Notes for Guidance - Taxes Consolidation Act 1997

Finance Act 2024 edition

Part 5

Principal Provisions Relating to the Schedule E Charge

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PART 5
PRINCIPAL PROVISIONS RELATING TO THE SCHEDULE E CHARGE

CHAPTER 1
Basis of assessment, persons chargeable and extent of charge

Overview

This Chapter provides for the basis of assessment in relation to income tax charged under Schedule E and describes who is chargeable and the extent of the charge. The Chapter also contains a special provision to cater for the taxation of perquisites arising as the result of an employer paying medical insurance premiums or long-term care insurance premiums of an employee.

112 Basis of assessment, persons chargeable and extent of charge

Summary

This section provides for the basis of assessment, in relation to income tax charged under Schedule E, and describes the persons chargeable and the extent of the charge to tax. Income tax under Schedule E is charged for each year of assessment on every person having or exercising an office or employment of profit mentioned in that Schedule, and in respect of every annuity, pension or stipend chargeable under that Schedule. The charge to tax covers all salaries, fees, wages, perquisites or profits whatever derived from the office, employment or pension for the year of assessment.

However, for **2018 and subsequent years,** Schedule E is generally chargeable on the amount of emoluments that a person is paid **in** the year of assessment i.e. the receipts basis of assessment.

Emoluments paid (i) to certain company directors and (ii) in respect of which a PAYE exclusion order has issued, remain chargeable to tax on the earnings basis of assessment.

Details

Income tax under Schedule E is charged on every person having or exercising an office or employment of profit referred to in that Schedule (see ***section 19***) in respect of all salaries, fees, wages, perquisites and other profits derived by that person from the office or employment. It is also charged on any person to whom any annuity, pension or stipend chargeable under that Schedule is payable in respect of all salaries, fees, wages, perquisites and other profits derived by that person from the annuity, pension or stipend. The charge is computed on the total amount of all such payments for the year of assessment. ***(1)***

This subsection keeps the emoluments within the charge to Schedule E and, for 2018 and subsequent years, the emoluments will be charged to tax in the year they are received i.e. on the receipts basis.

Where emoluments (that is, anything assessable to income tax under Schedule E) derived from an office or employment would be for a year of assessment in which the person in receipt of the emoluments does not hold the office or employment, then — ***(2)(a)&(b)***

- if in the year of assessment the person has not yet held the office or employment, the emoluments are treated as emoluments for the first year of assessment in which the office or employment is held and are taxed accordingly, and ***(i)***

- if in the year in question the person no longer holds the office or employment, the emoluments are treated as emoluments for the last year of assessment in which the office or employment was held and are taxed accordingly. ***(ii)***

For **2018 and subsequent years**, the income tax to be charged in respect of emoluments to which Chapter 4 Part 42 applies (emoluments chargeable to tax under the PAYE system of deduction) is on the amount paid to the person **in** the year of assessment i.e. the receipts basis of assessment. ***(3)***

The receipts basis of assessment will not apply to emoluments paid to proprietary directors or in respect of emoluments where an exclusion order is in place.

Where emoluments fall chargeable to tax for the year 2017 (on the earnings basis of assessment) but also fall chargeable to tax in the year 2018 or a subsequent year (on the receipts basis of assessment), an individual can apply to Revenue to have the emoluments for the year 2017 charged to tax on the basis of the actual emoluments paid to the individual in 2017 (i.e. on the receipts basis of assessment). ***(4)***

In the case of the death of an individual, any emoluments due to be paid to the deceased person will be deemed to have been made to him or her immediately prior to death. ***(5)***

The receipts basis of assessment does not apply to a proprietary director or ***(6)(i)***

in cases where an exclusion order is in place. The latter scenario includes for example, a payment of benefit made by the Department of Employment Affairs and Social Protection. ***(6)(ii)***

112A Taxation of certain perquisites

Summary

This section is concerned with the situation in which an employer pays medical insurance premiums or long-term care insurance premiums of an employee as part of the employee's remuneration (as a perquisite). As insurers would not be able to distinguish such payments from others made by employers on behalf of their employees, all premium payments by employers are treated in the same way, that is, the reduced premiums under the tax relief at source arrangements are payable in all cases. This section ensures that employees and employers are left in the same position as they would be under previous arrangements (i.e., prior to the introduction of tax relief at source) in relation to the taxation of the perquisite.

An employee is chargeable to income tax at his/her marginal rate on the value of the gross premium (as a taxable perquisite) but is given a credit for tax relief, at the standard rate, in respect of that premium in the calculation of the tax chargeable on that perquisite. In the case of medical insurance premiums paid by an employer under a "relevant contract" within the meaning of ***section 470B,*** renewed or entered into between 1 January 2009 and 31 December 2011, the employee is also given a credit for any age-related tax credit due under that section (subject to certain restrictions – see ***section 470B(5)(c)***).

To recover the benefit obtained by the employer by way of the reduced premium paid, a payment equal to 20 per cent of the gross premium will have to be made by the employer to Revenue. This tax payment is allowed as a deduction in taxing the employer's profits so that, when added to the net amount of premiums actually paid to the insurer, the employer, as previously, gets a deduction for tax purposes equivalent to the gross premium.

In the case of medical insurance premiums paid by an employer under a "relevant contract" within the meaning of ***section 470B,*** renewed or entered into between 1 January 2009 and 31 December 2011, the payment the employer has to make to Revenue is to be calculated

at 20 per cent of the gross premium net of any age-related tax credit due under ***section 470B***.

Example

Gross premium payable	€2,200
Age-related tax credit	€200
	€2,000
Tax relief at standard-rate	€400
Net premium	€1,600

The employer must pay an amount equal to 20 per cent of €2,000 (€400) to Revenue. The employee will be chargeable to income tax on €2,200 at his or her marginal rate and will receive a tax credit of €2,000 x 20% and an age-related tax credit of €200.

Details

Definitions

A number of terms are defined by reference to ***sections 470, 470A*** and ***470B*** – that is, the sections which, respectively, provide tax relief for medical insurance premiums, tax relief for long-term care insurance premiums, and age-related tax credit for medical insurance premiums. ***(1)***

"employee" and "employer" have the same meanings, respectively, as in section 983.

Taxation of perquisite

Section 112 is applied by the section so as to tax the perquisite comprising the payment of medical insurance or long-term care insurance premiums of an employee by an employer as if the deduction of tax at the standard rate or age-related tax credit (see ***section 470B***) had not been made. In other words, the employee will be charged to tax on an amount equal to the gross insurance premium with relief at the standard rate and age-related tax credit, (if any), due, being included in the charging calculation. ***(2) & (2A)***

Charge on employer

Where an employer pays medical insurance premiums or long-term care insurance premiums as part of an employee's remuneration (that is, as a perquisite) and deducts and retains income tax at the standard rate under the relief at source arrangements, a charge of income tax equal to the standard rate percentage of the gross premium (net of age-related tax credit, if any) is imposed on the employer. That tax liability is allowable as a deduction in charging the employer's profits to tax so that the employer is left in the same overall position as in the pre-relief at source situation by getting a deduction equivalent to the gross premium. ***(3)***

Payment of charge

The provisions of ***subsections (3)*** to ***(6)*** of ***section 238***, modified as necessary, are applied in order to provide for the accounting for, and payment of, the charge imposed on the employer. ***(4)***

112AA Taxation of certain perquisites: employees of authorised insurers and tied health insurance agents

Summary

This section provides that where an employee of a medical insurer (or of a tied health insurance agent) receives a medical insurance policy in the course of their employment, any discount received on the policy shall be a taxable emolument for the employee.

Where a family member of an employee receives a free or discounted policy by way of their connection to the employee, the value of any discount received shall also be a taxable emolument for the employee.

The emolument is calculated by reference to the market value of the insurance policy inclusive of any tax relief at source (TRS) that would have been available had they paid for the policy personally.

Medical insurance relief rules will apply to affected employees in a manner that ensures the same relief is available to an employee where their employer provides medical insurance, regardless of whether they work for an insurance company or any other industry i.e. an employee is chargeable to income tax at his/her marginal rate on the value of the gross premium (as a taxable perquisite) but is given a credit for tax relief, at the standard rate, in respect of that premium in the calculation of the tax chargeable on that perquisite.

Details

Definitions

"authorised insurer" has the same meaning as section 470; ***(1)***

"employee" includes an office holder and any person who is an employee within the meaning of section 983;

"emoluments" has the meaning assigned to it by section 983;

"relevant contract" means a contract of insurance for health expenses or dental expenses other than expenses in respect of routine dental treatment;

"relevant contract price" is the amount that would be payable, by an individual who is neither a relevant employee nor connected with a relevant employee for a similar insurance policy, inclusive of any Medical Insurance relief (generally granted by way of tax relief at source) that would generally be available

"relevant employee" means an employee of an authorised insurer, a tied health insurance agent or any person connected with such employers;

"tied health insurance agent" means any person who, directly or indirectly, enters into an agreement or arrangement with an authorised insurer—

a) whereby that person undertakes to refer all proposals of insurance, made under a relevant contract, to that authorised insurer, or

b) which restricts in any way that person's freedom to refer proposals of insurance, made under a relevant contract, to an authorised insurer other than the authorised insurer with whom an arrangement was made.

Application of section

This section applies where: ***(2)***

- employees of medical insurers (or of tied health insurance agents) receive medical insurance in the course of their employment, or
- family members of employees of medical insurers receive medical insurance by way of their connection to the employee

Charge on employer

Where this section applies to an insurance policy: ***(3)***

a) The difference between

- the relevant contract price, and
- the sum of any amount paid by the employee and/or connected person for the policy

shall be a taxable emolument for the employee.

b) the general benefit-in kind provisions of the TCA will not apply (Chapter 3 of Part 5) to any expense incurred by the employer in providing the insurance policy, and

c) the general provisions for the taxation of insurance as a benefit-in-kind (s112A TCA 1997) will not apply to the provision of the policy.

Application of Medical Insurance Relief

Where a an employee of a medical insurer, a tied health insurance agent or a party connected to either a medical insurer or a tied health insurance agent (or a person connected to that employee) receives a free insurance policy in the course of the employment of the employee, section 470(3) shall not apply to this policy. ***(4)***

Section 470(3) relates to tax relief at source. This section has been dis-applied as:

1. No payment is made by the employer or the employee for the insurance,
2. As a result, no party is able to deduct and retain the relievable amount when paying for insurance.

Instead, any emoluments for the purposes of section 112AA shall be deemed to be a payment made by the employee to which section 470(2) applies directly (notwithstanding that the deemed payment was made after the TRS provisions were introduced). This enables the employee to claim a credit equal to the relievable amount (20% of the policy value up to the first €1,000 for adults and €500 for children) where they receive an insurance policy for free, which is in line with the treatment of employees in other industries.

Example

Brian is an employee with a medical insurance company. His employer renews his policy on 1 January. The gross value of the policy is €2,300. Brian is charged to income tax, USC and PRSI under the PAYE system on the gross premium of €2,500.

Brian is entitled to a tax credit of €200 under section 470(2) in his tax credit certificate or to a repayment of €200 if he applies at the end of the year.

Where an employee of a medical insurer, a tied health insurance agent or a party connected to either a medical insurer or a tied health insurance agent (or a person connected to that employee) (or a connected person) makes a payment towards the cost of their insurance, section 112AA(5) operates to ensure the manner in which Medical Insurance relief is granted (20% of the policy value up to the first €1,000 for adults and €500 for children) is apportioned based on the amount actually paid by the employee or the connected person. This is in keeping with the treatment of employees in other industries in receipt of a medical insurance policy. ***(5)***

Example

A medical insurer offers a 75% discount on the relevant contract price to is employee. The employee owes the remaining 25%.

- Gross premium is €1,500
- Value of discount = €1,125 (€1,500 * 75%)
- Employee is charged to income tax, USC and PRSI on value of discount i.e. €1,125

- Tax relief related to employer share (€1,000 x 75% (cap based on value of discount [section 112AA(5)(a)]) = €750 @ 20% = €150
- Credit available under 112AA(4) = €150
- Employee's share €375 (€1,500 * 25%)
- Employee received TRS when premium was paid of (€1000 x 25% (TRS cap based on proportion actually paid [section 112AA(5)(b)] = €250 @ 20% = €50

112B Granting of vouchers

Summary

This section provides an exemption from tax where an employer provides a small incentive (benefit or voucher) to an employee where the following conditions are met–

a. it is not connected to a salary sacrifice arrangement,
b. it cannot be converted to cash,
c. the incentive is the first, second, third, fourth or fifth granted in the year, and
d. the cumulative value of incentives in the year of assessment does not exceed €1,500.

Details

Definitions

"benefit" means a tangible asset, but does not include physical cash; ***(1)***

"qualifying incentive" means a relevant incentive that is the first, second, third, fourth or fifth relevant incentive given to an employee in a year of assessment where–

(a) in the case of a first relevant incentive, the value does not exceed €1,500, and

(b) in the case of a second relevant incentive, the cumulative value of the first and second relevant incentives does not exceed €1,500,

(c) in the case of a third relevant incentive, the cumulative value of the first, second and third relevant incentives does not exceed €1,500,

(d) in the case of a fourth relevant incentive, the cumulative value of the first, second, third and fourth relevant incentives does not exceed €1,500, and

(e) in the case of a fifth relevant incentive, the cumulative value of the first, second, third, fourth and fifth relevant incentives does not exceed €1,500.

"relevant incentive" means either a voucher or a benefit that is given to an employee by his or her employer in a year of assessment where the following conditions are satisfied:

(a) the voucher or the benefit does not form part of a salary sacrifice arrangement;

(b) the voucher can only be used to purchase goods or services and cannot be redeemed, in full or in part, for cash.

"salary sacrifice arrangement" means any arrangement under which an employee forgoes the right to receive any part of his or her remuneration due under his or her terms or contract of employment and in return his or her employer agrees to provide him or her with a qualifying incentive.

The relief

A qualifying incentive is exempt from income tax and is not classed as income for the Income Tax Acts. As a consequence, it is exempt from USC also and is not liable for PRSI. ***(2)***

This section shall cease to have effect for the tax year 2030 and subsequent tax years. ***(3)***

CHAPTER 2
Computational provisions

Overview

This Chapter provides the computational rules applicable in calculating the emoluments derived from an office or employment and the amount of any annuity, pension or stipend.

113 Making of deductions

Any deduction from emoluments (that is, all salaries, fees, wages, perquisites or profits or gains whatever arising from an office or employment, or the amount of any annuity, pension or stipend) allowed under the Income Tax Acts for the purpose of computing a Schedule E assessment are to be made by reference to the amount actually paid or borne for the year or part of the year referable to the emoluments in respect of which the computation is made.

114 General rule as to deductions

The general rule as to the deductibility of expenses in computing the amount chargeable under Schedule E is that the expense must be wholly, exclusively and necessarily incurred by the holder of an office or employment in the performance of the duties of the office or employment.

114A Deductions in respect of remote working

Summary

This section provides for income tax relief for remote working, in the form of a tax deduction, allowing employees who work from his or her residential premises claim 30 per cent of the cost of electricity, heating and broadband, apportioned on the basis of the number of days worked from his or her residential premises during the year.

Definitions

qualifying residence', means a residential premises which is also used by a remote worker to perform the duties of the office or employment; ***(1)***

'relevant expenses' means expenses incurred and defrayed by the remote worker on the provision of electricity, heating or an internet connection in his or her qualifying residence;

'remote worker' means a person who is the holder of an office or employment of profit who performs some or all of the duties of the office or employment:

(a) by working from his or her residential premises on a full-time or part-time basis, or;
(b) by working some of his or her normal working time from his or her residential premises, with the remainder of that normal working time being spent in his or her normal place of employment or in some other place;

'residential premises' means, a dwelling or part of a dwelling which is occupied by an individual as his or her residence;

'specified amount', in relation to a year of assessment, means the amount of expenditure which qualifies for income tax relief.

The Relief

This provides a tax deduction for the relevant expenses of a remote worker for working from his or her residential premises based on the formula in subsection (4). ***(2)***

Where a claimant proves that the relevant expense was incurred by them or by his/her spouse or civil partner, the claimant shall be entitled to the remote working relief. ***(3)***

This subsection provides for a formula to calculate the tax deduction, being 30% of the cost of the expenses paid for electricity, heating or an internet connection, apportioned based on the number of days worked from his or her residential premises in the year of assessment as follows: ***(4)***

$$\frac{(A\ X\ B)}{C} - D$$

where-

A is the amount of the relevant expenses incurred and defrayed by the remote worker in the year of assessment,

B is the number of days in the year of assessment the remote worker performed the duties of his or her office or employment of profit from his or her qualifying residence,

C is the number of days in the year of assessment, and

D is any amount reimbursed or to be reimbursed, directly or indirectly to the remote worker in relation to those expenses by his or her employer.

Where two or more individuals (other than where the claimant is a married person or a civil partner and jointly assessed to tax) incur and defray the expenses of working from their qualifying residential premises, the cost shall be apportioned on the basis of the amount paid by each individual. ***(5)***

The claimant shall provide to the Revenue Commissioners, through electronic means full particulars of the relevant expenses required when making a claim for remote working relief including: ***(6)***

(i) the bill from the service provider in respect of the service provided relating to the claimant's qualifying residence; and

(ii) any other information required by the Revenue Commissioners to determine whether the requirements of this section are met.

Where relief is given under this section in respect of relevant expenses, no other relief or deduction under any other provision of the Income Tax Acts shall be given or allowed in respect of relevant expenses. ***(7)***

115 Fixed deduction for certain classes of persons

The Minister for Finance may set a fixed sum for expenses which represents a fair equivalent of the average amount for a year of assessment of expenses incurred by any class of person in receipt of salary, fees or emoluments payable out of the public revenue. The expenses must be wholly, exclusively and necessarily incurred in the performances

of the duties in respect of which such salaries, fees or emoluments are paid. The fixed sum may be deducted from the salary, fees or emoluments of a person of that class for the purposes of computing the charge to tax. Where a person incurs expenses in excess of the sum fixed by the Minister, the larger amount may be deducted instead of the fixed sum.

CHAPTER 3

Expenses, allowances and provisions relating to the general benefits in kind charge

Overview

This Chapter provides a scheme of taxation for payments of expenses and benefits in kind provided to directors and employees. The broad effect of the Chapter is to treat as taxable remuneration the amount of the expense payments made or the value of the benefit received. The Chapter does not affect the deduction of genuine business expenses of employees under ***section 114***. The Chapter applies to directors and employees of companies and other bodies engaged in trade or in holding investments or other property and also to employees of partnerships and sole traders. It also applies to the spouses, family, dependants, servants and guests of such directors and employees.

116 Interpretation (*Chapter 3*)

Summary

This section gives the meaning of certain terms and sets out the rules for the construction of certain references used in the Chapter.

Details

"business premises", "control", "director" and "employment" are self-explanatory defined terms. ***(1)***

"employee" includes the holder of an office.

"premises" includes land.

Anything provided by an employer for the spouse, civil partner, family, servants, dependants or guests of a director or employee is treated as a benefit provided for the director or employee. ***(2)***

While company directors are within the scope of the Chapter without qualification as to the amount of income derived from their office, an employee is within the Chapter's scope only where for the year of assessment his/her remuneration from the employment, including expenses payments and benefits in kind, but before any deduction of allowable expenses, is in excess of €1,905. ***(3)(a)***

Where a person has 2 or more employments under the same employer, emoluments are aggregated for the purposes of the €1,905 limit. ***(3)(b)***

Where there is a group of 2 or more bodies corporate one of which controls the rest, then, all directorships and employments within the group are treated as if they were held under the controlling body corporate. ***(4)***

117 Expenses allowances

A charge to income tax under Schedule E arises under this section where expense payments are made to directors and employees of a body corporate which are not otherwise chargeable to tax. Such payments are treated as perquisites of the employment

of the director or employee and are included in the assessable income of the director or employee for that year. However, this provision does not affect the deduction of allowable expenses (that is, expenses incurred wholly, exclusively and necessarily in the performance of the duties of the employment) under ***section 114***.

118 Benefits in kind: general charging provision

Summary

Subject to certain exceptions, a charge to income tax arises under this section where certain benefits in kind (that is, living or other accommodation, entertainment, domestic or other services, or other benefits or facilities of whatever nature) are provided for a director or employee which are not otherwise chargeable to tax.

Details

The charge to tax

A charge to income tax arises in respect of the provision by a body corporate of certain benefits in kind (that is, living or other accommodation, entertainment, domestic or other services, or other benefits or facilities of whatever nature, provided for a director or employee) and which are not otherwise chargeable. The charge is limited to the amount of the expense incurred by the body corporate in providing the benefit. ***(1)***

Exemptions

Certain benefits are exempt from the charge. These are —

- office accommodation, supplies or services provided for the director or employee on the business premises and used by him/her solely in performing the duties of his/her office or employment, ***(2)***
- living accommodation provided for an employee (but not a director) on the employer's business premises, if the employee is required to live there so that he/she can perform his/her duties properly, and either — ***(3)***
  - the accommodation is provided in accordance with a practice which, since before 30 July 1948, has commonly prevailed in trades of the class in question as respects employees of the class in question, or
  - it is necessary, in the particular class of trade, for employees of the class in question to live on the premises,
- meals in a canteen in which meals are provided for the staff generally, ***(4)***
- any— ***(5)***
  a) pension, annuity, gratuity or lump sum,
  b) contribution to a Personal Retirement Savings Account (PRSA) provided that contribution does not exceed the employer limit (within the meaning of section 787A),
  c) contribution to a Pan-European Pension Product (PEPP) provided that contribution does not exceed the employer limit (within the meaning of section 787V), or
  d) other like benefit provided on death or retirement of the director or employee.
- monthly or annual bus or railway passes including passes on light railway systems such as Luas and Metro and passes for travel on commuter ferry services within the State provided by an employer to an employee in respect of scheduled licensed passenger transport services. The exemption covers integrated ticketing, i.e. tickets covering travel on the systems of more than one travel provider. The pass must be ***(5A)***

issued for a service for which the approved transport provider is contracted or licenced.

- mobile telephones which are provided by employers for employees for business use where private use is incidental. The exemption also applies to mobile phones provided in connection with a car or van notwithstanding that the vehicles themselves are liable to a BIK charge. For the purpose of the exemption a mobile telephone means a telephone apparatus which is not physically connected to a land line, and is not a cordless telephone. ***(5B)***
- high-speed internet connection to an employee's home for business use where private use is incidental, the connection being capable of transmitting information at a rate equal to or greater than 250 kilobits per second. ***(5C)***
- home computer equipment provided for business use where private use is incidental. In addition to a computer, the exemption applies to fax machines, printers, scanners, modems, discs, disc drives, and other peripheral devices and computer software. ***(5D)***
- annual membership fees of professional bodies paid by the employer on behalf of an employee or paid by the employee and reimbursed by the employer, where membership of that body is relevant to the business of the employer. Membership of a professional body may be regarded as relevant to the business of the employer where it is necessary for the performance of the duties of the employee, or it facilitates the acquisition of knowledge which is necessary for, or directly related to, the performance of the duties of the employee, or would be necessary for, or directly related to, the performance of prospective duties of the employee with that employer. ***(5E)***
  Note this exemption ceased to have effect for the year of assessment 2011 and subsequent years of assessment.
- the private use of company vans where, subject to certain conditions, the only private use of the van by the employee is travelling to and from work. ***(5F)***
- the first €1,250 expenditure incurred by an employer in the provision of a bicycle or bicycle safety equipment by an employer to an employee, where the bicycle/safety equipment is used by the employee for qualifying journeys (the whole or part of a journey to and from work or between work places). The exemption only applies where bicycles/safety equipment are made available generally to all employees. ***(5G)(a) & (b)***
  For the purposes of the cycle to work scheme, a bicycle includes pedal cycles or pedelecs but does not include motor cycles, scooters or mopeds).
  An employee may only avail of the exemption <u>once</u> in any period of 5 years commencing with the year in which the bicycle or safety equipment is first provided. ***(5G)(c)***
- any expense incurred by an employer in the provision of electric vehicle charging facilities for employees and directors on the employer's business premises, once all employees and directors can avail of the facility. This exemption applies from 1 January 2018. ***(5H)(1)(a)***
- any expense incurred by an employer in the provision of a facility for the charging of an electric vehicle at a director's or an employee's qualifying residence. The exemption only applies where the director or employee has the private use of an employer provided electric vehicle that is liable to a BIK charge to tax under sections 121 TCA 1997 or section 121A TCA 1997, as the case may be. ***(5H)(1)(b)***
  Furthermore, to avail of the exemption the employer must retain ownership of the charging facility.
- For the purposes of the exemption: ***(5H)(1)(c)***
  - 'electric vehicle', being the meaning assigned to it by section 121 TCA 1997,
  - 'qualifying residence' means a residential premises situated in the State which is occupied by a director or employee, as the case may be, as his or her sole or main residence for the year of assessment concerned.

- This exemption applies from 1 January 2025. ***(5H)(2)***

- qualifying medical check-ups carried out by a medical practitioner to test a person's state of health, where such check-ups are made available to all employees. An employee may avail of this exemption once a year unless the qualifying medical check-up is required as a condition of employment, in which case there is no limit on the number of times this exemption may be availed of in a year of assessment. ***(5I)***
- the provision of health care, as defined in section 469, where such healthcare is made available to all employees. ***(5J)***
- a COVID-19 test, where the test is required to enable the employee to attend work to carry out their duties of employment and is made available to all directors and employees. This exemption will only apply where any COVID-19 test provided by an employer is administered in accordance with the relevant manufacturer's instructions. ***(5K)***
- an influenza vaccination, where the vaccine is offered to all employees. This exemption also applies where an employee pays for an influenza vaccination themselves and is reimbursed by their employer for the vouched cost of same. ***(5L)***
- contributions to the Automatic Enrolment Retirement Savings System (within the meaning of ***Chapter 2E***) on behalf of an employee/ ***(5M)***

Where only a part of an employer's expenditure is in connection with any matter related to the provision of a benefit for a director or employee, only the appropriate proportion of the expenditure is treated as remuneration of the director or employee. ***(6)***

Connected persons

Where an expense is incurred by a person connected with a body corporate which, if incurred by the body corporate itself, would be within the scope of this Chapter, then that expense is deemed to have been incurred by the body corporate. ***(7)***

The circumstances in which a person is regarded as connected with any body corporate are where the person is a trustee of a settlement made by that body corporate or is itself a body corporate and would be regarded as connected with that body corporate under the rules set out in ***section 10***. ***(8)***

118A Costs and expenses in respect of personal security assets and services

Summary

This section provides, subject to conditions, for an exemption from a benefit-in-kind charge in circumstances where an employer incurs expense in providing a security asset or service for use by a director or employee.

In order to qualify for the exemption there must be a credible and serious threat to the physical personal safety of the director or employee, which arises wholly or mainly from his or her employment.

Details

The terms "asset" and "service" are defined for the purposes of the section. ***(1)***

In order to qualify for the exemption there must be a credible and serious threat to the physical personal safety of the director or employee, which arises wholly or mainly from his or her office or employment. ***(2)***

The section applies in respect of expense incurred by the company, or by the director or employee and subsequently reimbursed by the company, in relation to the provision or use of, or associated expenses connected with, an asset or service which is provided for or used by the director or employee to meet the threat to their personal physical security, and which was provided for the sole purpose of meeting that threat. ***(3)***

Subject to ***subsections (6)*** and ***(7)***, a charge to benefit-in-kind under ***section 118(1)*** shall not apply in respect of an expense to which this section applies. ***(4)***

Incidental usage of an asset provided by a company for the purpose of personal physical security, will be ignored for the purposes of determining whether a charge applies or not. ***(5)***

Where the asset provided is intended for use only partly for the purposes of dealing with a threat to the personal physical security of the individual, then in such circumstances, the exemption from the charge to benefit-in-kind will only apply in relation to that portion which is for that intended use. ***(6)***

The exemption will only apply in relation to a service provided where the benefit resulting to the director or employee consists wholly or mainly of an improvement in their personal physical security. ***(7)***

Where the asset or service provided is permanently attached to a property, or the director or employee subsequently becomes entitled to that asset, or if there is a consequential benefit arising to a member of the family or household of the director or employee, this does not exclude the expense incurred by the company from coming within the provisions of the section. ***(8)***

118B Revenue Approved Salary Sacrifice Agreements

Summary

This section copper-fastens the existing administrative salary sacrifice arrangements which have already been authorised by the Revenue Commissioners in relation to the operation of the "Travel Pass" Schemes approved under ***section 118(5A)***, and salary sacrifices which are associated with the approved profit-sharing schemes set up by employers under ***section 510***. The section puts beyond doubt the issue that such salary sacrifices are Revenue approved arrangements.

Details

Subsection (1) contains the relevant definitions necessary for this section. ***(1)***

Salary sacrifice arrangements are only approved in relation to ─ ***(2)(a)***

- the operation of the travel pass schemes with approved transport providers (***section 118(5A)***),
- approved profit-sharing schemes established under ***section 510***, and
- the provision of bicycles/safety equipment by employers to directors and employees (***section 118(5G)***).

Any other benefits arising as a result of any salary sacrifice arrangement, and not specifically approved by Revenue as being exempt, are deemed to be payment of emoluments by an employer and chargeable to tax. ***(2)(b)***

Where the exempt employee benefit is provided to a spouse, civil partner or connected person, rather than the employee, it will not be treated as an exempt benefit, but deemed to be payment of emoluments by an employer and will be taxed accordingly. ***(3)***

Where an employee, as part of an arrangement, is provided with an exempt employee benefit and a compensating payment, this will be treated as an avoidance scheme. In such circumstances the exemption status conferred by ***subsection (2)(a)*** will not apply and the income subjected to salary sacrifice will be deemed to be payment of emoluments by an employer and taxed in full. ***(4)***

Where income is not paid during the year e.g. a bonus, commission or other income which only arises after the end of the year, such income cannot be taken into account for the purposes of salary sacrifice. ***(5)***

119 Valuation of benefits in kind

Summary

This section provides rules for the valuation of benefits in kind. In general, the amount to be regarded under ***section 118***, as remuneration is so much of the expense incurred by an employer in providing the benefit as is not made good by the employee or director.

Details

The initial cost of acquisition or production of an asset which remains the employer's property is not treated as remuneration of the person who has the use of it. ***(1)***

Where the benefit to a director or employee takes the form of the transfer of an asset after it has been used or depreciated, its market value at the date of transfer and not the cost of acquisition to the employer is treated as the director's or employee's remuneration. ***(2)***

Where an asset of the employer is used by a director or employee, the benefit to be assessed on the director or employee is, in addition to any current expenditure incurred by the employer in connection with the asset, the greater of — ***(3)***

- the annual value of the use of the asset, and
- the amount payable in respect of any rent or hire of the asset.

The annual value of the use of an asset is taken to be —

(a) in the case of premises, the rent which might reasonably be expected to be obtained on a letting from year to year (the annual letting value), if the tenant undertook to pay all the usual tenant's rates and if the landlord undertook to pay the costs of repairs, insurance, etc necessary to maintain the premises in such state as to command that rent, and ***(4)(a)***

(b) in the case of any other asset, 5 per cent of the market value at the time it was first provided by the employer as a benefit-in-kind. ***[NOTE:*** This provision operates with effect from 1 January, 2004. Prior to that the 5 per cent valuation operated on an administrative basis.***]*** ***(4)(b)***

120 Unincorporated bodies, partnerships and individuals

The benefit in kind charge to tax imposed by this Chapter applies, with suitable modifications, in relation to unincorporated societies, public bodies and other bodies as it applies in relation to bodies corporate. ***(1)***

Likewise, the Chapter applies, with suitable modifications, in relation to any partnership and individuals carrying on any trade or profession. ***(2) & (3)***

Where an expense is incurred by a public body in respect of the holder of an office or employment either in that public body or another public body, the provisions of ***section 118(1)(a)*** will apply as if the expense had been incurred by a body corporate and the payment will be subject to tax accordingly. ***(4)(a)***

For the purposes of this Chapter the expenses incurred are to be treated as if they were incurred by the public body in which the office or employment is exercised, and as if that public body was a body corporate. ***(4)(b)***

For the purposes of this section "public body" means- ***(5)***

- The Civil Service of the Government and the Civil Service of the State;
- The Garda Síochána; or
- The Permanent Defence Force.

120A Exemption from benefit-in-kind of certain childcare facilities

Summary

This section provides that certain childcare facilities provided by employers to employees on a free or subsidised basis are not to be charged to income tax as a benefit-in-kind. The exemption applies where the childcare service is either provided on premises which are made available solely by the employer, or where the service is provided jointly with other participants (e.g. other employers) on premises made available by one or more participants in a joint scheme. In the latter circumstances the employer must be wholly or partly responsible for both financing and managing the service. Where an employer is not involved in the management of the childcare facility the benefit-in-kind exemption is restricted to cases where the employer provides financial support for items of capital expenditure.

The exemption ceases to have effect for the year of assessment 2011 and subsequent years of assessment.

Details

Definitions

"childcare service" is any form of child minding service or supervised activity to care for children whether or not provided on a regular basis. ***(1)***

"qualifying premises" are premises which are —

- made available solely by the employer, or
- made available by the employer jointly with other participants, or
- made available by other persons and the employer is wholly or partly responsible for financing and managing the childcare service, or
- made available by other persons and the employer is wholly or partially responsible for capital expenditure on the construction or refurbishment of the premises.

The premises must, where appropriate, meet the provisions of the Child Care (Pre-School Services) Regulations, 1996.

Exemption

Exemption from the general benefit-in-kind charging provisions of ***section 118(1)*** is granted in respect of any childcare service provided by an employer in a qualifying premises for a child of a director or an employee. ***(2)***

Restriction

Where an employer provides financial support by way of capital expenditure only, then the exemption for the employee is restricted to the amount of such expenditure. ***(3)***

Cesser

The exemption ceases to have effect for the year of assessment 2011 and subsequent years of assessment. ***(4)***

120B Certain benefits in kind: members of Permanent Defence Force

Summary

This section exempts from benefit in kind certain living accommodation and health expenses incurred by or on behalf of the Minister for Defence in respect of members of the Permanent Defence Force.

Details

Exemption from tax

Any expense incurred by or on behalf of the Minister for Defence in the provision of: ***(1)***

- living accommodation on land occupied by, used by, or under the control (whether temporarily or otherwise) of the Permanent Defence Force, and
- health care

shall be exempt from a benefit in kind charge

Definitions

"health care" means prevention, diagnosis, alleviation or treatment of an ailment, injury, infirmity, defect or disability, and includes care received by a woman in respect of pregnancy, but does not include: ***(2)***

- routine ophthalmic treatment, or
- cosmetic surgery or similar procedures, unless the surgery or procedure is necessary to ameliorate a physical deformity arising from, or directly related to, a congenital abnormality, a personal injury or a disfiguring disease.

"routine ophthalmic treatment" means the provision and repairing of spectacles or contact lenses.

Application

This section shall apply for the year of assessment 2018 and subsequent years.

CHAPTER 4
Other benefit in kind charges

121 Benefit of use of car

Summary

This section charges to income tax the benefit to directors and employees derived from the private use of motorcars provided by their employers. The charge to tax is based on "cash equivalent" of that benefit derived from the use of the car. The "cash equivalent" is computed as a specified percentage of the original market value of the car.

Prior to 1 January 2023, the cash equivalent of the use of a car was set at 30 per cent.

Finance Act 2019 changes, which came into operation on 1 January 2023, provide that the cash equivalent of the use of a car is determined based on the cars CO_2 emissions as well as business mileage.

Finance Act 2023 provided for a temporary reduction of €10,000 in the original market value of cars in category A, B, C and D, for the purpose of determining the cash equivalent. This temporary reduction has since been extended and now applies from 1 January 2023 up to 31 December 2025. A further reduction in the original market value used to calculate the benefit in kind arising on employer provided electric cars is also provided for and applies from 1 January 2023 to 31 December 2027.

Contributions which the director or employee is required to make, and actually makes, to the employer in respect of the costs of providing or running the car are deductible from the cash equivalent.

Relief known as "tapering relief" applies where business miles exceed 26,000 kilometres per year. This relief reduces the cash equivalent of the original market value with the amount of relief dependant on the business mileage and vehicle category as set out in Table A in subsection (4A).

As an alternative to tapering relief, a director or employee may opt to avail of a relief which will reduce the cash equivalent of the benefit of the car by 20 per cent provided he/she —

- travels at least 8,000 business kilometres per year,
- spends at least 70 per cent of his/her time away from the employer's premises,
- works at least 20 hours per week, and
- keeps a detailed logbook.

Cars included in car pool arrangements are outside the scope of the section.

Details

Definitions and construction

"business mileage for a year of assessment" is the total number of whole kilometres travelled by a person in a car or cars in the course of business use. The change to using kilometres rather than miles is effective for years of assessment 2014 and subsequent years. ***(1)(a)***

"business use" is travelling in a car which a person is necessarily obliged to do in the performance of the duties of his/her employment. This is similar to the normal Schedule E expenses test (***section 114***) and it follows that "home to office" travel does not constitute "business use".

"car" means any mechanically propelled road vehicle constructed or adapted for the carriage of the driver alone or the driver and one or more passengers, but does not include a motor-cycle, a van (within the meaning of ***section 121A***), or a vehicle of a type not commonly used as a private vehicle and unsuitable to be so used.

"electric vehicle" means a vehicle that derives its motive power exclusively from an electric motor.

"employment" is an office or employment the emoluments (within the meaning of ***section 113***) of which are within the charge to tax. Employment, therefore, includes employees and directors chargeable to tax under Case III of Schedule D.

"motor cycle" means a mechanically propelled vehicle with less than 4 wheels and an unladen weight not exceeding 410 kilograms.

"private use" is use other than business use.

"relevant log book" is a record maintained on a daily basis of a person's business use of a car for a tax year which —

- contains relevant details of distances travelled, nature and location of business transacted, and the amount of time spent away from the employer's place of business, and
- is certified by the employer as being, to the best of employer's belief, a true and accurate account.

A car made available to an employee by reason of his/her employment is treated as available for private use unless the terms on which it is made available prohibit such use and no such use is in fact made of the car. ***(1)(b)(i)(I)***

A car made available to an employee by his/her employer or by a person connected with the employer is treated as made available by reason of his/her employment unless the employer is an individual and it can be shown that the car was made available in the normal course of his/her domestic, family or personal relationships. If, for example, a self-employed individual employs his/her child and the child is provided with a car purely for private purposes and the car is not regarded as a business asset for the purpose of claiming capital allowances or no expenses relating to the car are claimed as deductions in computing the individual's taxable profits, then, the car is not regarded as made available to the child by reason of his/her employment and no charge to tax arises. ***(1)(b)(i)(II)***

A car is treated as available for a person's private use if it is available to a member or members of his/her family or household. ***(1)(b)(i)(III)***

References to a person's family or household are references to his/her spouse, his/her civil partner, sons and daughters and their spouses or civil partners, his/her parents and his/her servants, dependants and guests. ***(1)(b)(i)(IV)***

Costs in relation to a car which are borne by a person connected with the employer are treated as having been incurred by the employer. ***(1)(b)(ii)***

The original market value of a car is the price (including any customs duty, excise duty and value-added tax) which it might reasonably be expected to fetch if sold in the open market when new in the State in a single retail sale. ***(1)(b)(iii)***

Application

The section applies in the case of a person in an employment (that is, a director or employee) for any year of assessment in relation to which a car is made available to the person, by reason of the employment, for his/her private use without any transfer to the person of the ownership of the car. ***(2)(a)***

The charge to tax

In relation to such a car — ***(2)(b)***

- the general benefits in kind charge (contained in ***Chapter 3*** of this Part) does not apply for that year in relation to the expense incurred in connection with the provision of the car, and ***(2)(b)(i)***
- in place of that charge, the "cash equivalent" of the benefit of the car is charged to tax as an emolument of the employment by reason of which the car is made available, subject to a deduction being made from the cash equivalent in respect of any amount which the employee is required to contribute, and actually contributes, in respect of the costs of providing or running the car. Excluded from this deduction are amounts which are allowed to be deducted in computing the cash equivalent under ***subsection (3)(a)***. ***(2)(b)(ii)***

Example

An employee has the use of an employer provided car. The cash equivalent is €9,000. The employee is required to pay and pays the employer €100 per week (€5,200 per annum) towards the cost of the car. The employee is, therefore, chargeable on the full cash equivalent of €9,000 less the contributions of €5,200, that is, on €3,800.

Where the car made available to the employee is an electric vehicle and is provided during the period 1 January 2018 to 31 December 2018, no amount shall be treated as emoluments. ***(2)(b)(iii)***

Where an electric vehicle is made available to an employee during the period 1 January 2019 to 31 December 2022 and the original market value of the car does not exceed €50,000, no amount shall be treated as emoluments. ***(2)(b)(iv)***

Where an electric vehicle is made available to an employee during the period 1 January 2019 to 31 December 2020 is an electric vehicle: ***(2)(b)(v)***

- the original market value of the car exceeds €50,000, and
- the car was first made available to the employee during the period 10 October 2017 to 9 October 2018,

no amount shall be treated as emoluments.

Where an electric vehicle is made available during the period 1 January 2019 to 31 December 2022 and the original market value of the car exceeds €50,000, the cash equivalent of the car shall be computed on the original market value of the car reduced by €50,000. ***(2)(b)(vi)***

Cash equivalent of benefit of car

Up to 31 December 2022, the cash equivalent of the benefit of a car for a year of assessment was a flat rate of 30 per cent of the original market value of the car. ***(3)(a)***

Where a car is available to a person for part only of a year of assessment, the cash equivalent of the benefit is ascertained by apportionment on a time basis. This provision operates where a person — ***(3)(b)***

- first obtains the use of a company car during the course of a year,
- ceases to have the use of a company car during the course of a year, or
- changes cars during the course of a year.

Example

An employee has the private use of a company car on which the employer meets all the running expenses. At the start of the year the employee has the use of car A which costs €30,000. On 1 August in the year the employee changes to car B which costs €36,000.

The employee is charged to tax for the full year in respect of the benefit derived from the private use of the cars as follows —

Car A: €30,000 x 30% x 7/12 =	€5,250
Car B: €36,000 x 30% x 5/12 =	€4,500
	€9,750

From 1 January 2023, the charge to BIK is calculated with reference to the emissions-based criteria under ***subsection (4A)***. ***(3)(c)***

Tapering relief for years of assessment prior to 2023

Tapering relief is available for employees with high business mileage, that is, business mileage in excess of 24,000 kilometres in a year of assessment. In relation to such employees, the cash equivalent of the benefit of the car for that year, instead of being the amount ascertained under ***subsection (3)***, is the percentage of the amount applicable to the business mileage as set out in the Table below. ***(4)***

TABLE		
Business Mileage		Percentage
Lower Limit	Upper Limit	
(1)	(2)	(3)
Kilometres	Kilometres	Per cent
24,000	32,000	24
32,000	40,000	18
40,000	48,000	12
48,000	--	6

Example

Employee with private use of company car costing €36,000. All running expenses are met by the employer. Business mileage amounts to 42,240 kilometres. The cash equivalent of the car is €10,800 (30% of €36,000). However, the tapering relief due ensures that the cash equivalent is reduced to €4,320 (12% of €36,000).

Where a car is only available for part of the year the table above is to be revised so that the figure of 24,000 is replaced using a formula -

$$\frac{24{,}000 \times A}{365}$$

Where A is the number of days the car is available in the year, and each of the figures in the Table to this subsection are reduced in the same proportion to determine the cash equivalent of the benefit.

From 1 January 2023, the charge to BIK is calculated with reference to the emissions-based criteria under ***subsection (4A)***. ***(4)(d)***

Emissions-based calculations

From 1 January 2023, the method of calculating the charge to BIK under subsection (4) shall cease to apply for all vehicles. ***(4A)***

The cash equivalent of the benefit of a car shall be determined by the formula: ***(4A)(a)***

$$\text{Original market value} \times A$$

where -

A is a percentage, based on the vehicle categories set out in Table B below and the business kilometres travelled as set out in Table A below.

(4A)(aa) This paragraph provides for a reduction in the original market value used to calculate the benefit in kind arising on employer provided electric cars made available in the period from 1 January 2023 to 31 December 2027.

Period car is made available to the employee	Amount OMV is reduced by
01 January 2023 to 31 December 2025	€35,000
01 January 2026 to 31 December 2026	€20,000
01 January 2027 to 31 December 2027	€10,000

(4A)(ab) A reduction of €10,000 in the original market value applies to cars in category A, B, C, and D, for the 2023, 2024 and 2025 years of assessment. This applies to electric cars in addition to the reduction of €35,000 provided for in paragraph (aa).
Any excess amount, after this reduction is applied, is chargeable to benefit in kind at the prescribed rate.

(4A)(b) This paragraph provides for the appropriate percentage to be applied to the original market value of the car.

(4A)(ba) In Table A, the lower limit of "52,001" in column (1) is reduced to "48,001", and the upper limit of "52,000" in column (2) is reduced to "48,000" for the 2023, 2024 and 2025 years of assessment.

(4A)(c) Where a car is available to a person for part only of a year of assessment, the cash equivalent of the benefit is ascertained by apportionment on a time basis. This provision operates where a person –

- first obtains the use of a company car during the course of a year,
- ceases to have the use of a company car during the course of a year, or
- changes cars during the course of a year.

(4A)(d) This paragraph clarifies that the categories in Table B refer to the CO_2 emission levels of the car, as determined by virtue of section 130 of Finance Act 1992.

TABLE A						
Business mileage		Vehicle Categories				
Lower limit (1)	Upper limit (2)	A (3)	B (4)	C (5)	D (6)	E (7)
Kilometres	Kilometres	Per cent	Per cent	Per cent	Per cent	Per cent
--	26,000	22.5	26.25	30	33.75	37.5
26,001	39,000	18	21	24	27	30
39,001	52,000	13.5	15.75	18	20.25	22.5
52,001	--	9	10.5	12	13.5	15

TABLE B	
Vehicle category (1)	CO_2 emissions (CO_2 g/km) (2)
A	0 g/km up to and including 59 g/km
B	More than 59 g/km up to and including 99 g/km
C	More than 99 g/km up to and including 139 g/km
D	More than 139 g/km up to and including 179 g/km
E	More than 179 g/km

Example

Employee had an employer provided car that cost €36,000 available to him/her for all of 2023. All running expenses are met by the employer. Per the manufacturer the car produces 85g/km in emissions which puts it in Vehicle Category B. Business mileage was 48,500 kilometres. The cash equivalent of the car is €2,730 ((€36,000 - €10,000) x 10.5%).

Where a person, in any year of assessment – ***(5)(a)***

- spends 70 per cent or more of their time performing their duties away from their place of employment, and
- their business mileage exceeds 8,000 kilometres,

that person can elect, in writing to the inspector, to have the cash equivalent of the car reduced to 80 per cent of the amount ascertained under subsection (3), which is subject to subsection (4A) for the year of assessment 2023 and subsequent years.

Where an individual makes an election under paragraph (a) for a year of assessment they must, when requested in writing by the inspector, provide a completed log book for that year within 30 days of the request. ***(5)(b)***

This subsection will not apply to a year of assessment where a person fails to provide the requested logbook within 30 days, or where the time spent performing the duties of their employment is less than 20 hours a week on average. ***(5)(c)***

This paragraph provides for the right to appeal to apply for the purpose of this subsection as it does for the purposes of subsection (7). ***(5)(d)***

Where a person makes an election under paragraph (a) for a year of assessment, they must retain the logbook for that year for a period of 6 years, unless a shorter period of time is authorised in writing by the Inspector. ***(5)(e)***

Where a person is chargeable to tax under this section, the person chargeable to tax in respect of the amount so chargeable must deliver in writing to the inspector, not later than 30 days after the end of that year of assessment, particulars of the car, of its original market value and of the business mileage and private mileage for that year of assessment. ***(6)(a)***

Where the person does not supply the required particulars or the inspector is not satisfied with the particulars delivered, the inspector may, for the purpose of calculating the amount of tax to which that person is chargeable, estimate the original market value or business mileage or private mileage to the best of his/her judgement. For the purposes of estimating the business mileage, the inspector may, in the absence of evidence to the contrary, estimate the business mileage by deducting from the total mileage 8,000 kilometres in respect of private use. ***(6)(b)***

Any such estimates may be amended by the Appeal Commissioners or the Circuit Court on the hearing or rehearing of an appeal against an assessment to income tax raised in respect of the employment in the performance of the duties of which the business mileage was travelled. ***(6)(d)***

Car pools

An exemption from the benefit in kind charge applies where an inspector is satisfied (whether on a claim being made or otherwise) that a car has for any year been included in a car pool for the use of one or more employees. It is to be noted that this exemption does not reinstate a charge to tax under the general benefit in kind charging provision in ***Chapter 3*** of this Part. ***(7)(a)***

A car is treated as part of a car pool where — ***(7)(b)***

- the car is available to, and used by, more than one employee, and is made available to them by reason of their employment and is not ordinarily used by any one employee to the exclusion of the others,
- any private use of the car by any employee is merely incidental to its business use, and
- the car is not normally kept on or near the residence of any of the employees unless it is kept on premises occupied by the provider of the car.

Where these conditions are met, the car is treated for the year in question as not having been available for the private use of any of the employees. Consequently, none of the employees are chargeable to tax for that year in respect of the car. ***(7)(c)***

One or more employees using a car during the course of the tax year, or their employer, may claim that the car is a “pooled” car. ***(7)(d)***

Where an employer is aggrieved by a decision of the inspector that a car has not been included in a car pool may appeal the decision to the Appeal Commissioners, in accordance with section 949I, within the period of 2 months after the date of the notice of that decision. ***(7)(e)***

121A Benefit of use of van

Summary

This section charges to income tax the benefit to directors and employees derived from the private use of vans provided by their employers. The charge to tax is based on a "cash equivalent" of that benefit derived from the use of the van. This "cash equivalent" is computed as 8 per cent of the original market value of the van. Finance Act 2019 changes, which came into operation on 1 January 2023, increased the percentage used in the calculation of the cash equivalent of the use of a van from 5% to 8%.

Finance Act 2023 provided for a temporary reduction of €10,000 in the original market value of vans, for the purpose of determining the cash equivalent. This temporary reduction has since been extended and now applies from 1 January 2023 up to 31 December 2025. A further reduction in the original market value used to calculate the benefit in kind arising on employer provided electric vans is also provided for and applies from 1 January 2023 to 31 December 2027.

Contributions which the director or employee is required to make, and actually makes, to the employer in respect of the costs of providing or running the van are deductible from the cash equivalent.

Details

Definitions

"van" means a mechanically propelled road vehicle which is designed or constructed for the carriage of goods or other burden, has a roofed area or areas to the rear of the driver's seat, has no side windows or seating fitted in that roofed area or areas and has a gross vehicle weight not exceeding 3,500 kilograms. ***(1)***

"gross vehicle weight" in relation to a vehicle means the laden weight which the vehicle is designed or adapted not to exceed when in normal use.

"electric vehicle" means a vehicle that derives its motive power exclusively from an electric motor.

Application

The section applies to employees and directors chargeable to tax in an employment for any year of assessment in respect of the private use of a van, without any transfer to the person of the ownership of the van. ***(2)(a)***

The charge to tax

In relation to such a van —

- the general benefits in kind charge (contained in ***Chapter 3*** of this Part) does not apply for that year in relation to the expense incurred in connection with the provision of the van, and ***(2)(b)(i)***
- in place of that charge, the "cash equivalent" of the benefit of the van, is charged to tax as an emolument of the employment by reason of which the van is made available, subject to a deduction being made from the cash equivalent in respect of any amount which the employee is required to contribute, and actually contributes, in respect of the costs of providing or running the van. ***(2)(b)(ii)***

Example

An employee has the use of an employer provided van. The cash equivalent is €900. The employee is required to pay and pays the employer €500 per annum towards the running costs of the van. The employee is therefore, chargeable on the cash equivalent of €900 less the contributions of €500, that is, on €400.

Where the van made available to the employee is an electric vehicle and is provided during the period 1 January 2018 to 31 December 2018, no amount shall be treated as emoluments. ***(2)(b)(iii)***

Where an electric vehicle is made available to an employee during the period 1 January 2019 to 31 December 2022 and the original market value of the electric van does not exceed €50,000, no amount shall be treated as emoluments. ***(2)(b)(iv)***

Where a van made available to an employee during the period 1 January 2019 to 31 December 2020 is an electric vehicle: ***(2)(b)(v)***

- the original market value of the van exceeds €50,000, and
- the van was first made available to the employee during the period 10 October 2017 to 9 October 2018,

no amount shall be treated as emoluments.

Where an electric vehicle is made available during the period 1 January 2019 to 31 December 2022 and the original market value of the van exceeds €50,000, the cash equivalent of the van shall be computed on the original market value of the van reduced by €50,000. ***(2)(b)(vi)***

This subparagraph provides for a reduction in the original market value used to calculate the benefit in kind arising on employer provided electric vans made available in the period from 1 January 2023 to 31 December 2027. This reduction applies irrespective of whether the original market value of the van exceeds €50,000. ***(2)(b)(vii)***

Period van is made available to the employee	Original market value is reduced by
01 January 2023 to 31 December 2023	€35,000
01 January 2024 to 31 December 2024	€35,000
01 January 2025 to 31 December 2025	€35,000
01 January 2026 to 31 December 2026	€20,000
01 January 2027 to 31 December 2027	€10,000

A reduction of €10,000 in the original market value applies to all vans for the 2023, 2024 and 2025 years of assessment. This applies to electric vans in addition to the reduction of €35,000 given under subparagraph (2)(b)(vii). ***(2)(b)(viii)***
Any excess amount, after this reduction is applied, is chargeable to benefit in kind at the prescribed rate.

The tax charge to tax in respect of the private use of a company van will not apply where all of the following conditions are met: ***(2A)***

(a) the van is necessary for the employee's work,
(b) the employee is required by the employer to take the van home when not being used for work
(c) private use of the van other than travel to and from work is prohibited and there is no other private use, and
(d) the employee spends at least 80 per cent of his or her working time away from the premises of the employer to which the employee is attached.

Cash equivalent of benefit of van

The cash equivalent of the benefit of a van for a year of assessment prior to 2023 is 5 per cent of the original market value of the van. From 1 January 2023 the cash equivalent of the benefit of a van for a year of assessment shall be 8 per cent of the original market value of the van. ***(3)***

This paragraph provides that the provisions of ***subsections (1), (6) and (7)*** of section 121 (benefit of use of a car) shall apply to this section, with the exception of the definition of a car. ***(4)***

Where a van is available to a person for part only of a year of assessment, the cash equivalent of the benefit is ascertained by apportionment on a time basis. This provision operates where a person – ***(5)***

- first obtains the use of a company van during the course of a year,
- ceases to have the use of a company van during the course of a year, or
- changes vans during the course of a year.

122 Preferential loan arrangements

Summary

A charge to tax in respect of preferential loans arises where loans are made to employees at a rate which is either nil or at a rate lower than normal commercial rates. The charge to tax is on the difference between the amount of interest paid on the preferential loan and the amount of interest which would be payable if the loan had been subject to an interest rate of 4 per cent in the case of loans qualifying for mortgage interest relief under ***section 244*** or 13.5 per cent in all other cases. The charge arises for each year, or part of a year, for which the preferential loan is outstanding. The amount charged is treated as if it were interest actually paid by the employee and is eligible for relief subject to the normal restrictions on the eligibility of interest.

Details

Definitions and construction

"employee" is an individual employed by an employer in an employment which is assessable to tax under Schedule E or Case III of Schedule D. Where the employer is a company, a director of the company is also treated as an employee. ***(1)(a)***

"employer", in relation to an individual includes —

- a person of whom the individual or the spouse of the individual is or was an employee,
- a person who employs the individual after making a loan to the individual and while any part of the loan, or any part of a loan replacing that loan, is in existence (this enables an arrangement whereby an employer makes a preferential loan to a potential employee as part of a recruitment package before the start of the employee's service contract to be brought within the scope of the section),
- a person who is connected with any person referred to above (this brings within the scope of the section a preferential loan made by, say, an associated company of the company employing the individual).

"loan" includes any form of credit or a loan which, directly or indirectly, replaces a loan (this ensures that a preferential loan is caught by the section irrespective of the guise in which it is made).

"preferential loan", in relation to an individual, is a loan on which either no interest is paid or interest is paid at a preferential rate. The loan may be made, directly or indirectly, either

to the individual or to his/her spouse, by the individual's employer. Loans which are made by an employer to an employee at normal commercial interest rates are not preferential loans.

"preferential rate" means an interest rate which is less than the specified rate.

"qualifying loan" has the meaning assigned to it by ***section 244(1)(a)***.

The "specified rate" can be one of 3 different rates depending on the circumstances-

- In the case of a preferential mortgage loan, where the interest on the preferential loan qualifies for relief under ***section 244*** or, if no interest is payable on the loan, would have qualified for relief under ***section 244*** had interest on the loan been payable, the specified rate is 4 per cent per annum or such other rate (if any) prescribed by the Minister for Finance by regulations. This rate applies, therefore, only where the preferential loan is for the purchase, repair, development or improvement of the sole or main residence of the borrower, the former or separated spouse of the borrower or a dependent relative of the borrower.
- Where a preferential loan is made to an employee by an employer whose trade partly consists of making loans for a stated number of years at a fixed rate of interest to enable a borrower purchase a house as a residence, and the rate of interest on such loans (at the time the preferential loan was made) charged on non-employees in the normal course of business is less than 4 per cent or such other rate (if any) prescribed by the Minister for Finance by regulations, the specified rate is the rate charged by the employer on such loans to non-employees at the time the preferential loan is made to the employee.
- In any other case, the specified rate is 13.5 per cent per annum or such other rate (if any) prescribed by the Minister for Finance by regulations.

A person is connected with another person if the persons would be regarded as connected for the purposes of ***section 250***. The meaning of "connected" in ***section 250*** as used in ***subsection (5)(b)*** of that section treats as connected persons a lender who lends money otherwise than in the ordinary course of business and the person to whom the money is lent. ***(1)(b)***

So as to ensure that indirect methods of giving a preferential loan do not result in such a loan escaping the provisions of the section, a reference to a loan being made is broadened to include — ***(1)(c)***

- a person who takes over the rights and responsibilities of a loan from the person who originally made it, and
- a person who has a part in arranging, guaranteeing or facilitating the making of a loan or the continuation of an existing loan.

Tax treatment of preferential loans

Where, for the whole or part of a year of assessment, there is outstanding in relation to an individual a preferential loan, the individual is regarded for the purposes of ***section 112*** or a charge to tax under Case III of Schedule D, as having received in that year a perquisite of his/her office or employment with the employer who made the loan. The amount of the perquisite to be so charged is the difference between the aggregate interest paid in that year and the interest which would have been payable if interest had been payable on the loan or loans at the specified rate. ***(2)***

Where the individual's income is assessed on his/her spouse in accordance with ***section 1017***, the charge to tax is made on the spouse. ***(3)***

Where the individual's income is assessed on his/her civil partner in accordance with ***section 1031C***, the charge to tax is made on the civil partner.

Anti-avoidance

Special rules apply where a loan is made, directly or indirectly, by an employer to an employee or by an employer to a person who subsequently becomes an employee at a rate superficially in excess of the specified rate but in practice at a lower rate or a nil rate due to the loan or any interest on the loan being entirely or partially released or written-off. In such a case the employee is charged on the amount of the loan or interest that is so written-off or released. For example, a loan could be given, for say, a 20-year period at a rate of 18 per cent. The employer could then write-off all or part of the loan or, alternatively, release the employee from payment of further interest as a compensation for paying the interest in full over the first 5 years. Where this happens, the employee is charged to tax in the year of the release or writing-off in respect of the amount released or written-off. The amount so released or written-off is treated as a perquisite of the office or employment and assessed accordingly.

Application of section 244

(4) An amount of interest charged to tax in accordance with ***subsection (2)*** or ***(3)*** may be allowed as a deduction from income under ***section 244***. For any year of assessment in which any such amount is assessed on an individual, he/she is treated as having actually paid an equivalent amount of interest and, accordingly, the individual is entitled under ***section 244*** to obtain relief from tax to the extent that any such amount would be eligible for relief under that section. Relief under that section is available for certain interest paid on money borrowed to construct, purchase, repair or improve the sole or main residence of the borrower, the former or separated spouse of the borrower or a dependent relative of the borrower.

Exceptions

(5) Excluded from the application of the section are loans made by an individual employer in the normal course of his/her domestic, family or personal relationships.

Employee allowance

(6) Amounts brought into the charge to tax by this section are not regarded as emoluments for the purposes of the employee tax credit under ***section 472***. This provision is necessary to avoid claims where, for example, the non-working spouse of the employee is the individual to whom the working spouse's employer actually makes the loan. Although the working spouse may be the one on whom the charge under the section is made, there might be a possibility, but for this provision, that the non-working spouse could claim that as he/she was being treated as having received an emolument he/she was entitled to the employee tax credit provided for by ***section 472***.

Regulations

(7) The Minister for Finance may by regulations prescribe the specified rate. In any such case the usual provisions for the presentation of regulations to Dáil Éireann apply.

122A Notional loans relating to shares, etc

Summary

This section is designed to counter a tax avoidance device whereby directors and employees, by reason of their employment, acquire shares in a company without having

to pay the entire amount due on the allotment of such shares. This unpaid balance, known as a "call", amounts to what is essentially an interest-free loan in the hands of the directors and employees. The section accordingly provides that:

- the "call" is deemed to be an interest free preferential loan (called a "notional loan") for benefit-in-kind purposes,
- where the "call" (notional loan) is written off by the company in favour of the director or employee, the amount outstanding on the "call" is deemed to be an emolument of the director/employee, and
- where the shares are sold at above market value, the difference between the market value and the sale price is deemed to be an emolument of the director/employee.

The Revenue Commissioners are prepared to accept that where shares are acquired under —

- rights acquired between 6 April, 1986 and 28 January, 1992 under a share option scheme approved by them for the purposes of ***section 10*** of the ***Finance Act, 1986***, or
- a share option scheme approved of in accordance with ***Part 2*** of ***Schedule 11***,

the provisions of the section relating to a charge in respect of a notional loan or in respect of the deemed write off of a notional loan will not apply to such shares. However, the section will apply where such shares are disposed of at an over-value.

Details

Where, by reason of his or her employment, an employee (including a director) of a company acquires shares at undervalue in any company (whether the employer company or not), he or she is deemed to have the use of an interest-free loan (called a "notional loan") and this loan is deemed to be a preferential loan to which the provisions of ***section 122*** apply. ***(2)***

The section applies for any year in which an individual has a notional loan. Shares are acquired at undervalue where they are acquired without payment or for an amount which is less than the market value of fully paid up shares of the same class. The undervalue is the difference between market value of the shares and any payment made for them. ***(3)***

The initial amount of the notional loan is the amount of the undervalue which is not chargeable to tax as an emolument. The loan remains outstanding until terminated. Subsequent payments in respect of the shares reduce the amount of the loan. ***(4)***

A notional loan is terminated when: ***(5)***

(a) the amount of the call outstanding is fully paid,

(b) the employee is no longer bound to account for the call,

(c) the employee ceases to have a beneficial interest in the shares, or

(d) the employee dies.

Where the employee ceases to have a beneficial interest in the shares or dies, ***section 122(3)*** is to apply as if an amount equal to the then outstanding amount of the notional loan had been released or written off from a loan within that section. ***(6)***

Where shares are disposed of by an employee at above market value, the difference between the sale price and market value is deemed to be an emolument of the employee's employment. ***(7)***

Any charge to tax in respect of the release or writing off of a loan applies notwithstanding that the employment may have ceased. However, no such charge will arise after the death of the employee. ***(8) & (9)***

Subject to specified modifications, the section applies where an individual acquires or disposes of an interest in shares which is less than the full beneficial ownership of those shares. ***(10)***

A payment for shares includes giving any consideration or making any subscription for the shares. ***(11)***

Commencement of section 122A

The section applies generally as on and from 4 March, 1998. Where shares were acquired before that date, a notional loan is deemed to have been made on that date in an amount equal to the amount of the loan then outstanding. [Section 15(2), Finance Act, 1998.]

CHAPTER 5
Miscellaneous charging provisions

Overview

This Chapter provides for the imposition of a Schedule E charge to tax on the receipt of certain payments, sums, benefits, shares, securities and assets which, but for the provisions of this Chapter, would not be chargeable to tax. The Chapter also outlines the tax treatment of convertible securities, restricted shares and forfeitable shares acquired by directors and employees.

123 General tax treatment of payments on retirement or removal from office or employment

Summary

Subject to the exemptions provided for in ***section 201***, ***section 123*** imposes a charge to tax under Schedule E in respect of compensation payments for loss of office and certain other payments received on the termination of an office or employment or on a change in the functions or emoluments of an office or employment. ***Section 123*** is confined to payments which escape tax under the general law. ***Section 201*** may exempt from tax, depending on individual circumstances, all or part of such payments.

Details

Application

The payments charged to tax under this section are described by reference to the events in connection with which the payments are made. The charge is limited to payments "not otherwise chargeable to income tax". The payments covered include payments on a change of functions or emoluments and commutation payments. Examples of the type of payments caught by the section, which would otherwise be treated as non-taxable, are — ***(1)***

- compensation for loss of office,
- damages for breach of contract of service,
- a payment to obtain release from a contingent liability under a contract of service,
- a lump sum to commute a pension or pension rights,
- a gratuity on or after retirement entirely at the discretion of the employer, and
- redundancy, etc payments.

The charge to tax

Subject to the exemptions provided for in ***section 201***, a charge to tax under Schedule E arises in respect of any payments to which this section applies which are made to holders or former holders of offices or employments, whether made by the employer or by a third party. Also included are such payments made to the executors or administrators of a deceased person. ***(2)***

The charge to tax is extended to include payments made to the spouse, civil partner or any relative or dependant of the holders or former holders of offices or employments, or to any other persons on his/her behalf. It also provided that payments in kind are chargeable on their value at the time they are given.

When chargeable

Sums received in commutation of annual or periodical payments are chargeable for the year in which the commutation takes place and not the year in which the service ends. All other payments within the charge are treated as arising on the date of the termination of service or change of functions or emoluments in respect of which the payment is made. All such payments are treated as emoluments assessable under Schedule E. ***(4)***

Deceased persons

An assessment may be made on a taxpayer's executors or administrators where the payment was made in the taxpayer's lifetime but he/she has died before an assessment was made on him/her. ***(5)***

Information

A person making any payment chargeable under this section is required to give particulars of the payment in writing to the inspector within 14 days of the end of the year of assessment in which the payment is made. ***(6)***

124 Tax treatment of certain severance payments

Summary

This section imposes a charge to tax under Schedule E on certain termination allowances and severance allowances paid to outgoing members of the Oireachtas and to former holders of ministerial and parliamentary offices.

Details

The section applies to — ***(1)***

- a termination allowance, other than such part of a termination allowance consisting of a lump sum, payable under section 5 of the Oireachtas (Allowances to Members) and Ministerial and Parliamentary Offices (Amendment) Act, 1992, and
- a severance allowance or a special allowance payable under Part V of the Ministerial and Parliamentary Offices Act, 1938.

These allowances are treated as profits or gains arising from an office or employment and, accordingly, are chargeable to tax under Schedule E. The tax chargeable is computed in accordance with the Schedule E basis of assessment (see ***section 112(1)***), and the allowances are treated as emoluments to which PAYE applies (see ***Chapter 4*** of ***Part 42***).

124A Tax treatment of payments made pursuant to an order under section 2B of Employment Permits Act 2003

Summary

This section imposes an income tax charge on any payments made under a court order under Section 2B of the Employment Permits Act 2003. Any payments made under such an order are chargeable to tax under Schedule E and within the PAYE/USC system of tax deduction.

The payments shall not be treated as reckonable emoluments for the purposes of PRSI contributions.

Details

Any payments made under a court order under Section 2B of the Employment Permits Act 2003 are chargeable to tax under Schedule E and within the PAYE system of tax deduction. ***(1)***

125 Tax treatment of benefits received under permanent health benefit schemes

Summary

A charge to tax under Schedule E is imposed on payments made to an individual under a permanent health benefit scheme approved by the Revenue Commissioners.

Details

"benefit" is a payment to a person under a permanent health benefit scheme in the event of loss or diminution of income due to ill health. ***(1)***

"permanent health benefit scheme" is any scheme, policy, contract or other arrangement approved by the Revenue Commissioners which provides for periodic payments to an individual in the event of loss or diminution of income due to ill health.

A policy of permanent health insurance, sickness insurance or other similar insurance is a permanent health benefit scheme if it conforms either with a standard form of policy approved by the Revenue Commissioners or a form which varies from such a standard form where the variations are approved by the Revenue Commissioners and any conditions subject to which the variations are approved are met. ***(2)***

Any benefits received by a person under a permanent health benefit scheme are treated as profits or gains arising from an employment and, accordingly, are chargeable to tax under Schedule E. The tax chargeable is computed in accordance with the Schedule E basis of assessment (see ***section 112(1)***), and the benefits are treated as emoluments to which PAYE applies (see ***Chapter 4*** of ***Part 42***). ***(3)***

The Revenue Commissioners may nominate any of their officers to perform and discharge any functions authorised by this section. ***(4)***

126 Tax treatment of certain benefits payable under Social Welfare Acts

Summary

A charge to tax under Schedule E is imposed in respect of certain Social Welfare payments. Relief in the form of partial exemption is available in respect of unemployment

benefit. In addition, any element of disability, unemployment or injury benefit payments which relate to amounts in respect of qualifying children is disregarded.

The payments listed in the Table to the Section are exempt from the charge to income tax from 1 January 2019 (section 6A) and previous years (section 6B). This puts the longstanding Revenue practice on a legislative footing.

Details

Definition

"the Acts" are the Social Welfare Acts.

"the Act of 2005 means the Social Welfare Consolidation Act 2005.", ***(1)***

The charge to tax

Payments of — ***(2)(a)***

- widow's (contributory) pension,
- orphan's (contributory) allowance,
- retirement pension, and
- old age (contributory) pension,

are treated as emoluments to which ***Chapter 4*** of ***Part 42*** applies. As such these payments are chargeable to tax under Schedule E and are within the scope of the PAYE system.

From 1 July 2013 payments of – ***(2A)(a)& (b)(i)(ii)***

- maternity benefit,
- adoptive benefit,
- health and safety benefit,
- paternity benefit, and
- parent's benefit,

are treated as emoluments to which ***Chapter 4*** of ***Part 42*** applies. As such these payments are chargeable to tax under Schedule E and are within the scope of the PAYE system.

Any payment of an increase for a qualified adult under the State pension contributory, Pre 1953 State Pension Contributory, State Pension Transition or State Pension non-contributory shall be treated for all purposes of the Income Tax Acts as if it arises to and is payable to the beneficiary of the pension i.e. the pensioner who qualifies for the pension in the first instance. ***(2B)***

Payments of — ***(3)(a)&(b)***

- illness benefit,
- jobseekers benefit,
- jobseekers benefit (self employed),
- the payments commonly known as the pandemic unemployment payments (PUP)
- injury benefit which is comprised in occupational injuries benefit, and
- pay related benefit,

are treated as profits or gains from an employment and, accordingly, are chargeable to tax under Schedule E. The tax chargeable is computed in accordance with the Schedule E basis of assessment (see ***section 112(1)***), and except in the case of amounts payable in respect of jobseeker's benefit (self-employed) the payments are treated as emoluments within the scope of the PAYE system (see ***Chapter 4*** of ***Part 42***). Excluded from the charge to tax, however, is the amount of any such payment, which is referable to a

qualified child (within the meaning of section 2(3)(a) of the Social Welfare (Consolidation) Act, 2005).

Jobseeker's benefit or jobseeker's benefit (self-employed) payable in any period after 6 April 1997 to a person in short-time employment is exempt from tax. Short-term employment has the same meaning as in the Social Welfare Acts and, in effect, means a working arrangement where either — ***(3) (c)***

- the number of days systematically worked in a working week is less than the number of days which is normal in a working week in the employment concerned – typically, a 3 days on and 2 days off arrangement, or
- the number of days systematically worked in a period of 4 consecutive weeks is less than the number of days which was normal in the employment before the reduction in the number of days worked, provided that the number of days worked is equal to at least one-half the number of days normally worked – typically, a week-on/week-off or fortnight-on/fortnight-off arrangement.

Exemptions

The first €13 of the aggregate of the amounts of jobseeker's benefit or jobseeker's benefit (self-employed) payable (other than amounts payable in respect of a qualified child within the meaning of section 2(3)(a) of the Social Welfare (Consolidation) Act, 2005) to a person for one or more days of unemployment comprised in an income tax week (that is, one of the successive periods of 7 days, beginning with the first day of an income tax year) is exempt from tax. ***(4)***

(5)

Ministerial orders

The taxation of illness benefit, jobseeker's benefit, jobseeker's benefit (self-employed) (other than jobseekers benefit paid to individuals in systematic short-time work), the payments commonly known as the pandemic unemployment payments (PUP),injury benefit and pay related benefit payments comes into operation on such day or days as may be fixed by the Minister for Finance by order and different days may be fixed for different orders and for different categories of recipients. ***(6)(a)***

Any order (bringing any benefit in whole or in part into charge to tax) which it is proposed to make must be laid before Dáil Éireann and may not be made until Dáil Éireann has approved the draft order. ***(6)(b)***

Any DSP payment made to an individual, listed in the Table paid on or after 1 January 2019, is exempt from the charge to income tax. ***(6)(A)***

Any DSP payment made to an individual prior to 1 January 2019, listed in the Table shall be treated as exempt from the charge to income tax in the year of assessment to which the payment relates. ***6(B)***

TABLE

Description of payment (1)	Basis on which payment is made (2)
Basic supplementary welfare	Section 189 of the Act of 2005

allowance	
Back to education allowance	A payment made under a scheme administered by the Minister for Employment Affairs and Social Protection and known as 'Back to education allowance'
Back to work enterprise allowance	A payment made under a scheme administered by the Minister for Employment Affairs and Social Protection and known as 'Back to work enterprise allowance'
Back to school clothing and footwear allowance	A payment made under a scheme administered by the Minister for Employment Affairs and Social Protection and known as 'Back to school clothing and footwear allowance'
Carer's support grant	Section 225 of the Act of 2005
Constant attendance allowance	Section 78 of the Act of 2005
Death benefit – funeral expenses	Section 84 of the Act of 2005
Death benefit – orphans	Section 83 of the Act of 2005
Direct provision allowance	A payment made under a scheme administered by the Minister for Employment Affairs and Social Protection and known as 'Direct provision allowance'
Disability allowance	Section 210 of the Act of 2005
Disablement gratuity	Section 75(8) of the Act of 2005
Domiciliary care allowance	Section 186F of the Act of 2005
Exceptional needs payment	Section 201 of the Act of 2005
Farm assist	Section 214 of the Act of 2005
Fuel allowance	A payment made under a scheme administered by the Minister for Employment Affairs and Social Protection and known as 'Fuel allowance'
Guardian's payment (contributory)	Section 130 of the Act of 2005
Guardian's payment (non-contributory)	Section 168 of the Act of 2005
Household benefit package	A payment made under a scheme administered by the Minister for Employment Affairs and Social Protection and known as 'Household

	benefit package’
Humanitarian assistance payment	A payment made under a scheme administered by the Minister for Employment Affairs and Social Protection and known as ‘Humanitarian assistance payment’
Jobseeker’s allowance	Section 141 of the Act of 2005
Jobseeker’s transitional payment	Section 148A of the Act of 2005
Medical care	Section 86 of the Act of 2005
Part-time job incentive scheme	A payment made under a scheme administered by the Minister for Employment Affairs and Social Protection and known as ‘Part-time job incentive scheme’
Rent allowance	Section 23 of the Housing (Private Rented Dwellings) Act 1982
Supplementary welfare allowance	Section 198 of the Act of 2005
Telephone support allowance	A payment made under a scheme administered by the Minister for Employment Affairs and Social Protection and known as ‘Telephone support allowance’
Training support grant	A payment made under a scheme administered by the Minister for Employment Affairs and Social Protection and known as ‘Training support grant’
Urgent needs payment (other than the payments referred to in section 126 (3)(a)(ii)(b), that is the Pandemic Unemployment Payment)	Section 202 of the Act of 2005
Widowed or surviving civil partner grant	Section 137 of the Act of 2005
Working family payment	Section 228 of the Act of 2005
Youth employment support scheme	A payment made under a scheme administered by the Minister for Employment Affairs and Social Protection and known as ‘Youth employment support scheme’

127 Tax treatment of restrictive covenants

Summary

A charge to tax under Schedule E is imposed in respect of payments made under a restrictive covenant entered into by an employee with his/her employer where such payments do not already form part of the employee's profits or gains from the employment.

A restrictive covenant is a covenant between an employee and employer under which the employee, arising out of his/her employment, gives an undertaking to his/her employer which restricts his/her conduct or activities (for example, leaving to join a competitor within a certain period of time) and in return for which he/she receives a payment from the employer.

Details

Definitions and construction

"accounting period" is to be determined in accordance with the rules in ***section 27***. ***(1)***

"basis period" is the period for which income tax is finally computed under Schedule D or such other period as is deemed by virtue of the Income Tax Acts to be the final period on which a charge to income tax charge under Schedule D is made.

"office or employment" is an office or employment the emoluments of which are chargeable to tax under Schedule E. The term includes an office or employment from which no remuneration is derived.

The reference to the giving of valuable consideration is interpreted in such a way that the section operates when the property, advantage or rights are actually given and not when the obligation to give them is assumed. Accordingly, difficulties which may arise in determining the current value of, say, shares to be allotted at a future date cannot arise.

The charge to tax

The charge to tax applies to payments made in respect of all forms of restrictive covenants irrespective of whether the covenant is entered into before, during or after service in the office or employment concerned. The charge to tax arises on the individual who gives the covenant regardless of who actually receives the sum paid. The section does not apply to sums already treated as profits or gains of the office or employment concerned and already within the charge to tax. ***(2)***

Payments made under a restrictive covenant are treated as profits or gains arising from an office or employment and, accordingly, are charged to tax under Schedule E or under Case III of Schedule D in a case where the office is held or the employment is exercised abroad. Where the charge arises under Schedule E, the tax chargeable is computed under the Schedule E basis of assessment (see ***section 112(1)***), and the payments are within the scope of the PAYE system (see ***Chapter 4*** of ***Part 42***). Where the payment under a restrictive covenant is made, by agreement or otherwise, after the death of the individual who gave the covenant, the payment is treated as if it had been made immediately before the individual's death.

The charge to tax under this section is extended to include the value of any consideration given otherwise than in money form (for example, an allotment of shares). ***(3)***

Trades and professions

An employer who carries on a trade or profession and who pays a sum or gives other consideration to which this section applies is entitled to a deduction, in computing for the purposes of Schedule D the profits or gains of the trade or profession, of an amount equal to the sum paid or the consideration given. The deduction is given — ***(4)***

- in the case of a person liable to income tax, for the basis period in which the sum or other consideration is given, or
- in the case of a person liable to corporation tax, for the accounting period in which the sum or other consideration is given.

Management expenses

A deduction is available as a management expenses in the case of investment companies and assurance companies who pay sums or give other consideration to which this section applies. The deduction is allowable in computing such companies' taxable profits for the accounting period in which the sum is paid or other consideration given. ***(5)***

Application

The section applies to any sum paid or consideration given irrespective of when the restrictive covenant was given. ***(6)***

127A Tax treatment of members of the European Parliament

Summary

This section was inserted by the European Parliament (Irish Constituency Members) Act 2009 and came into effect on the first day of parliamentary term 2009.

The Government has the right to tax an Irish MEP's salary provided by the Oireachtas or out of the Budget of the European Union. Double taxation on this salary is avoided by way of granting a credit for EU tax paid against the Irish tax due on that salary.

Details

Income arising to any individual as a member of the European Parliament and payable out of money provided - ***(1)(a) & (b)***

(a) by the Oireachtas, shall be chargeable to tax under Schedule E, or

(b) by the budget of the European Union, shall be chargeable to tax under Schedule D Case III.

A credit for any EU tax paid on the salary is due against the Irish tax due on that salary (thus avoiding double taxation). ***(2)***

127B Tax treatment of flight crew in international traffic

Summary

This section provides for the taxation of the employment income arising to flight crew members in respect of employments exercised aboard aircraft operated in international traffic where the place of effective management of the enterprise is in this State.

There is an exemption from the charge to Income Tax under this section for the year of assessment 2022 or any subsequent year of assessment where an individual satisfies the required conditions for that year.

Details

The section has effect for the year of assessment 2011 and subsequent years.

The charge

Employment income arising to flight crew members in respect of employments exercised aboard aircraft operated in international traffic where the place of effective management of the enterprise is in this State shall be chargeable to tax under Schedule E. ***(1)***

In this context, aircraft operated in "international traffic" does not include aircraft operated solely between places in another state. ***(2)***

The exemption

A charge to tax will not arise under this section, where for the year of assessment 2022 or any subsequent years, an individual for that year -

- is not resident in the State, ***(1A)(a)***
- is resident in a territory with which Ireland has a Double Taxation Agreement, and ***(1A)(b)***
- is subject to tax on this employment income in a territory with which Ireland has a Double Taxation Agreement. ***(1A)(c)***

128 Tax treatment of directors of companies and employees granted rights to acquire shares or other assets

Summary

A charge to income tax under Schedule E is imposed on any gain realised by a director or employee from a right granted to him/her, by reason of his/her office or employment, to acquire shares or other assets in a company. When the gain is realised before 1 January 2024, the person in receipt of such a gain is, generally, to be regarded as a chargeable person under self-assessment for the year in which the gain was realised. Gains realised on or after 1 January 2024 are treated as a notional payment by the employer, who is responsible for remitting the tax via the PAYE system.

The amount chargeable is the difference between the market value of the asset at the time of acquisition and the aggregate amount or value of the consideration, if any, given for the asset and for the grant of the right to acquire the asset.

The section applies to rights granted on or after 6 April 1986 where the recipient is resident in the State at the time the right is granted. With effect from 5 April 2007 the section also applies to cases where the recipient of the right is not resident in the State when the right is granted.

A company which grants such rights to its directors or employees is obliged to return this information to the Revenue Commissioners. In the event that the company is not resident in the State but operates here through a subsidiary, branch or agency, the responsibility for making the return will rest on the subsidiary or the company's representative in the State.

Details

Definitions

"branch or agency" has the same meaning as in ***section 4***, i.e. "any factorship, agency, receivership, branch or management". ***(1)***

"company" is a company for the purposes of the Corporation Tax Acts (see ***section 4***).

"director" is, broadly, any person occupying the position of director and includes a manager and any person who is to be or has been a director.

"employee" is, broadly, an officer, director or manager of the company and includes a person who is to be or was an employee.

"right" is the right to acquire any asset or assets, including shares, in the company.

"market value" is the price which an asset or assets might reasonably be expected to fetch on a sale in the open market.

"shares" includes securities and stocks.

References to the release of a right include references to agreeing to the restriction of a right. ***(1)(b)(i)***

Scope of charge

The scope of the charge is limited to directors and employees who are chargeable to tax (under Schedule E or D) on the full amount of their emoluments and who are granted the right to acquire shares or other assets by reason of their office or employment. ***(1)(b)(ii)***

Individuals chargeable on the remittance basis of taxation under ***section 71(3)*** are excluded. The charge also arises where a right is granted by reason of an individual's office or employment but which comes to him/her through another person or where it is granted to him/ her before the commencement of the employment or after the cessation of the employment.

The charge to tax

A charge to income tax arises where a director or employee realises a gain from the exercise, assignment or release of a right obtained by him/her on or after 6 April 1986. The gain is taxed under Schedule E in the year of assessment in which the gain is realised. With effect from 5 April 2007, the charge applies irrespective of whether or not the director or employee was resident in Ireland at the time the right was detained. ***(2)***

Persons in receipt of share options which arise by virtue of their being directors or employees of a company are chargeable persons for the purposes of ***Part 41A*** (Self Assessment) other than where the person is exempted from the requirement to make a tax return under Self Assessment. This tax treatment only applies to gains realised before 1 January 2024. Therefore, individuals who realised a gain during 2023 will continue to have an obligation to submit an annual return of income by 31 October 2024. ***(2A)***

Gains realised by the exercise, assignment or release of a right on or after 1 January 2024 are chargeable to tax under the provisions of ***Chapter 4 of Part 42***. The employer will be responsible for remitting the tax under the PAYE system. ***(2B)***

Prevention of double charge

Where a charge to tax arises on a gain realised by the exercise of a right, no charge to tax arises under any other provision of the Tax Acts. An exception to this rule arises, however, where a right is capable of being exercised more than 7 years after it is obtained – see ***subsection (5)***. ***(3)***

Amount chargeable

The gain charged under this section is calculated in different ways depending on whether the gain arises from the exercise of a right or from the assignment or release of a right. It is also provided that, in calculating the gain, the performance of the grantee of his/her duties in connection with his/her office or employment is not regarded as part of the consideration given by him/her for the grant of the right. In addition, only one deduction is allowed in respect of the consideration given for the grant of the right. ***(4)***

Where the gain is realised by the exercise of any right, the gain is the difference between the market value of the asset at the time it is acquired and the aggregate amount or value of the consideration, if any, given for the asset and for the grant of the right.

Where the gain is realised by the assignment or release of any right, the gain is the difference between the amount or value of the consideration for the assignment or release and the amount or value given for the grant of the right.

Any consideration paid by a person for the grant of a right may be apportioned by an inspector between any assets which may be acquired by the exercise of the right. Similarly, where the consideration covers both the grant and something else, the consideration may also be apportioned by the inspector between the grant of the right and that something else.

Rights which need not be exercised for more than 7 years

Where a right need not be exercised for more than 7 years, ***subsection (3)*** does not prevent the charging of tax under some other provision of the Tax Acts (for example, ***section 112***) in respect of the actual receipt of the right. Any income tax so charged on the receipt of the right is deductible from any income tax which is subsequently charged under this section when the right is exercised, assigned or released. ***(5)(a)***

The value of any right charged under any other provision of the Tax Acts is to be not less than the market value, at the time the right is obtained, of the asset or assets which may be acquired by the exercise of the right (or the market value of any asset or assets for which the asset or assets that can be acquired by the exercise of the right may be exchanged). The value so determined is reduced by any consideration payable for the asset or assets. ***(5)(b)***

Anti-avoidance

A director or employee is chargeable in respect of a gain realised by virtue of a right obtained by reason of his/her employment even though the gain may be realised by some other person. This applies where— ***(6)***

- the right is granted to that other person, or
- the right was granted to the director or employee but subsequently transferred, at less than the arm's length price, or

- the right was granted to the director or employee but subsequently transferred, to someone who is a connected person at the time the gain is realised, or
- if the director or employee benefits directly or indirectly from the exercise, assignment or release of the right by the other person.

In such cases the realised gain is treated as reduced by the amount of any gain realised by the previous holder on an assignment of the right. (A gain realised by another person includes a gain realised on the exercise of a right by the director or employee, where it is exercised by the director or employee as nominee or bare trustee, or otherwise on behalf of the other person).

Bankruptcy

Where a director or employee is divested of a right following his/her bankruptcy or otherwise divested of the right by operation of law, he/she is not chargeable to tax in respect of a gain realised by some other person from the exercise of the right. Instead, the assessment in respect of the gain is made under Case IV of Schedule D on the other person. ***(7)***

Exchange of rights

Where rights are exchanged between directors and employees or a company grants a new right in exchange for the surrender of an old right, the new right and the old right are looked at as one for the purpose of the charge to tax under this section. For the purposes of calculating a gain, if any, arising from the exercise of the new right, the value of the old right is not treated as part of the acquisition cost of the new right, but account is taken of any consideration given for the grant of the old right to the extent that it has not been offset at the time of its assignment or release by any consideration other than the receipt of the new right. These provisions also apply where exchanged rights are acquired by means of a series of transactions. ***(8) & (9)***

The operation of ***subsection (8)*** does not prevent a charge arising under this section on the exercise of the original right (where, for example, as part of a scheme or arrangement, the purpose or one of the main purposes of which is the avoidance of tax, it is the original right and not the new right that is exercised, and the director or employee benefits from the exercise of the original right).

Capital Gains Tax

Where shares acquired under a right are disposed of, the amount on which income tax is charged is added to the acquisition price in computing the amount on which capital gains tax is chargeable. ***(10)***

Information

Companies must provide information to Revenue about the grant, assignment or release of rights or the allotment of shares or the transfer of any asset under a right granted. Such information is to be delivered in an electronic format approved by the Revenue Commissioners not later than 31 March in the tax year following that in which such an event takes place. ***(11)***

Right granted by non-resident

Where the person granting rights to acquire shares or other assets is not resident in Ireland, and the person in receipt of the rights is a director or employee of a company which either— ***(12)***

(i) is resident in Ireland, or

(ii) is not so resident but operates in Ireland through a branch or agency in which the employee is employed,

then the return of particulars to the relevant inspector must be made by either the resident company or, if the company is not resident here, by the company's agent, manager, factor or other representative.

128A Deferral of payment of tax under *section 128*

Summary

This section provides that where a person has exercised a right to acquire shares and is chargeable to income tax in accordance with ***section 128(2)*** the payment of the tax which has become due may, as discussed below, be deferred at the election of the individual. Where the option is exercised on or after 6 April 2000 and on or before 28 March 2003, payment of the tax may be deferred until the earlier of —

- the year of assessment in which the shares, acquired by the exercise of the right, are disposed of, or
- the year of assessment which is 7 years after the year of assessment in which the exercise took place.

In the case of share options exercised **before** 6 February 2003, payment of the income tax liability due can, irrespective of whether there has been an election for deferral as referred to above, be satisfied by way of a payment on account equal to the market value of the shares at the relevant date specified in the section with the balance of tax further deferred, if necessary, until there is a subsequent disposal of shares by the person or the person's spouse or civil partner.

In all cases the balance of the income tax due after the payment on account will become due for payment by reference to the net gains, after tax, made by the taxpayer, or his or her spouse or civil partner, on any subsequent disposal of shares. In the circumstances where a taxpayer dies before the tax has been fully discharged the balance remaining will not be levied on the estate.

Where a taxpayer defaults on his or her obligations under this new regime then any outstanding income tax will revert to being payable by reference to the normal due dates. Where the balance of income tax due is being deferred, by reference to the reduced market value of the shares, any capital gains tax loss arising (being the difference between the market value of the shares at date of acquisition and at date of disposal) may not be used until the full income tax liability is met.

Details

Period to which deferral of tax applies

(1) Subject to ***subsection (2)***, where a right to acquire shares is exercised in the period from 6 April 2000 to the date of passing of the Finance Act 2003 (28 March 2003) which results in an amount chargeable under Schedule E by virtue of ***section 128***, which is payable to the Collector-General, the person concerned may elect that the tax will be payable in accordance with the provisions of ***subsection (4)***.

Disposals in year of exercise of right

Subsection (1) does not apply if the disposal of the shares takes place in the same tax year as the right to acquire those shares was exercised. In these circumstances no deferral of the tax is possible. ***(2)***

Election for deferral of tax

The election to defer payment of the tax, referred to in ***subsection (1)*** must be made in writing to the inspector not later than 31 October following the year of assessment in which the right to acquire shares was exercised. This date ties in with the return filing dates for that year of assessment under the rules of Self Assessment (see ***Part 41A***). ***(3)***

Period to which deferral applies

The tax due may be deferred until the earlier of the following: ***(4)***

(a) 31 October following the year of assessment in which the shares are disposed of, or

(b) 31 October following the year of assessment beginning 7 years after the rights to acquire the shares were exercised.

These dates tie in with the preliminary tax payment dates for capital gains tax. Because it is possible that there may also be capital gains tax due arising from the disposal of the shares (based on the difference between market value of the shares on the date of exercise of the right or option and the disposal proceeds) it means that payment of both the income tax and capital gains tax due, can be made on the same day.

Payment on account provisions

The situation where the market value of shares acquired under an unapproved share option scheme declines between the date of exercise of the option and a specified date so that the market value at that date is less than the liability arising under ***section 128*** on the exercise of the option is addressed. In that situation, and notwithstanding ***subsection (4)***, a payment on account (inclusive of any payments already made) equal to that market value may be made to the Collector-General with the balance of the liability deferred further until there is a disposal of **any** shares by either the person chargeable or his or her spouse. The relevant dates for determination of market value and making of payments are: ***(4A)***

- ***6 February 2003, or date of disposal if later***, for persons with unpaid liabilities due before or by 6 February 2003, who have not elected for the 7 year deferral and who are not entitled to make that election after 6 February 2003 – in these cases the payment on account will be due on or before 30 June 2003; ***(4A)(c)***
- ***date of disposal*** in the case of persons who elect for the 7 year deferral and then dispose of shares within that period – in these cases the payment on account will be due 30 days after the date of disposal or, if later, by 30 June 2003; ***(4A)(a)(i)***
- ***31 December*** at the end of the 7 year deferral period for those who elect to defer and then retain ownership of their shares for the 7 year period – in these cases the payment on account will be due by 30 days after the end of the deferral period, and ***(4A)(a)(ii)***
- ***31 October 2003*** or ***2004***, where the taxpayer is currently entitled to elect for the 7 year deferral before on of those dates but does not do so or where the tax is only due to be paid by one of those dates – in these cases the payment on account will be due by 30 November 2003 or 2004. Where there is a disposal of the option shares before the relevant October date in these cases, the payment on account will be equal to the sales proceeds. ***(4A)(b)***

Payment of balance of unpaid tax on subsequent disposal

The amount of tax deferred for payment will be due by reference to the disposals, in a year of assessment, of any shares by the taxpayer or his or her spouse or civil partner. ***(4A)(d)(i)***

The amount to be paid will be the **lesser of** —

- the aggregate outstanding balances of tax unpaid, and
- the total of any net gains from disposals of shares in the year of assessment in question, or, in the case of disposals on or after 1 January 2012, half of such net gains.

The due date for the payment of this amount is on or before 31 October in the year following the year of assessment in which the disposal(s) of the shares took place.

"Net gain" in relation to the disposal of shares is the market value of the shares at the date of disposal **less** so much of the **sum** of — ***(4A)(d)(ii)***

- any consideration paid for the shares,
- where the concessionary treatment under this subsection does not apply the amount of the income tax chargeable, or
- where the concessionary treatment does apply, the total income tax paid before disposal, and
- the capital gains tax chargeable

that is not greater than the market value.

The income tax chargeable in respect of the acquisition of shares or the capital gains tax chargeable in respect of the disposal of shares is the amount by which the income tax or capital gains tax chargeable on the individual would have been reduced if the acquisition or disposal of the shares had not happened.

Election

A taxpayer, who wishes to avail of the provisions of this subsection must make a written election to the inspector, **on or before 1 June 2003**, in a form prescribed by Revenue, and give specified details relating to the exercise of the share option and the shares acquired. ***(4A)(e)***

There is provision for the admission of a late election in circumstances where the inspector or other authorised officer is satisfied that the late election was due to absence, illness or other reasonable cause.

Failure to comply with provisions

Where an individual, having elected to avail of the provisions of this subsection, fails at any time to comply fully with its provisions, the liability under ***section 128*** will be due and payable as if this subsection had not been enacted. ***(4A)(f)***

Treatment on death of individual

In the event of the death of the chargeable person, the balance of any outstanding liability under ***section 128*** and payable under ***subsection (4)*** or this subsection, will be discharged by the Revenue Commissioners, (and will not be a charge on the estate of the deceased person). ***(4A)(g)***

Bar on repayments

The concessionary treatment to be accorded under this subsection will not result in repayments of income tax (chargeable on gains from the exercise of share options) paid before 6 February 2003. ***(4A)(h)***

Disposal of shares by spouse or civil partner

The reference in ***paragraph (d)*** to the disposal of shares includes disposals by the spouse or civil partner of the person chargeable: ***(4A)(i)***

- in cases of jointly assessed married couples or jointly assessed civil partners,
- in the case of spouses or civil partners who are not jointly assessed, but the disposal by the spouse follows a transfer – on or after 25 February 2003 – of the shares from the other spouse or the other civil partner. An exception to this latter rule is where the couple are legally separated or divorced or where the civil partnership has been dissolved.

Excluded categories of persons

The concessionary treatment under this subsection will not be granted to a person who has not paid (or agreed to pay) tax chargeable under ***section 128*** in respect of share option gains that do not come within the scope of the concessionary treatment. ***(4A)(j)***

Definitions

"Market value" means the price an asset might reasonably be expected to fetch on a sale in the open market. "Shares" means securities within the meaning of ***section 135*** and stock. ***(4A)(k)***

Use of Capital Gains Tax loss relief

Where ***subsection (4A)*** applies in relation to any shares, any capital gains tax loss arising on a disposal of the shares is frozen until such time as the income tax payable in respect of the acquisition of the shares is fully paid. ***(4B)***

Part disposal rules

Provision is made for circumstances where a partial disposal of shares takes place. If, say, half of the shares are disposed of in any year, then only half of the deferred charge becomes due for payment. It also envisages events such as rights or bonus issue of stock or stock splits and ensures that by applying a just and reasonable basis for apportionment, that the appropriate amount of tax will be paid. ***(5)***

Determination of tax to be deferred

Where an election to defer the tax charge is made and subject to other similar provisions in the Tax Acts, the gain realised is to be regarded as the last part of that person's income. This means that the tax is calculated at the person's marginal rate of tax and that is the amount of tax which is deferred. ***(6)***

Due dates for interest

The due date for payment of tax which has been deferred, for the purposes of ***section 1080***, is set as the date when the tax becomes due and payable under ***subsections (4)*** and ***(4A)***. This means that the interest provisions in ***section 1080*** will apply from that date. Subsection (4A) has no effect as respects the payment of tax due from gains from options exercised on or after 6 February 2003. ***(7)***

128B Payment of tax under *section 128*

Summary

This section provides that where an individual exercises a share option on or after 30 June 2003 and before 1 January 2024, any income tax due under ***section 128*** in respect

of a gain arising on the acquisition of the shares will be payable within 30 days of the exercise. The income tax payable will be by reference to the higher rate of income tax in force for the tax year in which the option is exercised. Where the taxpayer would only be liable for that year at the standard rate of income tax, he or she can make an application to pay the tax at that rate. The income tax so paid will be credited against the individual's income tax liability for the year in which the shares were acquired but will not be regarded as a payment of Preliminary Tax for that year.

Details

Application of section

The section applies where a person is chargeable to tax under ***section 128*** on the exercise of an option, on or after 30 June 2003 and before 1 January 2024, of a right to acquire shares (referred to as "relevant shares") in a company. ***(1)***

Payment of Relevant Tax

Where the section applies, the tax (referred to as "relevant tax") is to be paid and is to be an amount equal to the gain computed in accordance with ***section 128(4)*** charged at the higher rate of income tax in force for the year in which the right is exercised. ***(2)***

Due date for payment of Relevant Tax

This tax must be paid to the Collector-General within 30 days after the exercise of the right to acquire the relevant shares. While the tax is due and payable without the need for an assessment, where the tax or any part of it is not paid by the due date, an assessment for the relevant tax can be made on the taxable person. ***(3)***

Returns

A return, detailing the amount of the gain and the income tax arising on that gain together with any other details that might be required, must accompany each payment of relevant tax. ***(4)***

The return for the relevant tax must be in a form prescribed by the Revenue Commissioners and will include a declaration that the return is correct and complete. ***(5)***

The Collector-General will provide a receipt for the amount of relevant tax paid by the taxable person. ***(6)***

Estimated assessments

An officer of the Revenue Commissioners has the power to raise an estimated assessment in circumstances where he or she considers that a return does not contain full details of relevant tax due. In such circumstances interest will be chargeable on the relevant tax from the original date on which it was due to be paid. ***(7)***

The Revenue officer, in relation to an incorrectly returned item under ***subsection (4)***, may make assessments, adjustments or set-offs, so as to arrive at the true liability of relevant tax. ***(8)***

Collection and interest

The provisions of the Income Tax Acts in relation to assessments, appeals, collection and recovery of income tax apply to the assessment, collection and recovery of relevant tax. The standard daily interest rate of 0.0219 per cent per day or part of a day will apply (from 1 January 2023). The rate that applied prior to this was 0.0322 per cent per ***(9)***

day or part of a day applied. Interest is payable from the date when the amount becomes due and payable until the actual date of payment.

The provisions of ***subsections (3)*** and ***(4)*** of ***section 1080***, (which provide that interest on overdue tax be paid gross and not be allowable as a deduction in the tax computation, plus the machinery for recovery of tax charged by assessment) apply in relation to interest payable. Interest will be charged at the daily rate on tax outstanding when an assessment for the relevant tax is raised.

Right to Appeal ***(9A)***

A person aggrieved by an assessment made on them under this section may appeal to the Appeal Commissioners, under ***section 949I***, within 30 days after the date of the notification of the assessment

Set-off of relevant tax

The relevant tax paid by a person may be set against any other income tax liability of a person for that year of assessment, and where the relevant tax is in excess of the income tax liability for the year of assessment, the taxable person can claim a refund of the excess. ***(10)***

Preliminary tax

The relevant tax is not to be treated as a payment of, or on account of, preliminary tax for the purposes of ***chapter 7 of Part 41A***. ***(11)***

Relevant tax payable by reason of the exercise of a right to acquire shares is not to be used in connection with the following provisions of the 1997 Act — ***(12)***

- to determine the amount of preliminary tax payable for that year of assessment in accordance with ***section 959AN(2)***,
- to determine whether the 90% or 100% rule has been satisfied in relation to payment of preliminary tax, in accordance with ***section 959AO(3)***.

Notwithstanding any provision of this section, the normal requirements for a chargeable person to make a return under ***section 959I*** continue to apply to gains arising from the exercise of share options in respect of which relevant tax is payable. ***(13)***

Standard rate relieving provision

This is a relieving provision for those individuals who are normally only chargeable at the standard rate. It enables them to make application to, and satisfy, the Revenue Commissioners, that they are likely to be only chargeable at that standard rate. Where the Commissioners are so satisfied, the rate of tax used in the calculation of relevant tax in ***subsection (2)*** will be the standard rate of tax in force at that time and not the higher rate. ***(14)***

128C Tax treatment of directors of companies and employees who acquire convertible securities

Summary

This section imposes an income tax charge on the conversion of securities acquired by a director or employee by reason of his or her office or employment ("employment-related securities") into securities of another description or into money or money's worth. The income tax charge is based on the difference between the market value (immediately after conversion) of the securities into which the employment-related

securities are converted and the market value of the employment-related securities (ignoring the right of conversion), reduced by any amounts paid by the employee or director in connection with the entitlement to convert and any amounts already charged to income tax.

The section also imposes an income tax charge in certain circumstances other than conversion – release of the entitlement to convert the securities; disposal of the securities while they are still convertible; and receipt of a benefit in connection with the entitlement to convert the securities.

Any person chargeable to income tax under this section is, generally, to be regarded as a chargeable person under self-assessment for the year in which the charge arises.

Where a company awards convertible securities to its employees or directors, it is obliged to return details of such awards and details regarding the conversions to the Revenue Commissioners in an electronic format approved by them.

The section applies to employment-related securities acquired by an employee or director on or after 31 January 2008.

Details

Definitions ***(1)***

"chargeable amount" has the meaning given in ***subsection (6)***, and is to be computed in accordance with ***subsection (8)***.

"*chargeable event*" has the meaning given in ***subsection (7)***.

"*collective investment scheme****"*** means any scheme or arrangement made for the purpose, or having the effect, of providing facilities for the participation by persons, as beneficiaries, in profits or income arising from the acquisition, holding, management or disposals of assets.

"*convertible securities***"** has the meaning given in ***subsection (3)***.

"*director*" is, broadly, any person occupying the position of director and includes a manager and any person who is to be or has been a director.

"*employee*" is, broadly, an officer, director or manager of the company and includes a person who is to be or was an employee.

"*interest****"*** in relation to securities, includes an interest in securities which is less than full beneficial ownership and an interest in the proceeds of the sale of them, but does not include a right to acquire securities.

"*market value*" is the price which the security might reasonably be expected to fetch on a sale in the open market.

"*securities****"*** is widely defined, and includes —

(a) shares,

(b) securities within the meaning of ***section 135***,

(c) debentures, debenture stock, loan stock, bonds, certificates of deposit, and other instruments (including certificates and warrants) creating or acknowledging indebtedness, including certificates and other instruments providing for a share in the profits of a company,

(d) options (other than options to acquire securities, except where such options are acquired under arrangements of which the main purpose or one of the main purposes is the avoidance of income tax, corporation tax or capital gains tax) and

financial and commodity futures (within the meaning of the Investment Intermediaries Act 1995),

(e) warrants and other instruments entitling their holders to subscribe for securities,

(f) certificates and other instruments conferring rights in respect of securities held by persons other than persons on whom the rights are conferred and the transfer of which may be effected without the consent of those persons,

(g) units in a collective investment scheme,

but it does not include cheques or other bills of exchange, bankers' drafts or letters of credit, statements showing balances in current, deposit or savings accounts, or leases and other dispositions of property.

"shares" includes securities within the meaning of ***section 135***, and stock.

Scope of charge

The scope of the charge is limited to employees and directors who acquire securities in a company as an employee or director of that or of another company ("employment-related securities"), and at the time of acquisition the securities are convertible securities. (The meaning of "convertible securities" is dealt with in ***subsection (4)***). A charge also arises where the securities are acquired by a person other than the employee or director, and are so acquired by reason of the employee's or director's office or employment (this includes a current, former or prospective office or employment). ***(2) & (3)***

Convertible securities

To come within the section, the employment-related securities must be capable of conversion into securities of another description or into money or money's worth, because: ***(4)(a) & (b)***

- the right to convert is automatically built into the securities (for example, if it is specified in the articles of association of the company that issued the securities that they carry a right of conversion), or
- it is provided for in a contract, agreement, arrangement or condition in the event that certain circumstances arise or do not arise (for example, where the employer specifies that a certain period must expire before the securities can be converted).

The section will also apply where a contract, agreement, arrangement or condition provides for the conversion of the securities by someone other than the holder into securities of a different description or into money or money's worth.

The charge to tax on the acquisition of convertible securities

The value of any right to convert is to be ignored when calculating any income tax charge arising under Schedule E computed in accordance with ***section 112***, or on the exercise of a right under ***section 128***, or in accordance with ***section 122A,*** on the acquisition of the convertible securities. ***(5)(a)***

However, where the securities are acquired under an arrangement of which the main purpose or one of the main purposes is the avoidance of tax, the income tax charge on acquisition is to be calculated on the basis that the securities are "immediately and fully convertible", unless the market value ignoring the right to convert would be less than or the same as the market value taking account of the right to convert. ***(5)(b), (c) & (d)***

"Immediately and fully convertible" means convertible immediately after acquisition so as to obtain the maximum gain that would be possible without allowing for any consideration given for the conversion or for any expenses incurred in connection with the conversion.

Example

As part of a tax avoidance scheme, an employee is awarded, under certain conditions, a "B ordinary" share which is convertible into an "A ordinary" share. At the date of the award, the market value of the "A ordinary" share is €200 and the market value of the "B ordinary" share ignoring the right of conversion is €20. ***Subsection (5)(c)*** ensures that the real benefit passing to the employee will be taxed (i.e. €200) by treating the "B ordinary" share as having immediately and unconditionally converted into the "A ordinary" share.

If however, under a tax avoidance scheme an attempt is made to exploit the treatment outlined above, for example, if the employee is awarded a "B ordinary" share which has a market value of €500 with a right to convert it into the "A ordinary" share (which has a market value of €200), ***subsection (5)(b)*** will ensure that the market value of the "B ordinary" share - €500 is used to calculate the benefit arising to the employee.

The charge to tax on the conversion of convertible securities

Subject to the exclusions covered in ***subsection (11)***, a charge to income tax arises on an employee or director having a beneficial interest in employment-related securities on the occurrence of a "chargeable event". The charge is under Schedule E and is imposed in the year of assessment in which the chargeable event occurs. (The meaning of "chargeable event" is dealt with in the note on ***subsection (7)***). ***(6)***

There are four circumstances that give rise to a chargeable event. These are: ***(7)***

- the conversion of the employment-related securities into securities of another description, where the employee or director (or any other person who acquired the employment-related securities by reason of the employee's or director's office or employment) has a beneficial interest in those securities before the conversion occurs and in the securities into which they are converted,
- the release of the entitlement to convert for consideration, where the employee or director (or any other person who acquired the employment-related securities by reason of the employee's or director's office or employment) has a beneficial interest in the securities,
- the disposal for consideration of the employment-related securities by the employee or director (or any other person who acquired the employment-related securities by reason of the employee's or director's office or employment) while they are still convertible, and
- the receipt of a benefit in money or money's worth by the employee or director (or any other person who acquired the employment-related securities by reason of the employee's or director's office or employment) in connection with the entitlement to convert (for example, the receipt of compensation for the loss of the entitlement).

Amount chargeable

The formula for calculating the chargeable amount is **A – B,** where**:**

A is the amount of any ***gain*** realised on the occurrence of a chargeable event. This amount is computed differently for each of the chargeable events. ***(8)(a)***

B is the aggregate of the amount of any consideration given for the entitlement to convert and any expenditure incurred by the holder in connection with each chargeable event.

Calculation of gain on the conversion of employment-related securities into securities of a different description ***(8)(b)(i)***

The gain is determined by the formula:

$$C - (D + E),$$

where:

C is the market value, at the time of the chargeable event, of the securities into which the employment-related securities are converted and where those securities are themselves convertible, the market value is determined as if they were not convertible. Where the employment-related securities are an interest in securities (i.e. an interest less than the full holding), then a proportion of this market value, which is equivalent to the proportion of the interest held, is to be used, (e.g. 50% of the full holding held, then 50% of the market value at the time of the chargeable event, of the securities into which the employment-related securities are converted is to be used).

D is the market value of the employment-related securities at the time of the chargeable event, determined as if they were not convertible securities or an interest in convertible securities.

E is the amount of the consideration given for the conversion of the employment-related securities.

Example

An employee is awarded "A ordinary" shares which have a right of conversion after 5 years attaching to them. The market value of the shares at the date of acquisition, ignoring the right of conversion, is €1,000. On conversion, the employee receives "B ordinary" shares that have a market value of €3,000, for a consideration of €100.

The market value at the date of conversion of the "A ordinary" shares (ignoring the right of conversion) is €1,100.

Income Tax charge on acquisition		
Market value of the "A ordinary" shares ignoring		
the right of conversion		€1,000
Consideration paid by the employee		0
Chargeable amount		€1,000
Income Tax charge on conversion		
Market value of "B ordinary" shares		€3,000
Less		
Market value of the "A ordinary" shares	€1,100	
Consideration paid	100	€1,200
Chargeable amount		€1,800

Prevention of a double charge

Where the income tax charge on the acquisition of the employment-related securities is based on the market value of the securities as if they were immediately and fully convertible (because of the operation of ***paragraph (b) of subsection (5)***), a double charge is prevented by providing for the chargeable amount computed in accordance with ***subsection (8)*** to be reduced by the amount determined by the formula **H – I**, where: ***(8)(c)***

H is the amount by which the market value of the employment-related securities computed as if they were immediately and fully convertible exceeds the market value of the employment-related securities ignoring the right of conversion.

I is the aggregate of any amount by which the chargeable amount on any previous chargeable event relating to the employment-related securities has been reduced under ***subsection (8)***.

Example

As part of a tax avoidance scheme, an employee is awarded, under certain conditions, a "B ordinary" share which is convertible into an "A ordinary" share. At the date of the award, the market value of the "A ordinary" share is €1,000 and the market value of the "B ordinary" share, ignoring the right of conversion, is €20. On conversion, the employee receives an "A ordinary" share that has a market value of €3,000, for a consideration of €100.

The market value at the date of conversion of the "B ordinary" share (ignoring the right of conversion) is €25.

Income Tax charge on acquisition		
Market value of the "B ordinary" share treated		
as if it is immediately and fully convertible		€1,000
Consideration paid by the employee		0
Chargeable amount		€1,000
Income Tax charge on conversion		
Market value of "A ordinary" share		€3,000
Less		
Market value of the "B ordinary" share		€25
Consideration paid		€100
Excess charged on acquisition (€1,000 – 20)		€980
Aggregate amounts previously charged under		
Section 128C	0	€1,105
Chargeable amount		€1,895

Calculation of gain on the release of entitlement to convert for consideration *(8)(b)(ii)*

The gain is the amount of the consideration received for the release of the entitlement to convert.

Calculation of gain on the disposal for consideration of the employment related securities prior to conversion *(8)(b)(iii)*

The gain is determined by the formula:

$$F - G,$$

where:

F is the amount of consideration given on disposal of the securities.

G is the market value of the employment-related securities at the time of the chargeable event, determined as if they were not convertible securities or an interest in convertible securities.

Example

An employee is awarded "A ordinary" shares which have a right of conversion after 5 years attaching to them. The market value of the shares at the date of acquisition, ignoring the right of conversion, is €1,000. The employee sells the securities (while they are still convertible) after 3 years for €3,000.

The market value of the "A ordinary" shares (ignoring the right of conversion) at the date of sale is €1,100.

Income Tax charge on acquisition	
Market value of the "A ordinary" shares	
ignoring the right of conversion	€1,000

Consideration paid by the employee	0
Chargeable amount	€1,000
Income Tax charge on disposal	
Consideration received	€3,000
Less	
Market value of the "A ordinary" shares	
ignoring the right of conversion	€1,100
Chargeable amount	€1,900

Calculation of gain on the receipt of a benefit in connection with the entitlement to convert

The gain is the amount of the benefit received in connection with the entitlement to convert. ***(8)(b)(iv)***

Consideration given for the entitlement to convert the employment-related securities

For the purposes of calculating **B** in the formula in ***subsection (8)(a),*** consideration is to be treated as given for the entitlement to convert the employment-related securities only if the amount of any consideration given for the acquisition of the employment-related securities exceeds the market value of such securities (determined as if the employment-related securities were not convertible securities) at the time of their acquisition. ***(9)(a)&(b)***

The effect of this provision is that it allows for relief to be given for any amount of consideration not previously allowed against any amount chargeable on the acquisition of the convertible securities in computing the amount of the gain on the conversion of the securities.

For example, if an employee paid €30 for a convertible share, which was valued at €10 ignoring the right to convert. The charge on acquisition (provided there was no tax avoidance scheme involved) would have been nil (€10-€30). If the shares are subsequently converted, the employee will be entitled to a deduction for the unrelieved amount, €20, in calculating the income tax charge on the conversion of the securities.

In calculating the chargeable amount under this section, the performance of the duties in connection with the office or employment is not regarded as part of any consideration given by the employee or officer for the acquisition of employment-related securities or part of any consideration given for the entitlement to convert such securities. In addition, only one deduction can be allowed in respect of any consideration given. ***(10)***

Exclusions from charge

The section does not apply where all of the following conditions are satisfied: ***(11) & (12)***

- the securities are ***shares*** in a company,
- the right to convert applies to all shares in the same class as the employment-related shares,
- an event similar to that which effects the employment-related shares also effects all the other shares of the same class, (shares are converted into securities of a different description; the entitlement to convert is released; shares are disposed of; a benefit is received in respect of the entitlement to convert, as the case may be), ***and***
- the majority of the shares so affected are not employment-related securities.

In addition, no charge arises where, at the time of acquisition of the employment-related securities, the emoluments from the office or employment are not within the charge to tax under Schedule D or E.

Chargeable persons

Any person chargeable to tax under this section is a chargeable person for the purposes of ***Part 41A*** (Self Assessment) other than where the person is exempted from the requirement to make a tax return under self-assessment. ***(13)***

Capital Gains Tax

Any amount charged to income tax under this section is to be added to the costs of acquisition of the securities in computing the amount on which capital gains tax is chargeable on the disposal of such securities. ***(14)***

Information

Companies must provide details of all awards of convertible securities made to employees and directors and details regarding the occurrences of chargeable events to the Revenue Commissioners in an electronic format approved by them not later than 31 March in the tax year following the year in which the awards are made or the chargeable events occur, as the case may be. ***(15)***

128D Tax treatment of directors of companies and employees who acquire restricted shares

Summary

This section sets out the tax treatment of shares acquired by directors and employees (other than shares acquired under an approved profit sharing scheme) where there is a restriction on the disposal of the shares for a specified period, and such a restriction is imposed under the terms of a written contract or agreement which is in place for bona fide commercial reasons. The shares must be shares in the company in which the director or employee holds his or her office or employment, or in a company that controls that company. The section provides for an abatement of the amount chargeable to income tax on the acquisition of the shares. The rate of abatement (from 10% to 60%) depends on the number of years for which the restriction on the disposal of the shares is in place. It applies to shares acquired on or after 20 November 2008.

Details

Definitions

"director" and "employee" have the meanings respectively assigned to them by ***section 770(1)***; ***(1)***

"EEA Agreement" means the Agreement on the European Economic Area signed at Oporto on 2 May 1992, as adjusted by all subsequent amendments to that Agreement;

"EEA State" means a State, other than the State, which is a contracting party to the EEA Agreement;

"employer" means the company in which the director or employee holds his or her office or employment;

"market value" has the same meaning as it has for Capital Gains Tax purposes in ***section 548***;

"restricted shares" is to be construed in accordance with ***subsection (3)***;

"shares" includes stock.

"trust" means a trust established in the State or in an EEA State or in the United Kingdom and the trustees of which are resident in the State or in an EEA State or in the United Kingdom. *(Applies to shares acquired on or after 4 February 2010 in relation to a restriction in the type of trust that can be used.)*

Scope

(2) The section applies where a director or employee acquires shares (including shares acquired on the exercise of a share option) in a company as a director or employee of that company or of another company, and—

- the shares are shares in the company in which the director or employee holds his or her office or employment or in a company which has control (within the meaning of ***section 432***) of that company, and
- at the time of acquisition, the shares are restricted shares.

Restricted shares

(3) To come within the section, the shares must be "restricted shares". Shares are "restricted shares" if—

- there is a bona fide written contract or agreement in place under the terms of which there is a restriction on the freedom of the director or employee by whom the shares are held to assign, charge, transfer or otherwise dispose of the shares for a specified period of not less than one year,
- the shares cannot be assigned, charged, transferred or otherwise disposed of in any circumstances during that specified period, except in limited circumstances (on the death of the director or employee or change in control of the company in which the shares are held), and
- the shares are held in a trust established by the employer or held under such other arrangements as the Revenue Commissioners may allow (e.g. secure stockbroker account).

Abatement of income tax charge

(4)(a) The formula for calculating the reduction in the amount chargeable to income tax on acquisition of the shares is:

$$A \times \frac{B}{100}$$

where—

A is the amount of the income chargeable to income tax under Schedule E or Schedule D (as the case may be), and

B is the specified period.

Where the specified period is—

1 year, the amount chargeable will be reduced by 10%,

2 years, the amount chargeable will be reduced by 20%,

3 years, the amount chargeable will be reduced by 30%,

4 years, the amount chargeable will be reduced by 40%,

5 years, the amount chargeable will be reduced by 50%,

More than 5 years, the amount chargeable will be reduced by 60%.

The amount chargeable to income tax on the acquisition of the shares (under Schedule E or Schedule D) is to be calculated by reference to the market value of the shares at that time ignoring the restriction on the disposal of the shares. ***(4)(b)***

Example

On 1 January 2019, an employer awards 1,000 shares to an employee for nil consideration. Under a bona-fide written contract, the shares cannot be disposed of for a period of 4 years, and during this period the shares are held in a trust established by the employer. The market value of the shares at the date of the award, ignoring the restriction on the disposal of the shares, is €1,000.

Income Tax charge on acquisition

Market value of the shares ignoring the restriction on the disposal of the shares	€1,000
Consideration paid by the employee	0
Chargeable amount before abatement	€1,000
Abatement 40%	€ 400
Net chargeable amount	€ 600

Variation or removal of restriction

Where the restriction on the disposal of the shares is removed or varied or the shares are disposed of in the limited permitted circumstances (on the death of the employee or in the event of a change in control in the company in which the shares are held) before the expiry of the specified period, the amount chargeable to income tax on the acquisition of the shares is to be adjusted to take account of the actual period for which there was a restriction on the disposal of the shares, and all necessary assessments may be made at any time to collect any additional income tax due, notwithstanding the general 4 year time limit in the Act for making assessments. ***(5)***

Example

On 1 January 2018, an employer awards 1,000 shares to an employee for nil consideration. Under a bona-fide written contract, the shares cannot be disposed of for a period of 4 years, and during this period will be held in a trust established by the employer. The market value of the shares at the date of the award, ignoring the restriction on the disposal of the shares, is €1,000. On 1 January 2020 the restriction on the disposal of the shares is lifted.

Income Tax charge on acquisition

Market value of the shares ignoring the restriction on the disposal of the shares	€1,000
Consideration paid by the employee	0
Chargeable amount before abatement	€1,000
Abatement 40%	€ 400
Net chargeable amount	€ 600

Lifting of restriction - Revision of tax charge on acquisition

Market value of the shares ignoring the restriction on the disposal of the shares	€1,000
Consideration paid by the employee	0
Chargeable amount before abatement	€1,000
Abatement 20%	€ 200
Net chargeable amount	€ 800
Amount previously charged	€ 600

Additional amount chargeable	€ 200

Capital Gains Tax

Where an amount chargeable to income tax on the acquisition of shares by a director or employee is to be treated under ***section 552*** as forming part of the acquisition costs of the shares for Capital Gains Tax purposes, then the amount to be so treated is the actual amount chargeable to income tax (i.e. the amount of the reduced amount chargeable to income tax on the acquisition of the shares plus any additional amount chargeable as a consequence of the lifting or variation of the restrictions or in the event of a permitted disposal). ***(6)***

Non-application to shares acquired approved employee share schemes scheme

The section does not apply to shares acquired by a director or employee under an employee share scheme approved under ***Schedule 11*** (profit sharing scheme), ***Schedule 12*** (employee share ownership trust), ***Schedule 12A*** (share option scheme), or ***Schedule 12C*** (savings-related share option scheme). ***(7)***

Information

Companies must provide details of all awards of restricted shares made to employees and directors (including details of restricted shares acquired on the exercise of rights to which ***section 128*** applies) together with details of any variations and removals of restrictions to the Revenue Commissioners in an electronic format approved by them not later than 31 March in the tax year following the year in which the awards are made or the variation or removal occur, as the case may be. ***(8) & (9)***

128E Tax treatment of directors of companies and employees who acquire forfeitable shares

Summary

This section sets out the tax treatment of shares acquired by directors and employees where the shares are subject to forfeiture if certain circumstances arise or do not arise (e.g. if the employee or director ceases employment with the company within a specified period). It applies to shares acquired on or after 20 November 2008.

Details

Definitions

"director" and "employee" have the meanings respectively assigned to them by ***section 770(1)***; ***(1)***

"market value" is to be construed in accordance with ***section 548***;

"forfeitable shares" is to be construed in accordance with ***subsection (3)***;

"shares" includes stock.

Scope

The section applies where a director or employee acquires shares in a company as a director or employee of that company or of another company, and at the time of acquisition the shares are forfeitable shares. ***(2)***

Forfeitable shares

To come within the section shares must be forfeitable shares. Shares are forfeitable shares if there is a bona fide written contract or agreement in place under the terms of which— ***(3) & (4)***

- there will be a forfeiture of the shares, if certain circumstances arise or do not arise (e.g. if the employee ceases employment before the expiry of a specified period),
- as a result of the forfeiture, the director or employee will cease to have any beneficial interest in the shares, and
- the director or employee will not be entitled to receive, directly or indirectly, consideration in money or money's worth in respect of the shares on their forfeiture in excess of the consideration given by the director or the employee for the acquisition of the shares.

Shares are not forfeitable shares by reason only that the shares are unpaid or partly paid shares that may be forfeited for non-payment of calls.

Income tax charge

The income tax charge on acquisition of the shares (under Schedule E or Schedule D) is to be calculated by reference to the market value of the shares at that time, ignoring the risk of forfeiture. ***(5)***

Forfeiture of shares

If the shares are forfeited, any income tax, income levy or universal social charge already imposed will be removed and any tax, levy or charge overpaid will be repaid by the Revenue Commissioners on foot of a claim from the director or employee, which must be made (notwithstanding the general time limits for making claims for repayment of tax set out in ***section 865***) within 4 years from the end of the year of assessment in which the forfeiture takes place. ***(6) & (7)***

Example

On 1 January 2016, an employer awards 1,000 shares to an employee for €200. Under a bona-fide written contract, the shares are subject to forfeiture if the employee ceases employment with the employer before 31 December 2019. The market value of the shares at the date of the award, ignoring the risk of forfeiture, is €1,000. The employee ceases employment with the company on 1 August 2018 and the shares are forfeited. The employer refunds the employee the €200 paid for the shares.

Income Tax charge on acquisition

Market value of the shares ignoring the risk of forfeiture	€1,000
Consideration paid by the employee	€ 200
Chargeable amount	€ 800
Tax paid (€800 x 40%)	€ 320

Forfeiture of shares

Revised income tax charge	Nil
Refund due	€320

The employee must make a claim to the Revenue Commissioners on or before 31 December 2022 for the refund of tax of €320.

Capital Gains Tax

Any loss arising on the forfeiture of shares is to be restricted to the amount of consideration given by the director or employee for the shares less any amount subsequently recovered by him or her on the forfeiture. ***(8)***

Information

Companies must provide details of all awards of forfeitable shares made to employees and directors together with details of any forfeitures to the Revenue Commissioners in an electronic format approved by them not later than 31 March in the tax year following the year in which the awards are made or the forfeitures occur, as the case may be. ***(9)***

128F Key Employee Engagement Programme

Summary

This section provides for an exemption from income tax, USC and PRSI on any gain realised on the exercise of a qualifying share option under the Key Employee Engagement Programme (KEEP). The gain will however be subject to Capital Gains Tax on a subsequent disposal of the shares. KEEP is available to employees and directors of SME companies and is designed to support SMEs in Ireland in competing with larger enterprises in the recruitment and retention of key employees.

There are a number of conditions that must be satisfied for the relief to apply. For example, the share option must be granted at not less than market value on the date of grant, the share option must be held for a minimum period of one year before exercise (with limited exceptions) and the option must be exercised within ten years of grant. Monetary limits apply at both company and employee level. It applies to qualifying share options granted on or after 1 January 2018 and before 1 January 2024. Subject to the commencement of a Ministerial Order, the KEEP scheme is being extended to 1 January 2026.

Details

Definitions

'connected persons' shall be construed in accordance with section 10; ***(1)***

'control' shall be construed in accordance with section 432;

'EEA state' means a state which is a contracting party to the EEA Agreement, which is the Agreement on the European Economic Area signed at Oporto on 2 May 1992, as adjusted by all subsequent amendments to that Agreement;

'excluded activities' means—

(a) adventures or concerns in the nature of trade,

(b) dealing in commodities or futures in shares, securities or other financial assets,

(c) financial activities (as defined in section 489),

(d) professional services companies, which are services of a medical, dental, optical, aural, veterinary, architectural, quantity surveying, or surveying nature and related services, accountancy, auditing, taxation, finance, geological services, and services of a solicitor or barrister and other legal services,

(e) dealing in or developing land,

(f) building and construction,

(g) forestry, and

(h) operations carried out in the coal industry or in the steel and shipbuilding sectors.

'qualifying company' means, subject to subsection (10), a company that—

(a) is incorporated in the State, or in an EEA state other than the State or in the United Kingdom, and is resident in the State, or is resident in an EEA state other than the State or in the United Kingdom and carries on business in the State through a branch or agency,

(b) exists wholly or mainly for the purpose of carrying on a qualifying trade (which are trading activities other than excluded activities) on a commercial basis with a view to the realisation of profit, the profits or gains of which are charged to tax under Case I of Schedule D,

(c) throughout the entirety of any relevant period—

(i) is an unquoted company none of whose shares, stock or debentures are listed in the official list of a stock exchange, or quoted on an unlisted securities market of a stock exchange other than—

(I) on the market known as the Euronext Growth market operated by the Irish Stock Exchange plc trading as Euronext Dublin, or

(II) on any similar or corresponding market of the stock exchange—

(A) in a territory with which Ireland has a double tax treaty, or

(B) in an EEA state other than the State or in the United Kingdom,

and

(ii) is not regarded as a company in difficulty for the purposes of the Commission Guidelines on State aid for rescuing and restructuring non-financial undertakings in difficulty[1]

and

(d) at the date of grant of the qualifying share option—

(i) is a micro, small or medium sized enterprise within the meaning of the Annex to Commission Recommendation 2003/361/EC of 6 May 2003[2] concerning the definition of micro, small and medium sized enterprises. This refers to enterprises which employ fewer than 250 persons and which have an annual turnover not exceeding €50 million and/or an annual balance sheet total not exceeding €43 million, and

(ii) the total market value of the issued but unexercised qualifying share options of the company does not exceed €3,000,000;

Subject to the commencement of a Ministerial order, the current definition of a "qualifying company" is to be replaced with the following:
'qualifying company' means, subject to subsection (10), a company that—

(a) is incorporated in the State, or in an EEA state other than the State or in the United Kingdom, and is resident in the State, or is resident in an EEA state other than the State

[1] OJ No. C249, 31.7.2014, p.1
[2] OJ No. L124, 20.5.2003, p.36

or in the United Kingdom and carries on business in the State through a branch or agency,

(b) exists wholly or mainly for the purpose of carrying on a qualifying trade (which are trading activities other than excluded activities) on a commercial basis with a view to the realisation of profit, the profits or gains of which are charged to tax under Case I of Schedule D,

(c) throughout the entirety of any relevant period—

(i) is an unquoted company none of whose shares, stock or debentures are listed in the official list of a stock exchange, or quoted on an unlisted securities market of a stock exchange other than—

(I) on the market known as the Euronext Growth market operated by the Irish Stock Exchange plc trading as Euronext Dublin, or

(II) on any similar or corresponding market of the stock exchange—

(A) in a territory with which Ireland has a double tax treaty, or

(B) in an EEA state other than the State or in the United Kingdom,

and

(ii) is not regarded as a company in difficulty for the purposes of the Commission Guidelines on State aid for rescuing and restructuring non-financial undertakings in difficulty[3]

and

(d) at the date of grant of the qualifying share option—

(i) is a micro, small or medium sized enterprise within the meaning of the Annex to Commission Recommendation 2003/361/EC of 6 May 2003[4] concerning the definition of micro, small and medium sized enterprises. This refers to enterprises which employ fewer than 250 persons and which have an annual turnover not exceeding €50 million and/or an annual balance sheet total not exceeding €43 million, and

(ii) the total market value of the issued but unexercised qualifying share options of the company does not exceed €6,000,000;

'qualifying group' means, subject to subsection (2A), a group of companies that consists of the following (and no other companies):

(a) a qualifying holding company,

(b) its qualifying subsidiary or subsidiaries, and

(c) as the case may be, its relevant subsidiary or subsidiaries;

'qualifying holding company' means a company—

(a) which is not controlled either directly or indirectly by another company,

(b) which does not carry on a trade or trades, and

(c) whose business consists wholly or mainly of the holding of shares only in the following (and no other companies), namely, its qualifying subsidiary or

[3] OJ No. C249, 31.7.2014, p.1
[4] OJ No. L124, 20.5.2003, p.36

subsidiaries and where it has a relevant subsidiary or subsidiaries, in that subsidiary or in each of them;

'qualifying subsidiary', in relation to a qualifying holding company, means a company in respect of which more than 50 per cent of its ordinary share capital is owned directly by the qualifying holding company;

'relevant subsidiary', in relation to the qualifying holding company, means a company in respect of which more than 50 per cent of its ordinary share capital is owned indirectly by the qualifying holding company, but for the purposes of this section a relevant subsidiary in relation to a qualifying holding company shall not be regarded as a qualifying company

'qualifying individual', in relation to a qualifying share option, means an individual who throughout the entirety of the relevant period is—

(a) in the case of a qualifying group, an employee or director of a qualifying company within the group, and who is required to work at least 20 hours per week for such a qualifying company or to devote not less than 75 per cent of his or her working time to such a qualifying company, and

(b) in the case of a qualifying company not being a member of a qualifying group, an employee or director of the qualifying company, and who is required to work at least 20 hours per week for the qualifying company or to devote not less than 75 per cent of his or her working time to the qualifying company;

Up to 10 November 2022, an individual was required to be a full-time employee or director of the qualifying company and to devote substantially the whole of his or her time to the service of the company, with a minimum requirement for the individual to work at least 30 hours per week for the qualifying company.

'qualifying share option' means a right granted to an employee or director of a qualifying company to purchase a predetermined number of shares at a predetermined price, by reason of the individual's employment or office in the qualifying company, where—

(a) the shares which may be acquired by the exercise of the share option are new ordinary fully paid up shares in a qualifying company, which carry no present or future preferential right to dividends or to a company's assets on its winding up and no present or future preferential right to be redeemed. 'Ordinary shares' are shares forming part of a company's ordinary share capital,

(b) the option price (which is a predetermined price at which an employee or director can purchase a share at some time in the future) at date of grant is not less than the market value of the same class of shares at that time,

(c) there is a written contract or agreement in place specifying—

(i) the number and description of the shares which may be acquired by the exercise of the share option,

(ii) the option price, and

(iii) the period during which the share options may be exercised,

(d) the total market value of all shares, in respect of which qualifying share options have been granted by the qualifying company to an employee or director, does not exceed—

(i) €100,000 in any one year of assessment,

(ii) €300,000 in all years of assessment, or

(iii) the amount of annual emoluments (which includes anything assessable to income tax under Schedule E) of the qualifying individual in the year of assessment in which the qualifying share option is granted.

(e) the share option is exercised by the qualifying individual in the relevant period,

(f) the shares are in a qualifying company, and

(g) the share option can not be exercised more than 10 years from the date of grant;

Up to 31 December 2018, the total market value of all shares, in respect of which qualifying share options have been granted by the qualifying company to an employee or director, could not exceed—

(i) €100,000 in any one year of assessment,

(ii) €250,000 in any 3 consecutive years of assessment, or

(iii) 50 per cent of the annual emoluments (which includes anything assessable to income tax under Schedule E) of the qualifying individual in the year of assessment in which the qualifying share option is granted.

Subject to the commencement of a Ministerial Order, the current definition of a "qualifying share option" is to be replaced with the following:

'qualifying share option' means a right granted to an employee or director of a qualifying company to purchase a predetermined number of shares in the qualifying company or, in the case of a qualifying group, in the qualifying holding company of the qualifying group, at a predetermined price, by reason of the individual's employment or office in the qualifying company, where—

(a) the shares which may be acquired by the exercise of the share option are ordinary fully paid up shares in the qualifying company or, in the case of a qualifying group, in the qualifying holding company,

(b) the option price at date of grant is not less than the market value of the same class of shares at that time,

(c) there is a written contract or agreement in place specifying—

(i) the number and description of the shares which may be acquired by the exercise of the share option,

(ii) the option price, and

(iii) the period during which the share options may be exercised,

(d) the total market value of all shares, in respect of which qualifying share options have been granted in the qualifying company or, in the qualifying holding company, to an employee or director does not exceed—

(i) €100,000 in any year of assessment,

(ii) €300,000 in all years of assessment, or

(iii) the amount of annual emoluments (which includes anything assessable to income tax under Schedule E) of the qualifying individual in the year of assessment in which the qualifying share option is granted,

(e) the share option is exercised by the qualifying individual in the relevant period,

(f) the shares are in a qualifying company or, in the case of a qualifying group, in the qualifying holding company, and

(g) the share option cannot be exercised more than 10 years from the date of grant of that option;

'relevant period' means a period of not less than 12 months beginning on the date a qualifying share option is granted to an employee or director of the qualifying company and ending on the date the share option is exercised by the qualifying individual;

Qualifying individual

In addition to the requirements of subsection (1), an individual shall not be a qualifying individual if his or her employment or office is not capable of lasting at least 12 months from the date on which the qualifying share option is granted. ***(2) (a)***

An individual shall cease to be a qualifying individual if he or she (together with any connected person) acquires 15% of the ordinary share capital of the qualifying company or in the case of a qualifying group, of the qualifying holding company. ***(2)(b)***

Where the scheme rules permit, on the cessation of an office or employment an individual may avail of the preferential tax treatment of the section, provided the exercise of the share options occurs within 90 days of leaving the office or employment. ***(2)(c)***

Qualifying group

At least one qualifying subsidiary must be considered a qualifying company for the entirety of the relevant period. ***(2A)***

The activities of the qualifying group (excluding the qualifying holding company) must consist wholly or mainly for the purposes of carrying on a qualifying trade throughout the entirety of the relevant period.

Each company in the qualifying group must meet the existing conditions as regards being an unquoted company and not being a company in difficulty for the purposes of the State Aid rules.

At the date of grant of the qualifying option, the group must be considered an SME within the meaning of the Annex to Commission Recommendation 2003/361/EC of 6 May 2003 and the total market value of the issued but unexercised qualifying share options of the qualified holding company must not exceed €3m.

Subject to the commencement of a Ministerial Order, this subsection is amended to increase the total market value of the issued but unexercised qualifying share options of the qualified holding company so that it must not exceed €6m.

Relief

An exemption from income tax, USC and PRSI will apply to any gain realised on the exercise of a qualifying share option granted on or after 1 January 2018 and before 1 January 2024. ***(3)***

Subject to the commencement of a Ministerial Order, this subsection is amended to extend the relief to share options granted on or after 1 January 2018 and before 1 January 2026.

Relevant period

An exemption from the 12 month holding period applies in the case of a company which, throughout the relevant period is a qualifying company or, in the case of a qualifying group, the holding company is a qualifying holding company, on the reorganisation or sale, or on the death of the option holder, in certain circumstances. ***(5)***

Capital Gains Tax

For capital gains tax purposes, the base cost of the shares (acquired by the exercise of the share option) on a subsequent disposal will be the price paid for the shares. ***(6)***

Subject to the commencement of a Ministerial Order, a new subsection is inserted which provides for Capital Gains treatment to apply where the employing company, purchases, repays or redeems shares that were qualifying share options on acquisition. The payment may be treated as a capital gain rather than income, so long as the conditions set out in section 176 TCA are satisfied. Section 176(1) TCA requires the redemption, repayment or purchase to be made wholly or mainly for the benefit of a trade carried on by the company. This provision deems that condition to be met for the purposes of a buy back of shares acquired under the KEEP scheme. ***(6A)***

Returns of information

A company will have an annual reporting requirement in respect of the share option scheme. The due date will be 31 March in the following year of assessment. ***(7)***

In the case of a group scenario, the holding company may not be registered for Irish tax and may wish to designate a qualifying company within the group who will undertake to file the relevant return on behalf of the group. ***(7A)***

The information required for State Aid publication purposes will be collected via the qualifying company's or the qualifying groups, as the case may be, annual return. ***(8)***

Revenue may publish information in relation to all qualifying companies, or in the case of a group scenario, to all entities (as appropriate) in the qualifying group for example the qualifying company, the qualifying holding company, qualifying subsidiary or relevant subsidiary.

No obligation as to secrecy imposed by section 851A shall preclude the Revenue Commissioners from publishing information obtained by them in accordance with this section. ***(9)***

If a company, or in the case of a group, the designated company, does not comply with the reporting requirements set out in subsections (7) or (7A) as the case may be, the company or group will no longer be considered qualifying for the purposes of this section. ***(10)***

Other

Subsection (11) includes a bona fide commercial test, which requires that the main purpose of granting the share option must be to recruit or retain employees. ***(11)***

Where relief under this section applies, no relief will be given in respect of the Employment and Investment Incentive (Part 16). ***(12)***