revenue Commissioners setting out in respect of each of its members ***par 4(7)***

—

- the name, address and PPS Number of the member,
- the number of shares in the successor company which the member has a right to acquire,
- the amount of new consideration which the member is required to give for those shares,
- the value of any assets of the society to which the member has a right, and
- such other information which the Revenue Commissioners may require.

In order to be able to supply the PPS Number of each member the society is required to request it from the member before the demutualisation.

Schedule 17

[*Section 705*]

Reorganisation into Companies of Trustee Savings Banks

Overview

The provisions of this Schedule, which are applied by ***section 705***, ensure neutral tax consequences where under the Trustee Savings Banks Act, 1989 trustee savings banks reorganise into companies.

Interpretation

"bank" is a trustee savings bank or a company controlled by the Minister for Finance or both, depending on the context. ***par 1***

"successor" is the company to which any property, rights, liabilities and obligations are transferred in the course of the transfer.

"transfer" means the transfer of all or part of a trustee savings bank's property and rights and all of its liabilities under an order made by the Minister for Finance, whether for —

- the reorganisation of a trustee savings bank into a "controlled" company (that is, controlled by the Minister for Finance),
- the reorganisation of a trustee savings bank into a "non-controlled" company, or
- the reorganisation of a "controlled" company into a "non-controlled" company.

Capital allowances

The transfer by a trustee savings bank of its assets to a successor company does not of itself give rise to any capital allowance or charge. The successor company is entitled to the capital allowances to which the bank would have been entitled if there had been no transfer. It is not, however, entitled to unused capital allowances which were carried forward. In the case of a trustee savings bank, these unused allowances would be carried forward separately as capital allowances (a trustee savings bank is not a body corporate and is liable to income tax not corporation tax). If they arose to a company they would become part of the companies trading losses for corporation tax purposes. That situation is dealt with in ***paragraph 3***. ***par 2***

Trading losses

The trading losses of the trustee savings bank may not be carried forward. A loss incurred by a trustee savings bank would not be available for set-off against trading income of a successor under the general rules of ***section 396(1)*** (relief for trading losses other than terminal losses). ***Paragraph 3*** ensures that a company which is not controlled by the Minister for Finance will not entitled to relief in respect of — ***par 3***

- losses incurred by it at a time when it was controlled by the Minister, and
- losses incurred by any other company which was controlled by the Minister.

It is possible under the Trustee Savings Banks Act, 1989 for the reorganisation of a "controlled" company to take the form of either the sale of shares by the Minister or the creation of a new company and the transfer of assets and liabilities to that company. These possibilities give rise to the need for the separate ***subparagraphs (a)*** and ***(b)***.

Financial assets

On a reorganisation the financial trading stock (financial assets bought for re-sale) of the bank is valued at its cost to the bank being reorganised. Furthermore, the transfer of financial assets in the course of a reorganisation is not treated as a disposal by the bank to the successor. However, when the successor disposes of those assets, its profit or loss on disposal will be determined by comparing the sale proceeds with the original cost of those assets. ***par 4***

Capital gains

Neither a gain nor a loss crystallises on the transfer of any assets in the course of a reorganisation. However, when the successor company subsequently disposes of any such asset, the gain is calculated as if the company had acquired the asset at the time and cost at which it was acquired by the trustee savings bank or the bank controlled by the Minister for Finance, as appropriate. ***par 5***

Unrelieved capital losses may be carried forward and set off against gains accruing to the successor company. Gains deferred under the replacement of business assets scheme (roll-over relief) do not crystallise on a reorganisation. The bank and the successor are, for that purpose, treated as the same person. Finally, a debt owed to a bank, which is not a chargeable asset, does not become a chargeable asset by reason only of a reorganisation of a trustee savings bank into a company.

Schedule 17A

[*Section 76A*]

Accounting Standards

Overview

This Schedule provides transitional rules to apply where a company's taxable profits begin to be calculated using IFRS standards, equivalent Irish GAAP standards, or for accounting periods beginning on or after 1st January 2015 'new' Irish GAAP standards to the extent that they embody IFRS. The transitional arrangements apply to each new standard as regards matters covered by the standard. Thus, the rules will be applicable to more than one accounting period where a company's accounts reflect a gradual move to such standards as may be the case as Irish GAAP gradually converges with IFRS. The purpose of the rules is, in the case of revenue recognition and gains and losses on financial assets and financial liabilities, to ensure that, on the move to IFRS/new Irish GAAP, no amounts are double counted for tax purposes and that no amounts fall out of the charge to tax. The Schedule also contains rules for bad debts and bad debts provisions to ensure that, where a debt is written off against a provision that has not been deducted for tax purposes, the write-off of the debt will be deductible for tax purposes.

Details

Definitions

The expression "relevant accounting standards" which is used in the schedule is defined as including: ***par 1***

- international accounting standards (IFRS).
- Irish GAAP which is based on published standards that are stated to embody IFRS and the application of which gives substantively the same results as IFRS. This includes a number of Irish GAAP standards issued in December 2004 and which specifically state that they embody IFRS. It is important to note, as respects the operation of the transitional provisions in the context of Irish GAAP converging with IFRS, that, as the opening words of paragraph (1)(b) of Schedule 17A make clear, this second category of "relevant accounting standards" is relevant only to matters covered by the published standards concerned.
- for accounting periods beginning on or after 1 January 2015, Irish GAAP based on published standards to the extent that the practice embodies international accounting standards. This addition to the definition of "relevant accounting standards" was introduced in Finance Act 2014 to extend the transitional arrangements to companies who are changing their accounting standards in order to comply with updated Irish accounting standards. This is particularly relevant for companies who are transitioning to the new Irish and UK Financial Reporting Standards (FRS) 102 and FRS 103. The wording in the definition deliberately restricts the transition provisions contained in the schedule to the elements of the practice that embodies IFRS-based standards. While substantial elements of FRS 102 continue to reflect old Irish GAAP, and will not give rise to transitional adjustments, FRS 102 does contain elements that embody international accounting standards and to that extent will give rise to adjustments under this schedule.

Note: If an entity has adopted new Irish GAAP standard FRS 102 or FRS 103, prior to 1 January 2015, the transitional rules contained in the schedule will be applied administratively, as appropriate, to these early adopters.

Amounts receivable and deductible – transitional rules

Transitional rules in the case of amounts receivable and deductible ensure against double counting or amounts falling out of the system. An example of double counting might be a fee of, say 300, received in respect of a 3 year contract and which is received, accounted for under old Irish GAAP and taxed up-front. If, under relevant accounting standards, the fee is to be accounted for over the period of the contract at a rate of 100 per year, and assuming that the company moves to IFRS/new Irish GAAP at the end of year 1, the position might be as follows: ***par 2***

	Year 1	Year 2	Year 3
Old Irish-GAAP Treatment	300		
IFRS Treatment/ New Irish GAAP	100	100	100

As the tax treatment would follow the accounting treatment, 300 would be taxed in year 1, 100 in year 2 and 100 in year 3. In the absence of a transitional measure, this would result in tax being charged on 500 in respect of the fee of 300.

The transitional measure requires the double counted amount (in this case 200) to be identified. The inclusion of that amount in a composite adjustment for tax purposes means in effect that it will be allowed as a deductible amount over a period of 5 years.

"Deductible amounts" are income amounts that would be double counted and expenses that that would not be counted at all while "taxable amounts" are income amounts that would otherwise not be counted and expenses that would be double counted. ***par 2***

"Deductible amount" is defined as—

- so much of any amounts receivable that are included in profits taxable under Case I or II by virtue of using relevant accounting standards as was also included in profits taxable under Case I or II *before* the move to relevant accounting standards, and ***par 2(1)(a)***
- so much of expenses of a company that would have been deductible in computing income under Case I or II if incurred in a relevant accounting period as:
  - was not deducted before the move to relevant accounting standards, and
  - is also not be deductible *after* the move to relevant accounting standards. ***par 2(1)(b)***

"Taxable amount" is defined as—

- so much of an amount receivable by a company and that would have been taxable under Case I or II if it had accrued in a relevant accounting period, as is not taken into accounting computing income under Case I or II either before or after the move to relevant accounting standards, and ***par 2(1)(a)***
- so much of any expenses of the company that are deductible in calculating income taxable under Case I or II for an accounting period after the move to relevant accounting standards as was also deducted in computing income for an accounting period before the move to relevant accounting standards. ***par 2(1)(b)***

Taxable amount exceeds deductible amount

If the "taxable amount" exceeds the "deductible amount" for a company, the excess is to be treated as a trading receipt for the company for its first accounting period for which relevant accounting standards are used. ***par 2(2)(a)***

The treatment is modified, however, by providing that the excess is not to be taxed fully in the first such accounting period. Instead, the excess is taxed in accounting periods falling ***par 2(2)(b)*** wholly or partly into the period of 5 years beginning at the commencement of the accounting period in which the change is made. The amount is to be allocated on a time basis to such accounting periods.

Where any accounting period for which such an amount is assessable is the last accounting period in which the company concerned carried on a trade or profession, any untaxed balance of the excess is to be taxed in that accounting period. ***par 2(2)(c)***

Deductible amount exceeds taxable amount

If the "deductible amount" exceeds the "taxable amount" for a company, the excess is to be treated as a deductible trading expense of the company for its first accounting period for which relevant accounting standards are used. The treatment is modified, however, by providing that the excess is not to be deducted fully in the first such accounting period. Instead, the excess is deducted in accounting periods falling wholly or partly into the period of 5 years beginning at the commencement of the accounting period in which the change is made. The amount is to be allocated on a time basis to such accounting periods. ***par 2(3)***

Where any accounting period for which such an amount is deductible is the last accounting period in which the company concerned carried on a trade or profession, any unallowed balance of the excess is to be deducted in that accounting period. ***par 2(3)(c)***

The rules do not apply to any amount which is dealt with in paragraph 4 of the Schedule – which provides transitional rules in the case of financial assets or liabilities. ***par 2(4)***

Bad debts provisions are not covered by paragraph 2 or 4. Special rules for these are contained in paragraph 3 (see below)

Bad Debts Provisions – transitional rules

Summary

Special transitional rules are applied in the case of bad debts provisions. The interaction between tax law and accounting practice means that provisions for doubtful debts are divided into specific provisions (which relate to estimations on specific debts) and general provisions. Any adjustment to such provisions is not taken into account for tax purposes to the extent that it relates to general provisions. Under relevant accounting standards the manner of calculating a provision for doubtful debts is more specific than heretofore and adjustments to such provisions which are properly calculated in accordance with the new standards will, in future, be treated as deductible for tax purposes. No adjustment to taxable profits is being made in respect of the restatement of the doubtful debts provision at the point of transition to relevant accounting standards. However, in the event that at any time the level of the provision for doubtful debts falls below its level at the point of moving to relevant accounting standards, an adjustment to taxable profits will be made at that time to ensure that there is no loss of deductibility for actual bad debts incurred.

Details

Definitions

"current bad debts provision" is defined in relation to an accounting period for which relevant accounting standards apply. It means the value of debts due to the company at the end of the accounting period that are estimated to be impaired (using the measure of impairment as set out in those standards). ***par 3(1)***

"first relevant period of account" is defined in relation to a company as the first period for which the company prepares accounts on the basis of relevant accounting standards.

"opening bad debts provision" is the value of debts due to the company that are estimated to be impaired (using the measure of impairment as set out in these standards) at the beginning of the company's first relevant period of account (i.e. its opening bad debts provision under relevant accounting standards).

"specific bad debts provision" is defined as the company's closing specific provision at the end of its last accounting period before the move to relevant accounting standards.

The transitional rule applies for a period of account for which accounts of a company are prepared on the basis of relevant accounting standards. ***par (2)***

The relief

The first step in calculating relief is to compare the opening (IFRS) bad debts provision with the higher of - ***par 3(3)***

- the current bad debts provision (i.e. the closing provision for the current year), and
- the specific provision (i.e. the closing specific provision before the move to relevant accounting standards).
- If the opening provision is greater than the higher of those two amounts, the excess is to be treated as a trading expense for the current accounting period. However, that amount is to be reduced by any amount treated as a trading expense by reference to this relief (i.e. under paragraph 3(3)) for any previous accounting period.

Example:

	Year 1	Year 2	Year 3	Year 4	Year 5
(a) Current BD Provision	80	90	60	55	40
(b) Specific BD Provision	50	50	50	50	50
Higher of (a) and (b)	80	90	60	55	50
Opening BD Provision	70	70	70	70	70
Treated as a trading expense	N/A	N/A	10	5	5
			(70–60)	(70–55 less 10)	(70–50 less 15)

Bar on double relief ***par 3(4)***

A debt which is taken into account under the bad debts transitional rules is not to be taken into account under the transitional rules relating to financial instruments.

Transitional rules for gains and losses on financial assets and liabilities

Summary

Transitional measures relating to gains and losses on financial assets and liabilities are provided for. Prior to the application of ***section 76B***, gains and losses on financial assets and liabilities were generally computed for tax purposes on a realised basis. Thus, where such an instrument was purchased for 100 and sold for 140, the gain of 40 was included in taxable income at the time of sale. Under relevant accounting standards, gains and losses on such instruments will be accounted for on the basis of the movement in the fair values of such instruments in accordance with the Income Statement – and that basis will also apply for tax purposes in accordance with ***section 76B***. For example, if the instruments cost 100 in year 1, rose in value to 110 by the end of year 1, fell in value to 95 by the end of year 2 and was sold in year 3 for 140, the taxable amounts would be as follows:

Year 1 10 increase (110 – 100)

Year 2 15 loss (95 – 110)

Year 3 45 increase (140 – 95)

Where a company moves from a realised basis for tax purposes to an effective unrealised basis (in accordance with the fair value movement reflected in the Income Statement), part of a gain or loss could fall out of account for tax purposes. For example, a company acquires a financial instrument for 100 in year 1, at the end of year 1 the instrument has a value of 120, in year 2 it rises in value to 130 and it is sold in year 3 for 150. If the company moves to relevant accounting standards for year 2, the taxable amount will be as follows:

Year 1 (GAAP) Nil (because realised basis applies)

Year 2 (IFRS) 10 (130 – 120)

Year 3 (IFRS) 20 (150 – 130)

The increase in value of 20 in year 1 falls out of account for tax purposes.

To deal with this, the paragraph identifies the amount of gains or losses, which could be either double counted, or fall out of account, for tax purposes. Once these amounts are calculated, a net adjustment is taken into account for tax purposes over a period of 5 years.

Where, prior to the move by a company to relevant accounting standards, trading income of a company in respect of particular financial assets and liabilities was computed for tax purposes on a "mark to market" basis, rather than the general realised basis, and after the move that income is computed on the basis of fair values, it is unlikely that there would be substantial change for the company in computing that income. Nonetheless, there may be instances where "fair value" under relevant accounting standards does not equal market value used previously. Where this gives rise to a prior year adjustment on the move to relevant accounting standards, any such adjustment will be dealt with under the transitional measures contained in this paragraph.

Details

"changeover day" is defined as the last day of the final accounting period before the move by the company to relevant accounting standards covering profits or gains or losses on financial assets or financial liabilities. ***par 4 (1)***

Deductible amount ***par 4(1)***

"deductible amount" contains two elements:

- an unrealised loss which is not counted at all for tax purposes, and
- an unrealised gain which might be counted twice for tax purposes.

Move from realised basis to unrealised basis

Paragraph (*a*) of the definition deals with the more common situation where a company will have been taxed on a "realised basis" up to the move to relevant accounting standards and then moves to an effective "unrealised basis" in accordance with the fair value movement reflected in the Income Statement.

Example:	A financial instrument cost	100 in 2004.
	It had a fair value of	80 at December 2004.
	It was sold for	110 in 2005.
Result:	Before relevant accounting standards the company is taxed on a realised basis. As nothing was realised, the loss of 20 does not crystallise for tax purposes.	

After the move to relevant accounting standards the company is taxed on movements in fair value reflected in the Income Statement. Fair value has increased from 80 to 110 in 2005 so the company becomes taxable on 30.

This means that, overall, the company would be taxed on 30 even though it only made a gain of 10 (110–100). This is because the fair value loss in 2004, being unrealised, was ignored.

Solution: The loss of 20 is identified as a "deductible amount".

Move from unrealised basis to realised basis

Paragraph (*b*) of the definition deals with an unusual situation where a company was effectively taxed on an "unrealised (mark to market) basis" before the move to relevant accounting standards and on an effective "realised basis" after the move to relevant accounting standards (because the assets concerned are categorised under relevant accounting standards as "available for sale" assets and as such, subject to impairment, any gain of loss will generally be recycled to the Income Statement on realisation.)

Example:	A financial instrument cost	100 in 2004.
	It had a fair value of	130 at December 2004.
	It was sold for	150 in 2005.

Result: Before relevant accounting standards the company was taxed on a "mark to market" basis on the increase in value of 30 in 2004.

After relevant accounting standards the company is taxed on an effective realised basis in accordance with the profit reflected in the Income Statement so that when the asset is sold in 2005, 50 is taxed (150–100).

This means that, overall, the company would be taxed on 80 (30 in 2004 and 50 in 2005) even though it made a gain of only 50.

Solution: The doubly-taxed amount of 30 is identified as a "deductible amount".

Taxable amount *par 4(1)*

"taxable amount" contains two elements:

- unrealised gains which might fall out of the system, and
- unrealised losses which might be taken into account twice for tax purposes.

Move from realised basis to unrealised basis

Paragraph (a) deals with the more common situation where a company will have been taxed on a "realised basis" up to the move to relevant accounting standards and then moves to an effective "unrealised basis" in accordance with the fair value movement reflected in the Income Statement.

Example:	A financial instrument cost	100 in 2004.
	It had a fair value of	130 at December 2004.

	It was sold for	150 in 2005.

Result: Before relevant accounting standards the company was taxed on a realised basis. As nothing was realised, the increase in value of 30 does not crystallise for tax purposes.

After the move to relevant accounting standards the company is taxed on movements in the fair value reflected in the Income Statement. Fair value has increased in 2005 so that the company becomes taxable on 20. This means that, overall, the company is taxed only on 20 even though it made a gain of 50.

Solution: The 30 that would otherwise not have been counted is identified as a “taxable amount”.

Move from unrealised basis to realised basis

Paragraph b deals with an unusual situation where a company has been taxed on an “unrealised (mark to market) basis” before the move to relevant accounting standards and on an effective “realised basis” after the move to relevant accounting standards (because the assets concerned are categorised under relevant accounting standards as “available for sale” assets” and as such, subject to impairment, any gain or loss will generally be posted directly to equity and recycled to the Income Statement on realisation).

Example:	A financial instrument cost	100 in 2004.
	It had a fair value of	80 in December 2004.
	It was sold for	90 in 2005.

Result: Before relevant accounting standards the company was taxed on a “mark to market” basis and would have been given relief for the loss of 20 in 2004.

After relevant accounting standards the company is taxed on an effective “realised basis” in accordance with the accounting treatment and will be entitled to relief for the loss of 10 (100–90), reflected in the Income Statement.

This means that, overall, the company would get loss relief of 30 (20 in 2004 and 10 in 2005) even though it actually made a loss of only 10.

Solution: The doubly relieved amount of 20 is identified as a “taxable amount”.

Taxable amount exceeds deductible amount

If the “taxable amount” exceeds the “deductible amount” for a company, the excess is to be treated as a trading receipt for the company for its first accounting period for which relevant accounting standards covering financial assets and liabilities are used ***par 4(2)(a)***

The excess is not to be taxed fully in the first such accounting period. Instead, the excess is to be taxed in accounting periods falling wholly or partly into the period of 5 years beginning at the commencement of the accounting period in which the change is made. The amount is to be allocated on a time basis to such accounting periods. ***par 4(2)(b)***

However, where any accounting period for which such an amount is assessable is the last accounting period in which the company concerned carried on a trade or profession, any untaxed balance of the excess is to taxed in that accounting period. ***par 4(2)(c)***

Deductible amount exceeds taxable amount

If the "deductible amount" exceeds the "taxable amount" for a company, the excess is to be treated as a deductible trading expense of the company for its first accounting period for which relevant accounting standards covering financial assets and liabilities are used. ***par 4(3)(a)***

However, the excess is not to be deducted fully in the first such accounting period. Instead, the excess is to be deducted in accounting periods falling wholly or partly into the period of 5 years beginning at the commencement of the accounting period in which the change is made. The amount is to be allocated on a time basis to such accounting periods. ***par 4(3)(b)***

Where any accounting period for which such an amount is deductible is the last accounting period of the company in which the company carried on a trade or profession, any unallowed balance of the excess is to be deducted in that accounting period. ***par 4(3)(c)***

Spreading of certain losses

An anti-avoidance measure prevents a company avoiding the spreading of losses under the above provision by realising losses on financial assets and liabilities before the move to relevant accounting standards. ***par 4(4)(a)***

Although the measure is not made conditional on there being a tax avoidance motive, in practice it will be accepted that a company need not apply the measure to financial assets and liabilities the taxable profit on which was calculated on a mark to market basis prior to the move to relevant accounting standards as there is unlikely to be a significant advantage in such circumstances.

The measure applies to losses incurred by a company on the disposal in the course of a trade or profession of financial assets and liabilities which the company replaces with similar instruments within a period of 4 weeks before or 4 weeks after the disposal. Disposals are caught by the provision if they take place within a period of 6 months before the first accounting period of the company for which its accounts are prepared using relevant accounting standards in relation to financial assets and liabilities. However, a disposal before 1 January 2005 is not affected by the provision.

The losses are not to be deducted fully in the accounting period in which they arise. Instead, the loss is to be allowed in accounting periods falling wholly or partly into the period of 5 years beginning at the commencement of the accounting period in which the change is made. The amount is to be allocated on a time basis to such accounting periods. ***par 4(5)(a)***

Where any accounting period for which such an amount is deductible is the last accounting period in which the company carried on a trade or profession, any unallowed balance of the loss is to be deducted in that accounting period. ***par 4(5)(b)***

Schedule 18

[*Section 734(5)*]

Accounting for and Payment of Tax Deducted from Relevant Payments and Undistributed Relevant Income

Overview

This Schedule sets out the framework for returns and payments of appropriate tax by collective investment undertakings (CIU's) and provides that, in general, existing provisions for the assessment and collection of income tax, and for the charge of interest on overdue tax, apply, with suitable modification, to appropriate tax. The Schedule provides specifically that appropriate tax is to be payable without the necessity for raising an assessment, but provision is made to empower an inspector to raise an assessment if payment is delayed, or if it is considered necessary to do so because of dissatisfaction with the particulars contained in a return.

Time and manner of payment

The collection and recovery of appropriate tax deducted in accordance with ***section 734(5)*** is governed by this paragraph. ***par 1(1)***

A CIU must make annual returns to the Collector-General for each year ending on 5 April (with effect from 5 April, 1990 onwards) of —

- relevant payments made by it in the year,
- undistributed relevant income, and
- the appropriate tax at the prevailing standard rate of income tax deductible therefrom.

The return is to be made within 15 days from 5 April. Even if an undertaking fails to deduct tax from a payment, it is nonetheless obliged to account in the end-of-year return for the amount of the appropriate tax relating to that payment. ***par 1(2)***

The appropriate tax should be paid to the Collector-General within 15 days of the 5th of April (the return date). The tax is payable without the making of an assessment but, for the purposes of securing collection of the tax or any interest on such tax, an assessment may be made by the inspector if the appropriate tax, or any part of that tax, due for the year is not paid on time. ***par 1(3)***

The inspector can make an estimated assessment where a CIU has not made a return, or has made an inadequate return, or has made a return with which the inspector is dissatisfied. The due date for any tax contained in such an assessment is, for the purposes of interest on unpaid tax, the date on which the tax should have been paid without the making of an assessment if a correct return were made in due time. ***par 1(4)***

There is a provision to make any appropriate adjustments to the tax liabilities of a CIU (and, if necessary, of a unit holder) where a return contains incorrect information. For example, the CIU might erroneously indicate in a return that appropriate tax was deducted from a payment made to a non-resident unit holder. ***par 1(5)***

While, normally, appropriate tax is due and payable without the making of an assessment, the due date for appropriate tax contained in an assessment (if any assessment must be made) is one month after the issue of the notice of assessment. However, that due date cannot displace an earlier due date which would have been applicable under ***subparagraph (3)***. If the assessment is appealed, the appropriate earlier due date continues to apply. ***par 1(6)(a)***

Any tax overpaid on determination of an appeal against such an assessment is to be repaid. ***par 1(6)(b)***

The income tax provisions relating to assessment, appeals and collection (including, for example, provisions relating to interest on tax) are applied to appropriate tax. ***par 1(7)(a)***

Interest is due on late payment of appropriate tax which is payable under ***subparagraph (3)*** without the making of an assessment. Assessed appropriate tax is subject to the normal interest provisions applying to assessed taxes. ***par 1(7)(b)***

Certain payment and procedural provisions of ***section 1080*** which apply to interest on assessed taxes, are applied to interest payable on appropriate tax which is payable without the making of an assessment. ***par 1(7)(c)***

Where appropriate tax is charged by assessment so that the normal provisions providing for an interest charge apply under ***section 1080***, that section is adapted for this purpose by the deletion of ***subsection (1)(b)***. ***par 1(7)(d)***

Returns are to be made on a Revenue approved form and incorporates a declaration which must be made to the effect that the return is correct and complete. ***par 1(8)***

Statement to be given on making of relevant payment

A unit holder is assessed to tax in respect of a payment from a collective investment undertaking as if the unit holder has got the payment directly. To enable this to happen the undertaking must give the unit holder a certificate which shows — ***par 2***

- the gross amount of the payment,
- the amount of any appropriate tax or other Irish tax deducted from the profits out of which the payment is made,
- the net amount of the payment,
- the date of the payment, and
- any other information which will assist the unit holder in paying his or her correct tax or getting a refund (such information could include an analysis between income and capital payments; and foreign tax paid).

Schedule 18A

[*Section 626A*]

Restriction on Set-off of Pre-entry Losses

Overview

This Schedule is an anti-avoidance provision, the purpose of which is to curb an abuse whereby companies with unused capital losses could be bought by other companies to use these losses to shelter gains from tax liability. The Schedule restricts the extent to which these "pre-entry losses" of a company can be used to shelter gains accruing to a company or a group of companies after the company with an unused loss has joined the group.

The term "pre-entry losses" refers to losses accruing to the company before entry to the group as well as losses on the sale of assets brought in. While the provision ensures that these losses cannot be used subsequently by a group which had no previous commercial connection with the company when those losses accrued, that company will be allowed to use those losses itself in the same way that it could have had it never entered the group.

Details

The Schedule comprises 5 paragraphs and makes provision in relation to losses accruing to a company before the time it becomes a member of a group and losses accruing on a subsequent disposal of assets held by the company at that time.

Application and construction of Schedule

The Schedule applies to a group of companies and refers to this as "the relevant group". ***par 1(1)***

A "pre-entry loss" is defined as — ***par 1(2)***

- an allowable loss accruing to a company before it joined the relevant group and which has not been previously allowed against gains accruing to the company, or
- the pre-entry proportion of an allowable loss accruing on the disposal of a "pre-entry asset". This pre-entry proportion is calculated in accordance with ***paragraph 2*** of the Schedule.

A "pre-entry asset" is defined as an asset held by a company before the occurrence of a "relevant event". The term "relevant event" is defined in ***subparagraph (3A)***. ***par 1(3)***

A "relevant event" means the following:

Where a company was within the charge to Irish tax in respect of the asset concerned at the time it became a member of the group, the relevant event is the company becoming a member of the group. ***par1(3A)(a)(i)***

- Where an asset is transferred to an SE or SCE in the course of its formation by a merger then —
  - generally the relevant event will be the asset becoming a chargeable asset in relation to the SE or the SCE, or
  - if, when the SE or SCE is formed, the asset was a chargeable asset of a company that cease to exist in the formation of the SE or SCE, the relevant event will be the time at which the asset becomes a chargeable asset of that company ***par1(3A)(a)(ia)***
- Where the company was not within the charge to Irish tax at the time it became a member of the group, the relevant event is the time at which the company comes within the charge to Irish tax in respect of the asset concerned. A company may be within the charge to Irish tax in respect of an asset either by being resident in the State or by virtue of the fact that the asset was a "chargeable asset" in relation to the company. ***par 1(3A)(a)(ii)***

An asset is regarded as a "chargeable asset" in relation to a company at any time if, were the asset to be disposed of by the company at that time or, if the company is an SE or an SCE, by reason of the asset having been transferred to the SE or the SCE on its formation, any gain accruing would be a chargeable gain. ***par 1(3A)(b)***

An exception is made to the definition of "pre-entry asset" in ***subparagraph (3)*** where an asset is brought into a group by a company, sold to a third party and subsequently reacquired by the group. If any interest in the asset is retained, however, that interest is a "pre-entry asset". ***par 1(4)***

The "relevant time" is defined as the time the company enters the group or the last such time if it has entered on more than one occasion. In addition the asset is a "pre-entry asset" if it would be a "pre-entry asset" in respect of any occasion the company joined the group. This is necessary to prevent manipulation of group entry to turn a "pre-entry asset" into one which is not. ***par 1(5)***

Provision is made for an effective "look through" principle where the principal company of a group joins another group and the two groups are treated as the same group by virtue of of ***subsections (3)*** or ***(3A)*** of ***section 616*** and the second group together with the first group is, as a result of this, also the relevant group. In this situation the companies in the first group will be treated for the purposes of this Schedule as having joined the second group at the time the principal company of the first group joined the second group. ***Subsections (3)*** or ***(3A)*** of s***ection 616*** would otherwise have deemed this joining to have taken place when the companies joined the first group. ***par 1(6)***

Provision is made for an exception to the rule contained in ***subparagraph (6)***. This exception applies where the owners of the second group are the same as the owners of the first group and the principal company of the second group was not a principal company of any previous group and now simply holds all or most of the issued share capital of the company which was the principal company of the first group. This situation might apply where a new holding company is set up to be the principal company for the existing group. In such circumstances the "relevant time" is the time the companies joined the first group. ***par 1(7)***

Two assets will be treated as the same asset if the value of one is derived from the other (such as a freehold derived from a leasehold). If the first asset is a "pre-entry asset" in these circumstances then the second asset is also. ***par 1(8)***

Provision is made for the special situation of the annual deemed disposal of assets held by the life fund of life assurance companies (***section 719***) and undertakings for collective investment (***section 738(4)(a)***). The 7 year spreading provisions in ***sections 720*** and ***738(4)(b)***, respectively, are ignored. ***par 1(9)***

Calculation of pre-entry loss by reference to market value

The pre-entry loss on such a disposal is the smaller of the amounts determined by ***subparagraph (2)***. ***par 2(1)***

These amounts are calculated as follows — ***par 2(2)***

- the amount of the loss which would have accrued if the asset had been disposed of at the time of group entry by the company, or
- the loss accrued on the actual disposal.

Gains from which pre-entry losses are to be deductible

Pre-entry losses are losses which actually accrued to the company before it joined the group.

These losses can be set against gains — ***par 3(1)***

- on assets disposed of by the company before it joined the group,
- on assets disposed of after entry but which were held by the company before entry, and
- on the disposal of assets, acquired by the company on or after entry from a 3rd party and which have been used continuously by the company for the purposes of a trade which the company has continued to engage in since before entry into the group.

The pre-entry proportion of an allowable loss on a pre-entry asset, i.e. assets brought into the group by the company on entry, can be set against gains as set out in ***subparagraph (1)***. ***par 3(2)***

Provision is made for the situation where 2 or more companies, which were group companies, together join a new group. For the purposes of setting pre-entry losses against gains on the disposal of assets brought into the new group the companies are treated effectively as the same company. This treatment also applies in relation to the pre-entry proportion of allowable losses on the disposal of pre-entry assets. Similarly the companies are treated as one company in relation to the setting of losses against gains on the disposal of assets acquired, before or after entry to the new group from third parties where the same trade has continued uninterrupted throughout the period. ***par 3(3)***

Change of a company's nature

This paragraph relates to the elements in ***paragraph 3*** which require the trade of a company to continue uninterrupted from before to after entry into a new group.

Provision is made that in any 3 year period during which a company enters a group and where either the nature of the company's trade alters fundamentally or reactivates after having been essentially dormant, the activity (if any) which was carried on before entry is to be disregarded for the purpose of ***paragraph 3***. This means that a gain on the disposal of assets, acquired after entry from 3rd parties, can be reduced by pre-entry losses even though the trade has changed. ***par 4(1)***

An indication of what is meant by a change in the nature or conduct of a trade is given and includes a change which is gradual and which extends over a period greater than 3 years. ***par 4(2)***

The time limit for assessments in relation to such changes is extended to 6 years after the time of entry into the new group. ***par 4(3)***

Companies changing groups on certain transfers of shares, etc

This paragraph specifies these circumstances as follows — ***par 5***

- where a company changes from membership of one group to another because of a disposal of shares, etc in that company, and
- the disposal is one to which neither a gain or loss accrues to the disponer by virtue of any provision in the Tax or Capital Gains Tax Acts. This could be as a result of a merger of two companies or a reconstruction of a group.

In these circumstances the period of membership of the first group is included in the period of membership of the second group and "pre-entry losses" and the pre-entry proportion of allowable losses on the disposal of "pre-entry assets" are determined with reference to the time the company joined the first, not the second, group. Without this provision there could be a restriction on allowability of losses caused by the sale of shares as part of the reconstruction. Such a restriction would not be appropriate in these circumstances.

Schedule 18B

[*Section 697A*]

Tonnage Tax

Overview

This Schedule contains provisions which are supplemental to the principal tonnage tax provisions contained in ***Part 24A***. The Schedule consists of 5 parts as follows:

Part 1: deals with matters relating to election for tonnage tax.

Part 2: is concerned with matters relating to qualifying ships.

Part 3: concerns capital allowances and balancing charges.

Part 4: deals with issues relating to groups, mergers and demergers.

Part 5: is concerned with miscellaneous and supplementary matters.

PART 1

Matters relating to Election to Tonnage Tax

Details

Part 1 provides the detailed rules relating to making a tonnage tax election, when such an election takes effect, the period on election is in force and related matters.

Method of making and giving effect to an election

The way elections are to be made is regulated by giving Revenue power to specify the information to accompany an election and require evidence to support the election.

An election is made by notice to the Revenue Commissioners on a prescribed form and will not come into effect until the necessary information required by the Revenue is provided to their satisfaction. ***par 1***

When election may be made

An initial period of 36 months, beginning from 28 March 2003, is provided within which a qualifying company must elect for tonnage tax (the initial period). ***par 2(1)***

Provision is also made where an election for tonnage tax may be made after the expiry of the initial period. ***par 2(2)***

If a company becomes a qualifying company after the end of the initial period and it was not a qualifying company before so becoming one, the company may elect for tonnage tax within the period of 36 months after becoming a qualifying company. ***par 2(3)***

Similar provision is made in the case of groups. However, the extension of the time within which an election may be made does not apply in the case of a group which was previously a qualifying group (e.g. where a group company was a qualifying company in the initial period and subsequently became a non-qualifying company and another group company becomes a qualifying company after the initial period) or where a group of companies which becomes a qualifying group after the initial period but is still substantially the same as a group which was a qualifying group in the initial period. This could arise where a qualifying group became non-qualifying in the initial period by divesting itself of its shipping interest and then became qualifying by buying most of those interests back. Such a group would be "substantially" the same group as before. ***par 2(4)***

This provision does not affect an election which is made under ***Part 4*** relating to mergers, etc. ***par 2(5)***

The Minister for Finance may by order to provide further periods within which an election may take place. ***par 2(6)***

When election takes effect

An election will usually take effect from the start of the accounting period in which it is made. This is subject to a restriction which prevents an election taking effect for an accounting period beginning before 1 January 2002. Where this would be the result of an election, the election is to take effect from the beginning of the accounting period following that in which it is made. ***par 3(1) & (2)***

Provision is also made giving Revenue discretion to allow an election to take effect from an earlier accounting period than would be the case under the general rule (but not for an accounting period beginning before 1 January 2002). This discretion would only be used where there was a legitimate commercial reason for using it. ***par 3(3)***

There needs to be exceptional circumstances for Revenue to exercise its discretion to allow a postponement of an election until the beginning of the next following accounting period. By "exceptional circumstances" is meant circumstances which are such that it is commercially impracticable for the election to take effect under the normal rules. For example, contractual arrangements which are impossible to unravel in sufficient time in order to qualify under the limit on the amount of tonnage chartered in or unusually complex re-structuring. As a safeguard it is made clear that these circumstances cannot relate to avoidance or reduction of a tax liability. ***par 3(4)***

Provision is also made for the application of this paragraph in relation to a group the members of which have different accounting periods. ***par 3(5)***

An election under ***subparagraph (3)*** or ***(4)*** has affect from the time the company becomes a qualifying company. However, this is made subject to ***section 697E(4)(a)*** and ***(b),*** which overrules this provision if the 75% limit on the net tonnage chartered in, in the first and second accounting period for which the company elected into tonnage tax is breached. Where this happens the election is not to have effect for those accounting periods, but the election will have effect for subsequent accounting periods. ***par 3(6)***

NOTE: Removal of the 75% limit, is under consideration in line with the liberalisation of EU State Aid rules. Provisions have been made allowing for the deletion of ***section 697E*** and certain consequential amendments. However this is subject to Commencement Order which has not been made to date. Accordingly ***section 697E*** remains in place pending the making of this Order.

Period for which election is in force

A tonnage tax election is to have effect for a 10 year period unless it ceases to be in force as a consequence of the company or group ceasing to be a qualifying company or group or the election ceasing under ***Part 4***. ***par 4***

Effect of election ceasing to be in force

A ceased tonnage tax election has no effect in relation to the company concerned. In other words, the company can no longer compute its profits on the basis of the tonnage tax profits calculation. ***par 5***

Renewal election

A company, in respect of which a tonnage tax election is in force, can make a further election called a renewal election. This continues the period tonnage tax applies for a period of 10 years from the renewal election. The necessary adaptations of the provisions relating to the making of an election are made in relation to such a renewals election. A renewal election supersedes any existing election. ***par 6***

PART 2

Matters relating to qualifying ships

Overview

Part 2 to a large extent supplements the definition of "qualifying ship" in ***section 697A***. It contains provisions relating to the meaning of operating a qualifying ship; the effect on a company of ceasing to operate a qualifying ship; and the use of a qualifying ship for activities which are excluded from the tonnage tax system.

Company temporary ceasing to operate a qualifying ship

Rules are set out for determining when a company is to be taken as ceasing to operate a qualifying ship. The intention is to allow a company to remain within tonnage tax even where it temporarily ceases to operate qualifying ships. These provisions are particularly directed at small companies where as a result of a loss of a ship at sea, a company may cease to operate a qualifying ship. Without this provision such a company could otherwise be excluded from tonnage tax for 10 years under the rule in ***section 697O***. It could also apply to a group where the group decided to sell all its qualifying ships at once. A cessation of 3 months or less will be treated as a temporary cessation, unless there is evidence to the contrary. A company that takes advantage of this provision will calculate its tonnage tax profits for an accounting period as though it still operated the same ships as immediately before the temporary cessation. ***par 7***

Meaning of operating a ship

A company is regarded as operating any ship owner by or chartered to it. A company does not operate a ship chartered out by it on a bareboat charter unless the charter out is to a company which is both a qualifying company and a member of the same group as the group the owner of the ship belongs to. In such a case, the owner is regarded as operating the ship. Also a company, does not cease to operate a ship it charters out on bareboat charter if the ship is temporarily surplus to the company's requirements and the charter terms do not exceed 3 years. ***par 8(1) to (5)***

The meaning of operating a qualifying ship in the context of providing ship management services is clarified. Real economic activity is required before the provision of ship ***par 8(6)*** management services is to be regarded as operating a qualifying ship. The intention here is to minimise the possibility of "brass plate" style operations. All elements must be present in order for the company to be regarded as operating a qualifying ship. Regardless of whether a company is regarded as operating a qualifying ship under this provision the company, to be a qualifying company, must carry on the strategic and commercial management of those ships within the State.

Qualifying ship used as vessel of an excluded kind

A means for determining when a qualifying ship begins to be used as a vessel of an excluded kind is provided for by this paragraph. Relief is provided for a company where a ship temporarily ceases to be a qualifying ship. ***par 9***

PART 3

Capital allowances, balancing charges and related matters

Overview

Part 3 is concerned with matters relating to capital allowances. ***Paragraphs 10*** and ***11*** provide for transitional measures governing the capital allowance treatment of plant and machinery acquired before entry into tonnage tax. ***Paragraphs 12, 13*** and ***14*** deal with the capital allowance treatment of plant and machinery acquired after entry into tonnage tax. ***Paragraphs 15*** to ***18*** are concerned with balancing charges and reliefs relating to such charges in relation to plant and machinery. ***Paragraph 19*** deals with the capital allowance treatment of plant and machinery following exit from tonnage tax. ***Paragraph 20*** provides for the capital allowance treatment of industrial buildings.

Plant and machinery used wholly for tonnage tax trade

This paragraph has three aspects. Firstly, it provides rules for the capital allowance treatment of machinery and plant acquired before entry into tonnage tax and taken into tonnage tax by a company. Secondly, it provides rules for the capital allowance treatment of such assets which following use wholly and exclusively for the purposes of the company's tonnage tax trade begin to be used wholly for other purposes. Thirdly, it deals with the situation where such assets begin to be used partly for tonnage tax purposes and partly for other purposes.

Where machinery or plant is taken into the tonnage tax regime by a qualifying company and the machinery or plant is to be used wholly and exclusively for the purposes of the tonnage tax trade, then— ***par 10(1)***

- neither a balancing charge or balancing allowance is triggered as a result of the machinery or plant starting to be used for the purposes of the tonnage tax trade (the provisions of section ***697O(1)*** which prevent a tonnage tax trade from being treated as a trade for the purposes of the capital allowances provisions combined with the provisions of ***section 288*** in particular the event described at section ***288(1)(b),*** could, without this provision, trigger a balancing charge or balancing allowance once the machinery or plant was taken into the tonnage tax trade),
- any capital allowance which would normally be due in respect of capital expenditure on the machinery or plant is not to be made for any accounting period in which the company is within tonnage tax (it is likely that the provisions of section ***697O(1)*** already referred to would prevent the making of any such allowances but this provision is included for the sake of emphasising that capital allowances are not to be made in respect of assets used for purposes of a tonnage tax trade),
- the provision (***section 288)*** which deems a normal wear and tear allowance to have been taken in circumstances where machinery or plant has been used by a person and no wear and tear allowances have been given in respect of it is not to apply as

respects any accounting period for which the asset is used wholly and exclusively for the company's tonnage tax trade (this effectively freezes the capital allowances situation of assets taken into tonnage tax).

Where an asset is taken into tonnage tax and used wholly for purposes of the tonnage tax trade and subsequently begins to be used wholly for purposes other than the company's tonnage tax trade, then — ***par 10(2)(a) & (b)***

- no balancing allowance, if one might be possible, is to be made on the change of use,
- for the purposes of making a balancing charge, if such a charge would arise, a deemed wear and tear allowance is not to be made under ***section 296*** for any accounting period in which the asset was used for the purposes of the tonnage tax trade (The effect of this is that the period for which the asset is used in the tonnage tax trade is disregarded for the purposes of determining the amount of capital allowances made in respect of the expenditure on the asset. This means that the amount of the capital expenditure un-allowed as capital allowances is frozen at the amount un-allowed on entry into tonnage tax. Where this amount (i.e. the amount of capital expenditure still un-allowed) is less than the disposal proceeds or, if the machinery or plant is not sold, the open market price of the asset, a balancing charge arises. Under normal rules the amount of the balancing charge is the excess of the proceeds or open market price over the un-allowed expenditure.),
- for the purposes of tonnage tax, instead of taking the proceeds or open-market value for the purposes of calculating the balancing charge, the least of the actual cost of the machinery or plant, the open-market value on entry to tonnage tax and the proceeds or open-market value on disposal is to be taken.

The effect of the above is that any clawback of capital allowances by way of a balancing charge will only be in respect of capital allowances granted when the asset was used outside of tonnage tax. ***par 10(2)(c)***

Similar provision is made where an asset begins to be used partly for purposes of a tonnage tax trade and partly for other purposes. Where this happens the asset is to be treated as two separate assets, one in use for the purpose of the tonnage tax trade and one in use for other purposes. The provisions in ***subparagraph (2)(b)*** apply in relation to that part of the asset treated as in use wholly and exclusively for the purposes of the company's tonnage tax trade. The part of the asset which is treated as in use wholly and exclusively for purposes other than the company's tonnage tax trade may itself be used in another trade of the company (in which case capital allowances would again be appropriated) or may be used for purposes other than a trade (in which case capital allowances would not be made).

Plant and machinery used partly for purposes of tonnage tax trade

This provision deals with the capital allowances situation of machinery or plant which on entry to tonnage tax is used by a company partly for the purposes of the company's tonnage tax trade and partly for purposes other than the company's tonnage tax trade. ***par 11***

In such situations, the asset is to be treated as two separate assets one in use wholly and exclusively for the purposes of the company's tonnage tax trade and the other part in use wholly and exclusively for other purposes.

As respects the part treated as in use wholly and exclusively for the purposes of the tonnage tax trade, ***paragraph 10(1)(b)*** and ***paragraph 10(2)(b)*** apply to modify the capital allowance position to cater for the introduction of the part of the asset into the tonnage tax trade of the company and its disposal out of the tonnage tax trade.

As respects the part treated as in use for purposes other than the tonnage tax trade, if this part is in use for the purposes of another trade carried on by the company capital allowances and balancing charges are to be made on such a basis as would be just and reasonable in the circumstances.

Plant and machinery: change of use of non-tonnage tax asset

This provision gives the rules relating to the capital allowance treatment of assets acquired by a company in the period in which it is subject to tonnage tax and used partly for purposes of the tonnage tax trade and partly for other purposes. ***par 12***

It is not necessary to make separate provision for assets acquired while the company is within tonnage tax and used wholly for purposes of the tonnage tax trade as the general provision in ***section 697O(1)*** ensures that no capital allowance can be given in such circumstances. If no capital allowances are given, no balancing charge can arise when the asset is disposed of. Where the asset is retained until the company comes out of tonnage tax, ***paragraph 19*** makes provision for the capital allowance treatment of the asset after the company leaves tonnage tax.

For a similar reason, there is no need to make provision for such assets being diverted or part of such an asset being diverted to non-trade use as there are no capital allowances consequences because the asset once acquired for the purposes of the tonnage tax trade is outside of the capital allowances regime.

The only situation which needs to be addressed is where the asset is wholly or partly put to use in another trade of the company. In such a case the asset is treated as two separate assets and the part used for the purposes of the other trade of the company is given capital allowances on the basis of a just and reasonable apportionment.

Plant and machinery: change of use of tonnage tax asset

This paragraph makes provision for the capital allowance treatment of assets acquired after entry to tonnage tax but which subsequently begin to be wholly or partly used for the purposes of another trade. ***par 13***

Provision is not needed where the asset begins to be used for non-trade purposes either wholly or partly as there are no capital allowances consequences in such an event.

Where the asset is either sold or put to use in another trade of the company, capital allowances will be available as if the company had acquired the asset in the accounting period in which the asset is first put to such use. The amount of expenditure qualifying for capital allowances will be the lesser of the actual cost of the asset (either to the tonnage tax company or any other company which acquires the asset) and the open market value of the asset at the time it is diverted to such use.

Where such an asset begins to be used partly for the purposes of the tonnage tax trade and partly for other purposes, the asset is treated as two separate assets. Where this happens the capital allowances to be made in respect of the part treated as in use for the other trade of the company are made on a just and reasonable basis.

Plant and machinery: change of use of non-tonnage tax asset

This provision deals with a situation where a company diverts either wholly or partly an asset used for the purposes of another of its trades into its tonnage tax trade. Where this happens on the basis that the asset begins to be used wholly for the purposes of the tonnage tax trade— ***par 14***

- no balancing charge or allowance is to be made as a consequence,
- where a balancing charge arises subsequent to the change of use, any such charge shall only be made in respect of capital allowances made in respect of that asset for periods in which the asset was in use for the purposes of a trade other than the company's tonnage tax trade.

Where only part of such an asset begins to be used for purposes of the company's tonnage tax trade, similar provisions apply so as to ensure that any balancing charge arising on a subsequent change of use of that part will be made in respect of the part so used.

Plant and machinery: provisions relating to balancing charges

This paragraph makes administrative provisions in relation to balancing charges to be made on a tonnage tax company as a consequence of this Schedule. ***par 15(1) & (2)***

Relief against any such balancing charge is only available under either ***paragraph 16*** or ***17***, but not both. On the first occasion on which a balancing charge arises the company must irrevocably elect for one or other relief and only this relief can apply on the occasion of any subsequent balancing charges arising. ***par 15(3) & (4)***

Relief under ***paragraph 16*** or ***17*** is not available unless an election under this paragraph is in force. ***par 15(5)***

Reduction in balancing charge by reference to time in tonnage tax

Relief against a balancing charge by reference to the time the company has been in tonnage tax is provided. The balancing charge is reduced by 20% for each full year the company is within tonnage tax. ***par 16***

Set-off of accrued losses against balancing charge

Any losses which accrued to the company before its entry into tonnage tax and which are referable to the activities taken into tonnage tax may be set against any balancing charge arising on a tonnage tax asset. ***par 17***

Deferment of balancing charge on re-investment

The deferment of a balancing charge is allowed where within the stated period the company or another qualifying company which is a member of the same group as the company which disposes of the ship re-invests in one or more qualifying ships (other assets do not qualify). The deferred balancing charge is the amount as reduced using either of the reliefs provided by ***paragraph 16*** or ***17***. Any balancing charge so deferred is recovered on the disposal of the new asset, if no further re-investment is made, by way of a new balancing charge. Technically the original balancing charge is cancelled on re-investment and once the group ceases to re-invest in qualifying ships a new balancing charge in made on whichever company incurred the expenditure on the new asset. ***par 18(1) to (3)***

The existing re-investment relief in ***section 290*** does not apply where this relief applies. ***par 18(4)***

Where the tonnage tax company leases a ship in such circumstances that the burden of wear and tear falls on the company and as a consequence the company would have obtained the capital allowances to be made in respect of the capital expenditure before entry into tonnage tax and as a consequence would be liable for any balancing charge on disposal, then this relief applies in respect of any replacement asset. ***par 18(5)***

Exit: plant and machinery

This paragraph provides for the capital allowance treatment of a company following its exit from tonnage tax on the expiry of its election (i.e. after 10 years).

As respects assets acquired at a time when the company is subject to tonnage tax and used in the tonnage tax trade, they are to leave the tonnage tax regime at the lower of the actual cost or market value at the date of exit. ***par 19(1)***

For the purposes of making capital allowances in respect of these assets for the on-going trade of the company, allowances are to be made as if the deemed cost were expenditure incurred by the company on the day following the date the company left the tonnage tax regime. ***par 19(2)***

As respects machinery or plant taken into tonnage tax and still held by the company on exit, all allowances that would have been made for such assets for any period in which the company was subject to tonnage tax are to be made once the company leaves tonnage tax. In other words, the capital allowances 'frozen' on entry are made available to the company on exit. ***par 19(3)***

Industrial Buildings

Where any part of an industrial building is used for the purposes of a company tonnage tax trade, that part effectively ceases to be treated as an industrial building. The result is that industrial buildings writing down allowance will not be available in respect of that part for the period the company is within tonnage tax. ***par 20(1)***

Provision is made for balancing charges to be made in respect of capital allowances made in respect of such a building before the company entered tonnage tax. ***par 20(2)***

The reliefs available under ***paragraphs 16*** and ***17*** for balancing charges arising on a company while in tonnage tax apply also to a balancing charge under this paragraph.

Once an industrial building is sold out of tonnage tax or following exit of a company from tonnage tax, the quantum of capital allowances available is to be the same as if the industrial building had ceased to be used for trade purposes for the duration of the time the building was used for tonnage tax purposes. ***par 20(3) & (4)***

PART 4

Groups, mergers and related matters

Company not to be treated as member of more than one group

Rules are set out for determining what group a company should be treated as a member of where, under the definition of group in ***section 697A*** it could be treated as a member of more than one group. ***par 21***

Arrangements for dealing with group matters

This is an administrative measure authorising Revenue to enter into arrangements with groups so as to simplify and streamline the application of the tonnage tax rules in relation to groups. ***par 22***

Meaning of "merger" and "demerger"

Meanings are provided for the terms "merger" and "demerger" for the purposes of this Schedule. ***par 23***

Merger: between tonnage tax groups or companies

Where two or more tonnage tax groups, two or more tonnage tax companies or two or more tonnage tax groups and companies merge the group resulting from the merger is treated as a tonnage tax group as if the resultant group had made a group election. This deemed election has effect for a period which is the same as the period which has longest left to run of the pre-existent tonnage tax elections made by any of the merged groups or companies. ***par 24***

Merger: tonnage tax group/company and qualifying non-tonnage tax group/company

Where a tonnage tax group or company mergers with a qualifying non-tonnage tax group or company, the resultant group may elect to be treated as if a group election had been made (with the deemed election treated as having effect for the period for which the original group or company election would have had effect) or for the original tonnage tax election ***par 25*** made by the group or the company to cease to have effect from the date of the merger.

Merger: tonnage tax group or company and non-qualifying group or company

Where there is a merger between a tonnage tax group or company and a non-qualifying group or company, the resultant group is treated as a tonnage tax group by virtue of the original election of the group or company. ***par 26***

Merger: non-qualifying group or company and qualifying non-tonnage tonnage tax group or company

Where a non-qualifying group or company mergers with a qualifying non-tonnage tax group or company, the resultant group may make a tonnage tax election with effect from the date of the merger. Any such election is to be made jointly by all qualifying companies in the merged group within 12 months of the merger. ***par 27***

Demerger: single company

Where a tonnage tax company ceases to be a member of a tonnage tax group and does not become a member of another tonnage tax group, the company is treated as if it had made a single company election to tonnage tax. This deemed election has effect for the same period as the period left for the original group election to remain in force. If there are two or more companies left in the original group and any of them are qualifying companies, they are to be treated as a tonnage tax group by virtue of the original group election which continues in force in respect of the remaining group. ***par 28***

Demerger: group

Where a tonnage tax group splits into two or more groups, each of the groups (if it contains a qualifying company) are to be treated as tonnage tax groups in the same way as if the resultant group had made a group election. This deemed election has effect for the same period as remains for the original group election to have effect. ***par 29***

Duty to notify Revenue Commissioners of group changes

An obligation is imposed on a tonnage tax company to inform Revenue if it ceases or becomes a member of a group. Failure to give this notice will be an offence subject to the penalties provided for in respect of the various provisions listed in ***column 2*** of ***Schedule 18***. ***par 30***

PART 5

Miscellaneous and supplemental

Measurement of tonnage of ship

The rules for determining the gross and net tonnage of a ship are set out.	***par 31***
Second or subsequent application of sections 697P and 697Q	
Sections 697P and ***697Q*** are adapted where they are to apply on a second or subsequent occasion on which a company ceases to be a tonnage tax company.	***par 32***
Delegation of powers and functions	
The Revenue Commissioners are authorised by this provision to delegate to their officers their functions in relation to tonnage tax.	***par 34***

Schedule 19

[*Section 744*]

Offshore Funds: Distributing Funds

Overview

This Schedule relates to the taxation of offshore funds under ***Chapter 2*** of ***Part 27***.

Part 1 of the Schedule sets out the requirements for a fund to be treated as pursuing a full distribution policy for an account period as follows —

Firstly, a distribution must be made for the account period [or for some other period which falls, in whole or in part, within the account period (account period being defined in ***section 744(8)***, ***(9)*** and ***(10)***)].

Secondly, the amount of a distribution or distributions made for the account period must represent at least 85 per cent of the fund's income for the period, and not less than 85 per cent of the fund's "Irish equivalent profits" (these are the profits, other than capital gains, in respect of which the fund would be chargeable to corporation tax if it were an Irish resident company).

Thirdly, the distribution must be made in the account period or within the following 6 months.

Finally, the distribution must be made in such a form that it would be chargeable as income to Irish tax if it were received by an Irish resident.

In applying the 85 per cent distribution test, half of any income of an offshore fund derived from dealing in commodities is left out of account. Accordingly, commodity funds deriving their income wholly from such dealing must only distribute 42.5 per cent of their total income to be certified as distributing funds. This less stringent distribution requirement recognises that it would be imprudent of commodity funds, operating as they do in volatile markets, not to retain a substantial part of their profits as reserves against losses.

The requirement that the distributions should be made in a form chargeable as income is also relaxed to enable funds operating equalisation arrangements, under which income is distributed in capital form, to obtain distributor status.

The distribution test is satisfied if there is no income in an account period but not if a fund fails to make up accounts.

Allowance is made for any legal restrictions on the amount which a fund may distribute.

In the absence of additional measures, it would be possible to avoid the charge under the offshore fund legislation simply by rolling up the gain at one further remove from the investor. For example, Fund A, which receives investors' money could reinvest it in Fund B. If Fund B rolled up the income accruing, Fund A would receive no income to distribute and would pass the distributor test. When the investors disposed of their interest in Fund A the gain would not be chargeable as income. To prevent funds getting around the 85 per cent distribution requirement by such arrangements, ***section 744(3)*** sets out the following additional requirements —

Firstly, the fund cannot hold interests in other offshore funds amounting to more than 5 per cent of the total value of the fund's assets.

Secondly, the fund cannot hold interests in a single company amounting to more than 10 per cent of the total value of the assets of the fund.

Thirdly, the assets of the fund cannot include more than 10 per cent of the issued share capital of any company or of any class of that share capital.

Finally, each class of investor in the offshore fund must receive at least 85 per cent of the income accruing to the fund in respect of assets representing that class of investor's investment in the fund.

Part 2 of the Schedule modifies the general conditions set out in ***Part 1*** in the case of —

- reinvestment in another fund which distributes 85 per cent of its income,
- investment in a trading company,
- investment in a wholly-owned subsidiary,
- investment in a company providing management and administrative services, and
- de minimis holdings in companies.

Parts 3 and ***4*** of the Schedule provide a certification procedure. The certification procedure may be initiated by the fund (***Part 3***) or by an investor in the fund (***Part 4***). In order to be certified as a distributing fund in respect of an account period, a fund must apply to Revenue within 6 months of the end of the account period in question. If certification is refused, then the fund (or, as the case may be, its trustees) may appeal against the refusal within 30 days of the date of the notice of the refusal.

Where the fund fails to apply for certification and as a result is not certified, an investor in the fund who might otherwise by subject to the charge imposed by ***Chapter 2*** of ***Part 27*** may require Revenue to invite the offshore fund concerned to apply for certification. If the fund declines to apply, Revenue determines the matter on the basis of the available information including any accounts or other information supplied by investors.

PART 1
The distribution test

Requirements as to distributions

An offshore fund is to be certified as a distributing fund with respect to an account period if it pursues a "full distribution policy" for that period. The distribution test consists of 4 conditions, namely — ***par 1(1)***

- A distribution must be made for the account period in question, or for some other period which falls wholly or partly within that account period.
- The amount paid to holders of material and other interests in the fund must represent at least 85 per cent of the fund's income for that period, and be not less than 85 per cent of the fund's "Irish equivalent profits" for that period.
- The distribution must be made during the account period or within 6 months of its expiry.
- The form of the distribution must be such that any part of it received in the State by an Irish resident, and not forming part of the profits of a trade, profession or vocation, would be charged under Case III of Schedule D.

The distribution test is treated as satisfied in any period in which there is neither any income in the fund nor any "Irish equivalent profits". This is to apply even where there is no distribution made. ***par 1(2)***

If a fund does not make up accounts for an account period, it fails the distribution test for that period. ***par 1(3)***

It may happen that the period for which a fund makes up its account covers more than one "account period" as defined in ***section 744(8)***, ***(9)*** and ***(10)***, or overlaps 2 account periods. If so, income shown in the accounts is apportioned between the account periods on a time ***par 1(4)(a)*** basis according to the number of days in each.

A distribution made for a period which does not coincide with the account periods as defined is similarly apportioned between the account periods on a time basis, according to the number of days in each which are comprised in the period for which the distribution was made. ***par 1(4)(b)***

If a distribution is not made for a specified period, but is made out of specified income, that income is attributed to the account period in which it arises. The distribution is then treated as made for that account period. ***par 1(4)(c)***

Example

Island Limited is an offshore fund which, in a particular account period, realises a large once-off profit on a transaction. A dividend is then declared out of this income, but it is not attributed in the company's accounts to a particular accounting period. For the purposes of the distribution test, the income and the distribution are both attributed to the period in which the income arose.

Where a distribution is made neither for a specified period nor out of specified income, it is treated as made for the last account period which ended before it was made. ***par 1(4)(d)***

Credit for a distribution is not lost where the amount of the distribution exceeds the fund's income for the period in respect of which it is made. If the amount attributable to the period in question was apportioned (under ***par 1(4)(b***), a fresh apportionment is made of the excess to transfer it to another account period or periods (as may be just and reasonable) falling within the period for which the distribution was made. Otherwise, the excess is treated as additional distributions made for preceding account periods, applying it to later account periods before earlier ones, until it is exhausted. ***par 1(5)***

If a fund is subject to a statutory restriction as to the amount which it may distribute because of an excess of losses over profits (giving these terms their meanings under local law), then, in determining the amount of the fund's income for the period in question, the amount unavailable for distribution may be deducted. ***par 1(6)***

Example

Faraway Limited is an offshore fund resident in Haven. Under the law of Haven, income may not be distributed until losses carried forward from previous years have been set off. As a result, Faraway Limited may only distribute €200,000 of its total income profits of €300,000 for the period in question. In determining whether Faraway Limited passes the distribution test it is treated as having income of €200,000, not €300,000.

Funds operating equalisation arrangements

The distribution test applies to funds operating equalisation arrangements. Where a disposal is made of an interest in an equalisation fund, the income accrued to the date of the disposal is treated as having been distributed. ***par 2(1)***

For this to be so — ***par 2(2)***

- The interest disposed of in the equalisation fund must be a material interest (as defined in ***section 743(2)*** and ***(3)***).
- The disposal must be one to which the offshore fund provisions apply so that a gain arising (or part of it) is treated as an offshore income gain. (The offshore fund provisions must apply whether to the equalisation element of the disposal proceeds only or (in the case of a non-qualifying offshore fund) to the entire disposal proceeds. This test will be satisfied where it would be satisfied if share reorganisations were treated as disposals for all the purposes of the offshore fund provisions).
- The disposal must not be a disposal covered by ***section 742(4)*** (that is, throughout the period in which the offshore fund operates equalisation arrangements the income preceding the disposal was taxed in the hands of the investors as income from foreign processions).

- The disposal must be made to the fund itself or to the fund manager in its capacity as fund manager.

The amount treated as distributed on a disposal of an interest in an equalisation fund is the "income accrued" which means the amount which would be credited to the fund's equalisation account if, on the date of the disposal, the interest were acquired by another investor by way of initial purchase. ***par 2(3)***

Example

In 2002, A purchases, by subscription, an interest in Clearwater Limited, an offshore fund operating equalisation arrangements. A pays €20,000, of which €2,000 is attributable to income accrued since the fund's last distribution. Soon afterwards, in 2003, Clearwater Limited makes a distribution to its investors, and part of the sum received by A is treated as a return of capital.

In 2005, A sells the interest to the fund manager for €30,000, of which €3,600 is attributable to income accrued since the last distribution.

Since part of each distribution made by Clearwater Limited is capital in the hands of investors, it would be difficult for the fund to meet the 85 per cent requirement for the distribution test. However, for the purposes of the test, Clearwater Limited is treated as having made a distribution of €3,600 on the date on which A redeemed his/her interest.

If an investor acquires his or her interest and then disposes of it before a distribution has taken place, the amount of the disposal proceeds treated as income is restricted to the income accrued since the acquisition (or since the latest acquisitions if there has been more than one acquisition in the period in question). ***par 2(4)***

Example

B acquires an interest in Quick Limited, an offshore fund operating equalisation arrangements, for €20,000 of which €800 is attributable to accrued income. Four months later, before any distribution has been made to him by Quick Limited. B sells the interest back to the fund managers for €22,000, of which €1,500 is attributable to accrued income. The amount which Quick Limited is treated as having distributed is €1,500 – €800 = €700.

A distribution by an equalisation fund is deemed — ***par 2(5)***

- to be in such form that, if received in the State by an Irish resident investor, it would be taxed as foreign source income under Case III of Schedule D,
- to be made from the fund income for the account period in which the disposal occurs, and
- to be paid to the person who disposed of the interest.

Where a distribution is made out of an equalisation fund to the fund manager in its capacity as fund manager, it only counts towards the 85 per cent distribution requirement to the extent that it is properly referable to that part of the period for which the distribution is made during which the fund manager held its interest, and in that capacity. This is an anti-avoidance measure intended to prevent the test being satisfied by artificial distributions of income. ***par 2(6)***

An investor makes an initial purchase if he/she subscribes for new shares or units in the fund, or buys shares or assets from the fund manger (acting in its capacity as fund manager). ***par 2(7)***

Income taxable under Case III of Schedule D

Generally, in order to pass the distributor test, the fund must make distributions in a form in which Irish investors would pay tax on them under Case III of Schedule D. In certain circumstances a fund (other than a company) might itself have sums of income on which Irish residents would be chargeable to tax under Case III even if the income is not distributed. ***par 3(1)***

For the purposes of the distributor test, such sums (plus income from Irish assets on which the Irish investors would have been chargeable under Case III had the assets been outside ***par 3(2)*** the State) are treated as a distribution complying with the conditions, made out of the income of which they form part, and paid to the investors to whose interests they are referable. Accordingly, such sums are added to sums actually distributed in determining whether the fund passes the distribution test.

Commodity income

The term "commodities" and "dealings" are defined for the purposes of ***paragraph 4***. ***par 4(1)***

One half of a fund's profits from dealing in commodities is left out of account in determining the fund's income and its Irish equivalent profits for the account period to which the profits relate. If a fund occurs a loss on dealing in commodities, the whole of the loss is taken into account in determining the fund's income. ***par 4(2)***

A fund's income may consist partly of commodity income and partly of other income. If so, the distributor test is applied to half the commodity income plus the whole of the other income. The fund's expenditure is apportioned between the 2 types of income in such manner as is just and reasonable. However, if management expenses are being deducted (under ***section 83***) in computing a fund's Irish equivalent profits, the 2 types of business are treated as carried on by separate companies. ***par 4(3)***

If a fund operating equalisation arrangements has commodity income, an adjustment must be made of the amount which the fund is treated as distributing on the occasion of a disposal. Where the accrued income includes commodity income, only one-half of the commodity income is treated as distributed. ***par 4(4)***

Irish equivalent profits

For the purposes of ***paragraph 5***, "profits" means income profits, and does not include chargeable gains. ***par 5(1)***

"Irish equivalent profits" are the total profits of the fund for the period in question on which, after allowing for any available deductions, corporation tax would be chargeable if the assumptions set out below were applicable. ***par 5(2)***

Firstly, it is assumed that the fund is a company, resident in the State in the account period in question. ***par 5(3)***

Secondly, it is assumed that the account period, defined in ***subsections (8)***, ***(9)*** and ***(10)*** of ***section 744***, is an accounting period of that company.

Thirdly, dividends from Irish companies, which would be exempt (as franked investment income) if the company were actually resident in the State, are brought into account as if they were dividends from non-resident companies.

Among the deductions which may be made in calculating Irish equivalent profits are — ***par 5(4)***

- the deduction for undistributable income mentioned in ***paragraph 1(6)***,
- un-refunded Irish income tax paid by deduction, and
- any foreign tax taken into account in determining the fund's income which, because it is referable to capital rather than income, would otherwise be left out of account in computing the Irish equivalent profits.

Certain Irish-sourced income which is exempt in the hands of non-residents is not treated as exempt for the purposes of computing the Irish equivalent profits of an offshore fund (for example, income from Irish government stocks). ***par 5(5)***

PART 2
Modifications of conditions for certification in certain cases

Exclusion of investments in distributing offshore funds

The term "qualifying fund" is defined for the purposes of ***Part 2***. ***par 6(1)***

The general rule of ***section 744(3)*** is modified where one fund (which is referred to as the "top fund") invests in another offshore fund (which is referred to as the "second tier" fund) in the following circumstances — ***par 6(2)***

- the top fund's interests in this and any other second tier fund are such that it fails the conditions in ***section 744(3)(a)***, ***(b)*** or ***(c)*** (maximum holding in any fund or company); and
- the second tier fund could be certified as a distributing fund in an account period which coincides with, or overlaps, the top fund's account period.

In these circumstances, the top fund's interest in the second tier fund is disregarded in determining the total value of the top fund's assets.

Example

Top Limited is an offshore fund which holds 40 per cent of the issued share capital of Second Tier Limited, another offshore fund. This investment represents 20 per cent of the value of Top Limited's assets. In the absence of ***paragraph 6***, Top Limited would fail to meet all 3 of the conditions in ***section 744(3)(a)***, ***(b)*** and ***(c)***. Provided Second Tier Limited passes the distributor test, Top Limited's interest in Second Tier Limited is ignored in determining whether or not Top Limited passes the test.

The relieving provisions only apply to 2 tier arrangements, and not to structures with 3 or more tiers. Thus if, in the above example, Second Tier Limited in turn held interests in other offshore fund, then Top Limited would fail the test.

There are 2 qualifications of ***paragraph 6*** which ensure that the "top fund" and "second tier fund" are consolidated for the purposes of the tests in ***section 744(3)(a)***, ***(b)*** and ***(c)***. ***par 6(3)***

If the top fund has relied on ***paragraph 6*** to meet the distributor test, a number of further provisions come into effect to impute certain assets and profits of the second tier fund to the top fund. ***par 7***

In determining whether the top fund —

- has more than 5 per cent of its assets in an offshore fund,
- has more than 10 per cent of its assets invested in a single company, or
- holds more than 10 per cent of the shares of a single company,

the top fund is attributed a proportionate share of any investment held by the second tier or "qualifying" distributing fund if the top or "primary" fund has invested in the same fund or company. The proportion of the common investment to be attributed to the top fund is specified by ***paragraph 9***.

In determining whether the top fund has distributed at least 85 per cent of its "Irish equivalent profits", it is attributed a proportionate share of the second tier fund's undistributed income. The proportion is specified in ***paragraph 9***. ***par 8(1)***

The second tier fund's undistributed income, is the amount by which that fund's "Irish equivalent profits" for the account period in question exceed the distributions made by it for that period. ***par 8(2)***

The account periods of the top fund and second tier fund may or may not coincide. If they do, the top fund is attributed its proportion of the second tier fund's "excess income" for that period. ***par 8(3)***

If the account periods of the top fund and the second tier fund do not coincide, the top fund is attributed on a time apportionment basis its proportion of the aggregate of the second tier fund's income for periods falling within the top fund's account period, plus a proportion of profits for overlapping periods. ***par 8(4) & (5)***

The proportion of the second tier fund's assets or excess income to be taken into account ***par 9***
for the purposes of ***paragraphs 7*** and ***8(1)*** is —

$$\frac{\text{average value of top funds interest in the second tier fund}}{\text{average value of all interests in the second tier fund.}}$$

The "average value" referred to is the average value over the relevant account period of the top or "primary" fund.

Offshore funds investing in trading companies

Funds which supply venture capital and which often take a substantial stake in companies ***par 10***
for which they provide capital are not caught by the offshore fund legislation.

In respect of an offshore fund's investments in trading companies, the 10 per cent limits in ***section 744(3)(b)*** and ***(c)*** are raised to 20 per cent and 50 per cent respectively. Thus, a fund may invest up to 20 per cent by value of its assets in a single trading company, and it may own up to 50 per cent of the issued share capital (or any class of that share capital) of a particular trading company.

The term "trading company" excludes companies dealing in commodities or financial assets and also companies involved in banking or money lending.

Offshore funds with wholly-owned subsidiaries

A parent offshore fund is in certain circumstances enabled to be certified as a distributing ***par 11***
fund where its holding in a subsidiary company would otherwise fall foul of the 10 per cent limit in ***section 744(3)(c)***. The circumstances are where the offshore fund has a wholly-owned subsidiary company. A "wholly-owner subsidiary" is a company in which the whole of the issued share capital or, where there is only one class of share capital, at least 95 per cent of that share capital is —

- in the case of an offshore fund that is a non-resident company, directly and beneficially owned by the fund,
- in the case of an offshore fund that is a unit trust scheme with non-resident trustees, directly owned by the trustees for the benefit of the fund, and
- in the case of offshore arrangements creating rights in the nature of co-ownership taking effect under local law, owned in a manner which corresponds as far as possible with either ownership by a company or by trustees as set out in either of the preceding indents.

The receipts, expenditure, assets and liabilities of the subsidiary are, for the purposes of ***section 744(3)***, attributed to the parent fund in proportion to the latter's ownership of the subsidiary's issued share capital. The parent company's interest in the subsidiary and all payments passing between the parent and subsidiary are ignored in determining whether or not the parent qualifies as a distributing fund. Accordingly, the tests for qualification, set out in ***section 744(3)*** and qualified in ***Part 1*** of the Schedule, require to be satisfied by the parent and subsidiary, taken as a whole.

Offshore funds with interests in dealing and management companies

In the absence of special provision, a fund which had a subsidiary company to perform ***par 12(1)***
management and dealing functions would fall foul of the condition in ***section 744(3)(c)*** by owing more than 10 per cent of the shares of a company. Relief is given to enable a fund to meet this condition in circumstances where it owns the whole of the issued share capital in a subsidiary whose business consists wholly of certain functions.

If the subsidiary meets the requirements in ***subparagraph (2) or (3)***, the parent company's interest in the subsidiary is disregarded in determining whether or not the former qualifies as a distributing fund.

The subsidiary is disregarded if it is dealing in material interests in the parent fund for the purposes of and in connection with the management and administration of the fund's business. The subsidiary must not be entitled to any distribution in respect of any material interest held by it for the time being. ***par 12(2)***

The subsidiary is disregarded if its business consists wholly of providing services for the fund, or for it and other offshore funds with an interest in the company. The services permitted are — ***par 12(3) & (4)***

- holding any property occupied or used in connection with the fund's management or administration, and
- providing administrative, management and advisory services to the fund.

The subsidiary's remuneration for these services must not exceed the commercial rate.

The management subsidiary is itself permitted to have subsidiaries. If so, all references to the nature of its business, etc are to be taken as references to it and all of its subsidiaries. ***par 12(5)***

Certain investments forming less than 5 per cent of a fund ignored

Where in any account period the assets of an offshore fund include a holding of more than 10 per cent of the issued share capital of any company (or of any class of that share capital), the fund may generally not be certified as a distributing fund for that period by virtue of ***section 744(3)(a)***. However, in determining "distributor status", such a holding may be ignored if, during the account period in question, the value of that holding and of any interests in any other offshore funds which are not qualifying funds does not exceed 5 per cent of the value of the fund's total assets. This ensures that a fund will not be disqualified from being certified as a distributing fund simply because a de minimis proportion of its assets includes a majority holding in a small company. ***par 13***

Power of Revenue to disregard certain breaches of conditions

Revenue has power to disregard breaches of 3 out of the 4 conditions laid down by ***section 744(3)*** if satisfied that the failure to comply with the condition occurred inadvertently and that it was remedied without unreasonable delay. Breaches occur if — ***par 14***

- more than 5 per cent by value of the assets of the fund consists of interests in other offshore funds;
- more than 10 per cent by value of the assets of the fund consists of interests in a single company;
- the assets of the fund include more than 10 per cent of the issued share capital of any company or of any class of that share capital.

Revenue are not empowered to disregard a failure to distribute 85 per cent of income to each class of material interest in an offshore fund.

PART 3
Certification procedure

Application for certification

In order to obtain distributor status, a fund must apply for certification to the effect that in respect of a particular account period it pursued a full distribution policy. Where a fund fails to apply for certification, an investor in the fund may request Revenue to invite the fund to apply for certification. ***par 15(1)***

An application for certification made to Revenue must include — ***par 15(2)***

- the fund's accounts for the account period (or for an accounting period which includes the period to which the application relates), and

- such information as Revenue may reasonably require to deal with the application (see below).

Revenue must be satisfied that the fund passes the distributor test, and that it is not disqualified by virtue of any interest it holds in another fund or company. ***par 15(3)***

An application for certification may be made to Revenue by the fund, or on behalf of the fund by the trustee or officer of the fund. It must be made within 6 months after the end of the account period in question or, if later, before 1 January, 1991.

Revenue must give notice in writing to a fund should it decide not to certify the fund as a distributing fund in respect of an account period.

If at any time Revenue considers that the accounts (or other information supplied in respect of an account period) were not a "full and accurate disclosure of all facts and considerations relevant to the application", Revenue can give notice in writing of this to the fund, specifying the period concerned. In that event any certificate previously issued for a period specified in a notice is then void. ***par 15(4) & (5)***

Information which would normally be required, under ***paragraph 15(1)(c)***, in support of an application for certification as a distributing fund —

- the full name of the fund;
- the account period, ending after 6 April, 1990, in respect of which certification is sought;
- a copy of any fund prospectus or explanatory memorandum in issue for the account period under consideration;
- whether or not equalisation arrangements were in operation throughout the account period and, if so, what form these took;
- unless supplied in the accounts provided, an analysis of the fund's investment portfolio as at the accounting date, indicating the percentage value of the fund's assets represented by each investment and identifying any holdings in other offshore funds (indicating whether each such fund is considered to be a distributing fund) and, in respect of each investment in an unquoted company, the fund's percentage interest in each class of that company's share capital;
- where the last preceding accounts of the fund were drawn up to a date before 6 April, 1990, information as in the preceding indent at that date;
- where, at any time during the account period for which certification is sought, the fund had a wholly-owned subsidiary company dealing either in commodities or in material interests in the fund or if the fund had an interest in a subsidiary management company, a copy of the accounts of each such company covering or including the fund's account period;
- a computation of the fund's Irish equivalent profits for the account period or, failing this, a summary analysis of surpluses on realisation taken directly to fund reserves during that period;
- in respect of each class of share in the fund —
    - the amount and date (actual or projected) of each distribution made or to be made in respect of the account period, and
    - the aggregate amount of deemed distributions made in respect of the account period by way of equalisation.

Appeals

If certification is refused or withdrawn by Revenue, the fund (or a trustee or officer) may appeal to the Appeal Commissioners by giving notice in writing to Revenue within 30 days, ***par 16(1)*** specifying the grounds of appeal.

The normal appeal procedures relating to appeals against assessments to tax apply, including the statement of a case for the opinion of the High Court. The procedures are modified to the extent that the question at issue (that is, whether an offshore fund should be certified as a distributing fund) requires. ***par 16(2)***

The jurisdiction of the Appeal Commissioners includes jurisdiction to review any decision of Revenue which is relevant to a ground of appeal. Hence, they are not confined to determining whether Revenue acted reasonably on the facts available, but may determine any question on the basis of the evidence before them. ***par 16(3)***

PART 4

Supplementary

Assessment: effect of non-certification

Assessments to tax under the offshore fund legislation are made on Irish investors. The making of an assessment may mean that no application for certification of the fund has been made. Alternatively, it may mean that an application has been made and refused. ***par 17***

An assessment may not be appealed on the grounds that the fund should have been certified as a distributing fund for the account period in question.

Any person liable to tax on offshore gains, so long as a fund is not certified in respect of a period, may by notice in writing require Revenue to take action to determine whether the fund should be certified in respect of the period. ***par 18(1)***

Revenue must then invite the fund to apply for certification in respect of the period. ***par 18(2)***

Revenue need not issue an invitation if an application has already been made, nor in any event need they do so before the end of the account period to which the invitation relates. The fund has 90 days from the date of the invitation to submit an application. ***par 18(3)***

If the fund does not submit an application within the time limits of 6 months after the account period or 90 days after the invitation, whichever is the latest, Revenue may determine the question of certification as if an application had been made. ***par 18(4)***

Where 2 or more persons require Revenue to invite an offshore fund to apply for certification, Revenue's obligations are fulfilled when it have taken action in respect of one of them. ***par 18(5)***

Before giving notice that a fund will not be certified, Revenue must have regard to all accounts and other information furnished by persons who set the application procedure in motion. Such accounts and information are treated as if they have been furnished in compliance with ***paragraph 15(1)***, that is, the normal procedure for application. Revenue could, therefore, give notice under ***paragraph 15(4)*** that the submissions did not make a full and accurate disclosure of the facts, if that were the case. ***par 18(6)***

The procedure in this paragraph is available only where no previous application for certification has been made and refused. However, a renewed application may be made under the paragraph if the person giving notice furnishes Revenue with accounts or information not given to Revenue at the time of the earlier determination. In these circumstance, Revenue must reconsider its previous determination and may, after all, certify the fund as a distributing fund. ***par 18(7)***

If a fund fails to submit an application following an invitation by Revenue under ***paragraph 18(4)***, Revenue must notify the person who required the invitation to be issued of its determination. No appeal may be made against such notification. ***par 18(8)***

Information as to decisions on certification, etc

Revenue are not precluded by obligations of secrecy from disclosing, to any person appearing to have an interest, their decision as to whether or not to certify a fund, or the content and effect of a notice given by them that full and accurate disclosure has not been made. Such disclosure would not involve mentioning the names of particular persons interested in the fund. ***par 19***

The Revenue Commissioners are empowered to delegate their functions under the Schedule to nominated officers. ***par 20***

Schedule 20

[*Section 745*]

Offshore Funds: Computation of Offshore Income Gains

Overview

This Schedule relates to the taxation of offshore funds under ***Chapter 2*** of ***Part 27***. It provides the rules for calculating the amount of gains on disposals of interest in offshore funds. Although they are to be charged as income, gains on disposals of material interests in non-qualifying offshore funds are calculated according to normal capital gains tax principles. However, costs of acquisition are not indexed for inflation in calculating gains. The unindexed gains charged as income are the gains arising from 6 April, 1990. A material interest held on 6 April, 1990 is treated as disposed of and immediately reacquired at its market value on that day. Therefore, the gain calculated on any subsequent disposal only includes the gain arising from the date of the deemed reacquisition, that is, 6 April, 1990. The charge is on the actual gain on the disposal if that gain is less than the gain based on the 6 April, 1990 market value. Losses arising on disposals of material interests are ignored for the purposes of the charge under ***section 745*** and this Schedule.

Part 2 of the Schedule provides for disposals of material interests in distributing funds operating equalisation arrangements. The equalisation element of redemption proceeds are charged as income. The equalisation element of redemption proceeds is the payment of the part of the next distribution to be made by the fund that has accrued to the date of disposal of the interest. In general, the equalisation element is only part of the gain on the disposal of an interest in a fund operating equalisation arrangements. The charge as income is only applied to the equalisation element of the gain.

PART 1

Disposals of interests in non-qualifying funds

Interpretation

Part 1 of the Schedule applies to material disposals of interests in offshore funds which are within the scope of the provisions of ***Chapter 2*** of ***Part 27***, otherwise than by virtue of their being disposals of interests in funds operating equalisation arrangements (that is, disposals of interest in funds which are not certified as distributing funds). ***Part 2*** of the Schedule deals with disposals of interests in distributing funds which operate equalisation arrangements. ***par 1***

Calculation of unindexed gain

The first step in charging a material disposal is to calculate the unindexed gain arising on ***par 2(1)*** the disposal.

The "unindexed gain" is simply the amount of the gain arising on the disposal, taking no account of any income tax or corporation tax charge under the offshore fund provisions or the capital gains tax indexation allowance. ***par 2(2)***

It is necessary to ignore the income tax or corporation tax charge under the offshore provisions because otherwise the provisions of ***section 551*** (exclusion from consideration for disposals of sums chargeable to income tax) could be said to apply so that the unindexed gain would be reduced to nil.

In addition, the applicable capital gains tax provisions are subject to the modifications (for death and share-for-share transactions) set out in ***section 741*** and in ***paragraph 3***.

Modifications to be made in calculating unindexed gains

Firstly, where a business is transferred to a company in exchange for shares in the company, income tax will not be deferred in charging the offshore income gain in respect of the transfer of assets of the business which are interests in an offshore fund. To the extent that the proceeds of the transfer are taken by the owner of the business as shares in the company acquiring the business, the charge to tax on the gain arising on the transfer is normally deferred. No such deferral arises in the case of offshore income gains on transfers of assets of a business representing interests in offshore funds. ***par 3(1)***

Secondly, if an investor incurs a loss on disposal of his/her interest in an offshore fund, this is treated for the purposes of calculating tax under the rules as a nil gain. In other words, the rules cannot give rise to an income tax loss. Hence, any loss incurred is a capital loss which may be offset against any capital gains of the investor. ***par 3(2)***

Gains since 6 April 1990

Where an interest is disposed of which was acquired, or deemed to have been acquired, by the disponer before 6 April, 1990, the gain is calculated on the assumption that on 6 April, 1990 the interest was disposed of and immediately reacquired for a consideration equal to its market value at that time. Thus, the market value on 6 April, 1990 of an interest held, or deemed to have been held, on that date by the disponer must be ascertained. ***par 4(1) & (2)***

Apart from the substitution of the 6 April, 1990 market value for the actual consideration given for the interest, the disponer's gain is calculated in the same way as an "unindexed gain" under ***paragraphs 2*** and ***3***.

Where the disponer acquired the interest on or after 6 April, 1990 in circumstances such that no gain or loss was deemed to arise (other than under provisions dealing with the indexation allowance producing a loss), the previous owner's acquisition is treated as the disponer's acquisition. ***par 4(3)***

Example

In 1987 B acquired an interest in Gannet Limited, an offshore fund, for €15,000. In 1991 B made a gift of his interest to his wife, Mrs B. In 1994, Mrs B sold the interest for €24,000. The market value of the interest on 6 April, 1990 was €20,000.

Mrs B is treated as having acquired the interest in 1987 and thus she is also treated as having owned it on 6 April 1990. In computing her offshore income gain, one takes as the base cost whichever is the higher of the 1987 acquisition cost or market value on 6 April 1990. In this case, the latter, namely, €20,000.

Where an interest has changed ownership more than once on a "no gain/no loss" basis on or after 6 April 1990, the ownership of the asset by the person making the disposal, in respect of which a gain or loss may be treated as arising, is deemed to have begun on the date of the latest disposal before 6 April 1990 in respect of which a gain or loss could have been treated as arising. ***par 4(4)***

The offshore income gain

The gain on a disposal of a material interest in a non-qualifying offshore fund is the unindexed gain which is defined in ***paragraph 2(2)*** as the gain which would arise ignoring the indexation allowance. ***par 5(1)***

If the interest was acquired before 6 April, 1990 and the gain since that date is less than the gain over the entire period of ownership, or deemed ownership, of the interest by the person disposing of it, the charge is limited to a charge on the gain arising since 6 April 1990. Whether the gain charged is the entire gain or the gain since 6 April 1990, the indexation allowance is not given. ***par 5(2)***

PART 2

Disposals involving an equalisation element

The income element of disposal proceeds of interests in funds operating equalisation arrangements is chargeable as an offshore income gain where the fund is a distributing fund. The income element chargeable as an offshore income gain is restricted to the income accruing after 6 April 1990 and during the disponer's period of ownership of the interest. ***par 6(1)***

An investor who redeems his/her interest in a distributing offshore fund which is an equalisation fund is charged to tax on an amount equal to the "equalisation element relevant to the asset disposed of". This applies even where the fund is a distributing fund.

The "equalisation element relevant to the asset disposed of" is the amount which would be credited to the fund's equalisation account if on the date of the disposal the interest were acquired by another investor directly from the fund managers. In other words, tax is charged prima facie on the same amount as is treated as distributed by the fund under ***paragraph 2*** of ***Schedule 19***. ***par 6(2)***

The equalisation element on which the investor is charged may be reduced in two circumstances, namely — ***par 6(4)***

- where the interest is acquired on or after 6 April 1990 and disposed of again before a distribution is made out of the fund, only that part of the income accruing since the date of acquisition is taxable, and
- where the interest was acquired before 6 April 1990, only that part of the income accruing since that date is taxable.

Where the interest is acquired before the beginning of the period in which the equalisation element accrues and that period begins before 6 April 1990, only the part of the income accruing since 6 April 1990 is taxable. ***par 6(5)***

The amount of the equalisation element of the disposal proceeds in respect of an interest in an equalisation fund is halved to the extent that the equalisation element represents commodity income of the fund. This is in keeping with the rest of the provisions relating to commodity income. ***par 6(6)***

Provision is made for a comparison of the amount chargeable under ***Part 2*** which affects distributing funds operating equalisation arrangements with the amount which would be chargeable under ***Part 1*** in respect of interests in non-distributing funds. ***par 7(1)***

Where an investor is charged to tax on the occasion of a disposal of his/her interest in a fund operating equalisation arrangements, the sum on which he/she would be charged to tax under the rules applying to non-qualifying funds must also be calculated. If this sum is lower than the "equalisation element", the investor is charged on that sum instead. The purpose of this is to prevent an investor being subject to higher taxation if he/she invests in an equalisation fund which distributes its income than if he/she had invested in a fund which rolls up its income.

The sum on which the investor would be taxed under the rules applying to non-qualifying funds, referred to as the "Part 1 gain", is to be calculated in all cases.

If there is no Part 1 gain, the investor is not charged to tax. If the Part 1 gain is less than the equalisation element, the investor is charged on the Part 1 gain. ***par 7(2)***

Example

In 1989, C purchases (by subscription) an interest in Seagull Limited, an offshore fund operating equalisation arrangements. The purchase price is €8,000 including an element attributable to accrued income. On 6 April 1990 the value of C's interest is €10,000. In 1993 C redeems the interest for €13,000, which includes €1,400 attributable to income accrued since the last distribution, which took place in December, 1992.

The "equalisation element" on which C will be charged is €1,400. The "Part 1 gain" is €13,000 – €10,000 = €3,000. Since the Part 1 gain is not less than the equalisation element, C is taxed on €1,400.

The "Part I gain" is the gain computed under ***Part 1*** of ***Schedule 20*** in respect of the disposal of an interest in an equalisation fund as if it were a disposal of an interest in a non-distributing fund. ***par 8(1)***

Although the general rules for the computation of offshore income gains are to be used, a transaction will, nevertheless, be treated as giving rise to a disposal by reference to the special rules in ***section 742*** for equalisation funds. These rules deem disposals to have been made on reorganisations and exchanges of shares as an exception to the general rule in respect of such reorganisations and exchanges. ***par 8(2)***

If the disposal with the equalisation element is an event to which no gain or loss is deemed to arise (other than because an indexation allowance produces a loss), then, for the purposes of computing the Part 1 gain, the actual gain or loss may be taken to arise on the disposal ***par 8(3)***

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Schedule 21

[*Sections 749, 750, 751*]

Purchase and Sale of Securities: Appropriate Amount in Respect of the Interest

Overview

Schedule 21 contains the necessary provisions for determining the appropriate amount of income received in respect of bond-washing transactions for the purposes of ***Chapter 1*** of ***Part 28***. In that Chapter, the purchase price of securities is, in certain circumstances, to be reduced by reference to the interest to be earned from the securities; and, in other cases, the interest earned on the securities is to be excluded for tax purposes. In general, the amount by which the purchase price is to be reduced in the case of dealers in securities is the net income accrued up to the date of purchase. In the case of exempt institutions and non-financial traders, the amount to be excluded form income for tax purposes is the gross amount (net amount plus tax credit) of the income which accrued up to the date of purchase.

The broad effect is that, in the case of dealers in securities, that part of the purchase price which is paid for accrued interest is disallowed in computing for tax purposes their profits and losses; and that, in the case of the other bodies affected by the provisions, income equivalent to the gross amount of interest accrued up to the date of the purchase is disregarded for tax purposes.

Details

For dealers in securities, the appropriate amount in respect of the interest is the net interest ***par 1*** received by the first buyer.

For exempt bodies and non-financial traders, the appropriate amount of interest is the gross amount of interest receivable by the first buyer. The gross amount is the net amount of interest plus the associated tax credit. ***par 2***

Broadly speaking, the "appropriate amount" of interest caught is determined by the formula — ***par 3(1)***

$$\frac{\text{Number of days from last "ex div" date up to date before the date of purchase}}{\text{Number of days from the last "ex div" date to the date before the next "ex div" date}}$$

The first and second relevant dates are the earliest possible last and next "ex div" dates. The provision ensures that manipulation of the respective dates cannot occur. ***par 3(2)***

An appropriate modification of this rule is made for cases where there was no previous "ex div" date (because the relevant payment was the first payment of income on the securities). ***par 3(3)***

Provision is made for the Appeal Commissioners to apply these rules with appropriate modifications in respect of securities not quoted on the Dublin Stock Exchange. ***par 3(4)***

Appropriate modifications of these rules are made for certain British Government securities where the purchase price is increased to take account of gross interest accruing on a day to day basis. ***par 4***

Schedule 22

[*Sections 749* and *752*]

Dividends Regarded as Paid Out of Profits Accumulated Before Given Date

Overview

Schedule 22 together with ***Chapter 2*** of ***Part 28*** counters a tax avoidance device known as "dividend stripping". The main effect of the provision is to reduce the purchase price of shares to take account of reserves accumulated before their acquisition. The artificial loss which might otherwise be created on a subsequent disposal of those shares is effectively cancelled. Secondly, it prevents the use of tax credits by exempt persons which might otherwise be available. The Schedule contains provisions for determining whether a dividend is to be treated as paid to any extent out of profits accumulated before the shares were acquired.

Details

The circumstances where dividends are to be regarded as accumulated before acquisition date or deemed acquisition date (referred to as "the relevant date") are — ***par 1(1)***

- if the dividend is declared for a period before the relevant date,
- if there are no profits in the period between the relevant date and the date when the dividend is payable, or
- if there are no profits available in that period for dividend payments because of other amounts which should be paid on other classes of the company's shares.

Dividends are to be regarded as far as possible as paid out of post-acquisition profits and only the excess out of pre-acquisition profits. ***par 1(2)***

The dividend is to be divided proportionately where the dividend is declared for a period ***par 1(3)*** which straddles the relevant date.

The Schedule contains provisions designed to ensure that the treatment to be accorded is that most favourable to the taxpayer. Any dividend paid within a year of acquisition is to be regarded as paid out of post-acquisition profits if the Appeal Commissioners are satisfied that —

- the rate is comparable with that of the previous 3 years, or
- in the case of quoted shares the rate is comparable with other similar shares. ***par 2(1)***

The Appeal Commissioners may make such adjustments as they deem necessary to achieve this fair comparison. ***par 2(2)***

Provision is made for determining how much profits are available for payment of a dividend. These provisions are contained in ***paragraphs 3*** to ***6***. A deduction of a reasonable amount (as determined by the Appeal Commissioners) to cover dividend payments on other classes of shares is allowed from profits arising between the acquisition date and the date of dividend payment. ***par 3(2)***

If no previous dividend was payable for that period the whole of the company's profits, less any amount set aside under ***paragraph 3(2***), is to be available for payment of the dividend. ***par 3(3)***

Where a previous dividend was payable in the period between the date of acquisition of the shares and the current dividend payment, a calculation is made to determine firstly how much, if any, of the profits are regarded as being attributable to a pre-acquisition period. The balance, less any reasonable deductions under ***paragraph 3(2)***, is deemed to fund that previous dividend and only any excess after that is available to fund the current dividend payment. ***par 3(4)***

The Appeal Commissioners, in determining how much profits are to be set aside for payment of dividends on other classes of shares, may take into account any amounts attributable to a pre-acquisition period. ***par 3(5)***

Paragraphs 4 and ***5*** provide in effect a set of rules for arriving at what might be regarded as "commercial" profits. ***par 4(1)***

The profits of a company for any given period are specified as the "income" (as determined in accordance with ***paragraph 5***) of the company less — ***par 4(2)***

- any income tax actually borne by it for any year of assessment (not being a year after the year 1975–76) in that period,
- any corporation profits tax paid by it in any accounting period in that period,
- any corporation tax paid by it for any accounting period in that period, or
- any capital gains tax paid by it for any year of assessment (not being a year after the year 1975–76) in that period.

For this purpose double taxation relief allowed on a credit basis is to be ignored, because while foreign tax of an equivalent amount will have been suffered, it will not have been taken into the above computation.

Provision is made to deal with a situation where an intermediate company is inserted between the two companies and is complementary to ***clauses (g)*** and ***(h)*** of ***paragraph 5(3)***. ***par 4(3)***

The rules for determining the "income" of a company for any "specified period" are set out. The income is computed as the sum of — ***par 5(2)***

- trading profits for the period in question,
- any other profits of that period, and
- any capital profits of that period.

Certain deductions for the period in question are allowed. These are — ***par 5(3)***

- trading losses of the period in question,
- group relief given to the company for any accounting period in that period,
- capital allowances under income or corporation tax for that period,
- annual payments made or charges on income allowed in that period.

In addition, where an intermediate company is put between the two companies, a dividend received from the interposed company and any part of that dividend which would have been brought in under ***section 752*** in computing the interposed company's profits had it been a dealing company is to be left out in computing post-acquisition income of the interposed company for the purposes of applying this provision to the dealing company. The corresponding adjustment for the tax applicable to the dividend is in ***paragraph 4(3)***.

Provision is made for an apportionment of profits for accounting periods and years of assessment which overlap the period in question. ***par 6***

Schedule 23

[*Section 770*]

Occupational Pension Schemes

Overview

Part 1 of this Schedule contains provisions relating to administration, including a provision under which the Revenue Commissioners are empowered to make regulations, in connection with the approval of occupational pension schemes under ***Chapter 1*** of ***Part 30***. ***Part 2*** of this Schedule is concerned with charging certain payments to tax under Schedule E.

PART 1
General

Application for approval of a scheme

An application for the approval for the purposes of ***Chapter 1*** of ***Part 30*** of any retirement benefits scheme is to be made in writing by the administrator of the scheme to the Revenue Commissioners, in the form and manner they may specify, before the end of the first year of assessment for which approval is required. The application is to be supported by — ***Par 1***

- a copy of the instrument or other document constituting the scheme,
- a copy of the rules of the scheme and, where appropriate, a copy of the accounts of the scheme for the last year for which such accounts have been made up, and
- such other information and particulars as the Revenue Commissioners may consider relevant.

Information about payments under approved schemes

The inspector may, by way of notice in writing, require the administrator of the scheme and every employer who pays contributions under the scheme to — ***par 2***

- furnish particulars of contributions paid under the scheme;
- deliver a return containing particulars of all payments under the scheme;
- furnish a copy of the most recent accounts of the scheme as the inspector considers relevant.

Any information sought shall be provided in the form and manner specified in the relevant ***par 2A*** notice.

Information to be provided in electronic format

The administrator of a scheme that has to deliver annual scheme accounts to Revenue must, for accounting years ending on or after 1 January 2011, deliver the accounts in electronic format. ***par 2B***

Information to be provided in respect of pre-retirement access to additional voluntary contributions

Administrators of AVC funds (within the meaning of ***section 782A(1)(a)***) are required to provide, within 15 working days of the end of each quarter (commencing with the quarter ending on 30 June 2013), certain statistical information to Revenue in relation to AVC pre-retirement transfers made during the quarter in question. The information, which must be provided electronically, is as follows - ***Par 2C***

- the number of transfers made,
- the aggregate value of transfers made, and
- the tax deducted from the aggregate value of the transfers made.

For the purpose of this Schedule a "quarter" means a period of 3 consecutive months ending on 31 March, 30 June, 30 September or 31 December.

Information about schemes other than approved schemes or statutory schemes

In the case of a retirement benefits scheme which is neither an approved scheme nor a statutory scheme, an employer is obliged — ***par 3***

- to deliver particulars of that scheme to the inspector within 3 months beginning on the date on which the scheme first comes into operation in relation to any of the employer's employees, and
- when required to do so, to furnish to the inspector particulars with regard to —
  - any retirement benefits scheme relating to the employer, or
  - the employees of that employer to whom any such scheme relates.

The administrator of any such scheme is obliged, when required to do so, to furnish to the inspector such particulars as the inspector may require with regard to the scheme.

Responsibility of administrator of a scheme

Where the administrator of a retirement benefits scheme defaults, cannot be traced or dies, the employer is responsible in place of the administrator for the discharge of all duties imposed on the administrator and is liable for any tax due from the administrator in the capacity as administrator. The liability of the administrator of a scheme, or an employer, is not affected by the termination of the scheme or by its ceasing to be an approved scheme or an exempt approved scheme, or by the termination of the appointment of the person mentioned in ***section 772(2)(c)(ii)***. ***par 4***

Regulations

The Revenue Commissioners may make regulations generally for the purposes of ***Chapter 1*** of ***Part 30*** and this Schedule. No such regulations have been made to date. ***par 5***

PART 2

Charge to tax in respect of unauthorised and certain other payments

Part 2 of this Schedule imposes a charge to tax under Schedule E on an employee in respect of — ***par 6 to 9***

- payments made contrary to the conditions on which a scheme is approved for tax purposes, and
- payments made after the cessation of approval, which would not have been expressly authorised by the rules when the scheme was last so approved.

Schedule 23A

[*section 787*]

Specified Occupations and Professions

This Schedule lists the various occupations and professions which qualify an individual for the higher rate of relief in respect of retirement annuity contract premiums. The occupations and professions specified are —

Athlete	Jockey
Badminton Player	Motor Racing Driver
Boxer	Rugby Player
Cricketer	Squash Player
Cyclist	Swimmer
Footballer	Tennis Player
Golfer	

Schedule 23B

[*Part 30, Chapter 2C*]

Limit on Tax-relieved Pension Funds

Overview

Schedule 23B is linked to ***Chapter 2C*** of ***Part 30*** - relating to the limit on tax relieved pension funds. The Schedule deals with the operational aspects of the arrangements as follows:

- ***Paragraph 1*** – how the value of an individual's uncrystallised pension rights on 1 January 2014 are to be calculated for both defined contribution (DC) and defined benefit (DB) type arrangements.

- ***Paragraph 2*** – the various types of benefit crystallisation event (BCE) and when they are deemed to occur, e.g. entitlement to a pension, annuity, lump sum etc. under a pension arrangement.

- ***Paragraph 3*** – how the capital value of a BCE is to be calculated for the various types of BCE identified.

- ***Paragraphs 4*** & ***5*** – how the amount of the standard fund or personal fund threshold that is available at the time of a BCE is to be determined.

It also includes a table setting out the relevant age-related valuation factors.

Details

Calculation of the uncrystallised pension rights of an individual on the specified date

The amount of an individual's uncrystallised pension rights on 1 January 2014 (the specified date) is the sum of all of such rights on that date in respect of all relevant pension arrangements that he or she has (e.g. occupational pension scheme, RAC, PRSA, AVC, Buy Out Bonds etc.). An individual's uncrystallised pension rights are, essentially, rights to pension benefits built up, or in the process of being built up, but which have not yet crystallised i.e. the individual does not have a present right or entitlement to those benefits on 1 January 2014. The entitlement to the rights is a prospective one which will crystallise at some time in the future. The purpose of valuing these rights on the specified date is to determine if the value of those rights (together with the amount of any BCEs since 7 December 2005) exceeds the amount of the standard fund threshold (SFT) of €2m. If it does, then that value or amount, subject to a maximum of €2.3m, becomes the individual's protected "personal fund threshold" (PFT) for the purposes of ***Chapter 2C*** unless the Revenue Commissioners issued a certificate to the individual under the legislation as it applied prior to the passing of Finance (No.2) Act 2013, in which case the amount on the certificate is the PFT (adjusted as necessary by the relevant earnings factors). ***par 1***

(*Note – where a BCE occurs on 1 January 2014 it will be deemed for the purposes of valuing an individual's uncrystallised pension rights to have occurred on the following day*.)

The methodology to be used for valuing uncrystallised pension rights depends on whether the relevant pension arrangement involved is a DC arrangement or a DB arrangement.

Where the uncrystallised benefits are in a DC type pension arrangement e.g. a DC occupational pension scheme, a retirement annuity contract with an insurance provider or a PRSA with a PRSA provider, the capital value of those rights is simply the assets (or so much of the assets) in the arrangement that represent the individual member's accumulated rights on that date - the assets may be cash or non-cash, and if the latter, the market value of those assets must be established on that date.

In the case of DB arrangements, a formula must be used to determine the value of uncrystallised rights. A formula is required in these cases because establishing the capital value of those rights is not so straightforward as there is no fund specifically earmarked to provide the pension benefits (which will generally be paid directly from the scheme). In order to work out the capital value of the uncrystallised rights at 1 January 2014, a conversion or valuation factor is needed. The legislation specifies a valuation factor of 20 for this purpose (see ***section 787O(2)(a)(i)***).

This conversion factor is applied to the gross annual pension (i.e. before any commutation for a lump sum, where the scheme provides a discretionary lump sum commutation option) that the individual would be entitled to under the scheme rules, at his or her current salary and service level, if on 1 January 2014, he or she had acquired an actual rather than a prospective right to receive a pension, in respect of those rights. If the scheme provides a separately accrued lump sum entitlement (otherwise than by way of commutation of part of the pension) e.g. civil service pensions, the value of any lump sum entitlement is added to the capital value of the DB pension to arrive at the overall capital value of the individual's pension rights on 1 January 2014.

A number of assumptions must guide the calculation of the uncrystallised pension rights in the case of DB arrangements. These are that:

- the individual had reached normal retirement age on that date (or had reached the age required under the pension arrangement to avoid any reduction in benefits on account of age), and
- the individual's rights to receive the pension had not arisen because of incapacity.

Occurrence of benefit crystallisation event

Paragraph 2 sets out when a benefit crystallisation event (BCE) is to be taken to occur (and in effect the different types of BCE that can arise). Most of the BCE's cover particular circumstances where pension rights that have been built up under a pension scheme are realised by the individual, most commonly by a pension or annuity coming into payment or a lump sum being paid. But other BCE's deal with situations where ***par 2***

- a pension or annuity is not taken and the value of the fund (less the lump sum) is placed in an ARF,
- a fund is transferred abroad,
- an option to transfer PRSA assets to an ARF is not exercised and instead the assets are retained in that, or any other, PRSA, or
- the owner of a Retirement Annuity Contract (RAC) or a PRSA does not take benefits from the RAC or PRSA on or before the date of his or her 75th birthday. In these circumstances, the RAC or PRSA becomes vested on the date the owner attains the age of 75, or on 25 December 2016 (the date Finance Act 2016 was passed), if the owner was 75 before that date.

There is also an-anti-avoidance BCE to deal with situations where, after a benefit is taken by way of a pension, the amount of the pension increases substantially. In such cases, a separate BCE arises, which must be valued and tested against the appropriate fund threshold, if the increase in the pension is above a set level called the "permitted margin". The term "permitted margin" is defined in ***section 787O(1)*** as being the greater of two calculations – "calculation A" or "calculation B" - which, in summary, is the greater of 5% p.a. or 2% plus the relevant movement in the CPI, between the time the pension is paid and the time it is increased.

Therefore, an individual cannot avoid the possibility of a tax charge on a chargeable excess simply by choosing the ARF option, by taking the benefits overseas or by arranging a relatively small pension in payment at the start followed by a large increase or increases later.

Calculation of amount crystallised by a benefit crystallisation event

Paragraph 3 sets out the basis for calculating the amount crystallised for each type of BCE as follows: ***par 3***

- The capital value of a DB BCE that is a pension drawn down after 1 January 2014 is determined by the formula P x A, where P is the annual amount of pension which would be payable to the individual (before any commutation of part of the pension for a lump sum) and A is the relevant age-related factor, as set out in the Table to this Schedule. If the arrangement provides for a separate lump sum entitlement (otherwise than by way of commutation of part of the pension) e.g. most public service schemes, the value of the lump sum is treated as a separate BCE and is added to the capital value of the annual amount of pension payable to arrive at the overall capital value.

  However, where part of a DB pension has been accrued at 1 January 2014 and part after that date, transitional arrangements allow the capital value of the pension at retirement to be calculated by way of a "split" calculation, so that the part accrued up to 1 January 2014 (called the "accrued pension amount" – APA in the formula in ***subparagraph (aa)***) will be valued at a factor of 20 and the part accrued after that date valued at the appropriate age-related factor. A condition of applying the "split" calculation is that the administrator concerned is satisfied from information and records available to the administrator that an accrued pension amount arises in relation to the pension in question. The administrator must retain for a period of 6 years the information and records on foot of which the administrator was satisfied that an accrued pension amount applied, for the purposes of satisfying Revenue, if required, that such was the case

- For an annuity type BCE (e.g. in respect of DC type arrangements) the capital value of those rights is simply the assets (or so much of the assets) in the arrangement that represent the individual member's accumulated rights on that date, as are used to purchase the annuity.

- For a lump sum type BCE the capital value is the amount of the lump sum paid.

- For a BCE arising where an "ARF" option is chosen, then irrespective of whether the relevant pension arrangement is a DB or DC type arrangement, an amount consisting of cash and/or assets representing the value of the annuity or pension that would otherwise have become payable under the scheme must, depending on the option chosen by the individual, be transferred to either the individual, an ARF or an ARMF. The amount crystallised is simply the value of the cash sums and/or assets as are to be transferred following the exercise of the "ARF" option.

  - For a BCE involving the retention of assets in a PRSA, the amount crystallised is the aggregate of the cash sums and the market value of any assets retained in the PRSA or any other PRSA.

  - For a BCE arising where an RAC or a PRSA vests as a result of the owner not taking benefits on or before the date of his or her 75th birthday, the amount crystallised is the aggregate of the cash sums and the market value of any assets which represent the owner's rights under the RAC at the date the owner attains the age of 75 years or, in the case of a PRSA, the aggregate of the cash sums and the market value of the assets in the PRSA at that date. Where the owner attained the age of 75 years prior to 25 December 2016, the relevant date for establishing the aggregate of the cash sums and the market value of the assets is 25 December 2016.

- For a BCE arising where an individual transfers his or her pension rights to an overseas scheme, the amount crystallised is simply the amount of any payment made to the overseas scheme or the value of any assets transferred to that scheme.

- For a BCE arising because a pension in payment is increased beyond a permitted margin (i.e. the greater of 5% p.a. or 2% plus the movement in the CPI between the month when the pension came into payment and the month when it was paid at the increased amount), the amount crystallised for BCE purposes is the amount by which the increased annual amount of pension in payment exceeds the increased amount of the pension if it was increased by the permitted margin. This amount (which will be a positive amount) is then multiplied by the relevant age-related valuation factor to arrive at the capital value of the BCE. As the calculation of this BCE always commences at the date the pension first came into payment, where previous increases in the pension have given rise to BCE's under this provision these must be deducted so as to avoid double counting. (For BCE's which occurred in these circumstances on or before 1 January 2014, the relevant valuation factor was 20, or such higher factor as was agreed by the individual with Revenue before 1 January 2014.)

Amount of a standard fund threshold or personal fund threshold that is available at the date of a current event

Paragraph 4 sets out how the amount of an individual's SFT or PFT, that is available at the date of a BCE is to be determined, as follows: ***par 4***

- where the BCE is the first BCE that has occurred on or after 7 December 2005, then all of the SFT (€2m) or, as the case may be, PFT is available. In other words, if the capital value of the BCE is, say, €1.5m and no prior BCE's have occurred, then the €1.5m is tested against the €2m SFT (or the PFT), no chargeable excess arises and the individual still has €0.5m of the SFT unused for future BCE's.

- where there have been BCE's prior to the current BCE on or after 7 December 2005 and the amount of those BCE's (called the "previously used amount") is equal to or greater than the amount of the SFT (€2m) or PFT, as the case may be, then by definition none of the SFT or PFT is available and, therefore, all of the current BCE is a chargeable excess subject to tax under Case IV of Schedule D at the higher rate of income tax for the tax year in which the BCE giving rise to the chargeable excess occurs.

- in any other case (which by definition means a case where some but not all of the SFT (€2m) or PFT, as the case may be, has been used up by prior BCE's) the amount of the SFT or PFT that is available at the time of the later (i.e. current) BCE, is the balance after deducting the amount of the prior BCE's.

Meaning of previously used amount

Paragraph 5 provides that in determining "the previously used amount" for the purposes of calculating how much, if any, of the SFT or PFT is available at the time of a current BCE, the amount of each prior BCE must be adjusted in accordance with a formula. This ensures, in the context of a reduction in the SFT, that the value of a prior BCE can never be less than its capital value at the time it crystallised. ***par 5***

The table following sets out the age-related valuation factors.

TABLE

Age	Relevant age-related factor
(1)	(2)
Up to and including 50	37
51	36
52	36
53	35
54	34
55	33
56	33
57	32

58	31
59	30
60	30
61	29
62	28
63	27
64	27
65	26
66	25
67	24
68	24
69	23
70 and over	22

Schedule 23C

[Part 30, Chapter 1]

Pre-Retirement Access to prsa avcS

Overview

This Schedule places certain information filing requirements on PRSA administrators where transfers under ***section 782A*** have been made to individuals in respect of PRSA AVCS.

Details

Information to be provided in respect of pre-retirement access to additional voluntary PRSA contributions

Administrators of AVC funds (within the meaning of ***section 782A(1)(a)***) who are PRSA administrators are required to provide, within 15 working days of the end of each quarter (commencing with the quarter ending on 30 June 2013), certain statistical information to Revenue in relation to AVC pre-retirement transfers made during the quarter in question. The information, which must be provided electronically, is as follows-

- the number of transfers made,
- the aggregate value of transfers made, and
- the tax deducted from the aggregate value of the transfers made.

For the purpose of this Schedule a “quarter” means a period of 3 consecutive months ending on 31 March, 30 June, 30 September or 31 December.

Schedule 24

[*Sections 826* and *833*]

Relief from Income Tax and Corporation Tax by Means of Credit in Respect of Foreign Tax

Overview

An Irish resident company is liable to corporation tax on all its profits wherever arising. It may also be liable to tax in other countries in respect of its income or gains.

An Irish resident individual is, subject to some exceptions, liable to income tax in respect of his/her world-wide income and capital gains tax in respect of world-wide chargeable gains. In some cases, part of that individual's income and gains may also be subject to tax in another country.

"double taxation" is the term used when a source of income is chargeable to tax in more than one country (that is, the income is doubly taxed). Relief from this double tax charge is known as "double taxation relief".

A Double Taxation Convention (sometimes called a "Double Taxation Agreement") is an international treaty concluded between the Government and the government of another country to provide, in the main, for the avoidance of double taxation.

Where income is chargeable to tax in more than one country (under the domestic tax legislation of each country) ***and*** a Double Taxation Convention is in force between the countries, the double charge to tax is generally relieved by either —

- exempting the income from tax in one of the countries, or
- allowing a credit in one country for the tax paid in respect of that income in the other country.

To determine which method of relief may be due it is necessary to examine the provisions of the relevant double taxation convention.

Schedule 24 sets out the "mechanics" for determining the amount of the credit, against Irish income tax, universal social charge, corporation tax and capital gains, in respect of foreign tax paid that can be given. This amount of credit cannot exceed the Irish tax due on the income from which the foreign tax was deducted. However, subject to certain conditions, surplus foreign tax may be credited against Irish tax on other foreign income or gains.

The Schedule also provides—

- that Irish resident parent companies which receive dividends from their subsidiaries (minimum of 5% shareholding) in countries with which Ireland does not have a tax treaty may now offset tax (whether it is in the form of withholding tax, or corporation tax on the subsidiaries' profits) against Irish corporation tax on the dividends,
- that where Irish resident parent companies have foreign subsidiaries (whether in treaty or non-treaty countries) and the foreign subsidiaries have themselves subsidiaries (sub-subsidiaries) in other countries an appropriate part of the tax paid by these "sub-subsidiaries" may, subject to certain conditions, be offset against Irish corporation tax on dividends received by the Irish parent,
- that where the foreign tax exceeds the Irish tax on certain dividends, the excess may be offset against Irish tax on other foreign dividends received in the accounting period concerned,

- that an Irish company may set foreign tax suffered on its branch income against Irish tax on that income in the accounting period concerned,
- that where the foreign tax exceeds the Irish tax on branch income, the excess may be offset against Irish tax on other foreign branch income received in the accounting period concerned,
- that withholding tax suffered by companies on royalty payments received in the course of a trade from countries with which Ireland does not have a tax treaty may be credited against the corporation tax attributable to those royalties,
- that any unrelieved foreign tax suffered by companies on relevant royalties may be used to reduce other foreign royalty income,
- that withholding tax suffered by companies, on leasing income, received in the course of a trade, from countries with which Ireland does not have a tax treaty may be credited against the corporation tax attributable to that leasing income,
- that where foreign CGT is suffered in a treaty country but that treaty does not cover relief from CGT, then credit for the foreign tax will be given against Irish capital gains tax suffered, and
- that an additional credit for tax on foreign dividends may be due, where the existing credit for foreign tax on certain dividends is less than the amount that would be computed by reference to the nominal rate of tax in the country from which the dividend is paid.

Details

Interpretation

An "arrangement" is a double taxation convention. ***par 1(1)***

"aggregate income for the tax year" is given the same meaning as in ***section 531AL***; that is, aggregate income for the purposes of universal social charge.

"aggregate of the tax value of the reduction" is the difference between:

(a) the income tax charged having reduced the taxable income by the reduction for foreign tax that could not be given as a credit (under ***subparagraph (3)(c)*** of ***paragraph 7*** - i.e. where the foreign effective rate of tax was greater than the Irish effective rate), and having given the credit for foreign tax against income tax, and

(b) the income tax that would have been charged if there had been no reduction for foreign tax not given as a credit.

The "Irish taxes" to which this Schedule applies are income tax, income levy, universal social charge and corporation tax. The provisions of this Schedule are also applied, suitably adapted, for the purposes of capital gains tax by virtue of ***section 828***.

"EEA Agreement" is the agreement signed at Oporto on 2 May 1992 between the EU and Norway, Iceland and Liechtenstein, as adjusted by the Protocol signed at Brussels in 1993,

"EEA State" is a state which is a signatory to the above agreement.

"foreign tax" is, in the case of any country with which the Government has entered into a double taxation convention, any tax chargeable under the laws of that country for which credit is allowed under the double taxation convention and, in any other case, any tax chargeable for which credit may be allowed by virtue of ***paragraph 9A(3)***.

"relevant Member State" is a Member State of the European Communities, or an EEA State with which Ireland has a double taxation agreement (i.e Norway and Iceland).

References in the section to foreign tax are to be taken as including only the tax of the country with which the arrangements have been made. ***par 1(2)***

General

Where a double taxation convention so allows, credit is to be given against the Irish tax chargeable on foreign source income for foreign tax paid on that same income. ***par 2(1)***

Where the foreign income is within the charge to corporation tax, a similar credit may be claimed. ***par 2(2)***

In the case of an individual the credit for foreign tax is first to be applied against income tax payable in respect of the foreign income. This ensures that for the purpose of allowing credit for foreign tax against income tax and universal social charge on foreign income, credit must first be given against income tax. ***par 2(2A)***

A credit cannot be given in respect of foreign tax unless a double taxation convention so allows. ***par 2(3)***

These general rules are subject to the other provisions of this Schedule. See for example the provisions of ***Part 2*** of this Schedule in relation to unilateral relief.

Requirements as to residence

Credit for foreign tax can only be given to a person resident in the State for tax purposes subject to ***paragraphs 9A***, ***9B*** and ***9C***. ***par 3***

Limit on total credit – corporation tax

The credit for foreign tax in respect of any income cannot exceed the amount of Irish corporation tax attributable to that same income. For example, if an Irish resident company has German income from which €1,000 German tax was deducted and the Irish corporation tax on that same income is €800, the credit for the German tax is restricted to €800. ***par 4(1)***

It is the Irish measure of income and gains which determines the amount of corporation tax which the credit for foreign tax must not exceed. The Irish measure of income and gains is the amount of such income and gains computed in accordance with the Tax Acts and the Capital Gains Tax Acts. ***par 4(2)***

The amount of doubly taxed trading income, where such income arises from a payment from which foreign tax has been deducted (for example, interest subjected to withholding tax that is received by a financial trader) is calculated as a proportion of the net trading income of the company, apportioned on the basis of gross receipts. However, foreign branch profits are excluded from the calculation of the amount of doubly taxed trading income that arises from a payment from which foreign tax is deducted. The actual profits of a foreign branch continue to be taken as a measure of the doubly taxed income. ***par 4(2A)***

The basis of attribution of corporation tax is such that it provides the intended result where the “effective” rate of corporation tax differs from the standard rate of corporation tax. ***par 4(4)***

If credit for foreign tax is to be allowed against corporation tax on doubly taxed income which is chargeable at the 25% rate, then the credit for foreign tax is to be limited to an amount equal to 25% of that income. An appropriate reduction in the limit where the income concerned includes income from dealing in residential development land which is taxed at an effective 20% rate, is also provided.

Where a lower corporation tax rate applies to income from a special investment fund (***section 723(6)***), an “effective” rate of 20 per cent applies.

Section 713 provides for the taxation of that part of the income and gains of a life assurance company which are reserved for policyholders. ***Section 738*** provides for the taxation of undertakings for collective investment. With regard to both sections, an "effective" rate equal to the standard rate of income tax applies.

Where the corporation tax due is reduced by a fraction under ***section 644B*** then the foreign tax credit is also to be reduced by that fraction.

Before attributing corporation tax to any income or gain by reference to the foregoing, the company must allocate all of its deductions which are deductions from profits (see ***section 4(1)***) between the income and gains constituting those profits. The company is entitled to allocate these deductions to its greatest advantage (it could, for example, set deductions primarily against income in respect of which no double taxation relief is due so as to maximise the Irish corporation tax against which foreign tax may be credited or it could also allocate the deductions to the income or gains which suffered the lowest rate of foreign tax). ***par 4(5)***

Whatever the company's choice is in allocating deductions, all of the deductions must be allocated. This allocation is also being made effective for unilateral credit relief under ***paragraphs 9D, 9DB*** and ***9DC***.

The provisions of ***subparagraph (5)*** do not apply to relevant trading charges within the meaning of ***section 243A***. ***par 4(6)***

Limit on total credit – income tax

In most cases, the effective rate of tax is calculated by dividing the total income of the person claiming the credit into the total income tax payable in respect of total income, for example, ***par 5(1)***

$$\frac{\text{Income tax payable say } €2{,}000}{\text{Total income say } €15{,}000} = 13.33\% \text{ (effective rate)}$$

In the case of individuals who are subject to the high earner restriction (HER) in ***Chapter 2A*** of ***Part 15*** the effective rate of tax is calculated by dividing the adjusted income (as defined in ***section 485C***) of the person claiming the credit into the total income tax payable in accordance with ***section 485E***.

$$\frac{\text{Income tax payable, after application of HER say } €120{,}000}{\text{Adjusted income say } €400{,}000} = 30\% \text{ (effective rate)}$$

The credit for foreign tax allowable against Irish income tax cannot exceed the sum ascertained by multiplying the amount of the foreign income by the taxpayer's effective rate of Irish tax on his/her total income.

Example

Calculation of credit for foreign tax

The foreign effective rate is 15% arising from —

$$\frac{\text{Foreign tax} \quad €150}{\text{Foreign income (gross)} \quad €1{,}000} \times 100$$

and the Irish effective rate is, say, 12%, then the credit for foreign tax is €116 calculated as follows —

Step 1

Revise the foreign income to be assessed to Irish tax. This is done by re-grossing the net foreign income at the lower of the two effective rates. In this example, the Irish effective rate [12%] is lower than the foreign effective rate.

Net foreign income = €1,000 – €150 = €850

Regrossed Net	100

foreign income $€850\times\frac{100}{(100\text{-}12)}$ = Revised foreign income of €966

Step 2

Multiply the revised foreign income by the Irish effective rate to arrive at the credit for foreign tax €966 @ 12% = €116

In this example, the foreign income ultimately assessed is €966 as the foreign tax for which credit cannot be given [i.e. €34 being the difference between €150 and €116] must be allowed as a deduction —

Gross foreign income	€1,000
Foreign tax for which credit cannot be given	€34
Net foreign income assessable	€966

In determining the tax payable for the purposes of the effective rate, the tax payable is calculated in the normal way. ***par 5(2)***

If credit for foreign tax paid on certain income is allowable under this Schedule, a credit for that same foreign tax cannot be claimed under ***section 830***. ***Section 830*** basically sets out that a credit for foreign tax is given to companies with income arising in a country with which Ireland does not have a double taxation convention. ***par 5(3)***

In practice, Revenue extends this principle to individuals who have income which arose in a country with which the Government has not entered into a double taxation convention.

Limit on total credit – universal social charge

The amount of the credit to be allowed against universal social charge (USC) is limited to the amount ascertained by multiplying the amount of the foreign income by the individual's effective rate of USC on his or her aggregate income for the tax year. ***par 5A(1)(a)***

Example

Calculation of limit of credit for foreign tax against USC on foreign income of an individual

Aggregate income	53,689 (Foreign income 8,189)		
USC Calculation	10,036	@2%	201
	5980	@4%	239
	37,673	@7%	2,637
	Total USC		**3,077**

Irish effective rate of USC is - $\frac{USC \quad €3{,}077}{Aggregate income\ €53{,}689} x100 = 5.7\%$

Credit for foreign tax against USC is limited to €8,189 x 5.7% = €467

To determine the amount available for credit against USC on a foreign income source, subtract from the total of foreign tax, including underlying tax on the foreign income the amount allowed as a credit for foreign tax in the income tax computation in respect of that income and the tax value of the reduction given in the income tax computation in respect of that income. This last sum is calculated by multiplying the aggregate of the tax value of the reduction as defined in ***paragraph 1*** by the reduction for foreign tax not given as a credit in respect of the particular income source over the aggregate of all the reductions given in the income tax computation in respect of foreign income sources. ***par 5A(1)(b)***

Example

Step 1 Calculate the total of foreign tax including underlying tax on the foreign income.

	Net	Direct tax	Gross	Indirect tax
Canadian loan interest (Self)	510	90	600	Nil
Netherlands Dividends (Spouse)	2,210	390	2,600	Nil
Belgian Company Dividends (Self)	4,250	750	5,000	2,589 (Foreign effective rate 44%)
	6,970	1,230	8,200	2,589

Foreign tax

Direct tax	1,230
Indirect tax	2,589
Total	3,819

Step 2 Calculate the amount allowed as a credit for foreign tax in the income tax computation in respect of that income.

Credit	**Net**	**Foreign effective rate**	**Irish rate (say)**	**Regross**	**at IER**
Canadian loan interest (Self)	510	15%	10.71%	571	61
Netherlands Dividends (Spouse)	2,210	15%	10.71%	2,475	265
Belgian Company Dividends (Self)	4,250	44%	10.71%	4,760	510
	6,970			7,806	836

Step 3 Calculate the reduction given in the income tax computation in respect of the foreign tax on that income that was not given as a credit.

Reduction	**Net**	**Foreign effective rate**	**Gross income**	**Regross**	**at IER**
Canadian loan interest (Self)	510	15%	600	571	29
Netherlands Dividends (Spouse)	2,210	15%	2,600	2,475	125
Belgian Company Dividends (Self)	4,250	44%	7,589	4,760	2,829
	6,970		1 0,789	7,806	2,983

Step 4 Calculate the aggregate of the tax value of the reduction given in the income tax computation in respect of that income.

This is the difference between the tax due in the final income tax computation which has included regrossed foreign income and allowed foreign tax credits, and the tax due from the same computation but including the gross foreign income; that is the foreign income without the reduction provided by ***subparagraph (3)(C)*** of ***paragraph 7***. Using the figures above the foreign income included in the first computation is 7,806, and in the second it is 10,789.

Income tax due per income tax computation with no reduction in foreign income	5,168 (say)
Income tax due per final income tax computation	4,195 (say)
Aggregate of the tax value of the reduction	973

Step 5 Add the aggregate of the tax value of the reduction to the tax credit and subtract the result from the total foreign tax available as a credit (including the underlying tax) to establish how much of the foreign tax available as a credit is still available for offset against USC.

Foreign tax credit from Step 2	836
Aggregate of the tax value of the reduction from Step 4	973
Total used in income tax computation	1,809
Total foreign tax from Step 1	3,819
Balance of foreign tax still available for credit against USC	€2,010

Step 6 Attribute the balance of foreign tax still available for credit against USC, 2,010, between each foreign income source on the basis of the share of each income source in the reduction.

	Reduction given in IT Computation	**Balance of foreign tax (FT)**		**Share of balance of FT of each income source**
Canadian loan interest (Self)	29	2,010	x 29 / 2,983 =	20
Netherlands Dividends (Spouse)	125	2,010	x 125 / 2,983 =	84
Belgian Company Dividends (Self)	2,829	2,010	x 2,829 / 2,983 =	1,906
	2,983			2,010

Therefore, there is a credit of 20 available against USC on the Canadian loan interest, 84 on the Netherlands dividends and 1,906 against USC on the Belgian dividends.

Where two individuals who are jointly assessed share a foreign income source for which credit against USC is to be allowed, then the credit coming forward from the income tax computation must be apportioned to the USC computation for each individual, in the same proportion as the individual's share in the income. Where there is an excess of credit for one individual it cannot be offset against the liability of the other on that or any other foreign income source. ***par 5A(2)***

Example

Continuing with the figures used above, if, say, the Netherlands dividends (2,600) are the only income of one spouse, then it is below the exemption threshold for the purposes of USC (10,036). Therefore, the amount of 84 available as a credit against any USC on the Netherlands income cannot be used or offset against USC on the other spouse's income. If the Netherlands income was held jointly and 1,300 of it represented the only income of one spouse, only 42 of the credit of 84 available could be offset against the USC on the other spouse's income, and then only up to the amount of USC attributable to that income source.

Final USC computation on foreign income	Gross Div	USC	Credit left from IT computation	USC due
USC attributable to Canadian loan interest	600	@ 5.7% = 34	20	14
USC attributable to Belgian Dividends	7,589	@ 5.7% = 433	1,906	Nil
Total USC attributable to foreign Income		467		14

Note: Credit for USC cannot exceed 467 – example in paragraph 5A(1)(a) above

Credit for USC actually given is 453

In general, a credit for foreign tax is more advantageous than a deduction for foreign tax. Where a deduction is given for foreign tax in arriving at taxable income, a credit for such tax is not given against Irish tax due. ***par 6***

The total credit for foreign tax to be allowed to any person against his/her income tax payable for a year of assessment cannot exceed the tax payable for that year. Neither can the foreign tax be credited against tax which the person has retained in charge from payments made to another person and which must be remitted to Revenue.

Effect on computation of income of allowance of credit

Where credit for foreign tax is to be allowed against any of the Irish taxes in respect of any income, the following applies — ***par 7(1) to (3)***

- if the foreign income assessed depends on the amount received in the State (that is, "remittance basis" cases), the amount of such foreign income to be assessed is the aggregate of the amount actually received in the State plus the amount of the credit allowable against Irish tax,
- in non-remittance basis cases —
  - where a credit for the foreign tax is allowable against any of the Irish taxes, no deduction for the foreign tax is to be made in computing the amount of the foreign income for the purposes of income tax,
  - for the purposes of income tax in the case of a dividend on the foreign ordinary stock or of a dividend in excess of the fixed rate on the foreign participating preference stock, the gross amount of the dividend (that is, after adding back the foreign tax charged directly on the dividend) is to be increased by that part of the foreign tax charged on the foreign company's profits which, under the double taxation relief arrangements, is to be taken into account in the computation of credit,
  - despite the two preceding statements, the foreign tax for which credit cannot be given against either income tax or corporation tax must be allowed as a reduction from the foreign income tax brought into charge for Irish income tax

or corporation tax purposes. For corporation tax purposes, the reduction available to a company for an excess of foreign tax cannot exceed the amount of the Irish measure of that foreign tax, as calculated in accordance with ***subparagraphs (2)*** and ***(2A)*** of ***paragraph (4)***.

When calculating the effective rate of Irish income tax — ***par 7(4)***

- in remittance basis cases, the foreign income chargeable is increased by the amount of the foreign tax charged directly on that income (as distinct from, in the final calculation of liability, increasing the net foreign income by the amount of the foreign tax allowable as a credit),
- in non-remittance basis cases, no deduction is made for the foreign tax, and
- in the case of a dividend, no account is taken of the tax borne by the dividend-paying company.

Example

Irish effective rate

Ms. Murphy, an Irish resident single individual has the following income —

	€
Irish salary gross (from which tax was deducted)	25,000
Foreign Dividend (net of 15% withholding tax)	510
Foreign Distribution (with attaching tax credit of €150)	850

Her Irish effective rate is calculated as follows —

	€	€
Salary		25,000
Foreign dividend (€510 + withholding tax of €90)		600
Foreign distribution (Distribution €850 + tax credit €150)		1,000
Total income		€26,600
€26,600 @ 20%		5,320
Less: Single Person Tax Credit	1,760	
Employee Tax Credit	1,760	
		3,250
Net tax payable for effective rate purposes		1,800

The Irish effective rate is —

1800 x 100 = 6.81%

€26,600

Effect on computation of income of allowance of credit against universal social charge

Where credit for foreign tax is to be allowed against any of the Irish taxes in respect of ***par 7A(1)*** any income, the following applies in relation to the computation of the amount of that income for the purposes of universal social charge.

Where the foreign income is assessed on the basis of remittances to the State the income remitted must, for the purposes of assessment to universal social charge, be treated as increased by the amount of the credit allowable in respect of the foreign tax. ***par 7A(2)***

In non-remittance basis cases, where a credit for the foreign tax is allowable against any of the Irish taxes, no deduction for the foreign tax is to be made in computing the amount of the foreign income for the purposes of universal social charge. ***par 7A(3)(a)***

In addition, in non-remittance basis cases, for the purposes of universal social charge in the case of a dividend on the foreign ordinary stock or of a dividend in excess of the fixed rate on the foreign participating preference stock, the gross amount of the dividend (i.e. after adding back the foreign tax charged directly on the dividend) is to be increased by that part of the foreign tax charged on the foreign company's profits which, under the double taxation relief arrangements, is to be taken into account in the computation of credit. ***par 7A(3)(b)***

In computing the effective rate of universal social charge under ***paragraph 5A***, the provisions of ***subparagraphs (1), (2)*** and ***(3)*** apply. In relation to the foreign income chargeable to universal social charge on the basis of remittances to the State, the income is increased by the amount of the credit allowable as in ***subparagraph (2)***. In the case of foreign income chargeable to universal social charge on the basis of the amount arising in the foreign country, no deduction is made for the foreign tax; and in the case of a dividend, the gross amount of the dividend (i.e. after adding back the foreign tax charged directly on the dividend) is to be increased by that part of the foreign tax charged on the foreign company's profits which, under the double taxation relief arrangements, is to be taken into account in the computation of credit. ***par 7A(4)***

Example

Irish effective rate of USC

Case 1	39,500		
Case 111	3,600		
Schedule F	2,400		
Total Irish income	45,500		
Canadian Loan Interest gross	600	***Paragraph 7A(3)(a)***	
Belgian Company Dividends gross	7,589	***Paragraph 7A(3)(b)*** including underlying tax	
Total	53,689		
USC Calculation	10,036 @2%	201	
	5980 @4%	239	
	37,673 @7%	2,637	
		3,077	
Effective rate of USC	3,077 / 53,689 =	5.7%	

This is also the same calculation for the final liability to USC. Unlike the regrossing computation for calculating the final liability to income tax the USC computation is based on the USC attributable to the foreign income. This is because USC is computed on aggregate income, which is the aggregate of an individual's relevant emoluments, and relevant income for the year. Relevant income is income as estimated in accordance with the Tax Acts, without regard to any amount deductible from or deductible in computing total income. Therefore, the reduction envisaged in ***paragraph 7(3)(c)*** which is calculated in the regrossing computation is not allowable for the purposes of USC.

Note also that for the purposes of USC where credit is also allowable for underlying tax in the case of foreign dividends the gross dividend including the underlying tax is included in the USC computation. This also follows the premise that the USC computation does not encompass regrossing as is done in the income tax computation whereby a reduction for tax not used as a credit is provided.

Special provisions as to dividends

In determining the appropriate proportion of the foreign tax of the dividend paying company which is to be attributed to a foreign dividend for the purposes of credit relief, the tax is to be that appropriate to the "relevant profits" (that is, the profits for the period out of which the dividend is paid, or the specified profits out of which it is paid: or where the dividend is not expressed to be paid for any period or out of any specified profits, it is to be treated as paid out of the profits of the company for the last period, ended before the dividend became payable, for which accounts were made up). ***par 8(1) & (2)***

In circumstances where a dividend exceeds the profits of the period for which it is (or is treated as having been) paid, the profits represented by the dividend are to be taken as being the profits of that period plus so much of the available profits of the immediately preceding period or periods as is equal to the excess. The profits of the most recent preceding period are first to be taken into account; then (where necessary) those of the next most recent preceding period; and so on.

In the case of an Irish company which receives a fixed rate dividend (for example, a non-participating preference dividend) from a foreign company in which the Irish company controls not less than one-half of the voting power, the foreign tax paid by the dividend-paying company on its relevant profits is to be taken into account in considering the credit allowable to the recipient company in respect of that dividend. In other words, the fixed rate dividend is deemed in such exceptional circumstances to be in the nature of an ordinary dividend. ***par 9***

Unilateral Relief

Unilateral credit relief may be given where a parent company, which is resident in the State, receives a dividend from its subsidiary in respect of which tax has been paid in a country with which Ireland does not have a tax treaty. ***par 9A(1)***

The relief is given by allowing the foreign tax as a credit against the Irish corporation tax, even though there is no tax treaty in place between Ireland and the country concerned.

The amount of the relief is calculated as if a tax treaty was in place with the country concerned. This "notional treaty" is one containing the provisions set out in ***paragraph 9A(3)*** to ***(5)***. References in this Schedule to credit being given under tax treaties are to be regarded as including references to unilateral relief. ***par 9A(2)***

The corporation tax against which the credit is allowed is the Irish corporation tax attributable to a company's (included in ***subparagraph (3A)***) profits represented by the dividend. ***par 9A(3)***

A company is included in this subparagraph if it is resident in the State or resident in a 'relevant Member State' and the dividend referred to above forms part of the profits of a branch or agency within the State. ***par 9A(3A)***

Where a payment is made under the law of a foreign territory to any person by reference to tax paid in relation to a dividend paid by a company in a foreign territory, then the amount of the credit attributable to the profits represented by the dividend which is to be allowed against corporation tax is to be reduced by an amount equal to the amount of the payment. ***par 9A(3B)***

The foreign tax on the dividend means — ***par 9A(4)***

- any withholding tax on the dividend paid, and
- tax paid in the territory concerned by the company paying the dividend on its profits in so far as the tax is properly attributable to the proportion of the profits represented by the dividend.

Relief is only given in respect of a "relevant dividend" which is defined as a dividend paid by a non-resident company to a company included in ***subparagraph (3A)***.

However, credit will not be given — ***par 9A(5)***

- for any tax paid in a tax treaty country except to the extent to which it cannot be credited in accordance with the relevant tax treaty,
- for any foreign tax which is taken into account in calculating the existing unilateral credit relief under ***paragraph 9D*** of this Schedule,
- for any tax in respect of which credit is given under ***section 831*** which implemented in Ireland the EU Parent/Subsidiaries Directive.

Provision is made to enable assessments to be made or amended to ensure that the correct amount of credit is given. ***par 9A(6)***

Finally, the only foreign tax for which credit will be given is tax charged on income or capital gains which corresponds to corporation tax or capital gains tax. ***par 9A(7)***

Dividends paid between related companies: relief for Irish and third country taxes

Paragraph 9B provides that credit is allowed against Irish corporation tax on dividends received by a relevant company from a foreign related company for tax paid by that foreign company and its subsidiaries provided the foreign company is —

- a 5% subsidiary of the company to which it pays the dividends, and
- a 5% subsidiary of the ultimate Irish parent.

This is achieved in a stepped way. ***Subparagraph (1)*** deals with allowing a credit for tax paid by a foreign company (F Ltd) to the relevant company. ***Subparagraph (2)*** provides that tax paid by a subsidiary (S Ltd) of the foreign company will be treated as paid by the foreign company so as to be able to be set against Irish corporation tax of the relevant company. ***Subparagraph (3)*** provides that tax paid by a subsidiary (SS Ltd) of S Ltd will be treated as paid by S Ltd so as to be pushed up through F Ltd to be set against the Irish corporation tax of the relevant company. This process applies down through any number of tiers of companies as long as the company concerned is a 5% subsidiary of the one above it in the chain.

For the purposes of this paragraph — ***par 9B(5)(b)***

- one company is related to another if that other company directly or indirectly controls, or is a subsidiary (i.e. directly or indirectly owns at least 50% of the ordinary share capital) of a company which directly or indirectly controls, at least 5% of the voting power in the first company,
- one company is connected to another if that other company directly or indirectly controls, or is a subsidiary of a company which directly or indirectly controls, at least 5% of voting power in the first company.

In the case of a dividend payment by a foreign company to a relevant company, credit to be given will take account of certain tax paid by the foreign company and which is attributable to the profits represented by the dividend. The tax concerned is — ***par 9B(1)***

- any income tax or corporation tax paid in the State by the foreign company, this could arise where, for example, the company trades in the State through a branch or agency, and
- any tax paid by the company under the law of any territory other than the State. This includes tax paid by the foreign company in the territory in which it is resident and tax paid by it in any other territory.

A company that falls within this subparagraph is known as a "relevant company". It must be resident in the State or resident in a Member State of the EU or resident in a Member State of the EEA with which Ireland has a tax treaty.

The foreign company is to be treated as having paid certain tax for the purposes of giving credit where it receives a dividend from a third related company. The tax to be treated as paid is underlying tax paid by the related company if that underlying tax would have been creditable against Irish corporation tax if the foreign company had been resident in the State. ***par 9B(1A)***

Underlying tax in relation to a dividend is defined as tax borne by the company paying the dividend on relevant profits in so far as it is attributable to the proportion of the profits represented by the dividend. This includes both tax on the profits and any underlying tax suffered on a dividend coming in to that company. ***par 9B(5)(a)***

Where the third company itself receives a dividend from its related companies, it will be regarded as having paid tax borne by those companies. As a result, that tax can be treated as paid by the company above it, and so on up the chain so that the Irish resident parent can get relief for an appropriate part of foreign tax paid by foreign companies which are members of the group. ***par 9B(3)***

Limitations on this relief are as follows — ***par 9B(4)***

- no tax is to be taken into account in respect of a dividend paid by an Irish resident company except corporation tax payable in the State and any tax for which the company is entitled to double taxation relief under this Schedule. This covers a situation where an Irish parent company (P Ltd) has a foreign subsidiary (S Ltd) which in turn has an Irish subsidiary (SS Ltd). The Irish tax paid by SS Ltd will reduce the tax paid by S Ltd. The credit against tax charged on P Ltd will be the aggregate of the tax paid by S Ltd (which will be net of the Irish tax paid by SS Ltd) and that paid by SS Ltd.
- a foreign company (F1 Ltd) to which tax paid by its subsidiary (F2 Ltd) is being brought up may only have tax taken into account if the tax could have been credited had F1 Ltd been resident in the State (i.e. either a double tax treaty exists or unilateral credit is available).

This paragraph allows for a credit on foreign tax paid by a company which is resident in another EU Member State and which has an Irish branch. The credit will be the same as that currently afforded to Irish resident companies under a tax treaty. The tax which may be credited does not, however, include tax paid in the company's country of residence. ***par 9C***

This paragraph gives unilateral credit relief for withholding tax (referred to in the paragraph as "relevant foreign tax") suffered in countries with which Ireland does not have a tax treaty on interest (referred to in the section as "relevant interest") which falls to be taken into account in computing trading income of the company which receives it. ***par 9D***

This paragraph provides for a reduction in Irish corporation tax on relevant interest in respect of the relevant foreign tax borne. Under general computational rules the foreign tax suffered is deducted in calculating the company's trading income. Such a deduction results in a reduction in corporation tax the amount of which will depend on the corporation tax rate.

> For example, if foreign tax of €100 is suffered, a deduction of €100 in calculating trading income will result in a tax saving of €12½ where the corporation tax rate is 12½ %. Consequently, €87½ (or 87½ %) of the foreign tax remains to be credited. Relief is restricted to the amount of Irish corporation tax attributable to the doubly taxed relevant interest so that the foreign tax does not shelter Irish tax on other income. This is the standard approach in relation to relief from double taxation.

"relevant foreign tax" is defined, in relation to any interest, as tax, corresponding to income tax or corporation tax, which has been deducted from the interest and has not been repaid, for which credit is not allowed under a tax treaty and which is not treated under this Schedule as reducing the company's income.

"relevant interest" is defined as interest receivable by a company which falls to be taken into account in computing the company's trading income and from which relevant foreign tax has been deducted.

Corporation tax attributable to an amount of relevant interest is determined by applying the standard corporation tax rate to the amount of income of the company referable to the amount of the relevant interest. Income of a company referable to the amount of relevant interest is determined by apportioning the company's trading income between income from relevant interest and other income on the basis of relevant interest receivable in the accounting period and other amounts receivable in the course of the trade in the accounting period. This can be calculated by a formula as follows:

$$\text{Trading Income} \quad \text{x} \quad \frac{\text{relevant interest in the accounting period}}{\text{total amount receivable in the course of the trade}}$$

Unilateral relief for branch profits

Unilateral credit relief may be given where foreign tax is suffered by a company that has a branch in a country with which Ireland does not have a treaty.

The relief is given by allowing the company to set the foreign tax on its branch income against the Irish tax on that income.

The amount of the relief is calculated as if a tax treaty was in place with the country concerned. This "notional treaty" is one containing the provisions set out in ***subparagraphs (3)*** to ***(5)***. References in this Schedule to credit being given under tax treaties are to be regarded as including references to unilateral relief. ***par 9DA(2)***

The corporation tax against which the credit is allowed is the Irish corporation tax attributable to the income of the foreign branch. ***par 9DA(3)***

A company is included in this subparagraph if it is resident in the State or resident in a 'relevant Member State' and the income referred to above forms part of the income of a branch or agency of the company in the State. ***par 9DA(4)***

However, credit will not be given — ***par 9DA(5)***

- for any tax paid in a country that can be credited under a tax treaty between that country and Ireland, and
- for any foreign tax which is taken into account in calculating the existing unilateral credit relief ***paragraph 9D*** of this Schedule.

Provision is made to enable assessments to be made or amended to ensure that the correct amount of credit is given. ***par 9DA(6)***

Finally, the only foreign tax for which credit will be given is tax charged on income or capital gains which corresponds to Irish corporation tax or capital gains tax. ***par 9DA(7)***

Unilateral Relief for royalty income

Unilateral credit relief may be given for withholding tax (referred to in the paragraph as "relevant foreign tax") suffered in countries with which Ireland does not have a tax treaty on royalties, (referred to in the paragraph as "relevant royalties") which fall to be taken into account in computing trading income of the company which receives it. ***par 9DB***

The relief is given by allowing a reduction in Irish corporation tax on relevant royalties in respect of the relevant foreign tax borne. Under general computational rules the foreign tax suffered is deducted in calculating the company's trading income. Such a deduction results in a reduction in corporation tax of 12.5%.

For example, if foreign tax of €100 is suffered, a deduction of €100 in calculating trading income will result in a tax saving of €12.50 or 12½ %. Consequently, €87.50 (or 87½ %)

of the foreign tax remains to be credited. Relief is given as a percentage of the foreign tax or, if less, the amount of Irish corporation tax attributable to the doubly taxed relevant royalty. This is the standard approach in relation to relief from double taxation.

Definitions

"relevant foreign tax" is defined, in relation to any royalty, as tax corresponding to income tax or corporation tax, which has been deducted from the royalty and has not been repaid, for which credit is not allowed under a tax treaty and which is not treated under this Schedule as reducing the company's income. ***par 9DB(1)(a)***

"relevant royalties" are defined as royalties receivable by a company which fall to be taken into account in computing the company's trading income and from which relevant foreign tax has been deducted.

The meaning of "royalties" is set out.

Corporation tax attributable to an amount of relevant royalties is determined by applying the standard corporation tax rate to the amount of income of the company referable to the amount of the relevant royalty. Income of a company referable to the amount of relevant royalty is determined by apportioning the company's trading income between income from relevant royalties and other income on the basis of relevant royalties receivable in the accounting period and other amounts receivable in the course of the trade in the accounting period. This can be calculated by a formula as follows: ***par 9DB(1)(b)***

$$\text{Trading Income} \quad \text{x} \quad \frac{\text{relevant royalties in the accounting period}}{\text{total amount receivable in the course of the trade}}$$

Pooling

Any foreign tax, which cannot be treated as reducing income by virtue of a double taxation treaty or under the unilateral relief provision, due to an insufficiency of income, may be used to reduce the income referable to other foreign trading royalty income.

Where relevant royalties are received in an accounting period by a company and any part of the foreign tax on those royalties cannot be relived by virtue of a double taxation treaty or under unilateral relief due to an insufficiency of income then that unrelieved amount shall be "unrelieved foreign tax" for the purposes of ***paragraph 9DB***. ***par 9DB(4)***

Where, as respects an accounting period of a company, the trading income of a company includes royalties from persons not resident in the State the company may- ***par 9DB(5)***

(a) reduce the foreign royalty income by any unrelieved foreign tax, and

(b) allocate such reductions in such amounts and to such of its foreign royalty income for that accounting period as it sees fit.

The aggregate amount of reductions under ***subparagraph (5)*** cannot exceed the aggregate of the unrelieved foreign tax in respects of all relevant royalties for an accounting period. ***par 9DB(6)***

Unilateral Relief for leasing income

Unilateral credit relief may be given for withholding tax (referred to in the paragraph as "relevant foreign tax") suffered in countries with which Ireland does not have a tax treaty on leasing income, (referred to in the paragraph as "relevant leasing income) which fall to be taken into account in computing trading income of the company which receives it. ***par 9DC(1)***

The relief allows for a reduction in Irish corporation tax on relevant leasing income in respect of the relevant foreign tax borne. Under general computational rules the foreign tax suffered is deducted in calculating the company's trading income. Such a deduction results in a reduction in corporation tax of 12.5%.

For example, if foreign tax is €100, a deduction of €100 is allowed in calculating trading income, this will result in a tax saving of €12.50 or 12½ %. Consequently, €87.50 (or 87½ %) of the foreign tax remains to be credited. Unilateral relief is given as a percentage of the foreign tax or, if less, the amount of Irish corporation tax attributable to the doubly taxed leasing payment. This is the standard approach in relation to relief from double taxation.

"Relevant foreign tax" is defined, in relation to leasing income, as tax corresponding to income tax or corporation tax, which has been deducted from the lease payment and has not been repaid, for which credit is not allowed under a tax treaty and which is not treated under this Schedule as reducing the company's income.

"Relevant leasing income" is defined as leasing income receivable by a company which fall to be taken into account in computing the company's trading income and from which relevant foreign tax has been deducted.

The meaning of "leasing income" is set out.

Corporation tax attributable to an amount of relevant leasing income is determined by applying the standard corporation tax rate to the amount of income of the company referable to the amount of the relevant leasing income. Income of a company referable to the amount of relevant leasing income is determined by apportioning the company's trading income between income from relevant leasing income and other income on the basis of relevant leasing income receivable in the accounting period and other amounts receivable in the course of the trade in the accounting period. This can be calculated by a formula as follows: ***par 9DC(2)***

$$\text{Trading income} \times \frac{\text{relevant leasing income in an accounting period}}{\text{Total amount receivable in the course of the trade}}$$

Where foreign tax is incurred in respect of a separate stream of leasing income, and that tax cannot be fully relieved against the corporation tax attributable to that stream of leasing income in the current year, then the excess foreign tax may be carried forward for relief against income from the same stream of leasing income in future years. ***par 9DC(3)***

In order to allow unrelieved foreign tax (i.e. treaty country, foreign tax) or unrelieved relevant foreign tax (i.e. non-treaty country, foreign tax) to be carried forward, it is necessary to identify, for the purposes of ***subparagraph (4)***, the amount of such unrelieved tax.

In the case of unrelieved foreign tax (*i.e. tax borne in a tax treaty country*) the amount to be treated as unrelieved foreign tax for the purposes of ***subparagraph (4)***, is –

- the amount of the foreign tax that has not been allowed as a reduction against income nor allowed as a credit under the general rules of this Schedule, and
- 87.5 per cent of the amount of the foreign credit which under ***paragraph 7(3)(c)*** has been allowed as a reduction against leasing income.

For example, if foreign tax is €100 and the leasing income is €75, then the unrelieved foreign tax is €90.62 (made up of €25 i.e. the amount that is neither allowed as a reduction or as a credit) plus €65.62 (i.e. 87½ % of the foreign tax that has been allowed as a credit under ***paragraph 7(3)(c)***). The reason 87.5% of the foreign tax is used is because the value of the reduction will equate to 12.5% of the foreign tax allowed in reducing the foreign income chargeable to Irish tax.

In the case of unrelieved relevant foreign tax (*i.e. tax borne in a non-treaty country*), the amount to be treated as unrelieved relevant foreign tax for the purposes of ***subparagraph (4)***, is the amount by which 87.5% of the relevant foreign tax which is deducted from the leasing income, or treated as so deducted under ***subparagraph (4)***, exceeds the corporation tax attributable to that leasing income.

For example, if relevant foreign tax is €75 and the leasing income is €100, then the unrelieved foreign tax is €65.62 (i.e. 87.5% of €75); 12.5% of the relevant foreign tax will already have been effectively relieved by way of a deduction.

Unrelieved foreign tax or unrelieved relevant foreign tax on leasing income may be carried forward into the next accounting period and is deemed to be foreign tax or relevant foreign tax of that period for the purposes of the Corporation Tax Acts. Accordingly, the unrelieved foreign tax or unrelieved relevant foreign tax carried forward is deductible in computing the income as well as creditable against Irish tax, relating to the same stream of leasing income arising in subsequent accounting periods. ***par 9DC(4)***

Treatment of unrelieved foreign tax

Pooling

Where the foreign tax suffered exceeds the Irish tax on the dividend the excess may be offset against Irish tax on other foreign dividends and any unrelieved amounts may be carried forward. These pooling arrangements apply separately to dividends that are taxable at the 25% rate and to dividends that are taxable at the 12½% rate. Any surplus of foreign tax arising on dividends taxable at the 12½% rate is not available for offset against tax on dividends taxable at the 25% rate. There is a similar restriction in the case of dividends taxable at the 25% rate. ***par 9E(2)(c) & (3)(d)***

“foreign company” is defined as a company resident outside the State. ***par 9E(1)(a)***

“unrelieved foreign tax” has the meaning given to it in ***subparagraph (2)***, i.e. foreign tax that cannot be relieved against Irish tax on dividends concerned. ***par 9E(1)(a)***

“unrelieved foreign tax in respect of specified dividends” has the meaning given to it in ***subparagraph (3)***, i.e. foreign tax that cannot be relieved against Irish tax on the specified dividends concerned. Specified dividends are dividends that are taxable at the 12.5% rate. This is defined in ***subparagraph (3)***. ***par 9E(1)(a)***

A dividend is regarded as a “relevant dividend” if it is received from a non-resident company and the receiving company has a holding of 5% in the dividend paying company. ***par 9E(1)(b)(i)***

The aggregate amount of corporation tax payable by a company for an accounting period in respect of relevant dividends received by the company in the accounting period from foreign companies is the tax that would not have been payable if the company had not received those dividends. ***par 9E(1)(b)(ii)***

Provision is made to deal with foreign dividends that are chargeable to tax at the 25% rate. Dividends chargeable at the 12.5% rate are dealt with in ***subparagraph (3)***. ***par 9E(2)***

The meaning of unrelieved foreign tax is set out. As the income will have been reduced by the surplus foreign tax under the general rules of ***Schedule 24***, the company will have received a tax benefit equal to 25% of the surplus. Consequently, only the other 75% of the surplus tax may be set against tax on other foreign dividends. The 75% is determined by way of a formula. This ensures that the provision will continue to operate appropriately even in the event of a change in the 25% corporation tax rate. The formula applied to the surplus foreign tax is as follows- ***par 9E(2)(a)***

$$\frac{100-R}{100} \times D$$

In a situation where R is the rate of tax specified in ***section 21A*** and D is the surplus foreign tax, this means that 75% of the surplus foreign tax is available for offset.

Unrelieved foreign tax is to be set off against corporation tax payable by the company on other foreign dividends received by it in the accounting period, irrespective as to whether those other dividends are taxable at the 12.5% or the 25% rate. ***par 9E(2)(b)***

Where unrelieved foreign tax cannot be fully offset under ***clause (b)***, it can be carried forward and treated as unrelieved corporation tax of the following accounting period for offset in that accounting period against corporation tax payable by the company in respect of relevant dividends received in that accounting period. ***par 9E(2)(c)***

Provision is made to deal with foreign dividends that are chargeable to tax at the 12.5% rate. These are described as specified dividends. ***par 9E(3)(a)***

The meaning of unrelieved foreign tax as respects a specified dividend is set out. As the income arising from that dividend will already have been reduced by the surplus foreign tax under the general rules of ***Schedule 24***, the company will have received a tax benefit equal to 12.5% of the surplus. Consequently, only the other 87.5% of the surplus tax may be set against tax on other specified dividends. Again, the 87.5% is determined by way of a formula. The formula applied to the surplus foreign tax is as follows- ***par 9E(3)(b)***

$$\frac{100-R}{100} \times D$$

In a situation where R is the rate of tax specified in ***section 21*** and D is the surplus foreign tax, this means that 87.5% of the surplus foreign tax is available for offset.

Unrelieved foreign tax in respect of a specified dividend is to be set off against corporation tax payable by the company on other specified dividends received by it in the accounting period. ***par 9E(3)(c)***

Where unrelieved foreign tax in respect of a specified dividend cannot be fully offset under ***clause (c)***, it can be carried forward and treated as unrelieved corporation tax in respect of specified dividends of the following accounting period for offset in that accounting period against corporation tax payable by the company in respect of specified dividends received in that accounting period. ***par 9E(3)(d)***

This paragraph is concerned with giving relief to a company for foreign tax on interest received by the company from an associated company in a country with which Ireland has a double tax treaty in force or has signed a double tax treaty which has yet to come into force. Where a company receives such interest, the foreign tax may be offset against Irish corporation tax on the interest. Where the foreign tax exceeds the Irish tax, this paragraph allows the surplus tax to be credited against tax on other interest from associated companies, if the interest is sourced in a tax treaty country. ***par 9F***

"the aggregate amount of corporation tax payable by a company for an accounting period in respect of relevant interest of the company for the accounting period from foreign companies" is the tax that would not have been payable if the interest had not been chargeable to tax. ***par 9F (1)(a)***

"foreign company" is a company resident outside the State.

"foreign tax" is tax corresponding to income tax or corporation tax that has been deducted outside the State from the interest payment to the company, and which has not been repaid to the company.

"unrelieved foreign tax" is the tax that cannot otherwise be offset and is defined in ***subparagraph (2)***.

Interest receivable by a company is regarded as relevant interest if it is taken into account in computing trading income (i.e. the company carries on a financial trade), if it is sourced in a country with which Ireland has a double tax treaty, and if the company paying the interest and the company receiving the interest are associated: The relationship between the two companies is determined in terms of one being a 25% subsidiary of the other, or both being 25% subsidiaries of a third company – for the purposes of the provision, the 25% relationship is strictly determined in terms of actual beneficial entitlement to profits or assets, as opposed to any artificial relationship between the two companies. ***par 9F(1)(b)***

The meaning of unrelieved tax on relevant interest received in an accounting period is set out. Under the general rule, where foreign interest is received, it is chargeable to Irish tax. The Irish tax is reduced by the foreign tax. If the foreign tax exceeds the Irish tax the excess is treated as reducing the income concerned. This subparagraph allows a part of the foreign tax that has so reduced the income to be offset against Irish tax on other similar foreign interest received in the accounting period. ***par 9F(2)***

As the income is reduced by the surplus foreign tax, the company will have received a tax benefit equal to 25% of the surplus. Consequently, only the other 75% of tax surplus may be set against tax on other similar foreign interest. The 75% is determined by way of the following formula:

$$\frac{100 - R}{100} \times D$$

In a situation where R is the rate of tax and D is the surplus foreign tax, this means that 75% of the surplus foreign tax is available for offset.

Unrelieved foreign tax of an accounting period may be offset against corporation tax payable by the company in respect of relevant interest received by the company in the accounting period. ***par 9F(3)***

Pooling for branch profits

This paragraph is concerned with the pooling of certain double taxation relief arising from foreign tax on branch income. Where a company receives foreign income and the foreign tax suffered exceeds the Irish tax on the foreign branch income the excess may be offset against Irish tax on other foreign branch income of the year concerned. ***par 9FA***

"the aggregate amount of corporation tax payable by a company for an accounting period in respect of foreign branch income of the company for the accounting period" is the tax that would not have been payable if that income had not been chargeable to tax. ***par 9FA(1)***

"foreign branch" is a branch or agency of a company in a foreign territory through which the company carries on a trade in that territory.

"foreign branch income" is the income of the company that is attributable to a foreign branch.

"foreign tax" is tax paid in a foreign territory or income of a company from a branch or agency in that territory and which corresponds to corporation tax.

The meaning of unrelieved tax on foreign branch income in an accounting period is set out: Under the general rule, the foreign branch income is chargeable to Irish corporation tax. The Irish tax is reduced by the foreign tax suffered on that income. If the foreign tax exceeds the Irish tax the excess is treated as reducing the income concerned. This subparagraph allows a part of the foreign tax that has so reduced the income to be offset ***par 9FA(2)*** against Irish corporation tax on other foreign branch income of the accounting period.

As the income is reduced by the surplus foreign tax, the company will have received a tax benefit in respect of that foreign tax. The benefit received will depend on the rate applicable to the income concerned. If the income is taxable at the 12½% rate, the tax benefit will be equal to 12½% of the surplus. Consequently, only the other 87½% of tax surplus may be set against tax on other foreign branch income. The 87½% is determined by way of the following formula:

$$\frac{100 - R}{100} \times D$$

In a situation where R is the rate of tax relevant to the income concerned and D is the surplus foreign tax, this means that 87½% of the surplus foreign tax is available for offset.

Unrelieved foreign tax of an accounting period may be offset against corporation tax payable by the company in respect of foreign branch income of the company in the accounting period. ***par 9FA(3)***

Unilateral relief for capital gains tax

Unilateral credit relief may be given where foreign capital gains is paid in a country with which Ireland has a tax treaty but that treaty does not cover taxes on capital gains because the treaty was agreed before the introduction of capital gains tax in Ireland. ***par 9FB(1)***

The relief is given by allowing the foreign tax payable on the gain to be offset against Irish capital gains on the gain.

The amount of the relief is what would be given if the tax treaty with the territory contained the provisions set out in ***subparagraphs (3)*** and ***(4)***. References in this Schedule to credit being given under tax treaties are to be regarded as including references to unilateral relief. ***par 9FB(2)***

The capital gains tax against which the credit is allowed is the Irish capital gains tax computed by reference to the gain. Where a gain is included in profits for corporation tax purposes, the foreign tax on the gain is credited against corporation tax computed by reference to the gain. ***par 9FB(3)***

However, credit will not be given — ***par 9FB(4)***

- for any tax paid in a country that can be credited under a tax treaty between that country and Ireland, and
- to the extent that credit may be given for the tax under any other provision of this Schedule.

Provision is made to enable assessments to be made or amended to ensure that the correct amount of credit is given. ***par 9FB(5)***

Finally, the countries in respect of which unilateral relief is to be given for tax paid on capital gains in those countries against Irish tax are set out. These are the Kingdom of Belgium, Cyprus, the Republic of France, the Italian Republic, Japan, the Grand Duchy of Luxembourg, the Kingdom of the Netherlands, Pakistan and Zambia. ***par 9FB(7)***

Dividends paid by companies that are taxed as a group under the law of a territory outside the State

This paragraph sets out the mechanism for relieving double taxation where a dividend is received from a foreign company that is a member of a group that is taxed on a consolidated basis. ***par 9G***

The paragraph applies where there is a group of companies that is treated as a single taxable entity under the laws of a territory outside the State, and a dividend is paid either ***par 9G(1)*** by one of the group companies to a company outside the group, or by a company outside the group to one of the group companies.

The consolidated group is treated as if it were a single dividend paying or dividend receiving company for the purposes of giving double taxation relief under ***Schedule 24***. In particular, the rules provide that: ***par 9G(2)(a)***

- all companies in the group are treated as a single company,
- any dividend paid by a group company to a company outside the group is treated as if the single company paid it,
- any dividend received by a group company from a company outside the group is treated as if the single company received it,
- if a dividend-paying group company is related to the company that receives the dividend, then the single company is treated as if it is related to the recipient,
- if a dividend-paying group company outside the group is related to the group company that receives the dividend, then the dividend-paying company is treated as if it is related to the single company,
- the single company is treated as being resident in the territory where the tax for the consolidated group is paid, and
- the profits out of which any group dividends are paid is a single aggregate figure, and the foreign tax is the figure used for the group in its consolidated return.

Additional rules that allow the provisions of ***Schedule 24*** to operate in relation to a single company provide for three things: ***par 9G(2)(b)***

- for the purposes of ***paragraph 9B*** of the Schedule, a single company is treated as being connected to an Irish company if the group company that paid the dividend to the Irish company is so connected,
- for the purposes of ***paragraph 9A*** of the Schedule, a relevant dividend paid by a group company is treated as if it were a relevant dividend paid by the single company, and
- for the purposes of ***paragraph 8*** of the Schedule, a single company is treated as if it were a body corporate.

Dividends paid out of transferred profits

Provision is made for double tax relief in cases where the profits of one company become the profits of another company other than by the payment of a dividend. The relief applies where: ***par 9H***

- a foreign company (the first company) pays foreign tax in respect of its profits,
- some or all of those profits become the profits of another foreign company (the second company) other than by the payment of a dividend, and
- the second company pays a dividend to another company (either another foreign company or an Irish company) out of the profits.

Where the conditions for obtaining relief are satisfied and the second company or another foreign company pays a dividend to an Irish company, credit (in accordance with the rules in ***Schedule 24***) can be allowed to the Irish company in respect of the tax paid by the first company as if it had been paid by the second company.

The extent of the relief is limited in two ways:

- credit allowed to the Irish company is limited, where appropriate, to the amount that would have been due had the profits been transferred instead by way of a dividend, and
- no relief is available where the profits transfer from the first company to the second company is part of a tax avoidance scheme.

Dividends: Additional credit

This paragraph provides for an additional credit for foreign tax on certain foreign dividends. The additional foreign credit for tax allows for increased double taxation relief when the existing credit for foreign tax on the relevant dividend is less than the amount that would be computed by reference to the nominal rate of tax in the country from which the dividend is paid. ***par 9I***

Definitions

"excluded dividend" means a dividend, or part of a dividend, paid by a company resident in an EU Member State or an EEA State with which Ireland has a double taxation agreement, in so far as the dividend is paid out of profits of the company that: ***par 9I(1)***

- have not been subject to tax, and
- have been received, directly or indirectly, from a connected company not resident in a non EU Member State or EEA treaty partner state from profits which have not been subject to tax.

"relevant company" is a company resident in the State or is a branch in the State of a company resident in an EU Member State or an EEA State with which Ireland has a double taxation agreement (i.e. Iceland and Norway).

"relevant dividend" is a dividend, other than an excluded dividend, or a dividend from portfolio investments (that is, holdings of less than 5%) which forms part of the trading income of a company and is exempt from corporation tax in the same manner as Irish domestic dividends are exempt.

"source company" is a company not resident in the State which is resident for tax in an EU Member State or an EEA State with which Ireland has a double taxation agreement.

"tax" is tax, imposed in a foreign country which equates to corporation tax or to income tax that is deducted from dividends or distributions of profits. However, the meaning of 'tax' does not include such tax charged where most of the value of a dividend has been exempt from tax.

The rules for attributing relevant profits to specific periods or specific profits are set out in the paragraph. Relevant profits are the profits for the period out of which the dividend is paid, or the specified profits out of which it is paid. Where the dividend is not expressed to be paid for any period or out of any specified profits, it is to be treated as paid out of the profits of the company for the last period for which accounts were made up ended before the dividend became payable. ***par 9I(2)***

In circumstances where a dividend exceeds the profits of the period for which it is (or is treated as having been) paid, the profits represented by the dividend are to be taken as being the profits of that period plus so much of the available profits of the immediately preceding period or periods as is equal to the excess. The profits of the most recent preceding period are first to be taken into account; then (where necessary) those of the next most recent preceding period; and so on.

Where a source company pays a relevant dividend to a relevant company, then for the purposes of allowing credit against corporation tax for foreign tax in respect of the dividend, an additional foreign credit, calculated in accordance with ***subparagraph (4)***, and subject to ***subparagraph (5)***, is to be taken into account. The credit for foreign tax in respect of a relevant dividend cannot exceed the amount of Irish corporation tax attributable to that dividend in accordance with ***paragraph 4*** of the Schedule. ***par 9I(3)***

The additional foreign credit is to be calculated by the use of a formula as follows – ***par 9I(4)***

(A x B) – C

In a situation where –

A is the amount brought into charge to corporation tax in respect of the relevant dividend,

B is the lower of the Irish nominal corporation tax rate and the corresponding foreign corporation tax rate applicable to the relevant profits in relation to the relevant dividend, and

C is the amount of foreign tax credit that would otherwise be allowable under this schedule.

The subparagraph provides for separate computations depending on whether the dividend is taxed at the 12½% rate or 25% rate.

Examples of the computation of the additional credit are set out below.

1. Example where the foreign nominal tax rate is lower than the Irish rate of tax:

Gross Dividend = €1100

Net Dividend = €1000

Foreign Tax = €100

Irish Tax = 12.5%

Foreign Nominal = 10%

Additional foreign credit due in accordance with *paragraph 9I*:

(A x B) – C

(€1100 x 10% = €110) – €100 = €10 additional credit due.

2. Example where the foreign nominal tax rate is higher than the Irish rate of tax:

Gross Dividend = €1200

Net Dividend = €1000

Foreign Tax = €200

Irish Tax = 12.5%

Foreign Nominal = 20%

Where the foreign nominal rate is higher than the Irish rate, the credit relief available is quantified by regrossing the Irish measure of the dividend at the Irish effective rate.

€1000 x 100/87.5 = €1,143

Additional foreign credit due in accordance with *paragraph 9I*:

(A x B) – C

(€1,143 x 12.5% = €143) – 143 = €0 additional credit due.

An example of the interaction of additional foreign credit and the revised DTA computation required by *paragraph 7(3)(b)* is set out below.

3. Example where the foreign nominal tax rate is lower than the Irish rate of tax:

Step 1. Calculate the additional foreign credit due in accordance with *paragraph 9I.* Using the same figures as per example 1 above, the additional foreign credit is €10.

Step 2. The additional credit is included as income in accordance with *paragraph 7(3)(b)*:

(€1100 + €10) x 12.5% = €139

Less (€100 + €10) = €110

Irish tax due = €29

Step 3. A further recalculation of the additional foreign tax credit is required and is as follows:

A is €1110 (€1100 + €10)

B is €10

C is €110

Applying the formula (A x B) – C

(€1110 x 10%) = €111 – €110 = €1

Revised additional foreign tax credit is €11 (€10 + €1)

Step 4. The additional credit is then included as income in accordance with *paragraph 7(3)(b)* and the tax is recalculated:

(€1100 + €10 + €1) x 12.5% = €139

Less (€100 + €10 + €1) = €111

Irish tax due = € 28

In computing the additional foreign credit in ***clause (a)*** or ***(b)*** of ***subparagraph (4)***, and where the profits of source company have **not** been subject to tax, but are attributable to the profits of a company that have been subject to tax, then the rate per cent of tax which is to be used in the formulae is the rate per cent applicable to the profits that have been subject to tax. This will require the source company to trace back its profits that are attributable indirectly through other dividend paying companies to profits that have been subject to tax. ***par 9I(4A)(a)***

An example of where profits have **not** being subject to tax is where the profits out of which a relevant dividend is paid are profits that have been untaxed due to the operation of a participation regime *(i.e. total exemption from tax for dividends)* or a franked investment income regime.

Profits **not** subject to tax would **not** include profits of a company that have been fully extinguished by a claim for group relief. In such circumstances the rate per cent of tax for the purposes of the formulae in ***subparagraph (4)*** is the nominal rate of tax in the source company's location that corresponds to corporation tax in the State.

Provision is made for the calculation of the additional foreign credit where the dividend paid to the Irish company is derived from various incomes of the paying company, ***par 9I(4A)(b)*** including its own earned profits that have been subject to tax, as well as dividends received from one or more sources. For the purposes of calculating the additional foreign credit, the dividend is disaggregated into its component parts and treated as separate dividends. Accordingly, for the purposes of the formulae, the appropriate rate per cent of tax applicable to the profits that have been subject to tax for each separate dividend will be used. The aggregate value of the parts of the relevant dividend as disaggregated cannot exceed the value of the dividend.

Provision is also made for the attribution of profits of a company received by a company, directly or indirectly, by the payment of a dividend. Profits are only attributed once to the same amount of a stream of profit flowing by dividend or distribution through more than one country on its way to being paid as a cross-border dividend into Ireland. ***par 9I(4A)(c)***

Any unrelieved additional foreign credit may not be pooled or carried forward against corporation tax on other dividends. ***par 9I(5)***

Dividends paid out of transferred profits are not eligible for additional foreign credit under this paragraph. Transferred profits describe a situation where the profits of one foreign company become the profits of another company other than by way of a dividend. This would be the case, for example, with a merger of companies. ***par 9I(6)***

Miscellaneous

A person may elect not to accept credit for the foreign tax against his/her Irish taxes. In that event, the "direct" foreign tax borne on the foreign income would generally be allowable as a deduction in arriving at the foreign income chargeable to Irish tax. ***par 10***

While the Schedule allows for the raising of an amended assessment under Case IV of Schedule D to correct errors in respect of — ***par 11***

- foreign income under assessed, or
- an incorrect credit for foreign tax,

the figures in the original assessment can, under ***Part 41A*** ("Self Assessment"), be amended to take account of such errors without the need to raise an amended assessment.

In the Schedule — ***par 12(1)***

- "the relevant year of assessment" for the purposes of attaching a credit for foreign tax to particular income means the year of assessment for which that income is chargeable, or would be so chargeable, to income tax, and
- "the relevant accounting period" for the purposes of attaching a credit for foreign tax to particular income means the accounting period for which that income is chargeable, or would be so chargeable, to corporation tax.

Claims for an allowance by way of a credit for foreign tax must be made in writing to the inspector within 6 years after the end of the relevant year of assessment or relevant accounting period. ***par 12(2)***

If a person is aggrieved by a decision of an inspector in relation to a claim for relief, such a decision may be appealed by way of notice in writing to the Appeal Commissioners. An appeal must be made within 30 days after the date of the notice of that decision. The appeal is heard and determined in the manner provided for in Part 40A.

In cases where there may be protracted delay in this country or in the foreign country in arriving at the correct tax liability and, on the final computation of liability, it is found that adjustments upwards or downwards are necessary in credit relief already given on the basis of inconclusive figures, any further relief necessary may be claimed, or amended assessments made, despite the fact that the normal time-limits may have expired. ***par 13***

However, the amended assessment must be made and additional reliefs claimed within 6 years from the time all assessments, adjustments, etc have been made as are material in determining the extent to which credit is allowable.

The provisions that apply for the purposes of allowing for credit for foreign tax against USC on foreign income are also applicable for the purposes of income levy. ***par 14***

Schedule 24A

Arrangements made by the Government with the Government of any Territory Outside the State in Relation to Affording Relief from Double Taxation and Exchanging Information in Relation to Tax

[*Section 826*]

This Schedule lists all international tax agreements entered into by Ireland. ***Part 1*** lists all the existing Double Taxation Agreements. ***Part 2*** lists the only current Air Transport Agreement, which is with the USSR. ***Part 3*** lists all the existing Tax Information Exchange Agreements. ***Part 4*** lists all the existing orders relating to the recovery of tax and other tax matters. ***Part 5*** lists the Order that ratifies the OECD Multilateral Convention to implement Tax Treaty Measures to Prevent Base Erosion and Profit Shifting.

PART 1

Double Taxation Agreements

1A. Republic of Albania (S.I. 16 of 2011).

1AA. Republic of Armenia (S.I. 21 of 2012).

1. Australia (S.I. 406 of 1983).

2. Republic of Austria (S.I. 250 of 1967), (S.I. 29 of 1988) & (S.I. 30 of 2011).

2A. Kingdom of Bahrain (S.I. 24 of 2010).

2B. Republic of Belarus (S.I. 25 of 2010).

3. Kingdom of Belgium (S.I. 66 of 1973) & (S.I. 466 of 2014).

3A. Bosnia and Herzegovina (S.I. 17 of 2010).

3B. Botswana (S.I. 467 of 2014).

4. Republic of Bulgaria (S.I. 372 of 2000).

5. Government of Canada (S.I. 773 of 2004).

5A. Republic of Chile (S.I. 815 of 2005).

6. The Peoples Republic of China (S.I. 373 of 2000).

7. Republic of Croatia (S.I. 574 of 2000).

8. Cyprus (S.I. 79 of 1970).

9. Czech Republic (S.I. 321 of 1995).

10. Kingdom of Denmark (S.I. 286 of 1993) & (S.I. 468 of 2014).

10A. Arab Republic of Egypt (S.I. 27 of 2013).

11. Republic of Estonia (S.I. 496 of 1998).

12. Republic of Finland (S.I. 289 of 1993).

13. Republic of France (S.I. 162 of 1970).

13A. Georgia (S.I. 18 of 2010).

14. Federal Republic of Germany (S.I. 212 of 1962) & (S.I. 31 of 2011).
14A. Federal Republic of Germany (S.I. 22 of 2012), (S.I. 438 of 2015) & (S.I. 508 of 2021).
15. Hellenic Republic (S.I. 774 of 2004).
15A. Hong Kong Special Administrative Region (S.I. 17 of 2011).
16. Republic of Hungary (S.I. 301 of 1995).
17. Republic of Iceland (S.I. 775 of 2004).
18. Republic of India (S.I. 521 of 2001).
19. Italy (S.I. 64 of 1973).
20. State of Israel (S.I. 323 of 1995).
21. Japan (S.I. 259 of 1974).
21A. Republic of Kazakhstan (S.I. 479 of 2017).
22. Republic of Korea (S.I. 290 of 1991).
22AA. Republic of Kosovo (S.I. 507 of 2021).
22A. State of Kuwait (S.I. 21 of 2011).
23. Republic of Latvia (S.I. 504 of 1997).
24. Republic of Lithuania (S.I. 503 of 1997).
25. Grand Duchy of Luxembourg (S.I. 65 of 1973) & (S.I. 469 of 2014).
25A. Republic of Macedonia (S.I. 463 of 2008).
26. Malaysia (S.I. 495 of 1998) & (S.I. 32 of 2011).
26A. Malta (S.I. 502 of 2008).
27. United Mexican States (S.I. 497 of 1998).
27A. Republic of Moldova (S.I. 19 of 2010).
27B. Montenegro (S.I. 18 of 2011).
27C. Kingdom of Morocco (S.I. 19 of 2011).
28. Kingdom of the Netherlands (S.I. 22 of 1970) & (S.I. 459 of 2019).
29. New Zealand (S.I. 30 of 1988).
30. Kingdom of Norway (S.I. 520 of 2001).
31. Islamic Republic of Pakistan (S.I. 260 of 1974).
31A. Republic of Panama (S.I. 25 of 2012).
32. Republic of Poland (S.I. 322 of 1995).
33. Portuguese Republic (S.I. 102 of 1994) & (S.I. 816 of 2005).
33A. State of Qatar (S.I. 28 of 2013).
34. Romania (S.I. 427 of 1999).
35. Russian Federation (S.I. 428 of 1994).
35AA. Kingdom of Saudi Arabia (S.I. 26 of 2012).
35A. Republic of Serbia (S.I. 20 of 2010).
35B. Republic of Singapore (S.I. 34 of 2011).
36. Slovak Republic (S.I. 426 of 1999).
37. Republic of Slovenia (S.I. 573 of 2002).
38. Republic of South Africa (S.I. 478 of 1997) & (S.I. 33 of 2011).
39. Kingdom of Spain (S.I. 308 of 1994).
40. Sweden (S.I. 348 of 1987) & (S.I. 398 of 1993).
41. Swiss Confederation (S.I. 240 of 1967), (S.I. 76 of 1984), (S.I. 30 of 2013) &

(S.I. 460 of 2019).

41AB Kingdom of Thailand (S.I. 465 of 2014).

41A. Republic of Turkey (S.I. 501 of 2008).

41AA. Ukraine (S.I. 397 of 2013).

41B. United Arab Emirates (S.I. 20 of 2011).

42. United Kingdom (S.I. 319 of 1976), (S.I. 209 of 1995) & (S.I. 494 of 1998).

43. United States of America (S.I. 477 of 1997) & (S.I. 425 of 1999).

43AA. Republic of Uzbekistan (S.I. 31 of 2013).

43A. Socialist Republic of Vietnam (S.I. 453 of 2008).

44. Republic of Zambia (S.I. 130 of 1973).

45. The Double Taxation Relief (Taxes on Income)(Adjustment of Profits of Associated Enterprises (European Community) Order 1994, (S.I. 88 of 1994 as amended by S.I. 40 of 2004, S.I. 41 of 2004 & S.I. 112 of 2006). This agreement is commonly known as the Arbitration Convention.

PART 2
Air Transport Agreements

Union of Soviet Socialist Republics (S.I. 349 of 1987).

PART 3
Tax Information Exchange Agreements

1. Anguilla (S.I. 21 of 2010).

1A. Antigua and Barbuda (S.I. 22 of 2011).

1B. Belize (S.I. 23 of 2011).

2. Bermuda (S.I. 22 of 2010).

2A. British Virgin Islands (S.I. 24 of 2011).

3. Cayman Islands (S.I. 23 of 2010).

3A. Cook Islands (S.I. 25 of 2011).

3B. Dominica (S.I. 398 of 2013).

4. Gibraltar (S.I. 26 of 2010).

4A. Grenada (S.I. 23 of 2012).

5. Guernsey (S.I. 27 of 2010) & (S.I. 490 of 2022).

6. Isle of Man (S.I. 459 of 2008) & (S.I. 491 of 2022).

7. Jersey (S.I. 28 of 2010).

8. Liechtenstein (S.I. 29 of 2010).

8AA. Republic of the Marshall Islands (S.I. 26 of 2011).

8AB. Montserrat (S.I. 82 of 2013).

8AC. Macao Special Administrative Region of the People’s Republic of China (S.I. 480 of 2017).

8B. Saint Lucia (S.I. 27 of 2011).

8C. Saint Vincent and the Grenadines (S.I. 28 of 2011).

8D. Samoa (S.I. 29 of 2011).

8E. San Marino (S.I. 29 of 2013).

9. Turks and Caicos Islands (S.I. 30 of 2010).

9A. United States of America (S.I. 33 of 2013).

10. Republic of Vanuatu (S.I. 24 of 2012).

PART 4

Orders relating to the recovery of tax and other tax matters

Mutual Assistance in Tax Matters (S.I. 34 of 2013).

PART 5

Orders Pursuant to Section 826(IE) in Relation to the Multilateral Convention to Implement Tax Treaty Related Measures to Prevent Base Erosion and Profit Shifting

The Multilateral Convention to Implement Tax Treaty Related Measures Order 2018 (S.I. 440 of 2018).

Schedule 25

[*Section 833*]

Convention between the Government of Ireland and the Government of the United States of America for the Avoidance of Double Taxation and the Prevention of Fiscal Evasion with respect to Taxes on Income

This Schedule was deleted by section 48 of, and Schedule 3 to, the Finance Act, 1998 with effect from 1 January, 1998 for corporation tax purposes and 6 April, 1998 for income tax and capital gains tax purposes. The double taxation agreement made under ***section 826*** with the United States of America – Double Taxation Relief (Taxes on Income and Capital Gains) (United States of America) Order, 1997 (S.I. No. 477 of 1997) refers – is now in force.

Schedule 25A

Exemption from Tax in the Case of Gains on Certain Disposals of Shares

Overview

This Schedule supplements ***section 626B*** and deals with the interaction between ***sections 626B*** and ***626C*** and certain existing reliefs.

Details

Effect of earlier no-gain/no-loss transfer

In order to determine whether the company disposing of shares has held them for the required holding period, the period of ownership of shares by a company can be extended where the shares were acquired in a transaction that is treated as giving rise to neither a gain nor a loss. This could arise where assets are transferred within a group of companies. No gain or loss is treated as arising but the new owner takes over the assets for capital gains tax purposes at their original base cost. In these circumstances, where the assets consist of shares the new owner is allowed to extend the period of ownership by the time for which the shares were held by the previous owner. ***par 1***

Effect of deemed disposal and reacquisition

If a company is deemed under the Capital Gains Tax Act to dispose of and immediately reacquire shares which it holds (thus crystallising a gain), the holding of the shares in the period prior to the deemed disposal is not taken into account for the purposes of the holding period requirement. ***par 2***

Effect of repurchase agreement

Shares transferred under a repurchase agreement are regarded as remaining with the original holder for the purposes of determining whether the shareholding requirement for the purposes of the exemption has been met. Repurchase agreements are agreements under which a company transfers shares to another company subject to an agreement that the original owner will buy them back. ***par 3***

Effect of stock lending arrangements

Similar rules are provided in relation to stock lending arrangements. ***par 4***

Effect in relation to investee company of earlier reconstruction etc

A special rule applies where in the case of a reconstruction a company which held shares in one company exchanges them for shares in a second company in circumstances that there is no charge to capital gains tax but the cost of the old shares carries through as the cost of the new shares. In these circumstances the period of ownership of the new shares can include the period of ownership of the old shares for the purposes of the holding period requirement. ***par 5***

Negligible value

A company may not claim relief for a loss in value of shares which have negligible value if a gain on a disposal of the shares would be exempt under the new ***section 626B***. ***par 6***

Degrouping: time when deemed sale and reacquisition treated as taking place

A rule is provided for a situation where a company that is a member of a group had acquired an asset on a tax neutral basis. If that company ceases to be a member of the group there is a deemed disposal and reacquisition of the asset at the time of its acquisition from the other member of the group, thus crystallising a gain. In effect, this allows the exemption under ***section 626B*** to apply if the conditions for exemption are satisfied at the time the company ceases to be a member of the group. ***par 7***

Appropriations to trading stock

A rule is provided for the situation where shares are appropriated by a company as trading stock. It ensures that where the gain on the shares is exempt as a consequence of ***section 626B***, the company is treated as acquiring the shares at market value for the purposes of computing the profits of the trade to which they are appropriated. ***par 8***

Commencement

This Schedule came into effect on 2 February 2004 following a commencement order made by the Minister for Finance (S.I. 551 of 2004).

Schedule 25B

[Section 485C]

List of Specified Reliefs and Method of Determining Amount of Specified Relief Used in a Tax Year

Overview

Schedule 25B lists, in ***column (2)***, the reliefs to be restricted and the method of determining the amount to be included in the aggregate of amounts of restricted reliefs in ***column (3)*** of the Schedule. The following table gives a description of the relief to be restricted and the method of quantifying the amount of each relief to be restricted in respect of each item listed in the Schedule.	
TABLE	
Item Number Description of reliefs affected and quantification of the amount of relief to be restricted	
1. The total amount of dividends and other distributions received by the individual in the tax year which are made by a company out of income from stallion fees, stud greyhounds and woodlands which income is exempt from tax (***section 140***).	
2. Deleted by ***paragraph 1(j)*** of the ***Schedule*** to ***Finance Act 2020***.	
3. The total amount of dividends and other distributions received by the individual in the tax year which are made by a company out of exempt income from certain mining operations (***section 142***).	
4. The total amount of dividends and other distributions received by the individual in the tax year which are made by a company out of tax relieved income from certain mining operations (***section 143***).	
5. The full amount of any exempt income, profits or gains of artists, writers and composers (***section 195***) arising for the tax year computed in accordance with the Tax Acts as if the income, profits or gains were not exempt from income tax.	
6. Deleted by ***paragraph 1(j)*** of the ***Schedule*** to ***Finance Act 2020***.	
7. Deleted by ***section 14 Finance Act 2015***.	
8. Deleted by ***paragraph 1(j)*** of the ***Schedule*** to ***Finance Act 2020***.	
9. Deleted by ***paragraph 1(j)*** of the ***Schedule*** to ***Finance Act 2020***.	
10. Deleted by ***paragraph 1(j)*** of the ***Schedule*** to ***Finance Act 2020***.	
11. Deleted by ***paragraph 1(j)*** of the ***Schedule*** to ***Finance Act 2020***.	

12.	Interest relief for loans used to acquire an interest in a partnership (***section 253***). The amount of interest qualifying for relief which is actually deducted from or set off against the income of the individual for the tax year.	
13.	Annual writing down capital allowances under ***section 272*** for:	
	• Hotels written-off at 15% rate (***section 268(1)(d)***) (hotels attracting annual allowances at 4% rate not affected).	
	• Nursing homes (***section 268(1)(g)***).	
	• Convalescent homes (***section 268(1)(i)***).	
	• Qualifying private hospitals (***section 268(1)(j)***).	
	• Sports injury clinics (***section 268(1)(k)***).	
	• Qualifying mental health centres (***section 268(1)(l)***).	
	• Qualifying specialist palliative care units (***section 268(1)(m)***).	
	• Aviation services facilities (***section 268(1)(n)***) specified capital expenditure written off at 15% rate over 6 years and 10% rate in year 7 (expenditure written of at 4% rate is not affected).	
	• Holiday camps written-off at 15% rate (***section 268(3)***) (holiday camps attracting annual allowances at 4% rate not affected) and Registered holiday cottages (***section 268(3)***).	
	• Residential units attached to nursing homes (***section 268(3B)***).	
	The aggregate amounts of writing-down allowances for the above buildings and structures which are actually deducted from the profits or gains of the individual's trade for the tax year or which are actually deducted from or set off against income of the individual for that year.	
14.	Accelerated writing-down allowances under ***section 273*** (known as "free depreciation") that is, an annual allowance of up to 100% of capital expenditure on certain industrial buildings and structures to be taken whenever and in whatever way the person chooses.	
	The aggregate amounts of accelerated writing-down allowances for such buildings and structures which are actually deducted from the profits or gains of the individual's trade for the tax year or which are actually deducted from or set off against income of the individual for that year.	
15.	Balancing allowances under ***section 274*** made in respect of the following:	
	• Hotels written-off at 15% rate (***section 268(1)(d)***) (hotels attracting annual allowances at 4% rate not affected).	

	• Nursing homes (***section 268(1)(g)***).	
	• Convalescent homes (***section 268(1)(i)***).	
	• Qualifying private hospitals (***section 268(1)(j)***).	
	• Sports injury clinics (***section 268(1)(k)***).	
	• Qualifying mental health centres (***section 268(1)(l)***).	
	• Qualifying specialist palliative care units (***section 268(1)(m)***).	
	• Aviation services facilities (***section 268(1)(n)***) specified capital expenditure written off at 15% rate over 6 years and 10% rate in year 7 (expenditure written off at 4% rate is not affected).	
	• Holiday camps written-off at 15% rate (***section 268(3)***) (holiday camps attracting annual allowances at 4% rate not affected) and registered holiday cottages (***section 268(3)***).	
	• Residential units attached to nursing homes (***section 268(3B)***).	
	The aggregate amounts of balancing allowances for the above buildings and structures which are actually deducted from the profits or gains of the individual's trade for the tax year or which are actually deducted from or set off against income of the individual for that year.	
15A.	For the year 2007: The amount determined under paragraph 1 of ***Schedule 25C*** as the amount of capital allowances carried forward from 2006 to 2007 under ***section 304(4)*** that are referable to specified reliefs less any part of that amount so determined to which effect cannot be given for 2007.	
	For each subsequent year: That part of the amount determined under ***Schedule 25C*** as the amount of capital allowances carried forward from 2006 to 2007 under ***section 304(4)*** for which relief cannot be given for 2007, to the extent that relief is given for that amount or part of that amount in the subsequent year.	
15B.	For the year 2007: The amount determined under ***paragraph 3*** of ***Schedule 25C*** as the amount of capital allowances carried forward from 2006 to 2007 under ***section 305(1)*** that are referable to specified reliefs less any part of that amount so determined to which effect cannot be given for 2007.	
	For each subsequent year: That part of the amount determined under ***Schedule 25C*** as the amount of capital allowances carried forward from 2006 to 2007 under ***section 305(1)*** for which relief cannot be given for 2007, to the extent that relief is given for that amount or part of that amount in the subsequent year.	
15C	The total amount of wear and tear allowances (***section 284***) on plant and	

	machinery leased to a manufacturing trade by a passive trader, whether the allowances were granted in the year or carried forward from prior years (***section 485C(1B)*** refers).	
15D	The total amount of balancing allowances (***section 288***)on plant and machinery leased to a manufacturing trade by a passive trader, whether the allowances were granted in the year or carried forward from prior years(***section 485C(1B)*** refers)..	
16	Capital Allowances for commercial buildings in Customs House Docks Area (***section 323***). Allowances are 100% free depreciation, 50% initial allowance and 4% annual writing down allowance.	
	The aggregate amounts of such allowances which are actually deducted from the profits or gains of the individual's trade for the tax year or which are actually deducted from or set off against income of the individual for that year.	
17	That part of the amount of the double rent deduction for industrial and commercial premises in the Customs House Docks Area (***section 234***) which is actually deducted from the income of the individual's trade or profession for the year.	
18.	Temple Bar Area. Accelerated allowances (***section 331***) for industrial buildings and structures (including hotels). Initial allowance 25% where construction involved and 50% where refurbishment expenditure involved. Owner-occupiers got free depreciation of 50% for construction and 100% for refurbishment expenditure.	
	The aggregate amounts of such allowances which are actually deducted from the profits or gains of the individual's trade for the tax year or which are actually deducted from or set off against income of the individual for that year.	
19.	Temple Bar Area. Capital allowances for commercial premises including shops, pubs, offices, restaurants, multi-storey car parks (***section 332***). For refurbishment and construction of multi-storey car parks, 100% free depreciation, 50% initial allowance and 4% annual allowance were available. For other construction, 50% free depreciation, 25% initial allowance and 2% annual allowance applied.	
	The aggregate amounts of such allowances which are actually deducted from the profits or gains of the individual's trade for the tax year or which are actually deducted from or set off against income of the individual for that year.	
20.	That part of the amount of the double rent deduction for industrial and commercial premises in Temple Bar Area (***section 333***) which is actually deducted from the income of the individual's trade or profession for the year.	
21.	Urban Renewal Scheme and Designated Streets (***section 341***): 50% free depreciation or 25% initial allowance for construction or refurbishment of industrial buildings and structures. In case of designated streets, allowances	

	only applied to refurbishment expenditure.	
	The aggregate amounts of such allowances which are actually deducted from the profits or gains of the individual’s trade for the tax year or which are actually deducted from or set off against income of the individual for that year.	
22.	Urban Renewal Scheme and Designated Streets (***section 342***): 50% free depreciation, 25% initial allowance and 2% annual allowance for commercial premises. In case of designated streets, allowances only applied to refurbishment expenditure.	
	The aggregate amounts of such allowances which are actually deducted from the profits or gains of the individual’s trade for the tax year or which are actually deducted from or set off against income of the individual for that year.	
23.	Enterprise Areas (***section 343***): 50% free depreciation, 25% initial allowance and 4% annual allowance for certain trading activities, namely, manufacturing, internationally traded services, freight forwarding and allied services in enterprise areas adjacent to regional airports carried on in commercial type premises.	
	The aggregate amounts of such allowances which are actually deducted from the profits or gains of the individual’s trade for the tax year or which are actually deducted from or set off against income of the individual for that year.	
24.	Multi-storey car parks (***section 344***): Annual allowance of 2%. Initial allowance of 25%. Free depreciation of up to 50% for owner-occupiers. As respects expenditure after 31 July 1998, allowances available are 4% annual; 50% initial and up to 100% free depreciation.	
	The aggregate amounts of such allowances which are actually deducted from the profits or gains of the individual’s trade for the tax year or which are actually deducted from or set off against income of the individual for that year.	
25.	Urban renewal Scheme, Enterprise Areas, multi-storey car parks (***section 345***): That part of the amount of the double rent deduction for industrial and commercial premises under these schemes which is actually deducted from the income of the individual’s trade or profession for the year.	
26.	Qualifying Resort Areas (***section 352***): 75% free depreciation, 50% initial allowance and 5% annual allowance for hotels, holiday camps and registered holiday cottages.	
	The aggregate amounts of such allowances which are actually deducted from the profits or gains of the individual’s trade for the tax year or which are actually deducted from or set off against income of the individual for that year.	
27.	Qualifying Resort Areas (***section 353***): 75% free depreciation, 50% initial allowance and 5% annual allowance for buildings or structures used for qualifying tourism facilities.	

	The aggregate amounts of such allowances which are actually deducted from the profits or gains of the individual's trade for the tax year or which are actually deducted from or set off against income of the individual for that year.	
28.	Qualifying Resort Areas (***section 354***): double rent deduction for industrial building or structure within meaning of ***section 268(1)(d)*** (e.g. an hotel) and commercial premises in use for the operation of qualifying tourism facilities.	
	That part of the amount of the double rent deduction in respect of such buildings which is actually deducted from the income of the individual's trade or profession for the year.	
29.	Qualifying Areas (***section 372C***): Industrial buildings and structures. Initial allowance of 50%. Alternatively, free depreciation up to 50% of construction or refurbishment expenditure for owner-occupiers.	
	The aggregate amounts of such allowances which are actually deducted from the profits or gains of the individual's trade for the tax year or which are actually deducted from or set off against income of the individual for that year.	
30.	Qualifying Areas and Living-over-the-shop-scheme (***section 372D***): Certain commercial premises. Initial allowances of 50% with annual allowances of 4% for the balance. Alternatively, free depreciation of up to 50%.	
	The aggregate amounts of such allowances which are actually deducted from the profits or gains of the individual's trade for the tax year or which are actually deducted from or set off against income of the individual for that year.	
31.	Qualifying Rural Areas (***section 372M***): Industrial buildings and structures. Initial allowances of 50%. Alternatively, free depreciation of up to 50% by owner-occupiers.	
	The aggregate amounts of such allowances which are actually deducted from the profits or gains of the individual's trade for the tax year or which are actually deducted from or set off against income of the individual for that year.	
32.	Qualifying Rural Areas (***section 372N***): Capital allowances for commercial premises such as shops, offices, etc. Annual writing-down allowance of 4%. Initial allowance of 50%. Alternatively, free depreciation of up to 50% available to owner-occupiers.	
	The aggregate amounts of such allowances which are actually deducted from the profits or gains of the individual's trade for the tax year or which are actually deducted from or set off against income of the individual for that year.	
33.	Capital allowances for construction or refurbishment of Park and Ride facilities (***section 372V***). Annual allowances of 4%. Initial allowance of 50%. Alternatively, free depreciation of up to 100% available to owner-occupiers.	
	The aggregate amounts of such allowances which are actually deducted from	

	the profits or gains of the individual's trade for the tax year or which are actually deducted from or set off against income of the individual for that year.	
34.	Capital allowances for construction or refurbishment of commercial premises (such as shops, offices, etc.) within the site of a Park and Ride facility (***section 372W***). Annual allowances of 4%. Initial allowance of 50%. Alternatively, free depreciation of up to 100% available to owner-occupiers.	
	The aggregate amounts of such allowances which are actually deducted from the profits or gains of the individual's trade for the tax year or which are actually deducted from or set off against income of the individual for that year.	
35	Town Renewal Areas (***section 372AC***): Capital allowances for construction or refurbishment of industrial buildings and structures. Initial allowance of 50%. Free depreciation of up to 50% for owner-occupiers.	
	The aggregate amounts of such allowances which are actually deducted from the profits or gains of the individual's trade for the tax year or which are actually deducted from or set off against income of the individual for that year.	
36.	Town Renewal Areas (***section 372AD***): Capital allowances for construction or refurbishment of commercial premises (such as shops, offices, etc.) within qualifying area. Annual allowances of 4%. Initial allowance of 50%. Alternatively, free depreciation of up to 50% available to owner-occupiers.	
	The aggregate amounts of such allowances which are actually deducted from the profits or gains of the individual's trade for the tax year or which are actually deducted from or set off against income of the individual for that year.	
36A.	Mid-Shannon Tourism Infrastructure Investment Scheme (***section 372AX***): Capital allowances of 15% over 6 years and 10% in year 7 in relation to expenditure on the construction or refurbishment of certain registered holiday camps.	
	The aggregate amounts of allowances for the above buildings and structures which are actually deducted from the profits or gains of the individual's trade for the tax year or which are actually deducted from or set off against income of the individual for that year.	
36B.	Mid-Shannon Tourism Infrastructure Investment Scheme (***section 372AY***): Capital allowances of 15% over 6 years and 10% in year 7 in relation to expenditure on the construction or refurbishment of certain tourism infrastructure facilities.	
	The aggregate amounts of allowances for the above buildings and structures which are actually deducted from the profits or gains of the individual's trade for the tax year or which are actually deducted from or set off against income of the individual for that year.	
37.	Relief for lessors under ***section 372AP*** for expenditure incurred on the provision of residential accommodation under the Urban Renewal Scheme; the	

	Living Over the Shop Scheme; the Rural Renewal Scheme; the Park and Ride Scheme; the Student Accommodation Scheme; the Town Renewal Scheme; and the general countrywide scheme for the refurbishment of rented residential accommodation.	
	The lesser of the aggregate of relief under ***section 372AP*** and the net Case V profits before taking into account the relief under ***section 372AP***.	
38.	Relief for lessors under ***section 372AU(1)*** for expenditure incurred on the provision of residential accommodation under the Customs House Docks Area; the Temple Bar Area; the 1994 scheme for Designated Areas and Designated Streets; the Qualifying Resort Areas Scheme; and the Designated Islands Scheme. While these schemes are all ceased, they are included as the 10-year period within which a dwelling may be sold and the relief passed on to the purchaser has not expired in all cases.	
	The lesser of the aggregate amount of relief available under ***section 372AU*** and the gross rents received less expenses and less the amount of the ***section 372AP*** relief used for the year.	
38A.	Living City Initiative (***section 372AAC***). Capital allowances of 15% over 6 years and 10% in year 7 in relation to expenditure on the conversion or refurbishment of certain commercial premises.	
	The aggregate amounts of such allowances which are actually deducted from the profits or gains of the individual's trade for the tax year or which are actually deducted from or set off against income of the individual for that year.	
38B.	Living City Initiative (***section 372AAB***). A deduction of 10% over 10 years in relation to expenditure incurred on the conversion or refurbishment of owner occupied residential accommodation.	
	The amount actually deducted from the individual's total income for the tax year.	
38C.	Living City Initiative (***section 372AAD***). Capital allowances of 15% over 6 years and 10% in year 7 in relation to expenditure on the conversion or refurbishment of rented residential premises.	
	The aggregate amounts of such allowances which are actually deducted from the profits or gains of the individual's trade for the tax year or which are actually deducted from or set off against income of the individual for that year.	
39.	The amount of current year loss relief that is deducted for the tax year under ***section 381*** for Case I or II losses to the extent that the losses arise from double rent deductions.	
40.	The amount of current year loss relief that is deducted for the tax year under ***section 381*** to the extent that the loss is attributable to the creation or augmentation of a loss under ***section 392*** by the use of capital allowances that	

	are themselves specified reliefs.	
41.	The amount of the relief that is deducted for the tax year under ***section 382*** for losses forward which are attributable to a loss arising from the use of a specified relief.	
	(Please refer to ***paragraph 2*** of ***Schedule 25C*** regarding loss carried forward to the tax year 2007.)	
42.	The amount of relief that is deducted for the tax year under ***section 383*** for Case IV losses that arise from the use of a specified relief.	
43.	The amount of relief that is deducted for the tax year under ***section 384*** for Case V losses that arise from the use of a specified relief.	
	(Please refer to ***paragraph 2*** of ***Schedule 25C*** regarding loss carried forward to the tax year 2007.)	
44.	The amount of relief that is deducted for the tax year under ***section 385*** for terminal losses which are referable to the use of specified reliefs	
45.	Deleted by ***paragraph 1(j)*** of the ***Schedule*** to ***Finance Act 2020***.	
46.	The amount of loss relief which is referable to expenditure on a significant building or garden (***section 482***) that is deducted for the tax year.	
47.	The amount of excess relief (within the meaning of ***Chapter 2A*** of ***Part 15***) arising because of the operation of ***section 485E***, carried forward for relief under ***section 485F*** and actually deducted from the individual's income for the tax year.	
47A	Deleted by ***section 20 Finance Act 2016***.	
48.	Deleted by ***paragraph 1(j)*** of the ***Schedule*** to ***Finance Act 2020***.	
48A.	An amount equal to the total amount deducted from the individual's total income for the tax year under ***section 823A***.	
49.	Capital allowances under ***section 843*** for buildings used for third level educational purposes. Write-off rate is 15% for first 6 years and 10% for year 7.	
	The aggregate amounts of such allowances which are actually deducted from or set off against income of the individual for that year.	
50.	Capital allowances under ***section 843A*** for buildings used for child care purposes. Write-off rate is 15% for first 6 years and 10% for year 7.	
	The aggregate amounts of such allowances which are actually deducted from the profits or gains of the individual's trade for the tax year or which are	

	actually deducted from or set off against income of the individual for that year.	
50A.	Capital allowances under ***section 843B*** for buildings used by employers for the provision of child care services or a fitness centre to employees. Write-off rate is 15% for first 6 years and 10% for year 7.	
	The aggregate amounts of such allowances which are actually deducted from the profits or gains of the individual's trade for the tax year or which are actually deducted from or set off against income of the individual for that year.	
51.	The amount of relevant donations to sports bodies (***section 847A***) which are actually deducted in computing the individual's total income for the year.	
52.	Deleted by ***section 19(2) Finance Act 2013***.	
53.	Capital allowance for commercial buildings in old urban renewal schemes (***Schedule 32, paragraph 11***).	
	The aggregate amounts of such allowances which are actually deducted from the profits or gains of the individual's trade for the tax year or which are actually deducted from or set off against income of the individual for that year.	
54.	That part of the amount of the double rent deduction for industrial and commercial premises in the areas covered by the old urban renewal schemes (***Schedule 32, paragraph 13***) which is actually deducted from the income of the individual's trade or profession for the year.	

Schedule 25C

Determination of Amount of Relief to be Treated as Referable to Specified Reliefs as Respects Relief Carried Forward from Tax Year 2006 to 2007

Overview

This Schedule contains provisions for dealing with the allocation of certain reliefs carried forward from the year 2006 to the year 2007 as between amounts referable to specified reliefs and amounts referable to other reliefs.

The apportionment of relief carried forward from 2006 to 2007 is to operate, broadly, by applying to the relief carried forward to 2007 a fraction where the numerator is the total of the person's restricted reliefs of that type over the previous 4 years and the denominator is the person's overall amount of tax reliefs of that type used over the same period. All relief brought forward into 2003 from earlier years is disregarded.

As this approach is a broad-based one the taxpayer is allowed a facility to apply to Revenue to have the apportionment replaced by some longer or shorter period that would give a fairer result.

Revenue's refusal to accept an alternative period for apportionment can be appealed by notice in writing to the Appeal Commissioners. The appeal must be made within 30 days after the date of the notice of the assessment. The appeal is heard and determined in the manner provided for in Part 40A.

Once the relief carried forward into 2007 is allocated as between specified and other reliefs, the rules in ***Chapter 2A*** of ***Part 15*** ensure that specified and other reliefs will not become mixed up in the future as effect will be given to unrestricted reliefs (including such reliefs carried forward) before specified reliefs. However, this does not mean that all unspecified reliefs will be taken before specified reliefs as the tax computational rules require certain reliefs to be deducted before others.

Details

Excess trading capital allowances carried forward from 2006 to 2007

Section 304(4) provides that where full effect cannot be given for an allowance in the year in which it is made, the allowance or the part of it for which effect cannot be given is to be added to the allowances to be made in respect of a trade or profession in the following year or if there are no such allowances in that year the allowances forward become the allowances for that following year. If full effect cannot be given for the excess in this way they can be carried forward to the next following year in the same way. That is, they become part of the allowances for the next following year or the allowances for that next year, if appropriate. ***(1)***

This paragraph seeks to allocate excess allowances carried forward from 2006 to 2007 between specified reliefs and unspecified reliefs by reference to the use of industrial buildings type allowances over the 4 years 2006, 2005, 2004 and 2003.

All capital allowances carried forward which originally arose under ***Part 9*** and which were made to the individual in taxing his or her trade or profession are brought into the calculation. The total amount brought into 2007 from 2006 is apportioned as between specified and other reliefs by applying to the amount carried forward a fraction. The amount determined by the application of this fraction becomes the amount of the relief carried forward under ***section 304*** which is to be regarded as specified reliefs. This amount will be treated as a specified relief in its own right (see entry at ***Reference Number 15A*** of ***Schedule 25B***) but only to the extent that the amount so determined is actually used in 2007. Any un-used excess of this amount which is carried forward to 2008 will be the amount of the specified relief under ***section 304*** for the tax year 2008 (to the extent that it is used in 2008) and so on.

The apportionment works by applying to the amount of excess capital allowances arising in the individual's trade or profession and brought forward to 2007 (that is, RF in the formula) a fraction where the numerator constitutes the total of the person's specified reliefs made under ***Chapter 1*** of ***Part 9*** over the previous 4 years (that is, SR in the formula) and the denominator is the total of all the person's capital allowances made under ***Part 9*** in taxing the person's trade in that period (that is, TR in the formula). Excess allowances brought into 2003 from 2002 and excess allowances arising in the 4-year period are disregarded.

Trading losses carried forward under section 382 from 2006 to 2007

Section 382 allows losses incurred in a trade or profession to be carried forward from one year to the next to the extent that the losses are not relieved in the year they are incurred under ***section 381***. This paragraph seeks to allocate such losses carried forward from 2006 to 2007 as between specified reliefs and other reliefs. These losses could consist of actual trading losses, losses arising or increased because of entitlement to a double rent deduction, and losses arising or increased because of the capital allowances due to the individual for the year are added to the losses of the year or are used to create a loss in the year under ***Chapter 2*** of ***Part 12***. ***(2)***

The amount determined under this paragraph as the amount of losses forward that are referable to the use of specified reliefs will be treated as a specified relief to the extent that those losses are actually used in 2007 (see entry at ***Reference Number 41*** of ***Schedule 25B***). If any of these losses remain unused for 2007 and are carried forward to 2008 under ***section 382*** the amount carried forward will be an amount of specified relief for the tax year 2008 and subject to the restriction (to the extent that they are actually used in 2008) and so on.

The apportionment of losses forward works by applying to the amount of losses arising in the individual's trade or profession and brought forward to 2007 (that is, RF in the formula) a fraction.

The numerator of the fraction (referred to as SR in the formula) is the total of two amounts (referred to as DR and SA). The first amount referred to as DR is the total amount of loss relief for the 4 year period which is referable to the use of the double rent deduction authorised under ***sections 324, 333, 345, 354*** and ***paragraph 13*** of ***Schedule 13***. Only double rent deductions that contributed to the creation of, or an increase in the amount of, losses are brought into the apportionment calculation. Where a double rent deduction only reduced taxable income without creating or increasing the level of the losses in the trade it is not brought into the apportionment calculation. By referring to relief under ***section 381*** (which gives relief for current year losses) no account is taken of losses forward to 2003 from 2002. Likewise there is no double counting of relief brought forward within the 4 year period. The second amount (referred to as SA) is the total of the capital allowance made to the individual under ***Chapter 1*** of ***Part 9*** in the previous 4 years for buildings and structures that are specified reliefs. Excluded are excess allowances within the period. Also excluded is any year in which a claim is not made under ***Chapter 2*** of ***Part 12***. This means that only capital allowances that contribute towards the creation of, or increase in, a loss are brought into the apportionment calculation.

The denominator (referred to as TR) is also the total of two amounts (referred to as TL and TA). The first amount (referred to as TL) is the total of the losses arising to the individual in his or her trade or profession in the 4-year period disregarding any capital allowances treated as losses by virtue of ***Chapter 2*** of ***Part 12***.

The second amount (referred to as TA) is the total of all the capital allowances made to the individual under ***Part 9*** in taxing the individual's trade or profession. Excluded are years where a claim is not made under ***Chapter 2*** of ***Part 12***. Also excluded are any excess capital allowances during the 4 year period. All allowances made to the individual in taxing his or her trade are included here because it is a requirement of ***Chapter 2*** of ***Part 12*** that all the capital allowances of the year be used under those provisions to create or augment a loss.

Capital allowances used in a rental activity

Section 305(1) provides that where full effect cannot be given for an allowance in the year in which it is made, the allowance, or the part of it for which effect cannot be given, is to be available for deduction from the person's income to be charged under Case V of Schedule D. If full effect cannot be given for the excess in this way it can be carried forward to the next following year in the same way. That is, it is available for set off against the person's Case V income in the next following year and so on. ***(3)***

This paragraph seeks to allocate any excess allowances carried forward from 2006 to 2007 between specified reliefs and other reliefs by reference to the use of industrial buildings type allowances over the 4 years 2006, 2005, 2004 and 2003.

All capital allowances carried forward under ***section 305*** are brought into the calculation. The total amount brought into 2007 from 2006 is apportioned as between specified and other reliefs by means of a formula. The amount determined by the formula becomes the amount of the relief carried forward under ***section 305*** which is to be regarded as specified reliefs. This amount will be treated as a specified relief in its own right (see entry at ***Reference Number 15B*** of ***Schedule 25B***) but only to the extent that the amount so determined is actually used in 2007. Any un-used excess of this amount which is carried forward to 2008 will be the amount of the specified relief under ***section 305*** for the tax year 2008 (to the extent that it is used in 2008) and so on.

The apportionment works by applying to the amount of excess capital allowances arising in the individual's rental activity and brought forward to 2007 (that is, RF in the formula) a fraction where the numerator constitutes the total of the person's specified reliefs made under ***Chapter 1*** of ***Part 9*** over the previous 4 years (that is, SR in the formula) and the denominator is the total of all the person's capital allowances made under that Chapter in taxing the person's rental income in that period (that is, TR in the formula). Excess allowances brought into 2003 from 2002 and excess allowances arising in the 4-year period are disregarded.

Losses arising in a rental activity

Section 384 allows losses incurred in a rental activity to be carried forward to the next year. This paragraph seeks to allocate such losses carried forward from 2006 to 2007 as between specified reliefs and other reliefs. The amount determined under this paragraph as the amount of losses forward that are referable to the use of specified reliefs will be treated as a specified relief to the extent that those losses are actually used in 2007 (see entry at ***Reference Number 43***of ***Schedule 25B***). If any of these losses remain unused for 2007 and are carried forward to 2008 under ***section 384*** the amount carried forward will be an amount of specified relief for the tax year 2008 and subject to the restriction (to the extent that they are actually used in 2008) and so on. ***(4)***

The apportionment of losses forward works by applying to the overall amount of losses arising in the individual's rental activity and brought forward to 2007 (that is, RF in the formula) a fraction. The numerator of the fraction (referred to as SR in the formula) is the total of "section 23-type" deductions the individual was entitled to for the 4 year period. The denominator is the total of all rental deductions, including "section 23-type" deductions the individual was entitled to for that period.

Option to seek an alternative apportionment basis ***(5)***

An application for an alternative apportionment basis must be made to Revenue in writing setting out the alternative basis sought. Any alternative basis is confined to either a longer or shorter period than the 4 years used in the preceding paragraphs. Also the year 2006 must always form part of any apportionment period.

Revenue are required to accept the taxpayer's basis, confirm the amount determined under the provisions of this Schedule or to set out a new amount determined on the basis of some other time period. The reason for allowing Revenue to accept some other basis that that set out by the taxpayer or the Schedule is to provide some grounds for reaching some mutual agreement with the taxpayer.

Revenue's refusal to accept an alternative period for apportionment can be appealed by notice in writing to the Appeal Commissioners. The appeal must be made within 30 days after the date of the notice of the assessment. The appeal is heard and determined in the manner provided for in Part 40A.

Both Revenue and the Appeal Commissioners are to disregard any application or appeal that has as its basis a requirement that effect be given to specified reliefs before reliefs that are not specified reliefs and also to disregard any attempt to alter the basis on which the amounts are calculated.

Once an amount is determined under this paragraph it takes the place of the amount determined under the appropriate preceding paragraph.

Schedule 26

[*Section 842*]

Replacement of Harbour Authorities by Port Companies

Definitions

"relevant port company" and "relevant transfer" are defined for the purposes of the Schedule by reference to provisions of the Harbours Act, 1996. ***par 1***

Capital allowances

Rules for determining capital allowances where the transfer of assets, etc has taken place provide — ***par 2***

- that the provisions apply for both income and corporation tax purposes,
- that the transfer does not give rise to any capital allowances or balancing charges, and
- that the new port company is to be entitled to the same capital allowances and be subject to the same balancing charges to which the harbour authority would have been entitled or been subject had there been no transfer of assets.

Capital Gains Tax

Provision is made to achieve, for capital gains tax purposes, a tax neutral result from the transfer of assets to the port companies by — ***par 3***

- ensuring that neither a gain nor a loss crystallises on the transfer of any assets in these particular circumstances,

- ensuring that, in the event of a subsequent disposal of the asset by the port company, any capital gains tax charge is to be calculated as though the port company had acquired the asset at the time and cost at which it was acquired by the harbour authority. (This ensures that no capital gains tax is lost by the transfer of assets), and

- ensuring that any gains of the harbour authority, deferred under the replacement of business assets scheme (rollover relief under ***section 597***), does not crystallise on the transfer of assets to the port company. The harbour authority and the port company are treated as the same person. Gains deferred in this way by the harbour authority in respect of assets transferred to the port company, will ultimately be computed with reference to the acquisition cost by the harbour authority and indexed from that date.

Schedule 26A

[*Section 848A*]

Donations to Approved Bodies

Summary

This Schedule is to be construed together with ***section 848A*** which is concerned with tax relief for donations to approved bodies and comprises 3 parts.

Part 1 sets out the list of approved bodies for the purposes of the relief.

Part 2 sets out the conditions for approval as a body for education in the arts.

Part 3 sets out the conditions for approval as an eligible charity.

Details

Part 1: List of approved bodies for the purposes of ***section 848A***:

A body approved for education in the arts. ***par 1***

An eligible charity. ***par 2***

An institute of higher education, under the Higher Education Authority Act, 2022 or a body set up to raise funds for such an institute. ***par 3***

An education institution, under the Local Authorities (Higher Education Grants) Acts, 1968 to 1992, or a body set up to fund such an institution. ***par 4***

An institute of higher education in the State providing courses validated by the Qualifications and Quality Assurance Authority of Ireland under the Qualifications and Quality Assurance (Education and Training) Act 2012. ***par 5***

Primary schools. ***par 6***

Second level schools. ***par 7***

The Royal Irish Academy ***Par 7A***

Bodies established for the promotion of human rights. ***par 17***

Part 2: Approval of a body for education in the arts:

"Approved body" means a body approved by the Minister for Finance which — ***par 1***

(a) provides any third level course, or

(b) is established solely for the advancement of an approved subject, contributes to the advancement of that subject on a regional or national basis and is prohibited by its constitution from distributing any of its assets to its members.

"Approved subject" means —

(*a*) Architecture.

(*b*) Art and Design.

(*c*) Music and Musical Composition.

(*d*) Theatre Arts.

(*e*) Film Arts.

(*f*) Any other subject approved by the Minister for Finance.

The Minister for Finance may withdraw approval from a body by notice in writing. ***par 2(a)***

Where the Minister withdraws approval, a notice to that effect will be published in Iris Oifigiúil, and the withdrawal of approval will take effect from the day after publication. ***par 2(b)***

Part 3: Approval of body as eligible charity:

"Authorisation" is to be construed in accordance with ***paragraph 3***. ***par 1***

"Eligible charity" means a body with a valid authorisation.

Where a body applies to the Revenue Commissioners and forwards such information as may be reasonably required, the Revenue Commissioners may issue the body with an authorisation that the body is an eligible charity for the purposes of this Part. ***par 2***

The Revenue Commissioners may not issue an authorisation to a body unless they are satisfied that — ***par 3***

(*a*) the body is established for charitable purposes only,

(*b*) its income is applied for charitable purposes only,

(*c*) before applying for authorisation as an eligible charity the body had been granted exemption from tax under ***section 207*** (known as charitable exemption) for a period of at least 2 years or, if it is a body established in an EEA or EFTA State, it received a notice of determination from the Revenue Commissioners at least two years prior to that date,

(*d*) the body provides such further information as the Revenue Commissioners may require under this Part, and

(*e*) the body complies with such conditions, if any, which the Minister for Social, Community and Family Affairs may specify. (This power is currently exercised by the Minister for Community, Rural and Gaeltacht affairs.)

An eligible charity that had been previously granted exemption from tax under section 207 Taxes Consolidation Act (known as the charitable tax exemption) in the case of a restructured eligible body in certain defined circumstances, such as where the body or bodies being restructured or otherwise changing their legal identity had already been granted Revenue authorisation and had met all relevant conditions prior to restructuring for a period of at least 2 years will be deemed to comply with paragraph 3(a) above. ***par 3A***

Where one or more eligible charities that had been previously granted exemption from tax under section 207 Taxes Consolidation Act (known as the charitable tax exemption) has been the subject of any process of re-organisation, other than amalgamation as mentioned in paragraph 3A, that exemption can continue to apply if the body or bodies held Revenue authorisation and had met all relevant conditions prior to restructuring for a period of at least 2 years. ***par 3B***

Any eligible charity will be required to publish Profit and Loss accounts and Balance Sheets in such manner as the Minister for Finance may reasonably require. ***par 4***

The Revenue Commissioners may, despite their normal obligation of confidentiality regarding taxpayers, publish a list of eligible charities. ***par 5***

The authorisation from the Revenue Commissioners can last for any period up to 5 years. ***par 6***

Where the Revenue Commissioners are satisfied that an eligible charity has ceased to comply with ***paragraphs 3*** or ***4*** they shall withdraw the authorisation by notice in writing by registered post and the withdrawal shall have effect from the date specified in the notice, which shall not be earlier than the date on which the charity has ceased to comply. ***par 7***

All information provided to the Revenue Commissioners or to be published as required by the Minister for Finance must be furnished or published in an official language of the State. ***par 8***

Schedule 27

[*Sections 857*, *867* and *942*]

Forms of Declarations to be made by Certain Persons

This Schedule was deleted by section 68 of the Finance Act 2021.

Schedule 28

[*Sections 458*, *866* and *867*]

Statements, Lists and Declarations

Schedule 28 sets out the information to be included in statements of income, declarations and lists required under various sections of the Taxes Consolidation Act, 1997.

Schedule 29

Provisions Referred to in Sections 1052, 1054, 1077E and 1077F

Column 1	Column 2	Column 3
Benefit of use of car: ***section 121***		General tax treatment of payments on retirement or removal from office or employment: ***section 123(6)***
Returns, payment and collection of dividend withholding tax: ***section 172K(1)***		
Reporting of distributions made under stapled stock arrangements: ***section 172L(2)***		
Mortgage interest – relief at source (application of ***section 244***): ***section 244A*** and Regulations under that section		
Returns and collection of appropriate tax: ***section 258(2)***		
Medical insurance – relief at source (relief for insurance against expenses of illness): ***section 470*** and Regulations under that section		

Long-term care insurance – relief at source (relief for premiums under long-term care policies): ***section 470A*** and Regulations under that section		
		Rights to acquire shares and other assets, information: ***section 128(11)*** and ***(12)***
		Return to accompany payment of relevant tax - ***section 128B(4)***
		Convertible securities awarded to directors and employees, information: ***section 128C(15)***
		Restricted shares awarded to directors and employees, information: ***section 128D(8)***
		Forfeitable shares awarded to directors and employees, information: ***section 128E(9)***
Age-related relief for health insurance premiums: ***section 470B*** and Regulations under that section		
Allowance for rent paid by certain tenants: ***section 473*** or Regulations under that section	Share buybacks (information): ***section 183***	Annual payments not payable out of taxed income: ***section 238(3)***
Relief for service charges: ***section 477***		Deduction of tax from relevant interest: ***section 257(1)***
Covid Restrictions Support Scheme: ***section 485***		
Business Resumption Support Scheme: ***section 485A***		
Delivery of returns in respect of domicile levy: ***section 531AF***		
Delivery of returns in respect of defective concrete products levy: ***section 531AAK***		
Statement of qualification by qualifying company: ***section 508A***		

Statement of qualification (second stage relief) by qualifying company: ***section 508B***		
Statement of qualification (SURE) by qualifying company: ***section 508C***		
Obligation to file a return – Residential Zoned Land Tax: ***section 653T***		
Delivery of returns in respect of vacant homes tax: ***section 653AQ***		
	Returns of special term accounts by relevant deposit takers: ***section 264B***	Election to open a special share account or a special term share account: ***section 267B***
		Relief for fees paid for third level education, etc: ***section 473A***
		Home Renovation Incentive: ***section 477B***
		Help to Buy: ***section 477C***
		Relief for investment in films: ***section 481(2F)***
	Returns of special term accounts by credit unions: ***section 267E***	
Payments to subcontractors in certain industries: ***Chapter 2*** of ***Part 18*** and regulations made under that Chapter		EII (information): ***section 503(1)*** and ***(2)*** (as substituted by section 33 of the Finance Act 2011)
		BES (information): ***section 505(1)*** and ***(2)*** (before the coming into operation of section 33 of the Finance Act 2011)
Assessment of appropriate tax where tax not deducted under ***section 730F***: ***section 730FA(2)***		
Returns and collection of appropriate tax: ***section 730G(2)***		

Returns and collection of appropriate tax: ***section 739F(2) and 739R(2)***		
		APSS informaiton Returns: ***section 510(8)***
Returns by persons chargeable: ***section 877***	Approved profit-sharing schemes: appropriated shares: ***section 510(7)***	Payments to subcontractors in certain industries: ***Chapter 2*** of ***Part 18*** and regulations made under that Chapter
Persons acting for incapacitated persons and non-residents: ***section 878***	Land dealing transactions (power to obtain information): ***section 645***	Taxation of collective investment undertakings: ***section 734(5)***
		Notification by Qualifying Fund Manager: ***section 784A(8)***
Returns of income: ***section 879(2)***	Administration of estates (adjustments and information): ***section 804(4)***	Notice of liability to income tax: ***section 876***
Partnership returns: ***section 880***	Transfer of assets abroad (power to obtain information): ***section 808***	Obligation to show tax reference number on receipts: ***section 885***
Obligation to make a self-assessment return: ***Chapter 3 of Part 41A)***	Taxation of income deemed to arise from transfers of right to receive interest from securities: ***section 812(4***	Returns in relation to certain offshore products: ***section 896***
PAYE/PRSI Regulations: ***section 986*** and Regulations under that section		
		Returns in relation to settlements and trustees: ***section 896A***
		Returns of information in respect of awards of shares to directors and employees: ***section 897B***
Deduction from payments due to defaulters of amounts due in relation to tax: ***section 1002(2)(a)(iii)(I), (c)*** and ***(4)(a)(i)*** and ***(b)(i)***	Taxation of income deemed to arise on certain sales of securities: ***section 815***	Power of inspection: tax deduction from payments to certain subcontractors: ***section 904***
Application for separate assessments: ***section 1023***	Returns by married persons: ***section 881***	Duty of employer as to income tax payable by employees: ***section 972***
1993 tax amnesty declarations to the Chief Special Collector: Waiver of Certain Tax Interest and Penalties Act 1993: sections 2(3)(a) and 3(6)(b)	Returns etc. by lessors, lessees and agents: ***section 888***	Paying agents: ***Schedule 2 paragraph 14***

Temporary Business Energy Support Scheme: *section 101* of *Finance Act 2022*		ESOTS Returns of Information: ***Schedule 12 paragraph 3(5)***
		Approved Savings-Related Share Option Schemes: ***Schedule 12A paragraph 6A***
		Approved Share Option Schemes: ***Schedule 12C paragraph 20A***
	Returns by persons in receipt of income belonging to others: ***section 890***	Occupational pension schemes, information: ***Schedule 23 paragraph 3(2)(a)***
	Returns of interest paid or credited without deduction of tax: ***section 891***	1993 tax amnesty declarations to the Chief Special Collector: Waiver of Certain Tax Interest and Penalties Act 1993: sections 2(3)(a) and 3(6)(b)
	Returns of interest paid to non-residents: ***section 891A***	
	Returns by nominee holders of securities: ***section 892***	
	Returns of certain information by third parties: ***section 894(3)***	
	Returns in relation to certain offshore products: ***section 896***	
	Returns of employees' emoluments, etc: ***section 897***	
	Returns of copies of rates and production of certain valuations: ***section 898***	
	Power to call for production of books, information, etc.: ***section 900***	
	Power to require return of property: ***section 909***	
	Power to issue precepts: ***section 935***	
	Appeals against determination under ***sections 98*** to ***100***: ***section 947***	

Continental shelf activities, licence holder reporting requirements: ***Schedule 1 paragraph 1***

Change in ownership of company: disallowance of trading losses (information): ***Schedule 9 paragraph 8***

Employee share ownership trusts, information: ***Schedule 12 paragraph 3(4)***

Approved savings-related share option schemes, information: ***Schedule 12A paragraph 6***

Certified contractual savings schemes, information: ***Schedule 12B paragraph 5***

Approved share option schemes, information: ***Schedule 12C paragraph 20***

Collective investment undertakings, return: ***Schedule 18 paragraph 1(2)***

Tonnage tax, notification of group changes: ***Schedule 18B paragraph 30***

Occupational pension schemes, information: ***Schedule 23 paragraphs 2, 3(2)(b), 3(3)***

Schedule 30

[*Section 1098*]

Repeals

Schedule 30 lists the various enactments that are repealed by the Taxes Consolidation Act 1997 and the extent of such repeal.

Schedule 31

[*Section 1100*]

Consequential Amendments

This Schedule amends various Acts, Regulations and Orders which contained references to the repealed enactments (that is, the provisions repealed by the Taxes Consolidation Act 1997) so as to replace those references with the corresponding references in the Taxes Consolidation Act 1997.

Schedule 32

[*Section 1101*]

Transitional Provisions

Overview

Schedule 32 provides various transitional provisions consequential on the enactment of the Taxes Consolidation Act, 1997. It also preserves the integrity of certain other provisions, which although not consolidated in the Taxes Consolidation Act, 1997 are still, or may be, extant to some degree.

Details

Stock of local authorities

Paragraph 1 provides that stock, issued on or after 13 July, 1955, under section 87 of the Local Government Act, 1946, is, or may be, deemed to be stock issued by the Minister for Finance, and may be issued with a condition that any interest the stock may be paid without deduction of tax. Furthermore, interest on such stock payable without deduction of tax may be subject to either or both of two conditions. The first condition is that neither the capital nor the interest is liable to tax, if it can be shown, in the manner directed by the Minister for Finance, that the stock is in the beneficial ownership of person's who are neither domiciled nor ordinarily resident in the State. The second condition is that interest payable on such stock is not liable to tax if, it can be shown, in the manner directed by the Minister for Finance, that the security is in the beneficial ownership of person's who, though domiciled in the State, are not ordinarily resident in the State. ***par 1***

Income tax: exemption from tax of income from certain scholarships

This paragraph provides that income paid before 6 April, 1998, in respect of a scholarship awarded before 26 March, 1997, is exempt from income tax and is not taken into account in computing the recipient's income for the purpose of the Income Tax Acts. ***par 2***

Corporation tax: exemption from tax on profits of Custom House Docks Development Authority

Paragraph 3 provides for the continuation of the exemption from corporation tax of profits arising to the Custom House Docks Development Authority up to 1 May, 1997, at which stage this exemption stands repealed. ***par 3***

Meaning of "relevant distributions" for the purposes of section 147 in relation to distributions made before 6th April, 1989

This paragraph introduced, for the period 1 January, 1981 to 6 April, 1989 the concept of the "primary fund". The primary fund was, broadly, a fund of income which consisted of a company's profits taxed at the effective 10 per cent rate, less the tax on those profits, plus the dividends received by the company which carried a reduced tax credit of 1/18th. Distributions made out of the primary fund were known as "relevant distributions" and carried a reduced tax credit of 1/18th. The formula for calculating the fund is set out in the paragraph. Where distributions made by a company exceeded the company's primary fund, the excess was treated as a separate distribution carrying the appropriate tax credit applicable at the time of payment. ***par 4***

The concept of the primary fund ceased to have effect for distributions made on or after 6

April, 1989 and the paragraph is repealed with effect from that date..

Distribution out of certain income of manufacturing companies – provisions relating to relief for certain losses and capital allowances carried forward from 1975–76

This paragraph contains technical provisions relating to the relief from corporation tax provided for under ***paragraph 16*** in respect of unrelieved income tax trading losses and capital allowances carried forward from the year 1975–76. The relief under ***paragraph 16*** for such losses is given in terms of tax, that is, it is given as a deduction from corporation tax payable rather than (as would be the case with corporation tax losses) as a deduction from income charged to corporation tax. ***par 5***

The paragraph deals with the calculation of the tax credit attaching to distributions where for an accounting period a company has "manufacturing income" chargeable at the effective 10 per cent corporation tax rate under ***Part 14*** and also has unrelieved income tax trading losses and capital allowances carried forward from 1975–76. In such a case it is necessary, for the purposes of calculating the tax credit attaching to distributions made out of profits charged to corporation tax at the effective 10 per cent rate, to translate the relief given under ***paragraph 16*** in terms of a deduction from corporation tax payable into an equivalent amount of relief from tax given by way of a deduction from income charged to corporation tax. The paragraph provides rules for the required translation.

The paragraph is repealed with effect from 6 April, 1999. There are no tax credits attaching to distributions made on or after 6 April, 1999 and, consequently, the paragraph is redundant from that date.

Distribution out of certain income of manufacturing companies – provisions relating to relief for certain corporation profits tax losses

This paragraph contains technical provisions relating to the relief from corporation tax provided for under ***paragraph 18*** in respect of unrelieved corporation profits tax losses carried forward from the year 1975–76. The relief under ***paragraph 18*** for such losses is given in terms of tax, that is, it is given as a deduction from corporation tax payable rather than (as would be the case with corporation tax losses) as a deduction from income charged to corporation tax. ***par 6***

The paragraph deals with the calculation of the tax credit attaching to distributions where for an accounting period a company has "manufacturing income" chargeable at the effective 10 per cent corporation tax rate under ***Part 14*** and also has unrelieved corporation profits tax losses carried forward from 1975–76. In such a case it is necessary, for the purposes of calculating the tax credit attaching to distributions made out of profits charged to corporation tax at the effective 10 per cent rate, to translate the relief given under ***paragraph 18*** in terms of a deduction from corporation tax payable into an equivalent amount of relief from tax given by way of a deduction from income charged to corporation tax. The paragraph provides rules for the required translation.

The paragraph is repealed with effect from 6 April, 1999. There are no tax credits attaching to distributions made on or after 6 April, 1999 and, consequently, the paragraph is redundant from that date.

Approved share option schemes

Paragraph 7 provides relief from income tax for employees and directors participating in Revenue Approved Share Option Schemes. The relief is only available in respect of such options granted in the period 6 April, 1986 to 28 January, 1992. Participants in such schemes do not suffer any income tax liability under Schedule E in respect of the grant or exercise of the option in respect of the shares. However, a capital gains tax liability may arise when the shares obtained by the exercise of the option are sold. The terms to be met ***par 7***

in order for a scheme to be an approved scheme are set out in the Second Schedule to the Finance Act, 1986 (that Schedule has not been re-enacted in the Taxes Consolidation Act, 1997, however, it still applies for the purpose of this paragraph).

Interest on certain loans: relief from corporation tax

Before the introduction of corporation tax interest on permanent loans was not deductible in computing for the purposes of corporation profits tax the profits of the borrowing company, and, consequently, was not charged to corporation profits tax in the hands of the lending company. (The borrowing company had the right to deduct income tax when paying such interest, so that the lending company bore income tax thereon). Under the current corporation tax system such interest is an allowable deduction in computing the borrowing company's profits. However, in relation to interest paid under loan agreements entered into before 27 November, 1975, the lending company's liability to corporation tax on such interest, is, in effect, reduced to an amount equal to tax at the standard rate of income tax on the interest. The lending company's former position is thus preserved in relation to loans which were in existence before 27 November, 1975. ***par 8***

Allowance for certain capital expenditure on construction of multi-storey car parks

Paragraph 9 provides that expenditure incurred in the period 29 January, 1981 to 31 March, 1991, on the construction of a multi-storey car park, for use by the general public, qualifies for the same capital allowances (apart from free deprecation) as are available to industrial buildings or structures (as defined in ***section 268(1)(a)***. This paragraph preserves entitlement to such allowances following enactment of the Taxes Consolidation Act, 1997. ***par 9***

Allowance for certain capital expenditure on roads, bridges, etc

An allowance is available for capital expenditure incurred by a person on the provision in the period 29 January, 1981 to 31 March, 1992 of a toll road by virtue of an agreement made between that person and a Road Authority under section 9 of the Local Government (Tolls Road) Act, 1979. The allowance was 50 per cent of qualifying expenditure where the agreement was entered into before 6 April, 1987, and 100 per cent where the agreement was entered into after 6 April, 1987. In addition, for post 6 April, 1987, agreements, interest incurred on borrowings to fund qualifying expenditure also qualifies for relief. The allowance may only be set off against taxable income arising under such an agreement to the person who incurred the capital expenditure. This paragraph preserves entitlement to such allowances following enactment of the Taxes Consolidation Act, 1997. ***par 10***

Urban Renewal Scheme, 1986 – capital allowances in relation to certain commercial premises in designated areas other than the Custom House Docks Area

This paragraph preserves the integrity of allowances and charges to be made to or on a person, in respect of capital expenditure incurred by that person, on the construction or refurbishment of certain commercial premises in designated areas other than the Custom House Docks Area, 1994. ***par 11***

Urban Renewal Scheme, 1986 – allowances to owner-occupiers in relation to certain residential premises in designated areas other than the Custom House Docks Area

This paragraph preserves the integrity of the deduction to be allowed owner-occupiers in respect of capital expenditure incurred by such individual's, in the period 23 October, 1985 to 31 July, 1994, on the construction or refurbishment of a dwelling house situated in a designated area other than the Custom House Docks Area. ***par 12***

Urban Renewal Scheme, 1986 – double rent allowance in relation to certain premises in designated areas other than the Custom House Docks Area

This paragraph preserves the integrity of the availability of a double rent deduction as an expense in computing trading profits for tax purposes for rent paid under a bona fide commercial letting by a person carrying on a trade or profession in respect of a qualifying premises. The relief was available in respect of qualifying leases entered into in the period 23 October, 1985 to 31 July, 1994. ***par 13***

Rented residential accommodation – deduction for expenditure incurred on construction, conversion or refurbishment in areas other than the Custom House Docks Area

This paragraph preserves the integrity of the deduction available in respect of capital expenditure incurred by a person on the construction or refurbishment of a rental dwelling situated in a designated area other than the Custom House Docks Area. The relief is given as a deduction from the individual's rental income. ***par 14***

Loss relief, etc

This paragraph preserves the integrity of losses available for carried forward under pre-consolidation enactments. ***par 15***

Relief in respect of unrelieved losses and capital allowances carried forward from the year 1975–76

This paragraph contains technical provisions allowing relief from corporation tax in respect of unrelieved income tax trading losses and capital allowances carried forward from years before the introduction of corporation tax (that is before 6 April, 1976). The relief is given by reducing the company's corporation tax payable for the accounting period in respect of the company's trade. The amount of losses and capital allowances which can be relieved for an accounting period is limited to the net chargeable profits of the trade for the accounting period. Any unrelieved amounts may be carried forward for relief in subsequent accounting periods. ***par 16***

The rate of relief for unused income tax trading losses and capital allowances is calculated as the difference between the standard rate of corporation tax and the 15 per cent rate used under ***paragraph 18*** for relieving unused corporation profits tax losses. The paragraph specifies the differing rates of relief which apply up to accounting periods ending before 1 January, 2003. No relief is available from 1 January, 2003, as the standard rate of corporation tax from that date will be 12 per cent rate which is below the 15 per cent rate.

Relief in respect of losses or deficiencies within Case IV or V of Schedule D

Paragraph 17 contains technical provisions allowing relief for Case IV and V trading losses and capital allowances carried forward from years before the introduction of corporation tax (that is, losses incurred in the period before 6 April, 1976). The relief in respect of such losses and capital allowances is given as if they where trading losses of the company, and are relieved in tax terms, by apply the provisions of ***paragraph 16*** (that is, by giving a credit against corporation tax payable, the credit being calculated by applying the standard credit rate to the amount of the loss or capital allowance). The relief is only available for set-off against the company's Case IV or Case V income, as appropriate, any unrelieved amounts may be carried forward for relief to subsequent accounting periods. ***par 17***

Relief in respect of corporation profits tax losses

This paragraph contains technical provisions allowing relief for corporation profits tax losses carried forward from years before the introduction of corporation tax (that is, losses ***par 18*** incurred in the period before 6 April, 1976). The relief is given by reducing the corporation tax payable for the first accounting period for which the company is within the charge to corporation tax and, in so far as it cannot be so allowed, is allowed against the tax payable for the next accounting period and so on. The relief is restricted, for any one accounting period, to an amount determined by the formula set out in the paragraph. The formula limits the relief to an amount equal to 15 per cent of the total profits of the company for the accounting period excluding chargeable gains. However, from 1 January, 2003 relief for unused corporation profits tax losses will be given at a rate equal to the 12 per cent standard rate of corporation tax.

Capital gains tax losses accruing before 6th April, 1976

Paragraph 19 provides relief for capital gains tax losses incurred in the years 1974–75 or 1975–76. It provides that allowable losses incurred in those periods which would have been set off against chargeable gains but for the insufficiency of such gains, may be carried forward and set against the company's profits chargeable to corporation tax. ***par 19***

Income tax: relief for expenditure on certain buildings in certain areas

This paragraph preserves the integrity of the relief (provided for in section 4 of the Finance Act, 1989) for expenditure on certain buildings in designated areas. The relief was designed to encourage individuals to come and live in designated inner city areas and to renovate certain buildings there. Qualifying buildings are buildings the site of which is wholly within a designated area and which were determined by the Commissioners' of Public Works in Ireland to be of significant scientific, historical, architectural, or aesthetic interest. The relief was available for the period 24 May, 1989 to 31 July, 1994, and consisted of an income tax deduction from an individual's total income equal to 25 per cent of relevant expenditure incurred by an individual in a year of assessment, with a further deduction of 5 per cent allowable in each of the following 5 years (that is, a total deduction of 50 per cent). The expenditure must have been in respect of the repair, restoration or maintenance in the nature of repair or restoration of a house which was used by the individual as his/her sole or main residence. ***par 20***

Income tax: relief for income accumulated under trusts

This paragraph preserves the relief which may be claimed by a beneficiary for whom, under any will or settlement, income arising from any fund is accumulated for, contingent on that individual attaining a specified age or marrying. The relief must be claimed by the beneficiary within 6 years of the contingent materialising (that is, within 6 years of date of marriage or the date of attainment of the required age), and is given by repayment of any tax previously paid by the trustees. However, no claim can be made for repayment of tax paid by the trustees for any year of assessment after the year 1972- 1973. ***par 21***

Relief for investment in films in respect of certain sums

This paragraph provided certain transitional arrangements, consequent on the amendments to the relief for investment in films, introduced, with effect from 23 January, 1996, by section 31 of the Finance Act, 1996. ***par 22***

The transitional arrangements applied to funds invested on or after 23 January, 1996, but before 31 March, 1996, in respect of shares in a qualifying company, which funds enabled that company to produce a film in respect of which the Minister for Arts Culture and the Gaeltacht (now Minister for Arts, Sport and Tourism) had received an application for certification before 23 January, 1996, and the certification given by the Minister in respect of the film contained a statement to the effect that the Minister had received the application before that date.

Furthermore, if a sum of money to which the previous paragraph applies or which was paid on or after 6 April, 1995, and was used to enable the production of a film in respect of which an application for certification was not received by the Minister on or before 23 January, 1996, relief available before that date was restricted to 80 per cent of what it otherwise would have been.

The Finance Act, 1997, further increased, with effect from 26 March, 1997, the limit for corporate investment by a corporate group in any one film from €2,539,476.16 (£2 million) to €3,809,214.24 (£3 million). Furthermore to assist low budget films, it provided, with effect for any 12 month period starting after 22 January, 1997, that where a group invests more than €3,809,214.24 (£3 million)., in any such period, the excess over this amount must be targeted at films with a production cost below €5,080,000 (£4 million).

Farming: application of section 658 in relation to expenditure incurred before 27th January, 1994

With effect from the 27 January, 1994, capital allowances, in respect of qualifying capital expenditure incurred on farm buildings or farm works, are given over a writing down period of 7 years, at a rate of 15 per cent per year and 10 per cent in the final year. This paragraph preserves the capital allowance regime which applied in the period before 27 January, 1994. That regime provided — ***par 23***

- for capital expenditure incurred before 1 April, 1989 – free deprecation up to 30 per cent in a chargeable period, subject to an overall limit of 100 per cent,
- for capital expenditure incurred between 1 April, 1989 and 31 March, 1991 – free deprecation up to a maximum of 50 per cent, the balance being written off by annual allowances of 10 per cent for 5 years,
- for capital expenditure incurred between 1 April, 1991 and 31 March, 1992 – free deprecation up to a maximum of 25 per cent, the balance being written off by annual allowances of 10 per cent for 7 years and 5 per cent for the final year,
- for capital expenditure incurred between 1 April, 1992 and 26 January, 1994 – annual allowance of 10 per cent for 10 years.

However, in the case of qualifying pollution control expenditure free deprecation up to a maximum of 50 per cent was available for capital expenditure incurred between 1 April, 1991 and 31 March, 1993.

Transitional provisions arising from amendments made to the system of life assurance companies by Finance Act, 1993

The basis of taxation of life assurance companies was amended with effect from 1 January, 1993. The amendments, *inter alia*, widened the basis of charge to tax (that is, both realised and unrealised income and gains are charged to tax) of such companies and reduced the rate of tax of such companies from, 35 per cent in respect of income and 40 per cent in respect of capital gains to a rate equal to the standard rate of income tax. It also provided that accounting periods straddling 1 January, 1993, were deemed to be made up of 2 accounting periods one ending 31 December, 1992, and another beginning on 1 January, 1993. As a transitional measure, assets of life assurance companies, excluding gilts, were deemed to be sold and reacquired on 31 December, 1992, any resulting gains or losses were spread over the following 7 years, with gains being charged at a 40 per cent rate rather than 27 per cent rate. ***par 24***

Disposals in the year 1993–1994 of units in certain unit trusts

This paragraph preserves, for the year of assessment 1993–94, the exemption from capital gains tax, of gains arising from investments by certain unit trusts who invested wholly in government securities. ***par 25***

Application of section 774(6) in certain circumstances

This paragraph provides that contributions made by employers to approved occupational pension schemes are allowed as a deduction for tax purposes, to the extent that the sums are actually paid into an approved pension scheme. ***par 26***

Settlements: application of section 792 for the year of assessment 1997–98 in relation to certain dispositions to certain individuals residing with, and sharing normal household expenses with, the disponer

With effect from 6 April, 1996, the recognition for tax purposes of covenants made by individuals was generally abolished. However, this paragraph mitigates, the tax consequences of the abolition of covenants, to the extent that the covenantee is not a child of the covenantor and is resident with, and sharing normal household expenses with, the covenantor and a dependant child of either the covenantor or the covenantee or both of them, is resident with them and is jointly maintained by them. The mitigation only applies up to 5 April, 2000, and is in respect of covenants made before 6 April, 1993, or made after 6 April, 1993, but only to the extent that it immediately replaced a covenant made before that date. Furthermore, the Revenue Commissioners must also be satisfied that the imposition of the restrictions imposed after 6 April, 1996, would give rise to hardship. ***par 27***

Construction of certain references to Ministers of the Government

This paragraph sets out the various current Ministerial titles, the corresponding former titles, and the effective date from which the current titles took effect. ***par 28***

Construction of certain references to Government Departments

This paragraph sets out two new Government Department titles, the corresponding former titles, and the effective date from which the current titles took effect. ***par 29***

Construction of references to Secretary General of Department of Finance

This paragraph provides that any reference in the Taxes Consolidation Act, 1997, to the Secretary General of the Department of Finance, is, for the period 6 April, 1997, to 31 August, 1997, to be construed as a reference to the Secretary of the Department of Finance. ***par 30***

Construction of certain references to educational institutions

This paragraph provides that any reference in the Taxes Consolidation Act, 1997, to either National University of Ireland, Dublin or National University of Ireland, Cork, is, for the period 6 April, 1997, to 15 June, 1997, to be construed as a reference to University College, Dublin or University College, Cork, respectively. ***par 31***

Schedule 33

Specific Anti-Avoidance Provisions for the Purposes of Part 33

This Schedule is a list of provisions of the Taxes Consolidation Act 1997 which are specific anti-avoidance provisions for the purposes of ***Part 33***. Those provisions are as follows:

Section 381B

Section 381C

Section 546A

Section 590

Section 806

Section 807A

Section 811B

Section 812

Section 813

Section 814

Section 815

Section 816

Section 817

Section 817A

Section 817B

Section 817C

Schedule 34

[*Section 817RI*]

Specified arrangements referred to in section 817RI

Schedule 34 lists out the specified arrangements referred to in ***section 817RI(1)***, as follows:

- A salary sacrifice arrangement approved under ***section 118B***.
- The occupation of woodlands as provided for by ***section 232***.
- The disposal by an individual of woodland as provided for by ***section 564***.
- A retirement benefits scheme within the meaning of ***section 771***, for the time being approved by the Revenue Commissioners for the purposes of ***Chapter 1*** of ***Part 30***.
- An annuity contract or a trust scheme, or part of a Trust Scheme, for the time being approved by the Revenue Commissioners under ***section 784***.
- A PRSA contract (within the meaning of ***section 787A***) in respect of a PRSA product (within the meaning of that section).
- A qualifying overseas pension plan within the meaning of ***Chapter 2B*** of ***Part 30***.
- A profit sharing scheme approved by the Revenue Commissioners under ***Part 2*** of ***Schedule 11***.
- An employee share ownership trust approved by the Revenue Commissioners under ***paragraph 2*** of ***Schedule 12***.
- A savings-related share option scheme approved by the Revenue Commissioners under ***paragraph 2*** of ***Schedule 12A***.
- A certified contractual savings scheme certified by the Revenue Commissioners

under ***Schedule 12B***.

- A share option scheme approved by the Revenue Commissioners under ***paragraph 2*** of ***Schedule 12C***.
- A PEPP contract (within the meaning of ***Chapter 2D of Part 30***) in respect of a PEPP.

Schedule 35

[*Section 285D*]

Schedule 35, which is subject to a commencement order to be made by the Minister for Finance, specifies out the types of equipment which are to come within the meaning of "qualifying equipment" for the purposes of ***section 285D***.

Part 1 contains two definitions. ***Part 1***

"farm vehicle" is defined to mean an agricultural tractor, agricultural self-propelled machine, all-terrain vehicle or utility terrain vehicle;

"machinery Directive" is defined as meaning Directive 2006/42/EC of the European Parliament and of the Council of 17 May 2006 on machinery, and amending Directive 95/16/EC (recast)[1].

Part 2 sets out the qualifying equipment specified in ***section 285D*** in the following table. ***Part 2***

Equipment type **(1)**	**Description** **(2)**
Hydraulic linkage arms mounted tractor jacking systems.	An agricultural tractor jacking system that uses either the rear or front mounted lower linkage arms to enable an agricultural tractor to be lifted so that one or more wheels may be replaced on the agricultural tractor. The jacking system shall bear CE marking in accordance with Article 16 of the machinery Directive and be in conformity with the requirements of that Directive.
Big bag (equal to or greater than 500kg) lifter, with or without integral bag cutting	Lifting system for bags of fertiliser or seed of 500kg mass or greater. The system shall be mounted on either the three-point linkage of an

[1] See: https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32006L0042&from=EN.

system.	agricultural tractor, front loader of an agricultural tractor or mounted on a fertiliser or seed drill. The lifter shall be capable of securely holding the bag and raising the bag over a fertilizer spreader or seed drill. The system may have an integral system for automatically opening the bag. The lifting system shall bear CE marking in accordance with Article 16 of the machinery Directive and be in conformity with the requirements of that Directive.
Chemical Storage cabinets.	A storage cabinet fitted with a locking device and integral bund for the storage of pesticides and other chemicals. The cabinet may be made of metal or hard plastic, or a combination of both. The cabinet shall be suitably vented to prevent a build-up of fumes.
Animal anti-backing gate for use in cattle crush or race.	Device to be mounted on the side of a cattle crush or cattle crush race to prevent an animal from reversing along the cattle crush or cattle crush race. The device shall allow an animal to pass up along the cattle crush or cattle crush race and shall be either automatically or manually moved into position once an animal has passed.
Quick hitch mechanism for rear and front three-point linkage to enable hitching of implements without need to descend from tractor.	A one-part or two-part system to enable the hitching of implements to an agricultural tractor three-point linkage without having to descend from the agricultural tractor. The system shall be connected to the three-point hydraulic linkage of the agricultural tractor and enable the agricultural tractor to link to an implement. The system shall bear CE marking in accordance with Article 16 of the machinery Directive and be in conformity with the requirements of that Directive.
Provision of access lift, hoist or	Provision of an integrated ramp, lift or hoist to

integrated ramp to farm vehicle, including modified entry when required.	facilitate access to a farm vehicle by a disabled person. The system may incorporate a modified side or rear entry to enable access. The lift or hoist system shall bear CE marking in accordance with Article 16 of the machinery Directive and be in conformity with the requirements of that Directive.
Wheelchair restraints.	Provision of wheelchair restraints within a farm vehicle.
Wheelchair docking station.	Provision of wheelchair docking station within a farm vehicle.
Modified controls to enable full hand operation of a farm vehicle.	Extensive reconfiguration of primary controls necessary to enable a farm vehicle to be driven and operated by a disabled person.
Modified seating to enable operation of a farm vehicle.	Provision of an extensively modified seat to enable operation of a farm vehicle by disabled person.
Additional steps to farm vehicle or machinery to provide easier access.	Additional steps to farm vehicle or machinery to provide easier access. The additional steps shall bear CE marking in accordance with Article 16 of the machinery Directive and be in conformity with the requirements of that Directive.
Modified farm vehicle or machinery controls to enable control by hand or foot.	Extensive reconfiguration of controls necessary to enable a farm vehicle or farm machinery to be operated by a disabled person.
Hydraulically located lower three-point linkage arms.	Provision of a hydraulic system to control the location of the lower three-point linkage arms of a farm vehicle.

Schedule 35A

[*Section 658D*]

Types and Descriptions of Slurry Storage Items for the Purposes of s*ection 658D*

Part 1

Part 1 contains the definition for "slurry" which means excreta produced by livestock while in a building or yard, and a mixture of such excreta with rainwater, washings, or such other extraneous material or any combination of these.

Part 2

Part 2 sets out the qualifying capital items specified in ***section 658A*** in the following table.

Items **(1)**	**Description** **(2)**
Floors and walls of animal housing	Floors and walls of slurry collecting and storing buildings used to house livestock, built in accordance with the relevant specifications as may be approved from time to time by the Minister for Agriculture, Food and the Marine as required by the relevant regulation.
Mass concrete tanks with roof or cover	Slurry storage tank built in accordance with the relevant specifications as may be approved from time to time by the Minister for Agriculture, Food and the Marine as required by the relevant regulation. The tank must be covered.
Precast concrete tanks with roof or cover	Precast concrete tank built in accordance with the relevant specifications as may be approved from time to time by the Minister for Agriculture, Food and the Marine as required by the relevant regulation. The tank must be covered.
Circular slurry stores with roof or cover	Circular slurry tank built in accordance with the relevant specifications as may be approved from time to time by the Minister for Agriculture, Food and the Marine as required by the relevant regulation. The tank must be covered.

Geo-membrane lined stores with roof or cover	Geo-membrane lined slurry store built in accordance with the relevant specifications as may be approved from time to time by the Minister for Agriculture, Food and the Marine as required by the relevant regulation. The tank must be covered.
Farmyard manure pit with roof or cover	Structure for storage of high dry matter slurry built in accordance with the relevant specifications as may be approved from time to time by the Minister for Agriculture, Food and the Marine as required by the relevant regulation.
Collecting yards	Slurry collecting structure used for the holding of animals while they are waiting to be milked, built in accordance with the relevant specifications as may be approved from time to time by the Minister for Agriculture, Food and the Marine as required by the relevant regulation.
Cattle enclosure yards	Slurry collecting structure used for the holding of animals while they are waiting for handling, built in accordance with the relevant specifications as may be approved from time to time by the Minister for Agriculture, Food and the Marine as required by the relevant regulation.
Automatic slurry scrapers	A fixed device for the collection of slurry from the floor of an animal house for storage in a slurry store. The device will consist of a scraper blade that is either pulled or pushed along the floor of an animal house. The blade is usually driven by either a rope, chain or track.
Simple slurry aeration system	System for keeping stored slurry in a homogeneous pumpable state. The system works by pumping low pressure air through a valve system to outlet branches fixed to the base of the slurry store. Each outlet branch

	sequentially releases the air for a set period, with the rising air bubbles mixing and aerating the slurry.

Schedule 36

[*Part 18E*]

Types and Standards of Concrete Product for the Purposes of Part 18E

Schedule 36 sets out types of concrete product, as provided for in subparagraph (a)(ii) of the definition of "concrete product" in section 531AAG, which are subject to the defective concrete products levy.

Harmonised European Standard as referenced in the Official Journal of the European Union[2] (or any adopted national version of such Harmonised European Standard) (1)	Title Description (2)
EN 771-3:2011+A1:2015	Specification for masonry units - Part 3: Aggregate concrete masonry units (Dense and lightweight aggregates)
EN 771-4:2011+A1:2015	Specification for masonry units - Part 4: Autoclaved aerated concrete masonry units

[2] OJ No. L88, 4.4.2011, p.5