

# **Notes for Guidance - Taxes Consolidation Act 1997**

## **Finance Act 2021 edition**

### **Part 3**

## **Provisions relating to the Schedule C charge and Government and other public securities**

**December 2021**



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**Part 3 Provisions relating to the Schedule C charge and Government and other public securities**

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Part 3 Provisions relating to the Schedule C charge and Government and other public securities

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## INCOME TAX AND CORPORATION TAX: THE MAIN PROVISIONS

### PART 3 PROVISIONS RELATING TO THE SCHEDULE C CHARGE AND GOVERNMENT AND OTHER PUBLIC SECURITIES

#### CHAPTER 1

##### *Principal provisions relating to the Schedule C charge*

#### Overview

*Chapter 1* of *Part 3* provides for the method of charge and the payment of tax under Schedule C and applies *Schedule 2* for the purposes of the assessment, charge and payment of tax under Schedule C. The Chapter also ensures that no tax is to be charged on stock, dividends or interest belonging to the State, and provides that no tax is to be charged on the interest on any foreign securities payable in the State where the securities are owned by non-residents.

#### 32 Interpretation (*Chapter 1*)

This section provides for the interpretation of this Chapter.

“dividends” generally means any interest, annuities, dividends or shares of annuities.

“public revenue”, unless the context requires otherwise, includes the public revenue of the Irish Government (for example, interest on Irish Government stocks) and of any foreign Government (for example, interest on U.K. government stocks) and also the revenue of any public authority or institution in any foreign country (for example, interest on the securities of provincial, municipal and other public bodies of any country outside the State).

“public revenue dividends” are dividends out of any public revenue.

“foreign public revenue dividends” are dividends payable in any place other than in the State out of any foreign public revenue. This definition applies irrespective of whether or not the dividends are also capable of being paid in the State.

#### 33 Method of charge and payment

##### Summary

This section sets out the method of charging and paying tax under Schedule C. Persons entrusted on behalf of another person with a payment liable to tax under Schedule C are required to pay on behalf of that other person the tax due out of the payment. The procedure for the assessment, charge and payment of tax under Schedule C is set out in *Schedule 2*.

##### Details

Tax under Schedule C is charged by the Commissioners designated for that purpose (1) by the Income Tax Acts. *Section 853* specifically designates the Governor and directors of the Bank of Ireland as Commissioners for, among other things, the purposes of the assessment of public revenue dividends of the State payable to the

Bank. Tax under Schedule C is paid on behalf of the persons entitled to the profits, dividends, proceeds of realisation or price paid on purchase by the banker or other person who is entrusted with the duty of paying the income.

Tax charged under paragraph 1 of Schedule C is payable by the persons and bodies of persons respectively entrusted with the payment.

Tax charged under paragraphs 2, 3 or 4 of Schedule C is payable by the bankers, dealers in coupons or other persons, as the case may be.

The procedures for the assessment, charge and payment of tax under Schedule C is set out in *Schedule 2*. (2)

### **34 Stock, dividends or interest belonging to the State**

Exemption from tax is provided for stock, dividends and interest transferred to accounts in the Bank of Ireland in the name of the Minister for Finance in pursuance of any statute. The Bank of Ireland, however, is obliged to give the Revenue Commissioners details of the total amount of such stock, dividends and interest. (1)

Exemption from tax is also provided for stock, dividends or interest belonging to the State (in whatever name they may stand) in the books of the Bank of Ireland. (2)

### **35 Securities of foreign territories**

#### **Summary**

Dividends on securities of foreign territories payable in the State are exempt from tax where the person owning and entitled to such dividends is not resident in the State. For this purpose, where such securities are held under any trust, a person is deemed to be the owner of the securities where the person is the sole beneficiary in possession under the trust and can obtain possession of the securities absolutely free from any trust.

#### **Details**

##### ***Exemption***

Exemption from tax is provided for the dividends on any securities of any foreign territory payable in the State provided it is proved to the satisfaction of the Revenue Commissioners that the person owning the securities and entitled to the dividends is not resident in the State. Subject to any exception in the Income Tax Acts (in this regard see *subsection (2)*), no allowance or repayment is to be made for tax on such dividends which are payable in the State. (1)(a)

In the case of any such securities held under a trust, where the person who is the beneficiary in possession under the trust is the sole beneficiary in possession and can, by means either of the revocation of the trust or of the exercise of any power under the trust, request the trustees at any time to transfer the securities to that person absolutely free from any trust, then, that person is deemed for the purpose of this section to be the person owning the securities. (1)(b)

On a claim being made to the Revenue Commissioners, the exemption provided by this section may be given by means of allowance or repayment. (2)

##### ***Appeals***

There is a right of appeal to the Appeal Commissioners on any question as to a person's residence status. Any appeal is to be heard and determined by the Appeal (3) & (4)

Commissioners in the same way as an appeal against an assessment to income tax is heard and determined. The provisions relating to the rehearing of an appeal and to the statement of a case for the opinion of the High Court on a point of law also apply.

## CHAPTER 2

### *Government and other public securities: interest payable without deduction of tax*

#### Overview

**Chapter 2** of **Part 3** provides that interest on certain securities may be paid without the need to deduct tax. The interest payable on the securities, however, remains chargeable to tax under Case III of Schedule D in the hands of the recipient unless otherwise specifically exempted.

#### 36 Government securities

##### Summary

This section ensures that loans issued under the authority of the Minister for Finance can be issued subject to the condition that any interest is paid without deduction of tax. Any interest so paid remains chargeable to tax under Case III of Schedule D in the hands of the recipient unless otherwise specifically exempted. The section also provides for the necessary information to be furnished to the Revenue Commissioners so as to enable assessments to be made on the persons entitled to the interest.

##### Details

Securities issued under the authority of the Minister for Finance may on that Minister's direction be issued subject to the condition that the interest on the securities is paid without deduction of tax. (1)

The interest on securities so issued remains chargeable to tax. The tax, however, is charged under Case III of Schedule D. Where funds under the control of any court or public department are invested in such securities, the person in whose name the securities are invested is chargeable in respect of the interest. (The Case III of Schedule D charge is removed in certain cases – see **Chapter 3** of this Part, in particular **section 43**.) (2)

The persons who — (3)

- pay such interest,
- receive such interest on behalf of others, or
- act as intermediaries in the purchase of such securities,

are, on request by the Revenue Commissioners, required to furnish the Commissioners with information as to —

- the name and address of the persons to whom the interest has been paid,
- the name and address of the persons on whose behalf such interest has been received,
- the amount of the interest paid or received,
- the name and address of the persons on whose behalf such securities were purchased, and
- the amount of such securities.

### **37 Securities of certain State-owned companies**

The favourable treatment of interest outlined in *section 36* applies in respect of any interest on the securities specified in the Table to this section (that is, interest paid on such securities may be paid without deduction of tax at source). The interest, however, then becomes chargeable to tax under Case III of Schedule D in the hands of the recipient. (The Case III Schedule D charge is removed in certain cases – see *sections 47* and *49*.) (1) &(2)

Subject to *Part 35D*, such interest paid by any of the companies listed in the Table is allowable as a deduction in computing the profits or gains of the company assessable to tax under Schedule D. (3)

### **38 Certain State-guaranteed securities**

The favourable treatment of interest outlined in *section 36* (that is, that interest on certain securities may be issued without deduction of tax at source) applies to any interest on securities issued by a body corporate in respect of which the payment of interest and the repayment of principal is guaranteed by a Minister of the Government under statutory authority. The interest, however, is then chargeable under Case III of Schedule D unless otherwise specifically exempted. (The Case III of Schedule D charge is removed in certain cases – see *section 49*.) The securities issued by certain semi-State bodies which are covered by *sections 37* are excluded from this section as are securities issued by a company formed by the National Development Finance Agency. (1) & (2)

Subject to *Part 35D*, such interest paid on such securities is allowable as a deduction in computing the Case I Schedule D profits or gains of the body corporate concerned. (3)

### **39 Securities of certain European bodies**

The favourable treatment of interest outlined in *section 36* (that is, that interest on certain securities may be issued without deduction of tax at source) applies to any interest on any stock or other form of security issued in the State by the European Community, the European Coal and Steel Community, the European Atomic Energy Community or the European Investment Bank. Such interest, however, is chargeable under Case III of Schedule D. (The Case III of Schedule D charge is removed in certain cases – see *sections 48* and *49*.)

### **40 Securities of International Bank for Reconstruction and Development**

The favourable treatment of interest outlined in *section 36* (that is, that interest on certain securities may be issued without deduction of tax at source) applies to any interest on any stock or other form of security issued by the International Bank for Reconstruction and Development. The interest, however, is chargeable under Case III of Schedule D. (The Case III of Schedule D charge is removed in certain cases – see *section 49*.)

### **41 Securities of designated bodies under the Securitisation (Proceeds of Certain Mortgages) Act, 1995**

The favourable treatment of interest outlined in *section 36* (that is, that interest on certain securities may be issued without deduction of tax at source) applies to any interest on any stock or other form of security issued by a body designated under section 4(1) of the Securitisation (Proceeds of Certain Mortgages) Act, 1995. The

interest, however, is chargeable under Case III of Schedule D. (The Case III of Schedule D charge is removed in certain cases – see *section 49*.)

## CHAPTER 3

### *Government and other public securities: exemptions from tax*

#### Overview

This Chapter provides for the exemption from tax, subject to conditions, of various types of Government securities. The exemption given may be in respect of the interest paid on securities, or on a discount given on the issue of securities, or premiums paid on the redemption of securities, or on the capital represented by the securities.

#### 42 Exemption of interest on savings certificates

##### Summary

This section provides exemption from income tax in respect of the accumulated interest payable on savings certificates issued by the Minister for Finance. The exemption only applies so long as the amount of such certificates held by a person does not exceed the amount which that person is authorised to hold under regulations made by the Minister for Finance.

The exemption was extended, as and from 4 February 2010, to similar savings products issued by other EU or EEA Governments with which Ireland has a Double Taxation Agreement.

The exemption also extends to similar savings products issued by the Government of the United Kingdom.

In order to qualify for the exemption, the products issued by the EU, EEA Governments with which Ireland has a Double Taxation Agreement or the Government of the United Kingdom must be issued under rules which correspond to the rules that govern savings certificates issued by the Minister for Finance.

##### Details

##### *Definitions*

“EEA Agreement” means the Agreement on the European Economic Area signed in Oporto on 2 May 1992 as adjusted by the Protocol signed at Brussels on 17 March 1993; (1)

“EEA State” means a state which is a contracting party to the EEA Agreement. The contracting parties to the EEA Agreement are Norway, Iceland and Liechtenstein as well as all of the EU Member States;

“relevant State” means—

- (a) a Member State of the European Union, or
- (b) not being such a Member State, an EEA State which is a territory with the government of which arrangements having the force of law by virtue of *section 826(1)* have been made.

A “relevant State” also includes the United Kingdom.

Effectively, this definition encompasses all EU, EEA States except Liechtenstein since we have a double tax agreement with all of the EU and EEA countries except

Liechtenstein and the United Kingdom.

The section provides that the accumulated interest payable on savings certificates issued by the Minister for Finance or savings certificates or other similar securities issued by the Government of a relevant State will be exempt from tax where they are issued pursuant to rules and conditions which correspond to the rules and conditions contained in regulations issued by the Minister for Finance. (2)

The exemption applies so long as the amount of such savings products held by a person does not exceed the amount which that person is authorised to hold under regulations made by the Minister for Finance.

### 43 Certain securities issued by Minister for Finance

#### Summary

This section gives an exemption from tax on the capital of and interest on certain Government securities which are in the beneficial ownership of persons who are not resident in the State. This favourable tax treatment is withdrawn in certain circumstances in the case of certain foreign-owned financial businesses.

#### Details

The Minister for Finance may issue certain Government securities with a condition that both the capital of and the interest on any such security is exempt from income tax or corporation tax. This exemption applies only where the security is in the beneficial ownership of a person or persons who is, or are, not resident in the State. Up to 3 February 2010, this exemption applied where the security was held in the beneficial ownership of a person or persons who were not ordinarily resident in the State. (1)

The exemption does not apply to securities acquired by a company after 29 January, 1992 (regardless of when such securities were issued), where the securities are held by or for an Irish branch or agency of the company and the trade or business being carried on through that branch or agency is a financial trade or business. It is to be noted that the securities must be held by or for the Irish branch or agency. If they are held by the foreign company separately from its Irish branch or agency the exemption continues. (2)

In general, acquisition of securities is to be interpreted as the beneficial acquisition of the securities so that the nominal reacquisition of securities which, before and after that nominal reacquisition, were beneficially owned by a branch is to be ignored.

The requirement that the trade or business be a “financial” trade or business in order for the exemption not to apply is achieved by reference to the basis on which the income from the securities would be charged to tax if no exemption treatment applied – that is, would the income (which as well as interest on the security includes profits on disposal or redemption of the security) from the security be charged to tax as the income from a financial trade or business if the security had been issued without the condition granting the tax exemption. The reference to the Schedule D Case I and Case IV charges ensures that the provision applies to banking and general insurance businesses. (In so far as the reference to the Case IV charge is concerned, it is to be noted that the withdrawal of the exemption applies only to interest and other profits or gains accruing on or after 21 April, 1997.) The reference to the *section 726* charge ensures that it applies to life assurance businesses.



## 44 Exemption from corporation tax of certain securities issued by Minister for Finance

### Summary

The Minister for Finance may issue securities with a condition that the interest on the securities is exempt from a charge to corporation tax in the hands of certain companies resident in the State whose business consists of trading activities wholly or mainly carried on in the State. Banking, insurance business, dealing in securities and the selling of goods by retail are excluded from the exemption. To qualify for the exemption, the Irish resident company must be owned directly or indirectly by a foreign company or foreign companies resident in a country or countries with which the State has a double taxation treaty. The exemption is also available to Irish resident holding companies who hold shares in an Irish resident trading subsidiary, subject to the same conditions in relation to ownership as applies in relation to an Irish trading company. The exemption also applies to investments in such securities by foreign companies carrying on a relevant trade through a branch or agency in the State.

### Details

#### *Definitions*

A “qualifying company” is a company resident in the State and not resident elsewhere which is wholly or mainly carrying on a relevant trade or trades. Also regarded as a qualifying company is an Irish resident holding company not resident elsewhere which holds the stocks, shares or securities of a company wholly or mainly carrying on a relevant trade or trades. In the case of both types of companies, not less than 90 per cent of the company’s issued share capital must be held by a foreign company or foreign companies or by a person or persons who are directly or indirectly controlled by a foreign company or foreign companies. A foreign company carrying on a relevant trade through a branch or agency in the State is also a qualifying company. (1)

A number of other definitions are set out which are used to determine the status of a company for the purposes of establishing whether or not it is a qualifying company. For this purpose —

“control” is given the same meaning as in *section 432* with the adaptation that if, by the application of *section 432*, a company could be treated as under the control of persons resident in a state with which this country has a double taxation treaty it is to be so treated.

“foreign company” is a company which is not resident in the State but is under the control of a person or persons resident in a “relevant territory”, that is, a country with the government of which the State has a double taxation treaty under *section 826*.

“relevant trade” is a trade carried on wholly or mainly in the State, but excludes trades consisting wholly or partly of banking, assurance business, retailing or dealing in securities.

#### *Exemption*

Any security which the Minister for Finance has the power to issue may be issued with a condition that the interest on the security is exempt from corporation tax so long as the security is held by a qualifying company continuously from the date of (2)

issue of the security.

## **45 Exemption of non-interest-bearing securities**

### **Summary**

The excess of the amount over the issue price which is received on the redemption of non-interest-bearing securities issued by the Minister for Finance under *section 4* of the Central Fund Act, 1965 is exempt from tax, except where the excess is taken into account in computing the profits of a trade. The exemption does not apply to issues after 24 January, 1984 of non-interest-bearing Government securities issued at a discount or Agricultural Commodities Intervention Bills. However, where the owner of such securities is not resident in the State, any profits resulting from the sale, disposal or redemption of such securities are exempt from tax; but this latter exemption does not apply in respect of corporation tax chargeable on the income of an Irish branch or agency of a non-resident company.

### **Details**

A premium payable on the redemption of non-interest-bearing securities issued by the Minister for Finance under section 4 of the Central Fund Act, 1965 is exempt from tax, except where the premium is taken into account in computing the profits of a trade. (1)

The exemption provided for by *subsection (1)* does not apply to non-interest-bearing securities issued by the Minister for Finance at a discount (including Exchequer Bills and Exchequer Notes), and Agricultural Commodities Intervention Bills issued by the Minister for Agriculture and Food, after 25 January, 1984, unless a tender for such securities was submitted on or before that date. (2) & (3)

Where the owner (that is, the person at any time entitled to the proceeds on redemption of the securities if the issuer were to redeem them at that time) of such securities or Bills is not resident in the State, any profits resulting from the sale, disposal or redemption of such securities or Bills are exempt from tax; but this exemption does not apply in respect of corporation tax chargeable on the income of an Irish branch or agency of a non-resident company. (4)

Up to 3 February 2010, this exemption also applied where the security was held in the beneficial ownership of a person or persons who were not ordinarily resident in the State.

## **46 Exemption of premiums on Investment Bonds**

A premium payable on the redemption of securities (known as Investment Bonds) issued by the Minister for Finance under the Central Fund (Permanent Provisions) Act, 1965 is exempt from tax, except where the premium is taken into account in computing the profits of a trade.

## **47 Certain securities of ACC Bank plc**

Debentures, debenture stock and certificates of charge issued by ACC Bank plc are not liable to tax if it can be shown that they are in the beneficial ownership of persons neither domiciled nor ordinarily resident in the State. *This section was repealed by the ACC Bank Act 2001 with respect to securities issued on or after the date of the commencement of the repeal (28 February 2002).*

## 48 Exemption of premiums on certain securities

### Summary

Premiums payable on the redemption of certain Government securities, certain securities of certain State-sponsored bodies, securities issued by certain European Union institutions and securities issued by the International Bank for Reconstruction and Development are exempt from tax, except where the premiums are taken into account in computing the profits of a trade.

### Details

Premiums received on the redemption of — (1) & (2)

- Government securities other than securities to which section 4 of the Central Fund Act, 1965, *section 45(1)* (exemption of non-interest-bearing securities) or *section 46* (exemption of premiums on investment bonds) applies,
- securities issued by a body corporate which are statutorily guaranteed by a Minister of the Government (other than the securities set out in the Table to *section 37*),
- securities of the European Community, the European Coal and Steel Community, the European Atomic Energy Community or the European Investment Bank, and
- securities of the International Bank for Reconstruction and Development,

are exempt from tax, unless the premiums are taken into account in computing the profits of a trade.

This exemption from tax does not apply to premiums paid on securities which are — (3) & (4)

- non-interest-bearing securities issued by the Minister for Finance at a discount (including Exchequer Bills and Exchequer Notes),
- Agricultural Commodities Intervention Bills issued by the Minister for Agriculture and Food, or
- strips within the meaning of section 54(10) of the Finance Act, 1970 (inserted by section 161 of the Finance Act, 1997),

and which are issued after 25 January, 1984, unless a tender for any such securities was submitted on or before that date.

Where, however, the owner (that is, the person at any time entitled to the proceeds on redemption of the securities if the issuer were to redeem them at that time) of any such securities is not resident in the State, any profit on the sale or disposal of the securities or any premium paid on the redemption of the securities is exempt from tax; but this exemption does not apply in respect of corporation tax chargeable on the income of an Irish branch or agency of a non-resident company. Prior to 4 April 2009, the exemption applied where the owner of the securities was not ordinarily resident in the State. (5)

## 49 Exemption of certain securities

### Summary

On and from 4 April, 2009, securities on which interest is payable without deduction of tax by virtue of a direction given by the Minister for Finance in pursuance of *section 37, 38, 39, 40* or *41* may be issued with the condition that neither the capital nor the interest is liable to tax if the security is in the beneficial ownership of a person

who is not resident in the State (other than certain foreign owned financial businesses). However, the exemption does not apply as respects such securities acquired by a company after 15 May, 1992 (regardless of when such securities were issued), where the securities are held by or for an Irish branch or agency of the company and the trade or business being carried on through that branch or agency is a financial trade or business.

Prior to 4 April 2009, this favourable tax treatment applied where the security was issued with either or both of the following conditions:

- that neither the capital nor the interest is liable to tax if the security is in the beneficial ownership of a person who is neither domiciled nor ordinarily resident in the State, or
- that the interest on the securities is not liable to tax if the security is in the beneficial ownership of a person who, though domiciled in the State, is not ordinarily resident in the State.

### Details

Any stock or other security on which interest is payable without deduction of tax by virtue of a direction given by the Minister for Finance in pursuance of *section 37, 38, 39, 40 or 41* may be issued with the condition that neither the capital of nor the interest on such securities is liable to tax if it is shown in the manner directed by the Minister for Finance that the securities are in the beneficial ownership of persons who are not resident in the State. (1) & (2)

However, the exemption does not apply as respects such securities acquired by a company after 15 May, 1992 (regardless of when such securities were issued), where the securities are held by or for an Irish branch or agency of the company and the trade or business being carried on through that branch or agency is a financial trade or business. It is to be noted that the securities must be held by or for the Irish branch or agency. If they are held by the foreign company separately from its Irish branch or agency the exemption applies. (3)

In general, acquisition of securities is to be interpreted as the beneficial acquisition of the securities so that the nominal reacquisition of securities which, before and after that nominal reacquisition, were beneficially owned by a branch is to be ignored.

The requirement that the trade or business be a “financial” trade or business in order for the exemption not to apply is achieved by reference to the basis on which the income from the securities would be charged to tax if no exemption applied – that is, would the income (which as well as interest on the security includes profits on disposal or redemption of the security) from the security be charged to tax as the income from a financial trade or business if the security had been issued without the condition granting the tax exemption. The reference to the Schedule D Case I and Case IV charges ensures that the provision applies to banking and general insurance businesses. (In so far as the reference to the Case IV charge is concerned, it is to be noted that the withdrawal of the exemption applies only to interest and other profits or gains accruing on or after 21 April, 1997.) The reference to the *section 726* charge ensures that the provision applies to life assurance businesses.

## 50 Securities of Irish local authorities issued abroad

### Summary

Income from securities issued, under the authority of the Minister for Finance, outside the state by a local authority for the purpose of raising money is exempt from

tax, except where such securities are held by persons domiciled or ordinarily resident in the State or, if issued after 15 May, 1992, where such securities are held by or for a branch or agency through which a foreign company carries on a financial trade in the State.

### Details

A “local authority” includes any public body recognised as a local authority for the purposes of this section by the Minister for the Environment and Local Government. (1)

Securities issued outside the State by a local authority in the State for the purpose of raising money which it is authorised to borrow are exempt from tax if issued under the authority of the Minister for Finance. However, this exemption does not apply where such securities — (2)

- are held by persons domiciled in the State or ordinarily resident in the State, or
- were acquired by a company after 15 May, 1992 (regardless of when they were issued) and are held by or for a branch or agency of the company through which it carries on a financial trade in the State.

In general, acquisition of securities is to be interpreted as the beneficial acquisition of the securities so that the nominal reacquisition of securities which, before and after that nominal reacquisition, were beneficially owned by a branch are to be ignored.

The requirement that the trade or business be a “financial” trade or business in order for the exemption not to apply is achieved by reference to the basis on which the income from the securities would be charged to tax if no exemption applied – that is, would the income (which as well as interest on the security includes profits on disposal or redemption of the security) from the security be charged to tax as the income from a financial trade or business if the exemption did not apply. The reference to the Schedule D Case I and Case IV charges ensures that the provision applies to banking and general insurance businesses. (In so far as the reference to the Case IV charge is concerned, it is to be noted that the withdrawal of the exemption applies only to interest and other profits accruing on or after 21 April, 1997.) The reference to the *section 726* charge ensures that the provision applies to life assurance businesses.

## CHAPTER 4

### *Miscellaneous provisions*

#### **51 Funding bonds issued in respect of interest on certain debts**

“Funding bonds” includes all bonds, stocks, shares, securities and certificates of indebtedness. (1)

The section applies to all debts owing by any Government, public authority, or public institution whatever or wherever and to all debts owing by any body corporate whatever or wherever. (2)

The issue of funding bonds to a creditor in respect of any liability to pay interest on a debt is treated for tax purposes as if it were the payment of the amount of interest equal to the value of the bond at the time of issue. As a corollary, the redemption of the bond is not treated for tax purposes as a payment of interest. (3)