

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

## **Finance Act 2021 edition**

### **Part 7**

## **Income Tax and Corporation Tax Exemptions**

**December 2021**



The information in this document is provided as a guide only and is not professional advice, including legal advice. It should not be assumed that the guidance is comprehensive or that it provides a definitive answer in every case.

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**PART 7 Income Tax and Corporation Tax Exemptions**

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## PART 7 INCOME TAX AND CORPORATION TAX EXEMPTIONS

### CHAPTER 1 *Income tax*

#### **Overview**

*Chapter 1* of *Part 7* provides exemption from income tax in respect of certain income, payments, pensions, etc, and also provides exemptions from income tax and in some instances capital gains tax, in the case of certain individuals and bodies.

#### **187 Exemption from income tax and associated marginal relief**

##### **Summary**

This section provides exemption from income tax for individuals with income not exceeding €10,420, in the case of certain married persons, and €5,210, in the case of single and widowed persons. In addition, the exemption limits are increased by €575 in respect of each of the first 2 qualifying children and by €830 in respect of each subsequent qualifying child. The section also provides for marginal relief where an individual's total income exceeds the appropriate exemption limit applicable to that individual, but does not exceed a sum equal to twice that exemption limit.

##### **Details**

##### ***Exemption limits*** (1)

In the case of an individual entitled to the married person's tax credit under *section 461(a)*, the exemption limit is €10,420. In any other case (that is, a single person, a widowed person or a married person assessed as a single person), the exemption limit is €5,210. The exemption limit is known as "the specified amount".

##### ***Additional amount for children***

Where an individual proves that he/she has living, at any time during the year of assessment, a qualifying child, the exemption limit is increased by €575 in respect of each of the first 2 qualifying children and by €830 in respect of each subsequent qualifying child. Any question as to whether a child is a qualifying child is determined in the same manner as it would be for the purposes of *section 462* (one-parent family tax credit). The additional amount for qualifying children applies also for the purposes of the age exemption provided for in *section 188*. (2)

##### ***Joint entitlement to additional amount for a child***

Where 2 or more individuals would be entitled to an increase in the specified amount in respect of the same child — (3)

only one increase is allowed per child,

- where the child is maintained by one individual only, that individual only is entitled to the increase,
- where the child is maintained by more than one individual, each individual is entitled to claim such part of the increase as is proportionate to the amount expended by him/her in relation to the total amount expended by all individuals

- towards the maintenance of the child, and
- in ascertaining, for the purposes of entitlement to the additional allowance, whether an individual maintains a child, any payments made by him/her towards the maintenance of the child which he/she is entitled to deduct in computing his/her total income for the purposes of the Income Tax Acts is deemed not to be a payment towards the maintenance of the child.

### ***Exemption from tax***

Where an individual makes a return of his/her total income on the appropriate form and proves that his/her total income for a year of assessment does not exceed the appropriate exemption limit for that year, that individual is exempt from income tax. (4)(a)

### ***Marginal relief***

Where an individual makes a return of his/her total income on the appropriate form and proves that his/her total income for a year of assessment does not exceed a sum equal to twice the exemption limit applicable to that individual for that year, the amount of tax payable by that individual is limited to 40 per cent of the amount by which the individual's total income exceeds the exemption limit applicable to that individual. (4)(b)

### ***Cessation of section***

This section ceases to have effect on or after 1 January 2008. (5)

## **188 Age exemption and associated marginal relief**

### **Summary**

This section provides for increased exemption limits for individuals aged 65 or over. For certain married individuals/civil partners, where either spouse/civil partner is aged 65 or over at any time during the tax year, the exemption limit is €36,000. In the case of single persons, widowed persons, married persons or civil partners assessed as single persons who at any time during the tax year are aged 65 or over, the exemption limit is €18,000. In addition, these exemption limits are increased by €575 in respect of each of the first 2 qualifying children and by €830 in respect of each subsequent qualifying child. The section also provides for marginal relief where an individual's total income exceeds the exemption limit applicable to that individual, but does not exceed a sum equal to twice that exemption limit.

### **Details**

#### ***Definitions***

“income tax payable” has the same meaning as in *section 3*, but without regard to any reduction of tax under *section 244*. (1)

“total income” for the purpose of this section means total income from all sources as estimated in accordance with the Income Tax Acts, including income arising outside the State which is not chargeable to tax.

#### ***Exemption limits***

In the case of an individual assessed to tax under section 1017 or 1031C i.e. joint assessment/aggregation, where either spouse/civil partner during the year of assessment is aged 65 or over the exemption limit is €36,000. In the case of a single person, a widowed person, a married person or a civil partner assessed as a single person who is 65 or over, the exemption limit is €18,000. The exemption limit is known as the (2)

“specified amount”.

### ***Additional amount for children***

Where an individual proves that he/she has living, at any time during the year of assessment, a qualifying child, the exemption limit is increased by €575 in respect of each of the first 2 qualifying children and by €830 in respect of each subsequent qualifying child. Any question as to whether a child is a qualifying child is determined in the same manner as it would be for the purposes of **section 462B** (single person child carer credit). (2A)

### ***Joint entitlement to additional amount for a child***

Where 2 or more individuals would be entitled to an increase in the specified amount in respect of the same child — (2B)

- only one increase is allowed per child,
- where the child is maintained by one individual only, that individual only is entitled to the increase,
- where the child is maintained by more than one individual, each individual is entitled to claim such part of the increase as is proportionate to the amount expended by him/her in relation to the total amount expended by all individuals towards the maintenance of the child, and
- in ascertaining, for the purposes of entitlement to the additional allowance, whether an individual maintains a child, any payments made by him/her towards the maintenance of the child which he/she is entitled to deduct in computing his/her total income for the purposes of the Income Tax Acts is deemed not to be a payment towards the maintenance of the child.

### ***Application***

This section applies for any year of assessment to an individual who makes a return of his/her total income on the appropriate form and proves that at some time during the year of assessment that he/she, or in the case of a married couple/civil partnership entitled to the married person’s tax credit under **section 461** either spouse or civil partner, is aged 65 or over. (3)

### ***Exemption from tax***

Where an individual to whom this section applies proves that his/her total income for a year of assessment does not exceed the appropriate exemption limit for that year, that individual is exempt from income tax. (4)

### ***Marginal relief***

Where an individual to whom this section applies proves that his/her total income for any year of assessment does not exceed a sum equal to twice the exemption limit applicable to that individual for that year, the amount of tax payable by that individual is limited to 40 per cent of the amount by which the individual’s total income exceeds the exemption limit applicable to that individual. (5)

### ***Miscellaneous***

**Sections 459** and **460**, which provide rules relating to allowances, deductions and reliefs and to the repayment of tax, where appropriate, are applied for the purposes of any exemption from tax or repayment of tax under this section. (6)

## **189 Payments in respect of personal injuries**

## Summary

This section exempts from income tax and capital gains tax, the return arising to permanently incapacitated individuals from the investment of compensation payments awarded by the Courts, or made under an out-of-court settlement, or following assessment by the Personal Injuries Assessment Board, in respect of personal injury claims. The section applies where the return on such investment (both income and gains) is greater than 50 percent of the individual's total income and gains.

## Details

### *Qualifying payments*

(1)

This section applies to any payment made —

- to or in respect of an individual who is permanently incapacitated by reason of mental or physical infirmity from maintaining himself or herself, and
- following the institution of civil action for damages, or assessment of a claim for damages by the Personal Injuries Assessment Board, in respect of personal injury giving rise to that mental or physical infirmity.

### *Exemption from Tax*

Relevant gains are essentially chargeable gains arising from the disposal of assets that have been acquired by or on behalf of the individual concerned using the compensation payments or funds sourced from the investment or reinvestment of those payments. Relevant income means income derived from the investment and continuous reinvestment of the compensation payments which income but for this section would be chargeable to tax under —

(2)(a)

- Schedule C (interest paid out of public revenue),
- Case (III) (certain interest paid in the State without deduction of tax) of Schedule D,
- Case IV (by virtue of *section 59* (income taxed at source), *section 745* (offshore income gains) of Schedule D and *section 747E* (disposal of an interest in offshore funds)), or
- Schedule F (distributions by Irish companies).

Where for a year of assessment, the aggregate of an individual's income and gains generated from investment and continuous reinvestment of the compensation payments is more than 50% of the aggregate of the individual's total income and gains for that year, then the income so generated will be exempt from income tax and the gains so generated will be exempt from capital gains tax. However even if the exemption applies, the income and gains concerned require to be included in the individual's tax return.

(2)(b)

Where it is necessary to decide how much income is relevant income or how much gains are relevant gains, apportionment on a just and reasonable basis is to apply. This may be required where compensation payments or monies derived therefrom together with other funds available to the individual concerned are used to purchase an asset.

(2)(c)

## **189A Special trusts for permanently incapacitated individuals**

### Summary

This section deals with the taxation treatment of income and gains arising following the creation of trusts, the funds of which were raised by public subscription on behalf of individuals who are permanently and totally incapacitated from maintaining themselves. The section exempts from tax



certain income and gains arising to the trustees of such trusts and to the individual or individuals concerned.

### Details

“incapacitated individual” is an individual who is permanently and totally incapacitated, by reason of mental or physical infirmity, from being able to maintain himself or herself.

“public subscriptions” are subscriptions raised following a public appeal, for the benefit of one or more identified incapacitated individual or individuals, where either —

- the total subscriptions do not exceed €381,000, or
- if the total subscription exceed €381,000, the amount donated by any one person does not exceed 30 per cent of the total subscriptions raised. This 30 per cent limit applies from the return filing date for the first year for which the exemption is claimed by either the trustees or the incapacitated individual or individuals.

“qualifying trust” is a trust established by deed where it is shown to the satisfaction of the inspector, that —

- the trust was established exclusively for the benefit of the incapacitated individual or individuals specified in the deed and for whose benefit the public subscriptions were raised,
- the trust requires that —
  - the trust funds be applied for the benefit of the incapacitated individual or individuals at the discretion of the trustees,
  - in the event of the death of the incapacitated individual or the last surviving member, as the case may be, the undistributed part of the trust funds may form part of the estate of the individual provided they have a surviving spouse, civil partner or child and
  - otherwise the undistributed part of the trust funds at date of death are to be applied for charitable purposes or are to be appointed in favour of the trustees of other charitable bodies, and
- none of the trustees are connected with the incapacitated individual or individuals.

“specified return date for the chargeable period” has the same meaning as in *section 959A*.

“trust funds” in relation to a qualifying trust, means funds which consist of —

- public subscriptions raised for the benefit of the incapacitated individual or individuals who are the subject of the trust, and
- all money and other property arising directly or indirectly from such public subscriptions.

### *Exemption from tax*

Trustees of a qualifying trust are exempt from income tax in respect of income arising to them from the investment of the trust funds which would otherwise be chargeable to tax under —

- Schedule C (interest paid out of public revenue),
- Case III (certain interest paid in the State without deduction of tax) of Schedule D,
- Case IV (by virtue of *section 59* (income taxed at source), *section 745* (offshore income gains) and *section 747E* (disposal of an interest in offshore funds)) of Schedule D,
- Case V (rents) of Schedule D, or
- Schedule F (distributions by Irish companies).

Gains arising to the trustees of a qualifying trust in respect of trust funds are not liable to capital gains tax.

Relevant gains are essentially chargeable gains arising from the disposal of assets that have been acquired by or on behalf of the individual concerned using payments from the trustees or income or earlier gains derived from investment of those payments. Relevant income means income derived from the investment and continuous reinvestment of the payments made by the trustees.

Where for a year of assessment, the aggregate of an individual’s income and gains generated from

investment and continuous reinvestment of payments made by the trustees is more than 50% of the aggregate of the individual's total income and gains from that year, then the income so generated will be exempt from income tax and the gains so generated will be exempt from capital gains tax. However even if the exemption applies, the income and gains concerned are required to be included in the individual's tax return.

Where it is necessary to decide how much income is relevant income or how much gains are relevant gains, apportionment on a just and reasonable basis is to apply. This may be required where compensation payments or monies derived therefrom together with other funds available to the individual concerned are used to purchase an asset.

The income tax exemption provided by this section before being amended in Finance Act 2004, apply for the year 1997/98 and subsequent years of assessment and apply irrespective of when the public subscriptions were raised or when the qualifying trusts were established. Section 17 of the Finance Act 2004 amended the section so that a capital gains tax exemption is also available in respect of gains accruing in 2004 and subsequently.

### **190 Certain payments made by the Haemophilia HIV Trust**

Income consisting of payments made by the trustees of the Haemophilia HIV Trust or "the HHT" (established by a trust deed dated 22 November, 1989 between the Minister for Health and certain named trustees) to or in respect of a beneficiary under the trust is exempt from tax.

Income to which this section applies is disregarded for all the purposes of the Income Tax Acts.

### **191 Taxation treatment of Hepatitis C [and HIV] compensation payments**

#### **Summary**

This section exempts from tax compensation payments made by the Hepatitis C Tribunal, equivalent schemes established in an EEA Member State or similar payments awarded following the institution of civil action for damages in respect of personal injury. Such payments are treated for income tax purposes and capital gains tax purposes in all respects as if they arose out of a civil action for damages for personal injury and the provisions of *section 189* dealing with personal injury awards apply accordingly.

#### **Details**

##### ***Definitions***

"the Act" is the Hepatitis C Compensation Tribunal Act, 1997. (1)

"the Tribunal" is the tribunal known as the Hepatitis C Compensation Tribunal established under section 3 of that Act. By virtue of the Hepatitis C Compensation Tribunal (Amendment) Act 2002, sections 2 and 11, and the Hepatitis C Compensation Tribunal (Amendment) Act 2002 (Commencement) Order, 2002, the Tribunal established by the Hepatitis C Compensation Tribunal Act 1997 is, with effect from 9 October 2002, to be known as the Hepatitis C and HIV Compensation Tribunal, and references in the latter Act and any other Act of the Oireachtas and any instrument made under any Act of the Oireachtas to the Hepatitis C Compensation Tribunal are to be construed as references to the Hepatitis C and HIV Compensation Tribunal.

"comparable overseas scheme" means a scheme located in an EEA Member State whose

purpose is to compensate individuals infected with Hepatitis C or HIV from the use of blood products.

“eligible person” means a person entitled to receive compensation under the Hepatitis C Compensation Tribunal Act 1997 or under a comparable overseas scheme.

### ***Application***

This section applies to compensation payments made by the Tribunal, a comparable overseas scheme or following the institution of a civil action for damages for personal injury, to an eligible person. (2)

### ***Exemption from tax***

Income to which this section applies is disregarded for all the purposes of the Income Tax Acts, and any payment made by the Tribunal or comparable overseas scheme to which this section applies is treated in all respects as if it were a payment made following the institution of a civil action for damages in respect of personal injury. In particular, Tribunal awards, comparable overseas scheme awards or similar court awards are brought within **section 189** (payments in respect of personal injuries). Accordingly, and subject to the other conditions of that section being satisfied, investment income and capital gains arising from the Tribunal award or comparable overseas scheme award is also exempt from tax. (3)

## **192 Payments in respect of thalidomide children**

This section applies to any payment by the Minister for Health and Children or by the foundation known as Conterganstiftung für behinderte Menschen to or in respect of any individual handicapped due to infirmity which can be linked with the taking by the individual’s mother during pregnancy of preparations containing thalidomide. (1)

Exemption from income tax is granted in respect of such payments. Income arising from the investment and reinvestment of such payments or of income arising from such payments is also exempt from income tax to the extent that it would otherwise be chargeable to tax under — (2)

- Schedule C (interest paid out of public revenue),
- Case III (certain interest paid in the State without deduction of tax) of Schedule D,
- Case IV (by virtue of **section 59** (income taxed at source), **section 745** (offshore income gains) and **section 747E** (disposal of an interest in offshore funds)) of Schedule D,
- Case V (rents) of Schedule D, or
- Schedule F (distributions by Irish companies).

Such income is not taken into account in computing the individual’s total income. However, a return of the individual’s total income (including the exempt income) must be made.

Gains accruing on the disposal of assets acquired directly or indirectly with such payments or income derived from such payments are exempt from capital gains tax. (3)

Where it is necessary to decide how much income is exempt income or how much gains are exempt gains, apportionment on a just and reasonable basis is to apply. This may be required where the payments or monies derived therefrom together with other funds available to the individual concerned are used to purchase an asset. (4)

## 192A Exemption in respect of certain payments under employment law

### Summary

The section exempts from income tax compensatory awards where an employee's rights and entitlements in law have been infringed or breached, for example, through discrimination, harassment, victimisation or plain non-compliance by an employer with statutory requirements. The exemption will apply to payments arising out of formal hearings before the relevant authorities for the purposes of the relevant legislation. The exemption extends to such payments made following mediation processes provided for in the law. In addition, it will, subject to conditions, also apply to payments under an "out of court" settlement which has been agreed between an employee and his or her employer in place of a formal hearing of a relevant authority.

However, payments made under law to an employee which is in respect of remuneration, changes in functions or procedures of an employment or the termination of an employment will continue to be taxable in the normal way.

### Details

#### *Definitions*

The terms "relevant Act" and "relevant authority" are defined. "Relevant Act" means an enactment which contains provisions for the protection of employee's rights and entitlements or for the obligation of employers towards employees. In addition to the more obvious statutes e.g. the Employment Equality Act, 1998 and the Maternity Protection Act, 1994 it would also cover Acts such as the Protections for Persons Reporting Child Abuse Act, 1998 and the Competition Act 2002 which provide for compensation for employees who are victimised for making reports under those Acts.

"Relevant authority" lists the various persons and bodies responsible for dealing with claims or disputes under relevant Acts.

#### *Application of section*

Subject to the following, the section applies to payments made, on or after 4 February, 2004 to an employee (or former employee) by his or her employer (or former employer) arising out of a recommendation, decision or determination of a relevant authority under a relevant Act.

#### *Mediation processes*

Payments arising out of a mediation process provided for under a relevant Act (e.g. section 78 of the Employment Equality Act 1998) are to be treated as if they had been made following a recommendation, decision or determination under that Act of a relevant authority.

#### *Out of Court Settlements*

Without prejudice to any of the terms or conditions of a settlement, the section also applies to a payment under certain "out of court" settlements. To qualify, a settlement must comply with the following conditions:

- (i) it must be an agreement evidenced in writing between unconnected persons (within the meaning of **section 10**), in settlement of a claim —
  - (I) which is a bona fide claim made under the provisions of a relevant Act,
  - (II) which is evidenced in writing, and

- (III) which had the claim not been settled by the agreement, is likely to have been the subject of a recommendation, decision or determination under that Act by a relevant authority that a payment be made to the person making the claim,
- (ii) the amount of the payment under the settlement does not exceed the maximum payment which, in accordance with a decision or determination by a relevant authority (other than the Circuit Court or the High Court) under the relevant Act, could have been made under that Act in relation to the claim, had the claim not been settled by agreement, and
- (iii) (I) copies of the agreement and the statement of claim are kept and retained by the employer, by or on behalf of whom the payment was made, for a period of six years from the day on which the payment was made, and
- (II) the employer has made copies of the agreement and the statement of claim available to an officer of the Revenue Commissioners where the officer has requested the employer to make those copies available to him or her.

On request, an employer is to make available to a Revenue officer all copies of —

- (I) such agreements as are referred to in *paragraph (a)* entered into by or on behalf of the employer, and
- (II) the statements of claim related to those agreements,

kept and retained by the employer in accordance with *subparagraph (iii)* of that paragraph. The officer may examine and take extracts from or copies of any documents made available to him or her under this subsection.

### ***Non application of section***

The section does not apply to so much of a payment under a relevant Act or an agreement referred to in *subsection (4)* as is —

- (a) a payment, however described, in respect of remuneration including arrears of remuneration, or
- (b) a payment referred to in *section 123(1)* or *480(2)(a)*.

### ***Employment Permits Act 2003***

5(A)

Section 192A exemption does not apply to compensation payments made under a court order under Section 2B of the Employment Permits Act 2003.

### ***Exemption***

Payments to which the section applies are exempt from income tax and not reckoned in computing total income for the purposes of the Income Tax Acts.

### **192B Foster care payments etc.**

Section 192B was deleted by section 13 of the Finance Act 2019 and has been replaced by section 192BA, inserted by section 13 of the Finance Act 2019.

### **192BA Exemption of certain payments made or authorised by Child and Family Agency**

#### **Summary**

This section exempts from income tax, payments made or authorised by the Child and Family Agency (i.e. Tusla) to carers, foster parents, relatives and young person's transitioning from care to whom such payments are made.

## Details

This section deletes section 192B and inserts a new section 192BA into the Taxes Consolidation Act 1997 with the following provisions:

***Subsection (1)*** contains the following definitions: (1)

‘carer’, in relation to an individual, means a person who is or was a foster parent or relative of the individual or who takes care of the individual on behalf of the Child and Family Agency or the Health Service Executive;

‘foster parent’ has the meaning assigned to it in the Child Care (Placement of Children in Foster Care) Regulations 1995 (S.I. No. 260 of 1995);

‘Minister’ means the Minister for Children and Youth Affairs;

“Qualifying payment” means a payment

a) which either –

(i) is

(I) described in column (1) of the Table to this section,

(II) paid on a basis specified in column (2) of that Table, and

(III) made or authorised by the Child and Family Agency on behalf of the Minister,

or

(ii) is made by or on behalf of the Health Service Executive to a carer in respect of what is generally referred to and commonly known as a Home Sharing Host Allowance.

or

b) Made in accordance with the law of any other Member State and which corresponds to a payment referred to in paragraph (a);

Reference is made in the above definition of ‘qualifying payment’ to a Table, in which Column 1 provides a description of the payment being exempted and Column 2 specifies the basis under which the payment is made.

‘qualifying person’ means a carer, foster parent, relative or any other individual to whom a qualifying payment is made;

‘relative’ has the meaning assigned to it in the Child Care (Placement of Children with Relatives) Regulations 1995 (S.I. No. 261 of 1995).

***Subsection (2)*** provides that payments (2)

(i) listed in Column (1) of the Table, paid on the basis outlined in Column (2), or

(ii) made by or on behalf of the Health Service Executive to a carer in respect of what is generally referred to and commonly known as a Home Sharing Host Allowance,

on or after 1 January 2020 shall be exempt from income tax in the hands of the carer, foster parent, relative, and any other person to whom the payment is made, including the young person transitioning from care.

**Subsection (3)** provides that payments (3)

- (i) listed in Column (1) of the Table, paid on the basis outlined in Column (2), or
- (ii) made by or on behalf of the Health Service Executive to a carer in respect of what is generally referred to and commonly known as a Home Sharing Host Allowance,

before 1 January 2020 will be treated as if they were exempt from income tax in the hands of the carer, foster parent, relative, and any other person to whom the payment is made, including the young person transitioning from care.

Section 13(2) of Finance Act 2019 amended Section 192BA(1) of the Taxes Consolidation Act to include the United Kingdom in paragraph (b) of the definition of ‘qualifying payment’ in respect of the definition for Member State, subject to Ministerial Order, on such day as the Minister for Finance may appoint.

The Withdrawal of the United Kingdom from the European Union (Consequential Provisions) Act 2020 (“Withdrawal Act 2020”), provides for the repeal of Section 13(2) Finance Act 2019 and Section 27 of Part 8 of the Withdrawal Act 2020 extends the definition of “qualifying payment” in Section 192BA(1) to include payments made under the law of the United Kingdom. This is subject to Ministerial Order, on such day as the Minister for Finance may appoint.

### **192C Exemption in respect of payments of State support**

#### **Summary**

This section was inserted by section 48 of the Nursing Homes Support Scheme Act 2009 (No.15 of 2009) and exempts from income tax payments made by the Health Service Executive (HSE) under that Act in respect of a person in long-term care.

#### **Details**

The terms “care services” and “State support” have the same meanings in this section as they have in the Nursing Homes Support Scheme Act 2009. Care services is defined in that Act as long term residential care services while State support is defined as a payment made by the HSE in accordance with the Nursing Homes Support scheme following an application for such support to assist a person in meeting the cost of care services. (3)

A person in receipt of care services provided under the Nursing Homes Support Scheme Act 2009 is exempt from income tax in respect of State support provided to that person by way of payments made by the HSE to a nursing home. Such payments are not to be taken into account in computing the person’s income for the purposes of the Income Tax Acts. (1)

Payments made to a nursing home by the HSE under the Nursing Homes Support Scheme are to be paid without deduction of income tax. (2)

### **192D Exemption in respect of fuel grant**

#### **Summary**

This section provides an exemption from Income Tax and USC on payments made under section 79 of the Finance Bill 2015 in respect of the new Fuel Grant paid to Disabled Drivers.

### **192E Exemption in respect of water conservation grant**

This section provides that a payment made under section 5 of the Water Services Act 2014 (i.e. a water conservation grant) shall be exempt from income tax and shall not be reckoned in computing income for the purposes of the Income Tax Acts. As a consequence of the income tax exemption, any such payment is also exempt from USC and PRSI.

### **192F Exemption in respect of certain Education-related payments**

#### **Summary**

This section provides an exemption from income tax in the hands of the student, payments made in accordance with a scheme of grants made by an awarding authority on behalf of the Minister for Education and Skills, often referred to as the SUSI student grant.

#### **Details**

This section inserts a new section 192F into the Taxes Consolidation Act 1997, with the following provisions:

**Subsection (1)** contains the following definitions: **(1)**

‘the Act’ means the Student Support Act 2011;

‘awarding authority’ has the same meaning as it has in the Student Support Act 2011;

‘grant’ has the same meaning as it has in the Student Support Act 2011;

‘Minister’ means the Minister for Education and Skills;

‘student’ has the same meaning as it has in the Act.

**Subsection (2)(a)** provides that this section applies to a payment made by an awarding authority to or in respect of a student in accordance with a scheme of grant(s) made by the Minister or confirmed under the Student Support Act 2011, on behalf of the Minister for Education and Skills. **(2)(a)**

**Subsection (2)(b)** provides this section also applies to a corresponding payment made in accordance with the law of a Member State (other than the State) to that specified in subsection (2)(a) above. **(2)(b)**

**Subsection (3)** provides that a payment to which this section applies, which is made on or after 1 January 2020 be exempt from income tax and not included in determining total income of the student. **(3)**

**Subsection (4)** provides that a payment to which this section applies, made before 1 January 2020 be exempt from income tax and not included in determining total income of the student in the year of assessment to which it relates. **(4)**

**Subsection (2)** of this section provides for the United Kingdom in the context of a post Brexit scenario.



**Subsection (3)** gives effect to the aforementioned subsection (2) by Ministerial order.

## **192G Exemption in respect of Training Allowance payments**

### **Summary**

This section provides an exemption from income tax for certain further education training allowance payments made to qualifying individuals, who if not undertaking a further education and training course, would be in receipt of or eligible for a payment from the Minister for Employment Affairs and Social Protection.

### **Details**

This section inserts a new section 192G into the Taxes Consolidation Act 1997, with the following provisions:

**Subsection (1)** contains the following definitions: (1)

‘Minister’ means the Minister for Education and Skills;

‘qualifying payment’ means a payment, commonly known as a further education training allowance, made to a qualifying individual who is undertaking an approved further education and training course under a scheme (as referred to in the definition of qualifying individual), administered on behalf of the Minister and who, if not undertaking such a course, would be in receipt of or eligible for a payment from the Minister for Employment Affairs and Social Protection.

‘qualifying individual’ means an individual who satisfies the conditions of the relevant scheme, as specified by the Ministers for Education and Skills and Employment Affairs and Social Protection.

**Subsection (2)** provides that a qualifying payment made to a qualifying individual, on or after 1 January 2020 shall be treated as exempt from income tax and not included in determining the total income of that individual. (2)

**Subsection (3)** provides that a qualifying payment made to a qualifying individual, before 1 January 2020 be exempt from income tax and not included in determining total income of that individual for the year to which it relates. (3)

## **192H Exemption in respect of Mobility Allowance**

### **Summary**

This section provides an exemption from income tax for mobility allowance payments made to qualifying individuals, who satisfy the conditions of the Mobility Allowance scheme as administered by the Health Service Executive.

### **Details**

This section inserts a new section 192H into the Taxes Consolidation Act 1997, with the following provisions:

**Subsection (1)** outlines what payments qualify for this exemption. This section relates to a payment commonly known as a Mobility Allowance, made by or on behalf of the Health Service Executive to a person who satisfies the conditions of the Mobility Allowance scheme as administered by the Health Service Executive. (1)

**Subsection (2)** provides that a qualifying payment made to a qualifying individual, on or after 1 January 2021 shall be treated as exempt from income tax and not included in determining the total income of that individual. (2)

**Subsection (3)** provides that a qualifying payment made to a qualifying individual, before 1 January 2021 be exempt from income tax and not included in determining total income of that individual for the year to which it relates. (3)

## **192I Exemption in respect of Pandemic Placement Grant**

### **Summary**

This section provides an exemption from income tax for certain grant payments made by or on behalf of the Minister for Health, to a qualifying student who is undertaking a clinical placement as part of an undergraduate programme in Nursing or Midwifery.

### **Details**

This section inserts a new section 192I into the Taxes Consolidation Act 1997, with the following provisions:

**Subsection (1)** contains the following definitions:

‘Minister’ means the Minister for Health;

‘qualifying grant’ means a grant, generally referred to and commonly known as the Pandemic Placement Grant, which is made periodically by or on behalf of the Minister to a qualifying student;

‘qualifying student’ means an undergraduate student who is registered on the candidate register maintained by the Nursing and Midwifery Board of Ireland and who is undertaking what is generally referred to and commonly known as a Supernumerary Clinical Placement or an Internship Clinical Placement as part of a qualifying course;

‘qualifying course’ means an undergraduate programme in nursing or midwifery, approved by the Nursing and Midwifery Board of Ireland under section 85(2) of the Nurses and Midwives Act 2011.

**Subsection (2)** provides that, subject to subsection 3, an income tax exemption will apply to the Pandemic Placement Grant (PPG) in the hands of the student, where it is paid to a qualifying student on or after 1 January 2021 and on or before 31 December 2022.

**Subsection (3)** provides that the income tax exemption for the qualifying student will be capped at €2,100 in each year of assessment.

## **193 Income from scholarships**

### **Summary**

This section exempts from income tax certain scholarship payments received by individuals receiving full-time instruction at a university, college, school or other educational establishment. However, a benefit in kind charge applies where parents obtain a scholarship for their child under an employer sponsored scheme and the scholarship does not conform to certain requirements.

## Details

### *Definitions and construction*

“relevant body” is a body corporate, unincorporated body, partnership, individual or other body. (1)(a)

“relevant scholarship” is a scholarship provided directly or indirectly by a relevant body, or a person connected with that body, for employees or directors of the relevant body or any member of the household of such an employee or director (that is, a spouse, civil partner, family member, dependant, servant or child of the civil partner).

“scholarship” includes an exhibition, bursary or other educational endowment.

A person is connected with a relevant body if the person is a trustee of a settlement (within the meaning of *section 10*) made by a relevant body, or is a relevant body, and would be regarded as connected with that body under *section 10*. (1)(b)

### *Exemption from tax*

Income arising from a scholarship held by a person receiving full-time instruction at a university, college, school or other educational establishment is exempt from income tax and is disregarded in computing that person’s income for tax purposes. (2)

Only the person holding the scholarship in question is entitled to exemption from income tax in respect of scholarship income. (3)

A payment of income in respect of a relevant scholarship provided from a trust or under a scheme, and held by a person in full-time education, is exempt from income tax for any year of assessment in which not more than 25 per cent of the payments from the fund or under the scheme are in respect of relevant scholarships. (4)

In ascertaining whether income is qualifying scholarship income the Revenue Commissioners may consult the Minister for Education and Science. (5)

### *Transitional measure*

The 25 per cent rule in relation to relevant scholarships payments does not apply to the payment of scholarship income made before 6 April, 1998 in respect of a scholarship awarded before 26 March, 1997 – see *paragraph 2* of *Schedule 32*. (6)

## **194 Child benefit**

Child benefit payable under Part 4 of the Social Welfare Consolidation Act 2005 is exempt from income tax and is disregarded in computing income for tax purposes.

## **194A Early childcare supplement**

Early childcare supplement payable under Part 4A of the Social Welfare Consolidation Act 2005 is exempt from income tax and is disregarded in computing income for tax purposes.

## **194AA Exemption of certain childcare support payments**

### **Summary**

This section exempts from tax certain payments made by or on behalf of the Minister for Children and Youth Affairs under the following schemes:

- Affordable Childcare Scheme
- Community Childcare Subvention
- Community Childcare Subvention Plus
- Community Childcare Subvention Resettlement
- Community Childcare Subvention Resettlement (Transitional)
- Community Childcare Subvention Universal
- Training and Employment Childcare

## Details

### *Definitions*

“cohabitant” has the same meaning as section 172 of the Civil Partnership and Certain (1) Rights and Obligations of Cohabitants Act 2010.

“eligible child” means a child in respect of whom a qualifying payment is made.

“Minister” means the Minister for Children and Youth Affairs.

“qualifying payment” means a payment made under the Affordable Childcare Scheme which is provided for in section 15 of the Childcare Support Act 2018.

“relevant payment” means a payment made by or on behalf of the Minister under the following schemes:

- Community Childcare Subvention
- Community Childcare Subvention Plus
- Community Childcare Subvention Resettlement
- Community Childcare Subvention Resettlement (Transitional)
- Community Childcare Subvention Universal
- Training and Employment Childcare

### *Exemption from tax*

Qualifying payments made under the Affordable Childcare Scheme, are exempt from (2) income tax, USC and PRSI in the hands of a parent, guardian or their cohabitant.

Relevant payments made on or after 1 January 2019 under Community Childcare (3) Subvention, Community Childcare Subvention Plus, Community Childcare Subvention Resettlement, Community Childcare Subvention Resettlement (Transitional), Community Childcare Subvention Universal and Training and Employment Childcare are exempt from income tax, USC and PRSI in the hands of a parent, guardian or their cohabitant.

Relevant payments made prior to 1 January 2019 under Community Childcare (4) Subvention, Community Childcare Subvention Plus, Community Childcare Subvention Resettlement, Community Childcare Subvention Resettlement (Transitional), Community Childcare Subvention Universal and Training and Employment Childcare are exempt from income tax, USC and PRSI in the hands of a parent, guardian or their cohabitant.

## 195 Exemption of certain earnings of writers, composers and artists

### Summary

This section exempts from income tax certain earnings of writers, composers and artists which would otherwise be chargeable to tax under Case II of Schedule D. For the year of assessment 2015 and each subsequent year of assessment, the maximum amount of income which can be exempted under this section in respect of an individual is €50,000. To qualify, the Revenue Commissioners must, in accordance with statutory guidelines, make a determination that the artistic work is original and creative, is generally recognised as having cultural or artistic merit and is within certain categories of work.

Claims for determinations are considered by the Revenue Commissioners under guidelines drawn up by the Minister for Arts, Heritage and the Gaeltacht and An Comhairle Ealaíón (the Arts Council) with the consent of the Minister for Finance. The relief must be claimed and for the years up to and including 2014 applies only to individuals resident in the State (and not elsewhere) or ordinarily resident and domiciled in the State (and not resident elsewhere). For 2015 and subsequent years eligibility for the relief is extended to an individual who is either resident or ordinarily resident and domiciled in one or more Member States, or in another EEA state, or in the United Kingdom and not resident elsewhere.

An appeal mechanism is available to unsuccessful claimants.

The scope of this section is affected by the limitation on certain reliefs used by certain high income individuals in *Chapter 2A* of *Part 15* and *paragraph 46* of *Schedule 25B* (initially inserted by section 17 of the Finance Act 2006).

### Details

#### *Definition*

“work” is an original and creative work within one of the following categories — (1)

- a book or other writing,
- a play,
- a musical composition,
- a painting or other like picture,
- a sculpture.

#### *Application*

For 2015 and subsequent years eligibility for the relief applies to an individual who is either resident or ordinarily resident and domiciled in one or more Member States, or in another EEA state, and not resident elsewhere. This is extended to individuals resident or ordinarily resident and domiciled in the United Kingdom from 1 January 2021. For the years up to an including 2014 the relief was only available to an individual who was resident in the State (and not resident elsewhere), or who was ordinarily resident and domiciled in the State (and was not resident elsewhere). The relief applies to an individual who is determined by the Revenue Commissioners to have written, composed or executed either solely or jointly a work or works generally recognised as having cultural or artistic merit. In reaching a determination the Revenue Commissioners may consult any person or body of persons as may provide authoritative assistance to them in establishing whether a work is a qualifying work for the purposes of this section. The Revenue Commissioners are also required to consider any evidence in relation to the (2)

matter which the individual submits.

The section applies to both an individual who is engaged generally in producing cultural or artistic works and to an individual who produces a particular cultural or artistic work. The Revenue Commissioners will only make a determination where the individual makes a claim and, in the case of a claim relating to a particular work, they will only make the determination after the publication, production or sale of that work.

### ***Exemption from tax***

Where an individual makes a claim for relief and the Revenue Commissioners determine that his/her work qualifies for relief, the individual's profits/gains arising from the publication, production or sale of the work, or works in the same category as that work, are disregarded for income tax purposes to the extent that such profits or gains would otherwise be assessable to income tax under Case II of Schedule D. (3)(a)

The amount of profits or gains for a year of assessment which an individual shall be entitled to have disregarded shall not exceed €50,000 for the year of assessment 2015 and each subsequent year of assessment and €40,000 for the years of assessment 2011 to 2014. (3)(aa)

The exemption does not apply for any year of assessment before the year of assessment in which the individual concerned makes a claim under this section. (3)(b)

Relief may be given by repayment or otherwise. (3)(c)

### ***Information***

Where a claim is made in respect of an individual's general work, the Revenue Commissioners may request that individual to furnish to them such information, books, documents or other evidence as may be of assistance to them in reaching their determination. (4)(a)

Where an individual makes a claim in respect of a particular work which is a book or other writing, a play or musical composition, the Revenue Commissioners may request that the individual furnish to them 3 copies of the work. In the case of a painting or a sculpture, the Revenue Commissioners may request the individual to provide or arrange for such facilities as are necessary for the purpose of assisting them in reaching their determination (for example, arrange a viewing of a painting or sculpture already sold to another person). (4)(b)

The Revenue Commissioners may require a claimant to make available to them within a specified period all books, accounts, etc in the claimant's possession, being such books, accounts, etc relating to the publication, production or sale of the work the income from which is the subject of the claim for exemption. (5)

### ***Appeals***

Where an individual makes a claim for relief and has fulfilled any requests made to him/her for supporting documentation in respect of the claim and the Revenue Commissioners fail to make a determination within 6 months of the date on which the claim is first made, the individual may by giving notice in writing to the Appeal Commissioners, within 30 days after the end of this 6 month period, appeal to the Appeal Commissioners on certain specified grounds. These grounds are — (6)

- that the work is generally recognised as having cultural or artistic merit, or
- that a particular work has cultural or artistic merit.

The Appeal Commissioners will hear and determine an appeal in the manner provided (7)

for in Part 40A of the TCA 1997.

The Appeal Commissioners may on appeal determine that the claimant has written, composed or executed a work (or works) generally recognised as having cultural or artistic merit, or has written, composed or executed a particular work that has cultural or artistic merit. In making their determination the Appeal Commissioners may consider any evidence or consult any person or body of persons as may, in their opinion, provide authoritative assistance to them in establishing whether a work is a qualifying work for the purposes of this section. A favourable determination by the Appeal Commissioners is treated as if it had been made by the Revenue Commissioners and the exemption from tax applies accordingly. A determination of the Appeal Commissioners may be appealed on a point of law to the High Court. (8)

### ***Apportionment***

In determining the amount of income qualifying for relief under this section, the Revenue Commissioners may make any necessary apportionment of receipts and expenses. (10)

### ***Returns***

Individuals qualifying for relief are obliged to make a return of their total income (including the exempt income). (11)

### ***Guidelines***

An Comhairle Ealaíon (the Arts Council) and the Minister for Arts, Heritage and the Gaeltacht with the consent of the Minister for Finance, may issue guidelines for determining whether a work or works are original and creative works and whether such work has, or is generally recognised as having, cultural or artistic merit. (12)

In drawing up the guidelines, the following matters, which are not exhaustive, may be included in them —

- guidelines which consist of a list of the types or kinds of works that are not original and creative or that have not or are not generally recognised as having cultural or artistic merit (this list includes works that are published, produced or sold for a specified purpose),
- guidelines which specify criteria by reference to which questions as to whether works are original or creative and whether they have, or are generally recognised as having, cultural or artistic merit are to be determined.

The Revenue Commissioners are not to determine that a work is original and creative or has, or is generally recognised as having, cultural or artistic merit unless it complies with the published guidelines. Similarly, on appeal the Appeal Commissioners or a judge of the High Court may not determine that a work is original and creative or has, or is generally recognised as having, cultural or artistic merit unless it complies with the guidelines. (13)

Works in the same category as works which have already been granted a favourable determination do not qualify for relief if first published, produced or sold on or after 3 May, 1994, unless the work in the same category also complies with the published guidelines and would qualify to be determined by the Revenue Commissioners as an original or creative work and as having, or being generally recognised as having, cultural or artistic merit. (14)

On application the Revenue Commissioners are to supply an applicant with a free copy of the guidelines. (15)

The name of successful applicants together with the category and title of the work may be published by Revenue. (16)

## 195A Exemption in respect of certain expense payments

### Summary

**Section 12** exempts from tax, travel and subsistence expenses paid to certain members of non-commercial bodies, in both the public and private sectors, in respect of the attendance at meetings of such bodies. The work of these members must generally be carried out at periodic meetings of the bodies. To qualify for the exemption the member must be a non-executive member of the body and not be in receipt of emoluments (excluding the expenses) from the body in excess of €24,000 per annum in the case of the Chairperson and €14, 000 in the case of other members. The exemption covers expenses up to the civil service rates. Where the expenses paid exceed those rates the excess will continue to be taxable.

### Details

#### **Definition**

(1)

“body” means an unincorporated body of persons or a body corporate, being any board, council or committee, however expressed, or any body of persons exercising some or all of the functions of such a board, council or committee where the duties, other than incidental duties such as attendance at conventions or meetings as delegates on behalf of the body, of the office of members of the body are discharged in the course of meetings of the body concerned, or preparation for such meetings;

“civil servant” has the meaning assigned to it by section 1(1) of the Civil Service Regulation Act 1956;

“member”, in relation to a body, means a person holding office as a member of that body —

- (a) who has no other duties directly or indirectly, whether as an employee of the body or of a person connected with that body, in relation to that body, and
- (b) whose annualised amount of the emoluments from the office for the year of assessment 2006 and for each subsequent year in which the person is a member of the body, other than payments to which this section applies, does not exceed the limits specified in the definition.

A “non-commercial body” is defined in terms of a body that is —

- organised solely for non-profit purposes,
- in fact operated solely for non-profit purposes, and

with specified exceptions, does not distribute or otherwise make available any of its income for the personal benefit of any officer, employee or member, or connected person.

The section applies to payments made by a non-commercial body to or on behalf of a member of the body in respect of expenses of travel and subsistence incurred by the member in the attendance by him or her at meetings of the body. (2)

So much of any payments to which the section applies, as does not exceed the upper of any relevant rate or rates laid down from time to time by the Minister for Finance in relation to the payment of expenses of travel and subsistence of a civil servant, is to be disregarded for all the purposes of the Income Tax Acts. (3)



## **195B Exemption in respect of certain expense payments for relevant directors**

### **Summary**

This section exempts from income tax certain vouched expenses of travel and subsistence of a non-resident non-executive director of a company. Such expenses must be incurred solely for the purpose of attendance by such a director, in his or her capacity as a director, at a relevant meeting, as defined in the section.

### **Details**

#### *Definitions*

(1)

‘company’ has the same meaning as it has in section 4;

‘director’ has the same meaning as it has in section 770;

‘expenses’ means vouched expenses;

‘relevant director’, in relation to a company, means a director who is not resident in the State and is a non-executive director of that company;

‘relevant meeting’ means a meeting attended by a relevant director in his or her capacity as a director for the purposes of the conduct of the affairs of the company;

‘travel’ means travel by car, motorcycle, taxi, bus, rail, boat or aircraft.

#### *Expense Payments*

(2)

This section applies to payments made by a company to or on behalf of a relevant director of that company in respect of expenses of travel and subsistence incurred by the relevant director, on and from 1 January 2016, solely for the purpose of attendance by him or her at a relevant meeting.

#### *Exemption*

(3)

A payment to which this section applies shall be exempt from income tax and shall not be reckoned in computing income for the purposes of the Income Tax Acts. As a consequence of the income tax exemption, any such payment is also exempt from USC and PRSI.

## **195C Exemption in respect of certain expenses of State Examinations Commission examiners**

### **Summary**

This section exempts from income tax certain expenses of travel and subsistence of a State Examinations Commission examiner. The payment of expenses may not exceed the prevailing Civil Service rates.

### **Details**

#### *Definitions*

(1)

‘civil servant’ has the meaning assigned to it by section 1(1) of the Civil Service Regulation Act 1956;

‘employee’ has the same meaning as in section 983;

‘examination’ means any examination standing specified in Schedule 2 to the Education Act 1998.

‘examination purposes’ means:

(a) the development of examination papers or other examination materials;

- (b) the marking of such papers or other such materials; or
- (c) the carrying out of invigilator duties at an examination;

‘examination paper’ includes any paper, plan, map, drawing, diagram, pictorial or graphic work or other document and any photograph, film or recording (whether of sound or images or both)-

(a) in which questions are set for answer by candidates as part of an examination or which are related to such questions, or

(b) in which projects or practical exercises are set which candidates are required to complete as part of an examination or which are related to such projects or exercises;

‘examiner’ means a person who is an employee of the State Examinations Commission for examination purposes but does not include an Examinations and Assessment Manager;

‘relevant employer’ means the State Examinations Commission;

‘travel’ means travel by car, motorcycle, taxi, bus or rail.

### **Expenses**

(2)

This section applies to payments made by the State Examinations Commission to or on behalf of an examiner in respect of expenses of travel and subsistence incurred by the examiner, on and from 1 January 2016, for examination purposes.

### **Exemption**

(3)

Payments that do not exceed the prevailing rates laid down by the Minister for Public Expenditure and Reform in relation to the payment of expenses of travel and subsistence of a civil servant are exempt from income tax and shall not be reckoned in computing income for the purposes of the Income Tax Acts. As a consequence of the income tax exemption, any such payment is also exempt from USC and PRSI.

## **195D Exemption in respect of certain expense payments for resident relevant directors**

### **Summary**

This section exempts from income tax certain expenses of travel and subsistence of a resident non-executive director of a company. Such expenses must be incurred solely for the purpose of attendance by such a director, in his or her capacity as a director, at a relevant meeting, as defined in the section.

### **Details**

#### *Definitions*

(1)

‘civil servant’ has the meaning assigned to it by the Civil Service Regulation Act 1956;

‘company’ has the same meaning as it has in section 4;

‘director’ has the same meaning as it has in section 770;

‘relevant director’, in relation to a company, means a director who is resident in the State and is a non-executive director of that company, and whose annualised amount of the emoluments from the office for the year of assessment 2017 and for each subsequent year in which the person is a relevant director of the company (other than expenses of travel and subsistence to which this section applies) does not exceed €5,000

‘relevant meeting’ means a meeting attended by a relevant director in his or her capacity as a director for the purposes of the conduct of the affairs of the company;

‘travel’ means travel by car, motorcycle, taxi, bus, rail, or aircraft.

Expense Payments (2)

This section applies to payments made by a company to or on behalf of a relevant director of that company in respect of expenses of travel and subsistence, incurred by the relevant director, on and from 1 January 2017, solely for the purpose of attendance by him or her at a relevant meeting.

Exemption (3)

So much of a payment to which this section applies, as does not exceed the upper of any relevant rate or rates laid down from time to time by the Minister for Public Expenditure and Reform in relation to the payment of expenses of travel and subsistence of a civil servant, shall be exempt from income tax and shall not be reckoned in computing income for the purposes of the Income Tax Acts. As a consequence of the income tax exemption, any such payment is also exempt from USC and PRSI.

**196 Expenses of members of judiciary**

This section deals with allowances payable by way of an annual sum to members of the judiciary (being a judge of the Supreme Court, the High Court, the Circuit Court or the District Court) in accordance with *section 5* of the Courts of Justice Act, 1953 and which are, in accordance with *subsection 2(c)* of that section, in full settlement of the expenses which a judge is obliged to incur in the performance of his/her duties and which are not otherwise reimbursed out of public money. Such allowances are exempt from income tax and are not reckoned in computing total income for the purpose of the Income Tax Acts. Expenses covered by such an allowance are not allowable expenses in computing amounts chargeable to tax under Schedule E for a year of assessment.

**196A State employees: foreign service allowances**

**Summary**

This section exempts from income tax certain allowances or emoluments paid to officers of the State representing compensation for the extra cost of living outside the State while on foreign service.

**Details**

An exemption from income tax is provided for such allowances or emoluments paid to an officer of the State as the Minister for Finance, having consulted with the Minister for Foreign Affairs or such other Minister as is appropriate in the circumstances, certifies as representing compensation for the additional cost of having to live outside the State in order to perform the duties of the office.

**Definitions**

“*emoluments*” is defined as being emoluments to which the provisions of *section 985A* (1) applies i.e. benefits-in-kind. Normal salary payments are excluded from the provision and continue to be assessable as income arising from the holding of an office.

“*officer of the State*” is defined as — (2)

- a civil servant within the meaning section 1(1) of the Civil Service Regulation Act 1956,
- a member of the Garda Síochána, or

- a member of the Permanent Defence Force.

The section has effect from 1 January 2005.

(3)

## **196B Employees of certain agencies: foreign service allowances**

### **Summary**

This section provides for an exemption from income tax in respect of certain expense payments made to, or benefits provided for, employees of certain agencies who are posted abroad. To qualify for the exemption the payments must be certified by the Minister for Finance, after consultation with the Minister for Foreign Affairs or other appropriate Minister, as representing compensation for the additional living costs incurred in being posted abroad.

The exemption is intended for employees of those agencies who are abroad but who do not have a representational capacity on behalf of the State. The main agencies involved are Enterprise Ireland, An Bord Bia, Tourism Ireland Ltd and Industrial Development Agency Ireland.

### **Details**

An exemption from income tax is provided for such allowances or emoluments paid to employees of the agencies listed in *subsection (1)* as the Minister for Finance, having consulted with the Minister for Foreign Affairs or such other Minister as is appropriate in the circumstances, certifies as representing compensation for the additional cost of having to live outside the State in order to perform his or her duties.

### **Definitions**

*Subsection (1)(a)* defines “emoluments” as being emoluments to which the provisions of *section 985A* applies i.e. benefits-in-kind. Normal salary payments are excluded from the provision and continue to be assessable as income arising from the holding of an office. (1)(a)

*Subsection (1)(b)* lists the agencies to which this provision applies. They are — (1)(b)

- Enterprise Ireland,
- An Bord Bia,
- Tourism Ireland Ltd and
- Industrial Development Agency Ireland.

*Subsection (2)* contains the substantive provision providing for an exemption from income tax for such allowances or emoluments paid to an employee of one of the listed agencies as the Minister for Finance, having consulted with the Minister for Foreign Affairs or such other Minister as is appropriate in the circumstances, certifies as representing the additional cost of having to live outside the State in order to perform the duties of the office. (2)

The section has effect from 1 January 2007.

## **197 Bonus or interest paid under instalment savings schemes**

An exemption from income tax is provided in respect of interest or a bonus payable to an individual under an instalment savings scheme (established under section 53 of the Finance Act, 1970) to the extent that the amount payable does not exceed the specified amount permitted to be paid under the scheme.

## 198 Certain interest not to be chargeable

### Summary

This section exempts non-residents from tax in respect of certain interest receipts. The exemption from Irish income tax only applies where the company or person receiving the interest is a tax resident of another EU Member State, a tax resident of a country with which Ireland has a tax treaty in force or a tax resident of a country with which Ireland has signed a tax treaty which has yet to come into force. (Certain conditions apply in respect of interest payments to companies.)

### Details

#### *Interpretation*

Definitions of the terms “arrangements”, “relevant territory” and “tax” are provided for the purposes of the interpretation provision contained in *paragraph (b)*. **(1)(a)**

An interpretation of when a company or a person is to be regarded as a resident of a relevant territory (that is, a resident of another EU Member State, a tax treaty country or a country with which Ireland has signed a tax treaty which has yet to come into force) is provided. Essentially a person is such a resident where the tax treaty in force or a tax treaty signed but not yet to come into force between Ireland and the other territory so provides or, if there is no tax treaty and the other territory is another EU country, where the tax law of that country so provides. **(1)(b)**

#### *Exemption*

Interest paid to companies which are not resident in the State or to persons who are not ordinarily resident in the State — **(1)(c)(i)**

- by companies in the course of carrying on relevant trading operations in the IFSC (*section 446*) or the Shannon Airport Area (*section 445*), or
- by companies which are specified collective investment undertakings (*section 734*),

is exempt from Irish income tax in the hands of the recipient of the interest.

Interest paid for business purposes by a company or a collective investment undertaking (as defined in *section 246*) to a company which is not tax resident in the State but which is tax resident in another EU Member State, in a country with which Ireland has a tax treaty in force or in a country with which Ireland has signed a tax treaty which has yet to come into force (“relevant territory” as defined in *subsection (1)*) is also exempt from income tax, where the tax regime in that relevant territory is one that imposes a tax that generally applies to interest receivable in that territory by companies from sources outside that territory, or where the interest is exempt under the terms of the double tax treaty between Ireland and the relevant territory. **(1)(c)(ii)**

Interest paid by a company to a person who-

- is not a resident of the State and is regarded as being a resident of an EU or treaty country, or
  - is a company which is not resident in the State and-
    - is controlled by a person who is resident in another EU Member State or tax treaty country and the company is not under the control of a person not so resident, or
    - the principal class of shares of which is substantially or regularly traded on a
- (1)(c)(iii)**

recognised stock exchange in the State, another Member State of the EU, a tax treaty country, or on such other stock exchange as may be approved of by the Minister for Finance,

is exempt from income tax if the interest is-

1. Eurobond interest (i.e. interest to which *section 64(2)* applies),
2. interest on wholesale debt instruments as defined in *section 246A*, or
3. interest paid in respect of asset covered securities within the meaning of the Asset Covered Securities Act 2001.

*Subsection (1)(c)(iii)* was amended by section 39 of the Finance Act 2012 and applies to interest paid on or after the 31st March 2012 (i.e. the date of passing of the Finance Act 2012).

Interest paid by a special purpose securitisation company (that is a “qualifying company” within the meaning of *section 110*) to a person (this includes individuals as well as corporates and other entities) who is not resident in the State and is tax resident in another EU Member State, a tax treaty country or a country with which Ireland has signed a tax treaty which has yet to come into force, is exempt from income tax if that interest is paid out of the assets of the qualifying company. *(1)(c)(iv)*

Discounts arising on securities issued by a relevant person (within the meaning of *section 246*), in the ordinary course of a trade or business carried on by that relevant person, are exempt from income tax if issued to a person (this includes individuals as well as corporates and other entities) who is not resident in the State and is tax resident in another EU Member State, a tax treaty country or a country with which Ireland has signed a tax treaty which has yet to come into force. *(1)(c)(v)*

Certificates certifying that IFSC or Shannon companies are carrying on relevant trading operations expired on 31 December 2005 or, in certain cases, 31 December 2002. In the absence of a provision to the contrary, the exemption under *subsection (1)(c)(i)(I)* would cease to apply in respect of interest paid after the expiry date of the certificate. In the context of interest paid by such companies in respect of certain securities, this is addressed by ignoring the deletion of *sections 445* and *446* and the time limit to the application of the certificate set out in those sections. Thus, interest paid by an IFSC or Shannon company to a company not resident in the State, or to a person not ordinarily resident in the State, in respect of such securities will continue to be exempt from income tax despite those sections being deleted and the certificate having expired. The securities concerned here are relevant securities within the meaning of *section 246*; these are securities issued by an IFSC or Shannon company in the course of carrying on relevant trading operations on terms which oblige the company to redeem the security within 15 years after the date on which the security was issued. *(2)*

### **199 Interest on certain securities**

Interest on securities issued by the Minister for Finance for the purpose of being used in payment of income tax is exempt from income tax and is ignored in computing total income for the purposes of the Income Tax Acts.

### **200 Certain foreign pensions**

This section applies to any pension, benefit or allowance which —

- is given in respect of past services in an office or employment or payable under the law of a foreign country in which it arises which corresponds to Chapter 15, 18 or 19 of Part 2 of, or Chapter 4 or 6 of Part 3 of, the Social Welfare Consolidation

- Act 2005, or any subsequent Act together with which that Act may be cited, and if received by a person who, for the purposes of a tax in that country which corresponds to income tax in the State, is resident in the foreign country and is not resident elsewhere, would be disregarded for income tax purposes.

Any pension, benefit or allowance to which this section applies is not treated as income arising from foreign possessions and, accordingly, is not chargeable to tax under Case III of Schedule D.

Under the terms of the US Double Taxation Agreement, signed on 28 July, 1997, this exemption from income tax does not apply in respect of a US Social Security pension payable to an Irish resident individual.

## **201 Exemptions and reliefs in respect of tax under *section 123***

### **Summary**

This section provides that in certain circumstances all or part of a payment to which *section 123* (payments on retirement or removal from office or employment) applies is exempt from income tax. *Schedule 3* also provides certain relief from the charge to tax under *section 123* which relief is supplementary to the reliefs provided by this section. The section also provides an exemption of up to €5000 of the cost of retraining, subject to conditions, where the retraining is provided as part of a redundancy package.

### **Details**

#### ***Definitions***

“the basic exemption” is €10,160 plus €765 for each complete year of service of the person in the office or employment in respect of which the payment is made up to the relevant date. **(1)(a)**

“foreign service” is service in an office or employment —

- where tax was not charged in respect of the emoluments of that office or employment,
- within the charge to tax under Schedule E, but where tax was not fully chargeable in respect of the emoluments of that office or employment, or
- within the charge to tax under Case III of Schedule D, but where tax was not computed on the full amount of income arising in the year of assessment in accordance with *section 71(1)*.

“the relevant date” is the date of the termination of the employment or the change in the conditions of employment in respect of which the payment is made.

In relation to a company, “control” is the power of a person to secure — **(1)(b)**

- through the holding of shares or voting rights in the company or any other company, or
- by virtue of any power conferred by the articles of association or any other document regulating the company or any other company,

that the company’s affairs are conducted in accordance with the wishes of that person.

In the case of a partnership, “control” is the right to a share of more than 50 per cent of the assets, or of more than 50 per cent of the income, of the partnership.

#### ***Associated persons***

For the purposes of this section and *Schedule 3*, employers making payments to which *section 123* applies are associated if, on the date the payment is made, one of those **(1)(c)**

employers is under the control of the other or both are under the control of a third person.

### **Cost of Retraining**

“eligible employee” is a person who has more than 2 years continuous full time service or is deemed for the purposes of the redundancy acts to have 2 years continuous service. (IA)(a)

“retraining” is a training course made available as part of a redundancy package, which is designed to improve knowledge or skills to be used in obtaining gainful employment or in starting a business. The course must be completed within 6 months of the employee being made redundant.

“redundancy package” is any scheme of compensation offered to an eligible employee when he ceases his employment.

The first €5,000, of the cost of retraining an eligible employee, is exempt from tax where, as part of a redundancy package, an employer makes retraining available to all eligible employees. (IA)(b)

The exemption is not available on the cost of training a spouse, civil partner or dependant of an employer. (IA)(c)

The exemption is not available if an employee receives the cash or money’s worth in lieu of the employer providing the retraining. (IA)(d)

### **Exemption**

Excluded from the charge to tax under **section 123** are payments — (2)

- of an amount not exceeding €200,000 - (2)(a)(i)
  - arising on the termination of an office or employment by the death of the holder, or
  - made on account of the injury or disability of the holder (“disability” is to be taken as meaning a specified physical disability or mental disorder as distinct from a decline of powers due to advanced age),
- in respect of restrictive covenants (chargeable under **section 127**), (2)(a)(ii)
- made under any retirement benefits scheme where the employee has been charged to tax under **section 777** in respect of the payment, and (2)(a)(iii)
- made under a Revenue approved pension scheme or a statutory scheme or under a scheme set up by a foreign government for the benefit of its employees. (2)(a)(iv)

Where **subparagraph (2)(a)(i)** applies to any payment, or part of a payment, the other exemption provisions of this section and **Schedule 3**, including any deduction for Standard Capital Superannuation Benefit, shall not apply. A specific provision allowing for the making of a retraining payment, as provided for in **subsection (1A)**, is included. (2)(b)

The €200,000 limit referred to in **subparagraph (2)(a)(i)** shall be reduced by the amount of the aggregate of all previously exempted payments, and any exempt payments made at the same time, to which that subparagraph applies. (2)(c)(i)

Where two or more payments are made in respect of the same person, or in respect of the same office, or in respect of different office or employments, for the purposes of determining whether the limit set out in **subparagraph (2)(a)(i)** has been exceeded, the aggregate of all such payments will be treated as if it was a single payment. (2)(c)(ii)

### **Reporting of exempt lump sums**

It is obligatory to report to the Revenue Commissioners, within 46 days of the end of the (2A)



tax year, details of the lump sum payments, in that year and treated as exempt by reference to **subsection (2)(a)**, that is, payments, or parts of such payments, made on the termination of an employment by the death of the employee or made on account of injury or disability of the employee. The particulars to be furnished are —

- the name and address of the person to whom the payment was made,
- that person’s personal public service number (PPS No.),
- the amount of the payment made, and
- the basis on which the payment, or part of the payment, is not chargeable to tax under **section 123**, and, where the payment is on account of injury or disability, the extent of the injury or disability, as the case may be.

### ***Exceptions to the full exemption***

Certain payments made to former Members of the Oireachtas and public servants are not eligible for the full exemption provided in **subsection (2)(a)(iv)**. Instead, such payments qualify for the other exemptions provided for in this section and in **Schedule 3**. The payments in question are — (3)

- a termination allowance payable to a former member of the Oireachtas,
- a severance allowance payable to former Ministers or a special allowance payable to former Taoisigh,
- special severance gratuities payable under section 7 of the Superannuation and Pensions Act 1963 or other analogous statutory payments,
- any benefit paid in pursuance of a statutory retirement benefits scheme, other than normal retirement benefits, which are payable to an individual in circumstances of —
  - redundancy or abolition of office, or
  - for facilitating improvements in the organisation of the employer.

For this purpose “normal retirement benefits” are recognised superannuation benefits customarily payable at normal retirement date under the relevant statutory scheme. Accordingly, normal retirement benefits may include benefits which are —

- payable earlier than the normal specified retirement date,
- calculated by reference to a period greater than actual service (for example, where an early retiree is granted added years), or
- described as short service gratuities which are calculated on a basis approved by the Minister for Finance.

### ***Exemption for foreign service***

This subsection excludes from the charge to tax on termination payments (under **section 123**) any payment in respect of an office or employment in which the holder’s service included a period of foreign service, and where that foreign service was — (4)

- three quarters of the whole period of service,
- where the period of service up to the termination date exceeded 10 years, the whole of the last 10 years, or
- where the period of service up to the termination date exceeded 20 years, one-half of that period, including any 10 of the last 20 years.

The exemption for foreign service under **subsection (4)** ceased to have effect from 27 March 2013, the date of passing of the Finance Act 2013. (4A)

### **Basic exemption**

A charge to tax under **section 123** only arises where the amount of the payment exceeds the basis exemption limit (that is, €10,160 plus €765 for each complete year of service). (5)(a)

Where 2 or more payments are made to or in respect of the same person in respect of the same office or employment, or in respect of different offices or employments held under the same employer or under associated employers the payments must be aggregated and the basic exemption is applied as if the holder had received a single payment. Where such payments are treated as income of different years of assessments, the basic exemption is deducted from the payment treated as income of the earlier year. (5)(b)

### **Additional relief**

A person may, within 4 years of the end of the year of assessment in which the payment is treated as income chargeable under **section 123**, make a claim in writing to have any relief provided in **Schedule 3** applied to the payment. (6)

### **Supplementary**

Payments chargeable to tax under **section 123** are ignored where any provision of the Income Tax Acts requires income to be treated as the highest part of a person's income. (7)

### **Restriction of relief**

With effect from 1 January 2011 the amount of the chargeable lump sum in accordance with **section 123** shall be restricted to the lesser of — (8)(a)

- (i) the taxable lump sum computed in accordance with the provisions of this section and **Schedule 3**, or
- (ii) €200,000.

The amount of €200,000 is reduced by any previous exempt payments which the individual may have received to which **section 123** applied and also any deduction granted under **paragraph 6** of **Schedule 3**. (b)

The limit of €200,000 is exclusive of payments made in accordance with **subsection (1A)** i.e. retraining payments up to €5,000 and **subsection (2)** i.e. payments made on account of the death of the employee or injury or disability of the holder of an office or employment. (c)

Where 2 or more payments are made to an individual in respect of the same office or employment, or in respect of different offices or employments, the aggregate amount of the tax-free lump sums shall be restricted to a lifetime limit of €200,000. (d)

## **202 Relief for agreed pay restructuring**

### **Summary**

This section exempts from income tax certain lump sum payments paid to employees under an agreed pay restructuring scheme. The exemption only applies where the employer company is faced with a substantial adverse change in its competitive environment and restructures its operations, by agreement with its work force, to ensure its survival – and has been certified as such by the Minister for Enterprise, Trade and Employment (“the Minister) on the advice of the Labour Relations Commission (“the LRC”). The restructuring must involve pay reductions of at least 10 per cent of basic pay and must remain in place for at least 5 years. The maximum tax-free lump sum per employee is as follows:

Reduction in pay	Exemption	Maximum tax-free lump sum
At least 10% but not more than 15%	€7,620 plus €255 for each year of service up to a ceiling of 20 year’s service	€12,720
More than 15% but not more than 20%	€7,620 plus €635 for each year of service up to a ceiling of 20 year’s service	€20,320
More than 20%	€10,160 plus €765 for each year of service up to a ceiling of 20 year’s service	€25,460

## Details

### Definitions

Some of the more important definitions are — (1)

“basic pay” is the employee’s emoluments (within the meaning of *section 472*) excluding benefits in kind but including overtime (this is the base for determining the required 10 per cent pay cut).

“qualifying company” is an employer company which is certified by the Minister for Enterprise, Trade and Employment as a qualifying company.

“qualifying employee” is an employee in receipt of the PAYE tax credit provided for by *section 472*.

“relevant agreement” is a collective agreement (that is, an agreement between the employer and one or more trade unions representing the employees) involving more than 50 per cent of the total work force or more than 75 per cent of a particular category of the workforce (including a plant or a section) provided that at least 75 per cent of the workers in that category are party to the agreement. It must provide for lump sum compensation payments in return for pay reductions of at least 10 per cent (which must continue for at least 5 years). The agreement must be registered with the LRC.

“relevant date” is the date the agreement is registered with the LRC.

### Certification

On the making of an application by a company, the Minister for Enterprise, Trade and Employment may, in accordance with guidelines agreed to by the Minister for Finance, certify that the company may be treated as a qualifying company. The application must contain all relevant information concerning the company, its trade or business, and the terms of the proposed agreements as may be specified in the guidelines. (2)(a) & (c)

The Minister for Enterprise, Trade and Employment may not so certify an employer company unless satisfied, on the advise of the LRC, that — (2)(b)

- the company is confronted with a substantial adverse change in its competitive environment which will determine its current or continued viability,
- it is necessary to enter into a pay restructuring agreement with its qualifying employees to accommodate that change and maintain its viability, and
- the proposed agreement is for the sole purpose of rectifying the adverse change.

The certification may be subject to conditions and can be revoked if any of the conditions are not complied with. (2)(d) & (f)

Costs (for example, consultants' fees) incurred by the LRC in advising the Minister on the competitive threat faced by the applicant company and the need for pay restructuring must be met by the company. (2)(e)

The relief is scheduled to end on 1 January, 2004 (that is, no certificate can issue after that date). (2)(g)

### ***Monitoring***

The pay restructuring agreement must be registered with the LRC, and the employer company must in each of the following 5 years confirm in writing to the LRC (within 1 month of each of the 5 anniversaries of the registration) that the terms of the agreement continue in force. (3)

### ***National wage agreements and incremental scales***

For the purpose of determining whether the percentage pay cut is maintained during the 5 year period, pay increases arising from Partnership 2000 or any similar agreement and incremental scale payments are ignored. (4)

### ***Extent of the exemption***

A lump sum payment to an employee by a qualifying company under a “relevant agreement” is exempt from any charge to income tax to the extent that it does not exceed an amount calculated as follows — (5)(b)

- where the reduction in pay is at least 10% but not more than 15% – €7,620 plus €255 for each year of service up to a ceiling of 20 year's service,
- where the reduction in pay is more than 15% but not more than 20% – €7,620 plus €635 for each year of service up to a ceiling of 20 year's service,
- where the reduction in pay exceeds 20% – €10,160 plus €765 for each year of service up to a ceiling of 20 year's service.

Where more than one payment is made to an employee in respect of the same employment, or different employments within the same group of companies, the payments are aggregated. If multiple payments exceed the exemption threshold as set out, that threshold is deemed to be set — (5)(c)

- where the payments are made for different years, first against a payment received in an earlier year, and
- where the payments are made in the same year, against a payment received earlier in a year of assessment before a payment received later in that year.

### ***Withdrawal of relief***

Where the Minister for Enterprise, Trade and Employment revokes a certificate, or the company fails to make an annual return to the LRC or an employee receives a pay increase apart from the permitted exceptions, the relief is to be withdrawn by making an assessment under Case IV of Schedule D for the year of assessment in which the relief was granted. (6)

### ***Interaction with redundancy, etc payments***

Where an employee receives a payment to which *section 123* applies (for example, an ex-gratia redundancy payment) within 5 years of the registration of the pay restructuring agreement, any tax-free element of the “*section 123*” payment (as calculated under *section 201* or *Schedule 3*) is reduced by the relief given under this section. (7)

The exemption in *section 201* and the top-slicing relief in *Schedule 3* do not apply to (8) any payment within this section.

### **203 Payments in respect of redundancy**

An exemption from income tax is provided for payments made to or on behalf of an employed or unemployed person under the Redundancy Payments Act, 1967.

### **204 Military and other pensions, gratuities and allowances**

This section exempts from income tax certain military pensions, gratuities and allowances. The section applies to —

- army wound and disability pensions,
- gratuities in respect of army wounds or disabilities,
- demobilisation pay and gratuities paid to officers of the National Forces or the Defence Forces of Ireland,
- deferred pay (within the meaning of any regulation under the Defence Act, 1954), and
- gratuities granted in respect of service with the Defence Forces.

Such income is ignored in computing the recipient's total income for the purposes of the Income Tax Acts.

### **204A Exemption in respect of annual allowance for reserve members of the Garda Síochána**

This section provides that, with effect from 1 January 2014, the annual allowance payable to reserve members of the Garda Síochána is exempt from income tax and shall not be reckoned in computing income for the purposes of the Income Tax Acts. The allowance is payable under Regulation 15 of the Garda Síochána (Reserve Members) Regulations 2006 (S.I. 413 of 2006).

### **204B Exemption in respect of compensation for certain living donors**

This section provides that, with effect from 1 January 2015, compensation payable to a living donor for donation of a kidney for transplantation under conditions defined by the Minister for Health shall be exempt from income tax and shall not be reckoned in computing income for the purposes of the Income Tax Acts.

The statutory basis under which the Minister for Health may define conditions under which compensation may be granted is contained in Regulation 21(2) of the European Union (Quality and Safety of Human Organs Intended for Transplantation) Regulations 2012 and 2014 (S.I. Nos. 325 of 2012 and 198 of 2014).

With effect from 12 March 2019, this section shall also apply to compensation payable to a living donor for donation of a lobe of liver for transplantation under conditions defined by the Minister for Health.

The compensation payable under S.I. Nos. 325 of 2012 and 198 of 2014 relates to necessary expenses of travel and accommodation actually incurred and also loss of income and childcare costs, subject to such conditions as specified by the Minister for Health.

## 205 Veterans of the War of Independence

### Summary

This section exempts from income tax the military service pensions, allowances, benefits or gratuities payable to veterans of the War of Independence, their widows and dependants.

### Details

#### *Definitions*

“military service” is the performance of duty as a member of an organisation to which (1) Part II of the Army Pensions Act, 1932, applies. These organisations are —

- Óglaigh na hÉireann (Irish Republican Army),
- The Irish Volunteers,
- The Irish Citizen Army,
- Fianna Éireann,
- The Hibernian Rifles, and
- Cumann na mBan.

Also included is military service within the meaning of the Military Services Pensions Act, 1924, and service in the Forces within the meaning of the Military Services Pensions Act, 1934.

“relevant legislation” is widely defined to cover various Acts and regulations providing for both the granting and the increase of certain military service pensions, benefits, gratuities and allowances payable to veterans of the War of Independence (including certain members of the Connaught Rangers), their widows and dependants.

“relevant military service” is military service during any part of a period referred to in section 5(2) of the Army Pensions Acts, 1924–1964 (that is, the pre-truce period from 1 April, 1916 to 11 July, 1921 and the post-truce period from 12 July, 1921 to 30 September, 1923) or, in the case of a qualified person within the meaning of the Connaught Rangers (Pensions) Act, 1936, in the circumstances referred to in paragraphs (a), (b) and (c) of section 2 of that Act.

“veteran of the War of Independence” is a person who was a member of an organisations referred to in the definition of “military service” or who was a qualified person within the meaning of the Connaught Rangers (Pensions) Act, 1936, and who was engaged in relevant military service.

#### *Exemption*

Exemption from income tax is granted in respect of any pension, allowances, benefits or gratuities in so far as it related to relevant military service of a veteran of the War of Independence or to an event which happened during or in consequence of such relevant military service and which is paid under the relevant legislation. The exemptions cover payments to veterans, their widows and dependants. Any such pension, allowance, benefit or gratuity is ignored in computing the recipient’s total income for the purposes of the Income Tax Acts. (2)

## 205A Magdalen Laundry Payments

### Summary

This section provides an exemption from tax for ex-gratia payments made to a relevant individual by or on behalf of the Minister for Justice and Equality and for certain payments made to Magdalen awardees by the Department of Employment Affairs and Social Protection pursuant to the Magdalen Restorative Justice Ex-Gratia Scheme. A capital gain accruing from the investment of such proceeds (i.e. relevant payment) is also exempt from capital gains tax.

The section applies to payments made on or after 1 August 2013.

## Details

### Definitions

‘relevant individual’ means an individual who has received a payment referred from the Minister for Justice and Equality pursuant to the Magdalen Restorative Justice Ex-Gratia Scheme, referred to in paragraph (a) of the definition of ‘relevant payment’ in this subsection. (1)

‘relevant payment’ means:

- a. a payment or payments made, directly or indirectly, to a relevant individual by or on behalf of the Minister for Justice and Equality pursuant to the Magdalen Restorative Justice Ex-Gratia Scheme,
- b. an amount equal to the State Pension (Contributory) as set out in column 2 of Part 1 of Schedule 2 of the Social Welfare Consolidation Act 2005 to a relevant individual,
- c. an amount equal to the State Pension (Non-Contributory) as set out in Part 3 of the Social Welfare Consolidation Act 2005 to a relevant individual, and
- d. any payment, other than a payment referred to in paragraphs (a) to (c) made by or on behalf of the Minister for Employment Affairs and Social Protection to a relevant individual by virtue of them being a relevant individual

### Application

Income that:

- consists of a relevant payment, or (2)(a)
- arises from the investment of such relevant payments or of income arising from such payments is also exempt from income tax to the extent that it would otherwise be chargeable to tax under — (2)(b)
  - Schedule C (interest paid out of public revenue),
  - Case III (certain interest paid in the State without deduction of tax) of Schedule D,
  - Case IV (by virtue of *section 59* (income taxed at source), *section 745* (offshore income gains) and *section 747E* (disposal of an interest in offshore funds)) of Schedule D,
  - Case V (rents) of Schedule D, or

- Schedule F (distributions by Irish companies).

is exempt from income tax.

Gains accruing on the disposal of assets acquired directly or indirectly with such relevant payments or with exempt income derived from such payments are exempt from capital gains tax. (3)

Where it is necessary to decide how much income is exempt income or how much gains are exempt gains, apportionment on a just and reasonable basis is to apply. This may be required where the payments or monies derived therefrom together with other funds available to the individual concerned are used to purchase an asset. (4)

### **206 Income from investments under Social Welfare Consolidation Act 2005**

This section exempts from income tax any income derived by the Minister for Finance or the Minister for Social Protection from investments made under section 9 of the Social Welfare Consolidation Act 2005.

This section exempts from income tax any income derived by the Minister for Finance from investments made under section 9 of the Social Welfare Consolidation Act 2005.

### **207 Rents of properties belonging to hospitals and other charities**

#### **Summary**

This section provides that certain income of hospitals and other charities chargeable to income tax under Schedules C, D and F is exempt from income tax where such income is applied solely for charitable purposes.

#### **Details**

##### ***Exemptions***

Rental income and profits of any property belonging to any hospital, public school or almshouse, or vested in trustees for charitable purposes, is exempt from tax under Schedule D to the extent that such income is applied for charitable purposes only. (1)

Income forming part of the income of any body of persons or trust established for charitable purposes only is exempt from tax to the extent that such income is applied for charitable purposes only and provided such income is —

- interest, annuities, dividends or shares of annuities chargeable under Schedule C,
- yearly interest or other annual payments chargeable under Schedule D, or
- distributions chargeable under Schedule F.

Any interest, annuities, dividends or shares of annuities chargeable under Schedule C in the names of trustees and applied solely towards the repair of any church or building used for the purposes of divine worship is also exempt.

Gifts (within the meaning of the Charities Act, 1961) which relate to graves and memorials are deemed to be gifts for charitable purposes and this exemption applies accordingly. (2)

##### ***Claims***

Claims for relief under this section must be verified by affidavit and proof of the claim (3)



may be given by the treasurer, trustee or authorised agent.

### **Penalties**

Any person making a false claim under this section in respect of income chargeable under Schedule C forfeits €125. (4)

## **207A Charities Regulatory Authority and Common Investment Fund**

### **Summary**

This section provides the Charities Regulatory Authority with exemption from tax in respect of the income of the Common Investment Fund, which was vested in the Authority when it was established on 16 October 2014, on the same basis as if the Authority had been granted charitable tax exemption under *section 207*.

On the establishment of the Authority, the Commissioners of Charitable Donations and Bequests for Ireland were dissolved and, under the provisions of the *Charities Act 2009*, their functions were taken over by the Authority. As part of this process, the Authority assumed responsibility for the Commissioner’s Common Investment Fund.

The Commissioners had been granted tax exemption under *section 207*, which meant that the Fund income was not subject to tax in their hands. The Authority, however, is not in a position to apply for charitable tax exemption in its own right because, for example, it is not *established for charitable purposes*, as required by *section 207*.

### **Details**

“Fund” means the Common Investment Fund which, prior to the dissolution of the Commissioners of Charitable Donations and Bequests for Ireland (on the establishment of the Charities Regulatory Authority on 16 October 2014), was known as the “Commissioners Common Investment Fund”. This fund was established by the Commissioners in 1985 under *section 46 of the Charities Act 1961* and vested in the Authority on its establishment. (1)

“relevant income” means the income of the Fund as defined.

The Charities Regulatory Authority is deemed to be a body which has claimed and been granted tax exemption under *section 207* in respect of income arising in the Fund from 16 October 2014. (2)

## **208 Lands owned and occupied, and trades carried on, by charities**

This section exempts from income tax certain income arising to charities. The sources of income to which the exemption applies are —

- income arising from lands, tenements or hereditaments which are owned and occupied by a charity and where the land, etc is occupied for the purposes of quarrying, mining, etc or of any of the other concerns set out in *section 18(2)*, Case I(b) of Schedule D,
- trading profits, if the profits are applied solely for charitable purposes and either the trade is exercised in the course of the actual carrying out of the primary purpose of the charity or the work in connection with the trade is mainly carried on by beneficiaries of the charity. Where the trading profits arise from a trade of farming carried on by a charity, those profits need not be applied solely for charitable purposes.

A “charity” is any body of persons or trust established for charitable purposes only.

## **208A Overseas charities**

## Summary

This section, which applies from 1 January 2010, allows a charity established in any EEA or EFTA State to apply to the Revenue Commissioners for a determination that it would qualify for the tax exemptions provided for by *section 207* or *208*, if it were to have income in the State of a kind referred to in those sections. Essentially this is rental and other investment income, for example, interest and dividends, and trading profits. Where the Revenue Commissioners are satisfied that either of these exemptions would apply in those circumstances, they will issue a notice of determination to the charity to that effect.

The receipt of a notice will, in turn, permit the charity, after a period of 2 years, to seek an authorisation under *Part 3* of *Schedule 26A* for the purposes of accessing the donations relief scheme under *section 848A*. This 2-year waiting period already applies to domestic charities that have an exemption under *section 207*. Therefore, the treatment of domestic and overseas charities are the same in that regard.

## Details

### *Definitions*

The following definitions apply for this section and *section 208B*: (1)

“charity” means any body of persons or trust established for charitable purposes only.

“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.

“EFTA state” means a state, other than an EEA state, which is a Member State of the European Free Trade Association.

### *Claim*

A person or trust established in an EEA or EFTA State may, on a claim to the Revenue Commissioners, seek a determination to the effect that it would qualify for the exemptions provided for by *section 207* or *208* if it were to have income in the State of a kind referred to in those sections. (2)

### *Determination*

A claim referred to in *subsection (2)* must be determined by the Revenue Commissioners or an officer authorised by them for that purpose. (3)

### *Notice of Determination*

Where it is determined that the person or trust would qualify for the exemptions provided for by *section 207* or *208* if it had income in the State of a kind referred to in those sections, the Revenue Commissioners, or an officer authorised by them for the purpose of determining a claim, must issue the person or trust with a notice of determination. (4)

### *Verification & proof of claims*

Claims under this section must be verified by affidavit or an equivalent sworn statement, and proof of the claim may be given by the treasurer, trustee or any duly authorised agent. (5)

## 208B Charities – miscellaneous

### Summary

This section contains a number of administrative provisions dealing with the tax exemptions provided for in *sections 207* and *208* and the new arrangements concerning overseas charities provided for by *section 208A*.

Essentially, this section sets out that applications made under *sections 207, 208* and *208A* must be supported by whatever information the Revenue Commissioners may reasonably require to determine the claim.

In addition, it also requires charities that have been granted an exemption or a notice of determination, to submit a report to the Revenue Commissioners on their ongoing activities. Revenue is also given the power to appoint an auditor to verify any information provided to them.

### Details

#### Definitions

The following definitions apply for the purposes of this section: (1)

“charity trustee” includes-

- (a) where the charity is a company, the directors and other officers of the company, and
- (b) where the charity is a body corporate (other than a company) or an unincorporated body, any officer or any person performing the functions of an officer of the body.

“qualified person” means—

- (a) a person who is qualified for appointment as an auditor of a company under section 187 of the Companies Act 1990, or
- (b) where a person or trust –
  - (i) has made a claim for a determination under *section 208A(2)*,
  - (ii) is established in an EEA state or in an EFTA state, and
  - (iii) does not have a principal place of business in the State,

a person who is qualified under the law of that EEA or EFTA state to perform the same or equivalent functions to those which may be performed in the State by a person referred to in *paragraph (a)*.

#### Claims

All claims for exemption under *section 207* or *208*, or for a determination under *section 208A*, must be supported by whatever information the Revenue Commissioners may reasonably require to enable them determine the claim. Such information is likely to include the charity’s Governing Instrument, a statement of its activities prior to the date of the claim and of its plans for the 12 months following the claim, its annual report and latest financial statements. (2)

#### Provision of information

A charity that has been granted exemption under *section 207* or *208*, or issued with a notice of determination under *section 208A* shall provide such information as the Revenue Commissioners may require in respect of its activities in any financial year following the granting of an exemption or the issuing of the notice of determination. (3)

Such information is likely to include the charity’s annual report and financial statements for the period in question.

### ***Official language***

Information provided to the Revenue Commissioners under **subsection (2) or (3)** must **(4)** be in an official language of the State.

### ***Verification of information***

The Revenue Commissioners may appoint a qualified person, i.e. an auditor or equivalent in an EEA or EFTA state, to verify any information provided to them under **subsection (2) or (3)**. **(5)**

### ***Recovery of expenses***

The Revenue Commissioners may recover expenses incurred by them under **subsection (5)** as a simple contract debt in any court of competent jurisdiction from the charity trustees (who are jointly and severally liable for those expenses), or the charity concerned, where it is not practicable to recover the expenses from the charity trustees. **(6)**

## **209 Bodies for the promotion of Universal Declaration of Human Rights and the implementation of European Convention for the protection of Human Rights and Fundamental Freedoms**

This section grants to certain bodies the same exemption from income tax which applies to charities under **section 207** (that is, certain income chargeable under Schedules C, D and F). The bodies concerned are those established with the sole or main object of —

- the promotion of observance of the Universal Declaration of Human Rights,
- the implementation of the European Convention for the Protection of Human Rights and Fundamental Freedoms, or
- both the promotion of observance of that Declaration and the implementation of that Convention.

In addition, such bodies must, by their rules or constitution, be precluded from granting any benefit to its members, either directly or indirectly, other than for valuable and sufficient consideration and must apply the income solely for charitable purposes. Relief under this section must be claimed.

## **210 The Great Book of Ireland Trust**

This section exempts from income tax the income of the Great Book of Ireland Trust arising from the sale of the book and any payments made from such income to Clashganna Mills Trust Ltd and Poetry Ireland Ltd. In addition, payments made by the Great Book of Ireland Trust to Clashganna Mills Trust Ltd and Poetry Ireland Ltd are not subject to deduction of tax at source at the standard rate (that is, such payments are to be made gross).

The Great Book of Ireland Trust is a trust established for the benefit of Clashganna Mills Trust Ltd and Poetry Ireland Ltd. Clashganna Mills Trust Ltd is a registered charity. Poetry Ireland Ltd (the national poetry organisation) is a company limited by guarantee. The Great Book of Ireland Trust distributes money from the sale of the Great Book of Ireland equally to Clashganna Mills Trust Ltd and Poetry Ireland Ltd.

## **211 Friendly Societies**

## Summary

A registered friendly society which is precluded by statute or by its own rules from assuring to any person a sum exceeding €1,270, or €70 per year by way of annuity, is entitled to exemption from income tax in respect of its income chargeable to tax under Schedules C, D and F. An unregistered friendly society whose income does not exceed €205 is also exempt from income tax.

## Details

### *Unregistered societies*

An unregistered friendly society whose income does not exceed €205 is exempt from income tax. (1)

### *Registered societies*

A registered friendly society which is precluded by statute or by its own rules from assuring to any person a sum exceeding €1,270 by means of gross amount, or €70 per year by way of annuity, is entitled to exemption from income tax in respect of its income chargeable to tax under Schedules C, D and F. However, a registered friendly society is not entitled to exemption from tax under this section unless the Revenue Commissioners determine that the society satisfies the following conditions — (1)&(2)

- that it was established solely for any or all of the purposes set out in section 8(1) of the Friendly Societies Act, 1896 and not for the purpose of securing a tax advantage, and
- that since its establishment it has engaged solely in activities designed to achieve the purposes for which it was established and that it has not undertaken trading activities (other than insurance in respect of its members) for profit.

### *Determinations*

The Revenue Commissioners, in making a determination in relation to a registered friendly society, are to consider any evidence submitted by the society. (3)

### *Appeals*

Any friendly society aggrieved by a determination of the Revenue Commissioners is entitled to appeal to the Appeal Commissioners. The appeal is made via notice in writing to the Appeal Commissioners. An appeal must be made within 30 days after the date of the notice of the determination. The appeal will be heard and determined in the manner provided for in *Part 40A*. (4)

### *Claims*

Every claim for exemption under this section must be verified by affidavit and must be proved by the treasurer, trustee or any duly authorised agent. (5)

### *Penalties*

Any person making a false claim under this section in respect of income chargeable under Schedule C must forfeit €125. (6)

## 212 Credit unions

This section was repealed with effect from 6 April, 1998. [See, however, *section 219A* which exempts from corporation tax the income of credit unions which are registered or deemed to be registered under the Credit Union Act, 1997.]

## 213 Trade unions

### Summary

A registered trade union which is precluded by statute or by its own rules from assuring to any person a sum exceeding €10,160, or €2,540 per year by way of annuity, is entitled to exemption from income tax under Schedules C, D and F in respect of interest and dividends which are applicable and applied solely for the purpose of provident benefits.

### Details

#### *Provident benefits*

The term “provident benefits” includes any payment expressly authorised by the registered rules of the trade union and made to a member — (1)

- during sickness or incapacity from personal injury or while out of work,
- who is an aged member by means of superannuation,
- who has met with an accident, or
- who has lost his/her tools by fire or theft.

The term includes a payment in discharge or aid of funeral expenses on the death of a member, or the wife of a member, or a provision for the children of a deceased member.

#### *Exemption*

A registered trade union which is precluded by statute or by its own rules, from assuring to any person, a sum exceeding €10,160 by means of gross amount, or €2,540 per year by way of annuity, is entitled to exemption from income tax under Schedules C, D and F in respect of its interest and dividends which are applicable and applied solely for the purpose of provident benefits or the education and training of its members and dependent children of members. (2)

#### *Claims*

Every claim for exemption under this section must be verified by affidavit and must be proved by the treasurer, trustee or any duly authorised agent of the trade union. (3)

#### *Penalties*

Any person making a false claim under this section in respect of income chargeable under Schedule C must forfeit €125. (4)

## 214 Local authorities, etc

This section exempts from income tax the income of local authorities, the Health Service Executive, education and training boards and committees of agriculture. However, such bodies are still liable for deposit interest retention tax under *Chapter 4* of *Part 8*.

## 215 Certain profits of agricultural societies

Any profits/gains arising to an agricultural society (being any society or institution established for the purpose of promoting the interests of agricultural, horticulture, livestock breeding or forestry) from an exhibition or show held for the purposes of the society and which are applied solely for those purposes are exempt from income tax.

## 216 Profits from lotteries

The income of lotteries (licensed under Part IV of the Gaming and Lotteries Act, 1956) is exempt from income tax.

## **216A Rent-a-room relief**

### **Summary**

This section affords relief from income tax for gross receipts of up to €14,000 per annum, from the letting by an individual of a room or rooms in the individual's sole or main residence. The relief is not due in certain circumstances including, for example, where the sums received are from a child to a parent or are from an employer to an employee. The granting of relief under the section does not affect the individual's entitlement to mortgage interest relief or capital gains tax exemption on the disposal of that residence.

### **Details**

#### ***Definitions***

“qualifying residence” is a residential premises located in the State which is occupied by an individual as his or her sole or main residence during the year of assessment concerned;

“relevant sums” are sums received by an individual in respect of his or her qualifying residence for the use of a room or rooms in the residence as living accommodation and include sums received for meals, cleaning, laundry and similar goods and services which are incidentally provided in connection with that use;

“residential premises” means a building or part of a building used as a dwelling.

#### ***The relief***

Where, in a year of assessment, an individual is chargeable to tax under Case IV or Case V of Schedule D in respect of relevant sums, regardless of whether the sums are derived from one or more sources, and the total amount of those sums does not exceed €14,000, then the profits/gains or losses of that year of assessment arising from those relevant sums are treated as being nil.

The total relevant sum is a gross figure, i.e., no account is taken of any expenses incurred in generating the relevant sums. Any capital allowances which could have been granted under **section 284** are deemed to have been granted. In other words, there is a notional writing down of capital expenditure on furniture, etc., in respect of which wear and tear allowance would, but for this relief, have been granted.

#### ***Opting out of relief***

An individual can make an election to opt out of this relief for a year of assessment. Such an election must be made on or before the return filing date for the year of assessment concerned.

#### ***Non-application of relief***

“Rent-a-room” relief will not apply in circumstances where the relevant sums received in respect of accommodation provided in the family home are from a child to his/her parent, or from a child to the civil partner of his/her parent.

Relief will not apply to payments received either directly or indirectly by an individual, or by a person connected with the individual, in respect of accommodation provided in the family home where that individual is an office holder or employee of the person

making the payment or of a person connected with the payer.

For the year of assessment 2019 and subsequent years, relief will not apply to that part of the relevant sums arising to an individual in respect of the use by a person of accommodation for a period which does not exceed 28 consecutive days;

except where the person using the accommodation—

- (i) is a person who is resident or ordinarily resident in the State and is incapacitated due to mental or physical infirmity (a “relevant person”),
- (ii) uses the room or rooms for a minimum of 4 consecutive days per week for not less than 4 consecutive weeks, or
- (iii) is receiving full-time or part-time instruction at a university, college, school or other educational establishment in the State.

(3B)

The person claiming that the exception applies may be required to provide supporting proof to the Revenue Commissioners.

(3C)

### ***Tax returns***

This section does not affect the obligation to make a return.

### ***Limit***

The threshold for the rent-a-room scheme is €14,000.

### ***Apportionment***

Where more than one individual is entitled to the relevant sums concerned, the €14,000 limit is divided equally between them.

### ***Entitlement to other relief or exemption***

The granting of relief under the section does not affect the individual’s entitlement to mortgage interest relief nor capital gains tax exemption on the disposal of that residence.

## **216B Payments under Scéim na bhFoghlaimoirí Gaeilge**

### **Summary**

This section exempts from income tax income received by persons in Gaeltacht areas in respect of students attending Irish colleges in those areas to learn Irish under the scheme known as Scéim na bhFoghlaimoirí Gaeilge which is administered by the Department of Community, Rural and Gaeltacht Affairs.

### **Details**

In the case of a qualified applicant under a scheme known as Scéim na bhFoghlaimoirí Gaeilge, which is administered by the Minister for Community, Rural and Gaeltacht Affairs, the section applies to any income received under that scheme in respect of persons temporarily resident with the applicant (that is, students while they attend recognised Irish courses in the Gaeltacht) together with any other income received in the ordinary course in respect of those persons. It covers payments made in respect of the students by the Department of Community, Rural and Gaeltacht Affairs as well as payments by the Irish colleges which the students attend **(1)**

Income to which the section applies is disregarded for the purposes of the Income Tax Acts. That income is, therefore, exempt from income tax and no return of the income **(2)**



need be made to the Revenue Commissioners.

## 216C Childcare services relief

### Summary

This section provides for a scheme of tax relief for certain income arising from the provision of childcare facilities.

The detail of the scheme are as follows:

- Where the gross annual income from the provision of childcare services does not exceed €15,000 the income is fully exempt from tax.
- The care must be provided in the carer's home, not the child's home.
- No more than 3 children may be cared for at any one time.
- The care provider must be self employed (not an employee) and include the gross income in their annual return of income to the Revenue Commissioners. The claim for the tax exemption is made with this return.
- The claim must be accompanied by evidence that the care provider has notified the person recognised for that purpose by the Health Services Executive. In practice this will mean the officer appointed by the local City or County Childcare Committee. Details of the names and addresses of the officers will be published by the HSE.

### Details

This section provides for a scheme of exemption from income tax for certain childcare services.

The following terms are defined:

(1)

“childcare services” means essentially any form of childminding services or supervised activities to care for minors (persons under 18 years).

“qualifying residence” means the principal private residence of an individual in which, at any particular time, in the year of assessment not more than 3 minors are cared for. In determining the number of minors being cared for, minors who occupy the premises as their sole or main residence are not counted.

“relevant sums” means all payments received in respect of the provision of childcare services other than sums arising from the provision of childcare services to minors who are —

- (a) children of the person providing the service, or
- (b) occupying the premises as their sole or main residence.

“residential premises” means a building or part of a building used as a dwelling.

The terms of the relief are as follows:

The relief applies to relevant sums arising to an individual under Case I or Case IV, or both, of Schedule D, providing the amount of the relevant sums does not exceed the individual's limit for the year in question. (2)(a)

In determining the amount of the relevant sums, no deductions in respect of expenses are allowed. (2)(b)

Where this subsection applies, the following shall be nil for the purposes of the Income Tax Acts: (2)(c)

- (i) profits or gains, or

(ii) losses,

in respect of relevant sums.

Where relevant sums arise to an individual and an election under *subsection (3)(a)* has been made, then any claim for capital allowances which could have been made shall be deemed to have been made and granted. (2)(d)

The exemption applies where an individual so elects on or before the return date for the year of assessment and the election only applies for that year of assessment. The individual must also show the Revenue Commissioners evidence that they (the individual) have notified the person, recognised by the Health Service Executive for the purposes of such notification, that childcare services are being, will be or have been provided in that year of assessment. (3)

Even though the income in question is exempt from tax, details must be included in the annual tax return. (4)

The individual's limit for a year of assessment is €15,000. (5)

If more than one person is providing childcare services in one premises, the €15,000 limit is split between them. (6)

Mortgage interest relief on a person's principal private residence and capital gains tax relief on the disposal of a person's principal private residence are not affected by the use of the residence for childcare services. (7)

## **216D Certain profits of micro-generation of electricity**

### **Summary**

This section provides for an exemption of up to €200 from income tax, USC and PRSI for certain profits arising to a qualifying individual who generates energy from renewable, sustainable or alternative energy sources for their own consumption. The profits which are exempted are those profits arising from the domestic generation of electricity which is supplied to the grid.

### **Details**

#### **Definitions**

“Act of 1999” means the Electricity Regulation Act 1999. (1)

“generate” has the same meaning as in the Act of 1999.

“micro-generation of electricity” means the use of renewable, sustainable or alternative forms of energy to generate electricity at a qualifying residence.

“qualifying person” means an individual who purchases electricity for own use. In effect, this means the individual or individuals named on the electricity bill for the premises in question.

“qualifying residence” means a residential premise (to include any garden or grounds) located in the State which is occupied by an individual as his or her sole or main residence during the year of assessment concerned.

“residential premises” means a building or part of a building used as a dwelling.

“renewable, sustainable or alternative forms of energy” has the same meaning as in the Act of 1999.

“relevant period” means the period commencing on 1 January 2022 and ending on 31

December 2024.

### **Exemption**

The exemption provided for in subsection (3) applies to profits (chargeable to tax under Case IV) arising to an individual from the generation of electricity from renewable, sustainable or alternative sources of energy at the individual's sole or main residence (referred to as the micro-generation of electricity) during the period 1 January 2022 to 31 December 2024. To qualify for the exemption the individual (or individuals) must be named on the electricity bill for the premise in question. (2)

Where, in a year of assessment, profits arise to an individual from the micro-generation of electricity this subsection provides that up to €200 of those profits are exempt from Income Tax, USC and PRSI. The €200 exemption applies to each individual named on the electricity bill i.e. it is not divided between them. (3)

## CHAPTER 2 *Corporation tax*

### **Overview**

**Chapter 2** provides an exemption from corporation tax in respect of certain income, profits, payments and dividends.

### **217 Certain income of Nitrigin Éireann Teoranta**

This section, which is now effectively spent, provided for a temporary exemption from corporation tax for Nítrigin Éireann Teoranta (NET) on its trading profits from the business of selling gas, purchased from Bord Gais Éireann, to Irish Fertiliser Industries Limited. The exemption was granted for the period 1 January, 1987 to 31 December, 1999 and was confined to NET's income in that period which, but for this section, would have been chargeable under Case I of Schedule D.

### **218 Certain income of Housing Finance Agency plc**

This section exempts from corporation tax the income of the Housing Finance Agency plc arising from its business of making loans and advances under **section 5** of the Housing Finance Agency, Act, 1981, which would otherwise be chargeable under Case I of Schedule D. Investment income of the Housing Finance Agency plc is also exempt to the extent that it would otherwise be chargeable under Case III of Schedule D.

### **218A Certain income of Motor Insurers' Bureau of Ireland**

This section exempts from corporation tax the income arising to the Motor Insurers' Bureau of Ireland from investments made by it of moneys paid to the Motor Insurers Insolvency Compensation Fund under the Insurance Act 1964 (amended by the Insurance (Amendment) Act 2018) which would otherwise be chargeable under Case III or IV of Schedule D.

### **219 Income of body designated under Irish Takeover Panel Act, 1997**

This section exempts from corporation tax the income of the Irish Takeover Panel. This body was provided for under the Irish Takeover Panel Act, 1997, and oversees and regulates the conduct of takeovers and mergers and substantial acquisitions of shares in corporate bodies.

### **219A Income of credit unions**

The income of credit unions which are registered or deemed to be registered under the Credit Union Act, 1997 is exempt from corporation tax.

### **219B Income of Investor Compensation Company Ltd**

This section exempts from corporation tax the income and chargeable gains of the Investor Compensation Company Ltd. This company, incorporated under the Investor Compensation Act, 1999, maintains a fund out of which payments may be made to private clients of investment firms which are unable to meet their obligations to their clients.

### **220 Profits of certain bodies corporate**

This section exempts from corporation tax the income and chargeable gains of certain bodies. The bodies to which this exemption applies are —

- A company authorised by virtue of a licence granted by the Minister of Finance under the National Lottery Act 1986
- The Dublin Docklands Development Authority and any of its wholly owned subsidiaries;
- The Pensions Board;
- Horse Racing Ireland;
- Irish Thoroughbred Marketing Limited;
- Tote Ireland Limited;
- The Commission for Electricity Regulation.
- Limerick Twenty Thirty Strategic Development Designated Activity Company, registered on 7 July 2008 (registered number 459652).

### **221 Certain payments to National Co-Operative Farm Relief Services Ltd and certain payments made to its members**

Section 39 of the Finance Act 2011 abolished the exemption from corporation tax applying to certain grants or payments for farm relief services made by the Minister for Agriculture, Fisheries and Food to the National Co-operative Farm Relief Services body, as well as related payments made by that body to its member co-operatives. The abolition of the exemption applies to payments made on or after 1 January 2011.

### **222 Certain dividends from a non-resident subsidiary**

#### **Summary**

The section exempts from corporation tax certain dividends received by an Irish resident company from a non-resident subsidiary. The exemption only applies where the proceeds of such dividends are applied for the purposes of an “approved investment plan” which is directed towards the creation and maintenance of employment in the State.

To claim the relief, a company must submit an “investment plan” to the Minister for Finance showing how it proposes to apply the proceeds of a specified amount of dividends received from a foreign subsidiary. Where the Minister is satisfied that the plan is directed towards the creation or maintenance of employment in trading activities which is or will be carried on in the State, he/she may issue a certificate indicating a

specified amount of the dividends which qualify for exemption. Such a certificate must be given before 15 February 2001. The qualifying dividends must be applied for the purposes of an approved investment plan within a specified 3 year time period. The amount qualifying for exemption can be reduced where the full amount of the dividends are not spent on the approved investment plan.

No particular category of investment or employment is specified. An investment in any type of trading activities may qualify provided the activities are carried on in the State. The investment may be made by the company in activities it directly carries on or may be made indirectly by, for example, subscription for shares in another company which would then make the investment.

The nature of the employment is not specified beyond that it must be in Ireland. The employment may be either new jobs in a new or expanding business or existing jobs in a business which, but for the investment, would probably close down or shed jobs. There is no specification as to the number involved.

## Details

### Definitions

“approved investment plan” is an investment plan in respect of which the Minister for Finance has given a certificate in accordance with **subsection (2)**. (1)

“investment plan” is a plan of a company resident in the State directed towards the creation or maintenance of employment in the State in trading operations carried on or to be carried on in the State. The plan may be submitted in advance of implementation or after implementation where the Minister for Finance is satisfied that there was reasonable cause for the delay in submitting the plan. The plan must, in any case, be submitted within one year of its implementation.

“relevant dividends” are dividends received by an Irish resident company from a foreign subsidiary of that company which may qualify for relief under the section. They must be dividends —

- specified in a certificate given by the Minister before 15 February, 2001, and
- applied for the purposes of an approved investment plan in a period beginning one year before and ending 2 years after the dividends are received in the State.

The Revenue Commissioners have the power to specify an extension of this period either backwards or forwards or both backwards and forwards.

“a foreign subsidiary” is a company resident in a country with which Ireland has a double taxation treaty, which is a 51 per cent subsidiary of the claimant company.

### Certification

Where an investment plan has been submitted to the Minister by a claimant company, the Minister may give a certificate specifying the amount of dividends which may qualify for relief under the section. Before issuing such a certificate the Minister must be satisfied that the proceeds of the dividends will be applied towards the creation or maintenance of employment in trading activities carried on, or to be carried on, in the State. (2)

### Exemption

Subject to **subsection (4)**, where a company claims and proves that it has received in an accounting period an amount of relevant dividends, its income for the purposes of corporation tax will not include any amount in respect of those dividends. (3)

Where all or part of the dividends specified in a certificate have not been applied within the required period for the purposes of the related “approved investment plan”, the Minister may, by notice in writing, reduce the amount of dividends specified in the certificate. Where relief has been granted in respect of the relevant dividends specified in the certificate before the reduction, the inspector may make such assessments as are necessary to recover the relief given in respect of the amount of the reduction. Where relief has not yet been claimed, relief will only be granted in respect of the amount as so reduced. (4)

### **Claims**

A claim for relief under this section must be made in writing to the inspector together with the company’s tax return for the accounting period in which the relevant dividends are received in the State. (5)

## CHAPTER 3

### *Income tax and corporation tax*

#### **Overview**

**Chapter 3** provides for an exemption from corporation tax and income tax in respect of certain grants, income, profits or gains.

#### **223 Small enterprise grants**

This section applies to grant made under —

- section 10(5)(a) of the Údarás na Gaeltachta Act, 1979, being an employment grant under a scheme known as “Deontais Fhostaíochta ó Údarás na Gaeltachta do Thionscnaimh Sheirbhíse Idir-Náisiúnta” or under the scheme known as Deontais Fhostaíochta ó Údarás na Gaeltachta do Thionscail Bheaga Dhéantúsaíochta”, or
- section 21(5)(a) (as amended by the Industrial Development (Amendment) Act, 1991) of the Industrial Development Act, 1986, being an employment grant under a scheme known as the “Scheme Governing the Making of Employment Grants to Small Industrial Undertakings.

Employment grants to which this section applies are disregarded for all the purposes of the Tax Acts.

#### **224 Grants to medium and large industrial undertakings**

This section applies to a grant made under —

- section 10(5)(a) of the Údarás na Gaeltachta Act, 1979, being an employment grant under a scheme known as “Deontais Fhostaíochta ó Údarás na Gaeltachta do Ghnóthais Mhóra/Mheánmhéide Thionsclaíochta”, or
- section 21(5)(a) (as amended by the Industrial Development (Amendment) Act, 1991) of the Industrial Development Act, 1986, being an employment grant under a scheme known as the “Scheme Governing the making of Employment Grants to Medium/Large Industrial Undertakings.

Employment grants to which this section applies are disregarded for all the purposes of the Tax Acts.

#### **225 Employment grants**

This section provides that employment grants made under —

- section 3 or 4 of the Shannon Free Airport Development Company Limited (Amendment) Act, 1970,
- section 25 of the Industrial Development Act, 1986, or
- section 12 of the Industrial Development Act, 1993,

are to be disregarded for all the purposes of the Tax Acts.

### **226 Certain employment grants and recruitment subsidies**

This section provides that certain employment grants or recruitment subsidies paid to an employer who employs a person or persons under certain employment schemes are to be disregarded for all the purposes of the Tax Acts.

The relevant grants and subsidies are those paid —

- under the Department of Social and Family Affairs back to work scheme,
- under any scheme established by the Department of Enterprise, Trade and Employment which promotes the employment of individuals who have been unemployed for 3 or more years,
- under any operating agreements between the Minister for Enterprise, Trade and Employment and County Enterprise Boards,
- on or after 6 April, 1997, under the employment Support Scheme administered by the National Rehabilitation Board,
- on or after 1 September 2005, under the Wage Subsidy Scheme administered by the Department of Social Protection,
- under the EU Leader II Community Initiative which will run to 1999,
- under Area Partnership Schemes, which are administered by Area Development Management Limited under the EU Operational Programme for Local, Urban and Rural Development,
- under the Special Programme for Peace and Reconciliation in Northern Ireland and the Border Counties,
- under the joint Northern Ireland/Ireland INTERREG Programme 1994–1999, or
- under any initiative of the International Fund for Ireland.
- under JobsPlus, a scheme administered by the Dept. of Social Protection and paid on or after 1 July 2013.

### **227 Certain income arising to specified non-commercial state-sponsored bodies**

This section exempt from income tax or corporation tax certain income arising to non-commercial state-sponsored bodies (being a body specified in *Schedule 4*) which would otherwise be chargeable to tax under Cases III, IV and V of Schedule D. However, such bodies remain liable for deposit interest retention tax under *Chapter 4* of *Part 8*. (1) & (4)

The Minister for Finance may make an order amending *Schedule 4*. This could arise following a decision to remove the exemption from a body or where it was decided to grant exemption to a new body. (2)

Any order amending *Schedule 4* must be laid before Dáil Éireann and be passed by Resolution. (3)

Any tax paid by such bodies before the introduction of the exemption is not refundable. In addition, such bodies are not entitled to exemption from deposit interest retention tax nor are they entitled to claim repayment of that tax. (4)

### **228 Income arising to designated bodies under the Securitisation (Proceeds of**

## **Certain Mortgages) Act, 1995**

This section exempts from income tax and corporation tax the income arising to a body designated under section 4 of the Securitisation (Proceeds of Certain Mortgages) Act, 1995.

## **229 Harbour authorities and port companies**

### **Summary**

This section provides that port companies and other companies controlling harbours are exempt from corporation tax for the period 1 January 1997 to 31 December 1998 in respect of their income derived from the normal provision of harbour facilities. From 31 December, 1998 corporation tax will be chargeable on those companies in respect of such income on a phased basis. The phasing arrangements involve a 2/3rds reduction in taxable income in the year 1999, and a 1/3rd reduction in the year 2000; the income is fully taxable thereafter. Harbour authorities which are not companies are exempt from tax in respect of income derived from the provision of harbour facilities.

### **Details**

#### **Definitions**

A “relevant body” is — (1)

- a harbour authority under the Harbours Act, 1946,
- all companies established under the section 7 of the Harbours Act, 1996, and
- other companies which control harbours and which carry on a trade of the type carried on by such harbour authorities and such port companies.

“relevant profits or gains” is profits/gains of a relevant body derived from the provision of normal harbour facilities for vessels, goods and passengers. Thus, income and gains from other activities are outside the scope of the exemption.

#### **Exemption**

Exemption from tax under Schedule D in respect of relevant profits is granted, for the years 1997 and 1998, to all harbour authorities, port companies and other companies controlling harbours. This exemption is extended indefinitely for all harbour authorities (within the meaning of the Harbours Act, 1946). (2) & (3)

#### **Transitional arrangements**

With effect from 1 January, 1999, port companies chargeable to corporation tax under Schedule D in respect of relevant profits are taxable on a phased basis. The phasing in arrangements involve a 2/3rd reduction in those profits in the year 1999 and a 1/3rd reduction in the year 2000, with all port companies being fully taxable thereafter. Harbour authorities which are not port companies remain exempt from tax in respect of such profits – see *subsection (3)*. (4)

## **230 National Treasury Management Agency**

This section exempts from corporation tax any profits arising to the National Treasury Management Agency. In addition, any interest, annuity or other annual payment paid by the National Treasury Management Agency is payable without deduction of income tax.

## **230A National Pensions Reserve Fund Commission**



This section exempts from corporation tax any profits arising to the National Pensions Reserve Fund, the National Pensions Reserve Fund Commission or a Commission investment vehicle (within the meaning of section 2 of the National Pensions Reserve Fund Act 2000 as amended by section 2 of the Investment of the National Pensions Reserve Fund and Miscellaneous Provisions Act 2009).

### **230AA NAMA profits exempt from corporation tax**

This section exempts from corporation tax any profits arising to the National Asset Management Agency.

### **230AB National Development Finance Agency**

This section exempts from corporation tax any profits arising to the National Development Finance Agency. In addition, any interest, annuity or other annual payment paid by the National Development Finance Agency is payable without deduction of income tax.

### **231 Profits or gains from stallion fees**

#### **Summary**

This section provides that certain profits/gains arising to an owner or part owner of a stallion from the sale of services of mares within the State by the stallion, or from the sale of rights to such services (that is, stud fees or receipts from the sale of nominations) are exempt from income and corporation tax.

However, for chargeable periods commencing on or after 1 January 2004 details of all such profits, gains and losses must be included in the annual return of income to the Revenue Commissioners. The normal rules relating to the keeping of records and the making available of those records for inspection by the Revenue also apply. This relief ends on 31 July 2008.

#### **Details**

The exemption from income or corporation tax applies to profits/gains arising to — (1)

- the owner of a stallion which is ordinarily kept on lands in the State from the sale of services of mares within the State by the stallion,
- the part-owner of a stallion which is ordinarily kept on lands in the State from the sale of services of mares within the State by the stallion, or of the rights to such services, or
- the part-owner of a stallion which is ordinarily kept on land outside the State from the sale of services of mares by the stallion or from the sale of the rights to such services, where the part-owner carries on a trade in the State which consists of or includes bloodstock breeding and where the part-ownership of the stallion was acquired and is held primarily for the purpose of the service of mares owned or partly owned by the part owner of the stallion in the course of that trade.

The provisions of the Tax Acts relating to the making of a return (*section 951*) by a chargeable person (*section 959A*) apply — (2)

- as if *section 231(1)* had not been enacted,
- as if a person who is in receipt of income for a chargeable period (*section 321(2)*) from this source were a chargeable person,
- as if any person who may have had a notice issued to them under *section 951(6)* (exemption from need to submit a return) had not been issued such a notice, and

- so as to oblige persons in receipt of income from stallion fees to keep records as if the income was chargeable to tax.

Profits, gains and losses are to be computed in accordance with the Tax Acts, ignoring **subsection (1)** (the provision giving exemption from tax). **(3)(a)**

Where a loss is made, then the amount of that loss is to be included in the return. **(3)(b)**

The exemption from tax, provided for in this section, does not apply to income earned after 31 July 2008. **(4)**

## **232 Profits from occupation of certain woodlands**

### **Summary**

This section provides that profits/gains from the commercial occupation of woodlands in the State are exempt from income tax and corporation tax.

However, for chargeable periods commencing on or after 1 January 2004 details of all such profits, gains and losses must be included in the annual return of income to the Revenue Commissioners. The normal rules relating to the keeping of records and the making available of those records for inspection by the Revenue also apply.

### **Details**

For the purposes of this section “occupation” means having use of land and “woodlands” means woodlands in the State. **(1)**

Profits or gains arising from the occupation of woodlands on a commercial basis are exempt from income tax and corporation tax. **(2)**

The provisions of the Tax Acts relating to the making of a return (**Chapter 3 of Part 41A**) by a chargeable person (**Part 41A**) apply — **(3)**

- as if **section 232(2)** had not been enacted,
- as if a person who is in receipt of income for a chargeable period (**section 321(2)**) from this source were a chargeable person,
- as if any person who may have had a notice issued to them under **section 959N** (exemption from need to submit a return) had not been issued such a notice, and
- so as to oblige persons in receipt of income from the occupation of woodlands to keep records as if the income was chargeable to tax.

Profits, gains and losses are to be computed in accordance with the Tax Acts, ignoring **subsection (2)** (the provision giving exemption from tax). **(4)(a)**

Where a loss is made, then the amount of that loss is to be included in the return. **(4)(b)**

## **233 Stud greyhound service fees**

### **Summary**

This section provides that certain profits/gains arising to an owner or part owner of a stud greyhound from the sale of services of greyhound bitches within the State by the stud greyhound or from the sale of rights to such services (that is, stud fees or receipts from the sale of nominations) are exempt from income tax or corporation tax.

However, for chargeable periods commencing on or after 1 January 2004 details of all such profits, gains and losses must be included in the annual return of income to the Revenue Commissioners. The normal rules relating to the keeping of records and the making available of those records for inspection by the Revenue also apply. This relief

ends on 31 July 2008.

## Details

For the purposes of this section —

“greyhound bitches” means female greyhounds registered in the Irish Greyhound Stud Book or in another greyhound stud book recognised for the purposes of the Irish Greyhound Stud Book. (1)

“stud greyhound” means a male greyhound registered as a sire for stud purposes in the Irish Greyhound Book or in any other greyhound stud book recognised for the purposes of the Irish Greyhound Stud Book.

The exemption from income and corporation tax is granted in respect of profits/gains arising to — (2)

- the owner of a stud greyhound which is ordinarily kept in the State from the sale of services of greyhound bitches within the State by the stud greyhound,
- the part-owner of a stud greyhound which is ordinarily kept in the State from the sale of services of greyhound bitches within the State by the stud greyhound or the rights to such services,
- the part-owner of a stud greyhound which is ordinarily kept outside the State from the sale of services of greyhound bitches by the stud greyhound, or of the rights to such services, where the part-owner carries on a trade in the State which consists of or includes greyhound breeding and where the part-owner acquired the stud greyhound and held it primarily for the purpose of the service of greyhound bitches owned or partly owned by a part-owner of the stud greyhound in the course of that trade.

The provisions of the Tax Acts relating to the making of a return (*section 951*) by a chargeable person (*section 959A*) will apply — (3)

- as if *section 233(2)* had not been enacted,
- as if a person who is in receipt of income for a chargeable period (*section 321(2)*) from this source were a chargeable person,
- as if any person who may have had a notice issued to them under *section 951(6)* (exemption from need to submit a return) had not been issued such a notice, and
- so as to oblige persons in receipt of income from stud greyhound service fees to keep records as if the income was chargeable to tax.

Profits, gains and losses are computed in accordance with the Tax Acts, ignoring *subsection (2)* (the provision giving exemption from tax). (4)(a)

Where a loss is made, then the amount of that loss is to be included in the return. (4)(b)

The exemption from tax, provided for in this section does not apply to income earned after 31 July 2008. (5)

## 234 Certain income derived from patent royalties

### Summary

This section provided that prior to the Finance Act 2011 certain income derived from patent royalties was exempt from tax and was not, subject to an annual limit, to be taken into account for any purposes of the Tax Acts. The exemption was, however, abolished under the provisions of the Finance Act 2011 so that it will not apply to income from a qualifying patent which is paid to a person on or after 24 November 2010.

## Details

### Definitions

“a qualifying patent” is a patent where the work which gives rise to the invention which is patented is carried out in an EEA state. Prior to the Finance Act 2007, a “qualifying patent” was a patent in relation to which the research, planning, processing, experimenting, testing, devising, development or other similar activity leading to the invention which is the subject of the patent was carried out in the State. The extension to EEA states rather than just in the State, applies as respects income from a patent in relation to which the research, planning, processing, experimenting, testing, devising, development or other similar activity leading to the invention which is the subject of the patent is carried out on or after 1 January 2008. (1)

“EEA state” means a state which is a Contracting Party to the EEA Agreement.

“EEA Agreement” means an agreement of the EEA signed at Oporto in 1992 as adjusted by the Protocol signed at Brussels in 1993.

“income from a qualifying patent” is any royalty paid in respect of the user of the invention to which the qualifying patent relates and includes any sum paid for the grant of a licence to exercise rights under the patent. The royalty must be paid for the purposes of activities which —

- are regarded as activities within the 10 per cent scheme of corporation tax provided for by **Part 14**, other than international financial services carried on from the International Financial Services Centre and Shannon Zone services activities (it is to be noted that the repair or maintenance of aircraft in the Shannon Zone is not excluded), or
- would be eligible manufacturing activities for the purposes of **Part 14** even though they are carried on by an unincorporated enterprise or are carried on outside the State.

However, as respects royalties paid after 23 April, 1996, only so much of a royalty paid to the holder of a patent by a connected manufacturing company as does not exceed an amount which would be paid between persons acting at arm’s length is treated as income from a qualifying royalty.

Also treated as income from a qualifying patent are royalties paid —

- for the purpose of non-manufacturing activities where the payer is not connected (“connected” here means connected for the purposes of the Capital Gains Tax Acts – see **section 10**) with the beneficial recipient of the royalty, and
- where no arrangements exist which have as a main purpose the satisfying of the condition that the royalty or other sum must be received from a unconnected person. In other words if third parties are brought into the payment stream in order to achieve exemption of royalties, the royalties are not exempt.

“resident of the State” is any person resident in the State for tax purposes and not resident elsewhere.

A company is resident in the State if it is controlled and managed in the State.

See also further definitions relevant to **subsection (3A)** below.

### Exemption

An Irish resident individual or company on making a claim on the appropriate form is entitled to have any income accruing from a qualifying patent disregarded for the purposes of the Income Tax Acts or Corporation Tax Acts, as appropriate. Applicants (2)

claiming exemption must, however, make the appropriate tax returns.

An individual in receipt of income from a qualifying patent is not entitled to have that income treated as exempt income unless the individual carried out, either solely or jointly with another person, the research, planning, processing, experimenting, testing, devising, development or other similar activity leading to the invention which is the subject of the qualifying patent. (3)

The aggregate amount of income from qualifying patents of a person (company or individual) to be disregarded for income tax or corporation tax cannot exceed €5m in the “relevant period” as defined in *paragraph (e)* below. (3A), (a), (e)

Where a person or persons are connected (within the meaning of *section 10*) with a company which would otherwise have the income disregarded under *subsection (2)*, the limit of €5m will apply to the aggregate of the amounts of income arising to such persons. (b)

The €5m limit can be allocated between the above persons where the aggregate exceeds that amount.

The persons can make a joint election as to the allocation of the €5m in writing to the appropriate inspector, by the return filing date, of the latest chargeable period (within the meaning of *section 321(2)*) of the company or any of the persons which falls wholly or partly into the 12 month relevant period. Where no election notice of allocation is given, the amount of the €5m allocated to the company or person is then determined by applying a formula to allow an amount in proportion to the aggregate of the amounts of income from qualifying patents to the company or person over the aggregate of amounts arising to all of the connected persons. (c)

Where the accounting period of a company does not coincide with the 12-month relevant period (as defined), the amount of income from qualifying patents arising to the company in the 12-month period is the aggregate of such amounts in the whole or part of an accounting period falling within the relevant period. There is a time apportionment of the income from qualifying patents in the accounting period according to their respective lengths. The amount of income to be disregarded is to be given in the earlier accounting period, or part of that accounting period. (d)

Two definitions are included within *subsection (3A)*: (e)

“income from qualifying patents” means income from one or more than one qualifying patent.

“relevant period” means the period of 12 months commencing on 1 January 2008 and each subsequent period of 12 months (i.e. a calendar 12 month period).

Where under section 77 of the Patents Act, 1992 or any corresponding provision of any other country, an invention which is the subject of a qualifying patent is used for the service of the State or of the government of the country concerned, this section applies as if that use had taken place under a licence and any sums paid in respect of the licence were income from a qualifying patent. (4)

Section 77 of the Patents Act, 1992, allows the State to make use of any patented invention for the service of the State on payment of compensation to the patentee. In such a case there may be no formal document corresponding to the licence referred to in the definition of “income from a qualifying patent”. This subsection brings any such compensation within this definition and, accordingly, extends the exemption to the compensation.

### ***Miscellaneous***

Once a person establishes a Case III of Schedule D source of income, that source of income does not cease by virtue of the fact that that source represents income qualifying for relief under this section. (5)

The Revenue Commissioners may, in determining the amount of income to be disregarded under this section, make such apportionment of receipts and expenses as may be necessary. (6)

Relief under this section may be given by repayment or otherwise. (7)

Persons in receipt of disregarded income are obliged to show the amount of such income in their tax returns. (8)

### ***Abolition of exemption***

This section shall not apply to income from a qualifying patent which is paid to a person on or after 24 November 2010. (9)

## **235 Bodies established for the promotion of athletic or amateur games or sports**

### **Summary**

This section exempts from income tax and corporation tax the income of certain bodies established for the sole purpose of the promotion of athletic or amateur games or sports where it can be shown to the satisfaction of the Revenue Commissioners that such income is applied solely for those purposes.

### **Details**

#### ***Definitions***

“approved body of persons” is any body of persons whose sole purpose is promoting athletic or amateur games or sport, and includes any body of persons that previously enjoyed exemption from income tax under **section 349** of the Income Tax Act, 1967 for the year 1983–84 or earlier years or, in the case of companies, exemption from corporation tax under that section, as applied by **section 11(6)** of the Corporation Tax Act, 1976, for accounting periods ending before 6 April, 1984. (1)

However, not included is any body to which the Revenue Commissioners gives notice in writing stating that they are satisfied that the body —

- was not established solely for the purpose of promoting athletic or amateur games or sports,
- was established wholly or partly for the purpose of securing a tax advantage, or
- having being established for the sole purpose of promoting athletic or amateur games or sports, no longer exists for that purpose or begins to exist wholly or partly for the purpose of securing a tax advantage.

Before the issue of such a notice, the Revenue Commissioners may consult with any person or body of persons that may be of assistance to them in deciding whether such a notice should issue.

#### ***Exemption***

Exemption from income tax or corporation tax is granted in respect of so much of the income of any approved body of persons that can be shown to be income which has been or will be applied solely for the purpose of the promotion of athletic or amateur (2)

games or sports.

### ***Withdrawal of exemption***

The Revenue Commissioners may by notice withdraw the exemption granted to any (3) body of persons under this section.

If the notice is one issued under ***paragraph (I) of subsection (1)***, the exemption granted to the body of persons ceases to have effect, as respect income tax, for the later of the year of assessment in which the body was established and the year 1984–85, and for all subsequent years of assessment and, as respect corporation tax, for the first accounting period of the body which starts after 6 April, 1984 and for all subsequent accounting periods.

If the notice is one issued under ***paragraph (II) of subsection (1)***, the exemption granted to the body of persons ceases to have effect, as respect income tax, for the earlier of the year of assessment in which, in the opinion of the Revenue Commissioners, the body ceased to exist for the sole purpose of promoting athletic or amateur games or sports and the year in which it commenced to exist wholly or partly for the purpose of securing a tax advantage, and for all subsequent years of assessment. The withdrawal of exemption does not apply to a year ended before 6 April, 1985. As respects corporation tax, the exemption ceases to have effect for the earlier of the accounting period in which, in the opinion of the Revenue Commissioners, the body ceased to exist for the sole purpose of promoting athletic or amateur games or sports and the accounting period in which it commenced to exist wholly or partly for the purpose of securing a tax advantage, and for all subsequent accounting periods. The withdrawal of exemption does not apply to an accounting period ended before 6 April, 1984.

### ***Appeals***

A body of persons aggrieved by a notice issued by the Revenue Commissioners under (4) ***subsection (1)*** may appeal that notice to the Appeal Commissioners. An appeal is made by notice in writing within the period of 30 days after the date of the notice issued under ***subsection (1)***. The Appeal Commissioners will hear and determine an appeal in the manner provided for in ***Part 40A***.

### ***Delegation of functions and powers***

The Revenue Commissioners may authorise any of their officers to perform any (5) functions or exercise any powers imposed or conferred on the Commissioners by this section.

## **236 Loan of certain art objects**

### **Summary**

This section exempts, subject to conditions, certain benefits provided to an individual by his/her employer from the benefit-in-kind income tax charge under ***section 118*** and from the charge to tax in respect of distributions to participators under ***section 436***. The benefit must consist of the loan to the individual of a work of art or a scientific collection beneficially owned by the company in which the individual is an employee or director and which is available for viewing by the public. The exemption ceases to have effect for the year of assessment 2010 and subsequent years of assessment.

## Details

### Definitions

“art object” is an object which satisfies the requirements set out in *subsection (2)*. (1)

“authorised person” is an officer the Revenue Commissioners authorised by them in writing for the purposes of the section or a person authorised by the Minister in writing for those purposes.

“the Minister” is the Minister for Arts, Heritage, Gaeltacht and the Islands (now Arts, Sport and Tourism).

“relevant building” is a building approved of for the purposes of *section 482*.

“relevant garden” is a garden approved of for the purposes of *section 482*.

An “art object” means any work of art (including a picture, sculpture, print, book, manuscript, piece of jewellery, furniture or other similar object) or a scientific collection which on application to them in that behalf by a person who owns or occupies a relevant building or relevant garden is determined — (2)(a) & (b)

- by the Minister to be an object which is intrinsically of significant national, scientific, historical or aesthetic interest, and
- by the Revenue Commissioners to be an object to which reasonable access and reasonable facilities for viewing are afforded to the public.

In arriving at the determination the Minister may consult with whoever he/she considers necessary.

The requirements for “reasonable access” and “reasonable facilities for viewing” must be complied with before the exemption will be granted. Broadly, the art object must be on view and accessible in a house or garden approved for the purposes of the reliefs for expenditure on significant buildings or gardens (*section 482*) for 4 hours a day, 60 days a year (of which 40 days must be between 1 May and 30 September), on the same days and at the same times as access is afforded to the building or garden in which the object is kept, and the admission fee, if any, must be reasonable.

### Revocation of determination

The Revenue Commissioners may, where necessary, revoke from such date as they consider appropriate their determination that reasonable access to and reasonable facilities for viewing are afforded to the public. In such cases the exemption ceases to apply for the year of assessment in which the effective date of revocation occurs. (2)(c)

### Exemption

The relief takes the form of an exemption from the benefit-in-kind income tax charge under *section 118* and the charge to tax in respect of distributions to participators under *section 436*, where — (3)

- a body corporate incurs expense solely in, or solely in connection with, or is deemed to incur expense in connection with, the provision to an individual (being an employee or director of the company) of a benefit or facility which consists of the loan by the body corporate to the individual of an art object beneficially owned by the body corporate, and
- the art object is kept in a relevant building or relevant garden owned or occupied by the individual.



***Authorised person***

An authorised person may, at any reasonable time, enter a building or garden in which an art object is kept in order to inspect the art object. An authorised person is obliged on request to produce his/her authorisation. Anyone obstructing or interfering with an authorised person is liable to a fine of up to €630. (4)

***Claims***

All applications and claims under this section must be made on the prescribed form. In the case of a claim under ***subsection (3)*** for relief from the benefit-in-kind charge, the claim must be accompanied by such statements, including statements in relation to the expense incurred by the body corporate, as are required by the prescribed form. (5)

***Capital gains tax***

The exemption (***section 606***) for capital gains tax in respect of certain objects loaned for display in museums, etc does not apply to an object which is an art object within the meaning of this section. (6)

***Cesser of exemption***

The exemption ceases to have effect for the year of assessment 2010 and subsequent years of assessment. (7)