

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

**Finance Act 2021 edition**

## **PART 18D**

### **Universal Social Charge**

**December 2021**



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## PART 18D UNIVERSAL SOCIAL CHARGE

### Overview

**Part 18D** provides for the universal social charge (USC) on aggregate income from all sources with effect from 1 January 2011. The USC replaced the income levy and the health levy and **Part 18D** replicates many of the provisions of the income levy.

USC applies to practically all types of income with minimal exceptions. The main exemption is for social welfare payments and other payments of a similar-type character made by bodies such as the Health Service Executive and by similar foreign authorities. Those in receipt of such income are only liable to the USC to the extent that they have income over and above their social welfare entitlements. It applies to gross income and does not take account of various tax incentives and reliefs such as section ‘23 type’ relief. It also applies to income sources that are exempt from income tax such as income of certain artists or income from woodlands. However, it allows for the deduction of normal expenses associated with a **trade**, including normal capital allowances.

USC has a four-rate structure with different rates applying to different ranges of income. The entry-level threshold is €13,000. However, if this threshold is exceeded all of a person’s income becomes chargeable. There is no ceiling above which the charge does not apply. The lowest rate of 0.5% applies to income up to €12,012. For 2022 and subsequent years of assessment, a rate of 2% applies to the next €9,283 (€8,675 for 2021) and a rate of 4.5% applies to the next €48,749 (€49,357 for 2021). The highest rate of 8% applies to incomes above €70,044. However, these rates are modified in certain circumstances. Thus, the highest rate for individuals aged 70 or over or who have a **full** medical card is 2% with chargeable income above €12,012. A surcharge of 3% applies to self-employed individuals with relevant income in excess of €100,000.

An “excess bank remuneration charge” is incorporated into the USC. This charge applies to bonus-type remuneration paid to employees of financial institutions that have received financial support from the State. This charge applies in all respects as if it were USC except that it is charged (in its entirety) at a higher rate of 45%.

An additional USC charge is payable by certain individuals who have invested in property that qualifies for accelerated industrial buildings allowances and ‘section 23’ type relief. An additional 5% surcharge applies from 1 January 2012 to whatever part of an individual’s income (for USC purposes) that exceeds €100,000 in a tax year and that is sheltered by ‘specified property reliefs’.

Employers (and pension providers) are obliged to collect and remit USC through the PAYE system along with income tax. Self-assessed taxpayers are obliged to account for USC through the self-assessment system as if it was an amount of income tax.

### 531AL Definitions (Part 18D)

#### Summary

This section contains the definitions used in **Part 18D** in relation to USC.

#### Details

“aggregate income for the tax year” means the aggregate of an individual’s relevant

emoluments in the year of assessment, including relevant emoluments that are in whole or in part in respect of a year of assessment other than the year of assessment in which they are paid, and relevant income for the year of assessment. Any relevant emoluments paid **in** a year of assessment are chargeable in that year and are not chargeable in the year of assessment **for** which they were earned, if this was earlier.

“Collector-General” has the same meaning as it has in **section 851**.

“employee” and “employer” have the same meanings as they have in **section 983** in relation to the operation of the PAYE system, i.e. persons receiving and paying emoluments assessable under Schedule E.

“excluded emoluments” mean emoluments gifted to the Minister for Finance under **section 483**.

“income levy” has the meaning assigned to it by **section 531B**.

“income tax month” means a calendar month.

“Income Tax Regulations” means the Income Tax (Employments) Regulations 2018 (S.I. No. 345 of 2018).

“inspector” means an inspector of taxes or another officer of the Revenue Commissioners.

“relevant emoluments” and “relevant income” have the meanings construed in accordance with **paragraphs (a) and (b)** of the Table to **section 531AM(1)**. Broadly speaking, relevant emoluments is income that is taxed under the PAYE system and relevant income is whatever income (not otherwise exempted from USC) that is not subject to PAYE.

“similar type payments” means certain payments that are of a similar character to payments made under the Social Welfare Acts but that are made by

- the Health Service Executive (HSE),
- an ETB in relation to attendance at a SOLAS training course,
- a sponsor in relation to CES and Jobs Initiative,
- Department of Education and Skills, and
- Department of Agriculture, Food and the Marine.

The definition also includes social welfare-type payments that are made by the authorities of another country.

“social welfare payments” means payments made under the Social Welfare Acts.

“tax year” means a year of assessment within the meaning of the Tax Acts.

“universal social charge” has the meaning assigned to it by **section 531AM**.

## **531AM Charge to universal social charge**

### **Summary**

This section contains the main charging provisions for USC. It sets out the types of income that are chargeable and any exemptions and reliefs that apply. To be chargeable to USC, a person’s chargeable income must exceed a threshold of €13,000.

### **Details**

**Subsection (1)** contains the main charging provision and describes USC as a tax. The income specified in **paragraphs (a) and (b)** of the Table to this subsection is chargeable **(1)**

to USC.

**Paragraph (a)** of the Table to **subsection (1)** describes “relevant emoluments” as all income that is subject to the PAYE system (i.e. to the provisions of **Chapter 4** of **Part 42**). Such income is chargeable without allowing certain deductions that are allowed for income tax purposes or where it is exempted from income tax. Thus-

- any permanent health insurance and pension contributions that are deductible under Regulation 31 of the Income Tax Regulations, (1)(a)(i)
- the initial market value (within the meaning of **section 510(2)**) of any shares that are appropriated to the participants of an approved profit sharing scheme, except, in the case of shares that are appropriated to an approved profit sharing scheme from an employee share ownership trust (ESOT), where those shares were held in the ESOT before 1 January 2011, (1)(a)(ii)
- the market value (determined in accordance with **section 548**) of the right to acquire shares in an approved savings-related share option scheme (**section 519A(1)**) or share option scheme (**519D(1)**), and (1)(a)(iii)
- any gain exempted from income tax in respect of an approved savings-related share option scheme (**section 519A(3)**) or share option scheme (**519D(3)**), after deducting the chargeable value of the right that has already been charged to USC by subparagraph (a)(iii) from the chargeable value of the gain, and (1)(a)(iv)
- the income exempted from income tax (the “specified amount” in **section 825C**) under the ‘special assignee relief programme’ (SARP), (1)(a)(v)

are included in the amount of the relevant emoluments to be charged to USC.

Other types of income are excluded from relevant emoluments and are thus not chargeable to USC. These are-

- payments made under the Social Welfare Acts and similar type payments made by other government bodies (definition of “similar type payments), both Irish and foreign, (1)(a)(I)
- income that has been gifted to the Minister for Finance under **section 483** (definition of “excluded emoluments”), (1)(a)(II)
- emoluments that an employer has been authorised to disregard following receipt of a notification issued by an inspector under section 984(1) (this notification is commonly referred to as a PAYE exclusion order), (1)(a)(III)
- payments made on termination of an office or employment to the extent that they are covered by the basic and increased exemptions and relieving provisions of the Standard Capital Superannuation Relief as set out in **section 201(5)(a)**, and **paragraphs 6** and **8** of **Schedule 3**, (1)(a)(IV)
- payments of an amount paid under the pre-retirement access to Additional Voluntary Contributions (AVCs) arrangements, as provided by section 782A(3), or (1)(a)(V)

- emoluments in the nature of a contribution by an employer to a PRSA (within the meaning of Chapter 2A of Part 30). (1)(a)(VI)
  
- Paragraph (b)** of the Table to **subsection (1)** describes “relevant income” as income from all sources as estimated in accordance with the Tax Acts before deductions that are usually allowed when calculating either total income or taxable income for income tax purposes. From this broad starting point, **paragraph (b)** then goes on to exclude certain types of income and to allow certain deductions. **Excluded are-** (1)(b)

  - income referred to in **paragraph (a)**. Thus “relevant emoluments” are not charged to USC twice, (1)(b)(i) & (ii)
  
  - the emoluments and reliefs that are specified in **subparagraphs (I) to (V)** of **paragraph (a)** in relation to describing what constitutes “relevant emoluments”,
  
  - certain types of investment income listed in **clauses (I) to (VII)**. These are- (1)(b)(iii)
    - deposit interest subject to DIRT (**Chapter 4** of **Part 8**),
    - dividend payments by Credit Unions (**Chapter 5** of **Part 8**),
    - deposit interest from EU and non-EU sources (**Chapter 7** of **Part 8**),
    - income from certain foreign life assurance policies (**Chapter 5** of **Part 26**),
    - income from certain investment vehicles (**Chapter 1A** of **Part 27**),
    - income from certain offshore funds (**Chapter 4** of **Part 27**),
  
  - the amount by which a person’s total income is reduced where **section 825A** applies and a relief known as ‘transborder relief’ is given for a year of assessment, (1)(b)(iv)
  
  - the amount of a legally enforceable maintenance payment made under **section 1025** to a separated spouse, under **section 1031J** to a separated civil partner or under **section 1031Q** to a qualifying cohabitant provided there has been no claim for joint assessment under **section 1026** or **section 1031K**. (1)(b)(v), (va) & (vb)
  
  - the amount of an unrelieved loss from a trade or profession that is carried forward to a later year of assessment under **section 382** that is actually used in that later year against the profits from that trade or profession. This subparagraph allows the loss and **section 531AU(1)** quantifies the allowable loss, (1)(b)(vi)
  
  - the amount of certain capital allowances that are actually used in a year of assessment by a person carrying on a trade or profession. The allowances actually used in a year of assessment can include both current year and carried forward allowances. No deductions are allowed in the case of capital allowances given for leased plant and machinery or buildings or to an individual who is not an active partner in a trade (as defined in **section 409A**). This subparagraph allows the deduction and **section 531AU(2)** quantifies the allowable deduction. The capital allowances referred to are- (1)(b)(vii)
    - wear and tear allowances for plant and machinery (**section 284**),

- annual writing-down allowances for industrial buildings and structures (*section 272*),
- farm buildings and structures allowances (*section 658*),
- farm buildings and pollution control allowances (*section 659*).

the rental income deemed to be received under section 372AP(7) (i.e. the ‘clawback’ mechanism for section 23 relief) where section 23 relief is claimed after the introduction of USC on 1 January 2011. Such relief would not have been deductible when charging USC. However, USC is charged on deemed rental income received by an individual who claimed section 23 relief before the introduction of USC. (1)(b)(viii)

**Included are -**

- the income from certain sources that are exempt from income tax. This is done by treating the relieving sections as if they didn’t exist. These sections are- (1)(b)(I)
  - *section 140* – distributions out of profits or gains from stallion fees, stud greyhound services fees and occupation of certain woodlands,
  - *section 141* – distributions out of income from patent royalties,
  - *section 142* – distributions out of profits of certain mines,
  - *section 143* – distributions out of profits from coal, gypsum and anhydrite mining operations,
  - *section 195* – exemptions of certain earnings of writers, composers and artists,
  - *section 232* – profits from occupation of certain woodlands,
  - *section 234* – certain income derived from patent royalties, and
  - *section 664* – relief for certain income from leasing of farm land.
- the amount of the deduction allowed for income tax purposes, but **not** for USC, in respect of - (1)(b)(II)
  - the double rent allowance deduction in *section 324(2)*, *333(2)*, *345(3)* or *354(3)*, (1)(b)(II)(A)
  - the deduction for lessors under *section 372AP*, (1)(b)(II)(B)
  - the deduction for lessors under *section 372AU*, (1)(b)(II)(C)
  - a donation to a sports body under *section 847A*, or (1)(b)(II)(D)
  - a donation to an approved body under *section 848A*. (1)(b)(II)(E)
- the amount of any balancing charge on an asset where capital allowances would have been treated as a deductible amount for USC purposes. (1)(b)(III)

USC is not payable for a year of assessment where the individual proves to the Revenue Commissioners that his or her aggregate income for that year does not exceed €13,000. Where this amount is exceeded, the full amount, and not just the excess, is chargeable to USC. (2)

## 531AN Rate of charge

### Summary

This section describes the rates at which an individual's aggregate income is to be charged to USC. The standard rates and bands are set out in a Table. These standard rates and bands are modified in certain circumstances.

### Details

Subject to *subsections (2), (3) and (4)*, an individual is charged to USC on his or her aggregate income for a year of assessment at the rates set out in the Table to this section. (1)

The standard rates, that apply to most individuals, are set out in Part 1 of the Table to this section. These are–

#### 2022 and subsequent years

|                   |   |      |
|-------------------|---|------|
| The first €12,012 | – | 0.5% |
| The next €9,283   | – | 2%   |
| The next €48,749  | – | 4.5% |
| The excess        | – | 8%   |

#### 2021

|                   |   |      |
|-------------------|---|------|
| The first €12,012 | – | 0.5% |
| The next €8,675   | – | 2%   |
| The next €49,357  | – | 4.5% |
| The excess        | – | 8%   |

Reduced rates apply to individuals aged 70 and over whose aggregate income does not exceed €60,000 as set out in Part 2 of the Table to this section. These are–

|                   |   |      |
|-------------------|---|------|
| The first €12,012 | – | 0.5% |
| The excess        | – | 2%.  |

However, *subsections (2) and (3)* modify these rates in certain circumstances.

A 3% surcharge applies where an individual has relevant income (i.e. essentially non-PAYE income) that exceeds €100,000 in a year of assessment. The excess is charged at the rate of 11%. (2)

Gains made on the exercise of share options (although chargeable to Schedule E under *section 128(2)*, not paid through PAYE) are excluded from “relevant income” and are thus not chargeable to the 3% surcharge imposed by *subsection (2)*. (2A)

An individual who is aged under 70 with aggregate income not exceeding €60,000 and who is eligible for a **full** medical card (whether under the specified Irish law or EU law) is charged to USC at a maximum rate of 2% on the amount of his or her aggregate income that exceeds €21,295 for the year of assessment 2022. (3)



Where an individual encashes his or her private pension rights, the “encashment amount” that is ring-fenced under Schedule D Case IV by *section 787TA* is charged **in full** at a rate of 2% and is not regarded as “relevant income” for the purposes of the 3% surcharge imposed by *subsection (2)*. (3A)

The reduced rate of USC for those **full** medical card holders aged under 70 and whose income does not exceed €60,000 and shall cease to have effect from the year of assessment 2023 onwards. (4)

In the case of relevant emoluments that are paid on 31 December (or 30/31 December in a leap year), commonly known as a week 53 payment, the rate bands set out in the Table to this section are to be increased by 1/52 where relevant emoluments consist of weekly pay and 1/26 where the relevant emoluments consist of fortnightly pay. (5)

However, where the actual payments of relevant emoluments on those days are less than the increases provided above, the increase in the rates bands is restricted to the actual amount of the relevant emoluments.

In the exceptional circumstance where an individual is in receipt of income from 2 separate employers which both give rise to week 53 payments, only one increase (i.e. 1/52 or 1/26) applies.

Following on from subsection (5), the income figures in subsection (1) and (3) are also expanded by 1/52 or 1/26, as appropriate. In addition, the exemption threshold in section 531AM(2) is also expanded by 1/52 or 1/26, as appropriate. (6)

However, where the actual payments of relevant emoluments on those days are less than the expansion provided above, the expansion is restricted to the actual amount of the relevant emoluments.

This is an anti-avoidance provision to prevent pay dates being changed or manipulated with a view to benefiting from the widened rate bands. Subsections (5) and (6) do not apply where the normal pay date in the year, or the previous year, has changed, or, where the pay date occurs on 31 December (or 30/31 December in a leap year) and that date is not the normal pay date. (7)

The normal pay date is the day during the weekly or fortnightly pay cycle, as the case may be, on which relevant emoluments are usually paid to the individual. (8)

## **531AO Deduction and payment of universal social charge on relevant emoluments**

### **Summary**

This section puts the primary responsibility for the payment of USC in respect of “relevant emoluments” on an employer. The repealed *subsections (2) to (12)* contained provisions relating to the deduction and remittance of USC and the provision of documentation to Revenue. These are now contained in The Universal Social Charge Regulations 2018.

The section also relates to situations where an employer grants shares to employees, or employees exercise options to acquire shares under a Revenue approved savings-related share option (SAYE) scheme, as part of their remuneration package. Where

there is no means to pay whatever USC is due on the value of the shares, the employer is entitled to withhold sufficient shares to fund payment of the USC liability.

### Details

This section puts the primary responsibility for the payment of USC in respect of “relevant emoluments” on an employer. (1)

Where an employer makes notional payments to an employee in the form of shares, or an employee realises a gain by exercising an option under a Revenue approved savings-related share option (SAYE) scheme, he or she is obliged to account for USC on the value of those shares or the amount of the gain. An employer is entitled to withhold sufficient shares to fund that USC liability if the employee does not otherwise provide the employer with sufficient means to do so (*subsection (1C)*). (1A)

The employee must allow the employer to withhold sufficient shares to fund the USC liability. Even though the employee has not actually received the shares, he or she is to be treated as if the value of the shares had been paid by the employer. (1B)

An employer is only entitled to withhold shares where the employee does not otherwise provide the employer with sufficient means to fund the USC liability. (1C)

### 531AOA Return by employer

#### Summary

This section requires employers to send a monthly return to Revenue with information on the USC deducted or repaid that month under the PAYE system. This section applies to emoluments paid on or after 1 January 2019. It mirrors substantially the requirements in section 985G for employer reporting of income tax.

#### Details

The “return filing date” means the day that is 15 days from the last day of a calendar month. As the period of time is expressed from a particular date, the last day of a month is included in the calculation of the number of days. Therefore, the due date for filing is the 14<sup>th</sup> of the following month e.g. the return filing date for USC deducted or repaid during January is 14 February. (1)

On or before the return filing date, an employer must make a monthly return of USC to Revenue in accordance with the Universal Social Charge Regulations 2018. (2)

Revenue may issue a statement to an employer setting out the employer’s USC liability for a month, based on payroll notifications submitted by the employer. The statement will be deemed to be a return made by the employer on the return filing date, or, where the statement is issued after the return filing date, on the date of issue. (3)

Subsection (3) will not apply if the statement issued by Revenue does not accurately reflect the employer’s full USC liability for the month, i.e. a return will not be deemed to have been made. (4)

Where subsection (4) applies, the employer must ensure that all payroll data has been notified to Revenue and that the return the employer is obliged under subsection (2) to submit is accurate. (5)

### 531AP Record-keeping

The repealed *section 531AP* specified the particulars to be recorded by an employer. Its provisions are now contained in the Universal Social Charge Regulations 2018.

### 531AQ Power of inspection

The repealed *section 531AQ* provided that the powers of inspection set out in Regulation 32 of the PAYE Regulations applied to records kept under the repealed *section 531AP*. Its provisions are now contained in the Universal Social Charge Regulations 2018.

### 531AR Estimation of universal social charge due

#### Summary

The provisions in *sections 990* and *990A* in relation to the assessment of an employer's income tax liability and the notification of such liability to the employer are applied to USC.

#### Details

The provisions allowing for-

- Assessment of tax due for an income tax month (*section 990*), and
- Generation of assessments by electronic, photographic or other process (*section 990A*),

are applied to USC.

### 531AS Universal social charge payable by chargeable persons (within the meaning of Part 41)

#### Summary

This section relates to the assessment and payment of USC by individuals under the self-assessment system.

#### Details

Where an individual is a chargeable person within the meaning of *Part 41A* (i.e. in relation to the self-assessment system), USC is due and payable in the same way as income tax is due and payable for that individual. All the relevant income tax provisions therefore apply to USC. However, because there is a specific exception for *section 1017* and *section 1031C*, i.e. joint-assessment treatment, each individual must be separately assessed to USC and unused rate bands cannot be shared. (1)

The provisions of *section 128B* in relation to the payment of income tax – called “relevant tax on share options” (RTSO) - on gains made by exercising share options are modified and applied to the payment of USC on such gains. USC is brought within the definition of “relevant tax” in *section 128B*. The formula used in *section 128B(2)* to make RTSO chargeable at the higher rate of income tax in force in a particular tax year is adapted to charge USC at its highest rate, unless the individual satisfies Revenue that he or she will actually be chargeable at a lower rate of USC. (1A)(a) to (c)

Certain individuals in receipt of income from particular sources are not treated as chargeable persons within the meaning of *Part 41A*. Where this treatment is applied by *sections 140, 141, 142, 143, 195, 232, 234* or *664* (i.e. those sections specified in the description of ‘relevant income’ in *section 531AM(1)(b)(I)*), such individuals are to be treated as chargeable persons in relation to USC. They, therefore, have to make a return of income in respect of their USC chargeable income. (2)

USC may be included with any income tax as an aggregated sum for self-assessment purposes (e.g. in a single assessment), even where there is no income tax due. (3) & (4)

An individual who is a chargeable person within the meaning of **Part 41A** is to calculate and pay preliminary tax for the year of assessment 2011 as if USC had been payable instead of income levy for the year of assessment 2010. (5)

### **531AT Universal social charge payable by persons other than chargeable persons (within the meaning of Part 41)**

#### **Summary**

This section provides for the making of USC assessments on individuals who would not be regarded as chargeable persons within the meaning of **Part 41A**. This would typically be individuals who have an income tax liability attributable to income from sources other than employment that is collected by reducing their income tax credits. The USC liability attributable to such non-employment income is likely to be relatively higher because of the restrictions on deductions vis-à-vis income tax, and might have to be collected by assessment.

#### **Details**

Where an individual is not a chargeable person within the meaning of **Part 41A**, (possibly because he or she has income from non-employment sources), USC is due and payable in the same way as income tax is due and payable for that individual. All the relevant income tax provisions therefore apply to USC. However, because there is a specific exception for **section 1017** and **section 1031C**, i.e. joint-assessment treatment, each individual must be separately assessed to USC and unused rate bands cannot be shared. (1)

**Subsections (3)** and **(4)** of **section 531AS** are also to apply to the making of assessments to USC under this section. (2)

### **531AU Capital allowances and losses**

#### **Summary**

This section contains the rules for determining the **amount** of the losses and capital allowances that are deductible in computing a person's chargeable relevant income where an exception was made, in the case of those losses and capital allowances, to the general rule (contained in **section 531AM**) disallowing any deductions in computing total income.

#### **Details**

Unused trading or professional losses that are carried forward to a later year of assessment in accordance with **section 382** may be deducted in computing the amount of a person's relevant income that is to be chargeable to USC. The amount to be deducted is the amount of the loss that is actually used in that later year to reduce the person's taxable income from the **same** trade or profession in which the carried forward loss originally arose. (1)

The type of capital allowances that are deductible in computing the amount of a person's relevant income that is to be chargeable to USC are specified. These are wear and tear allowances for plant and machinery (**section 284(1)**), writing-down allowances for industrial buildings and structures (**section 272(3)**), allowances for farm buildings and structures (**section 658(2)**) and allowances for farm buildings and pollution control (**659(2)**). The part of the relevant section that specifies the amount of the particular allowance that can be deducted in respect of income tax for a year of assessment, and applied for USC purposes, is specified. The deductible amount of the allowance is the (2)

amount that is used in the year in which it is given (apart from any allowance that is used to create or increase a loss under *section 392* and used against other income in that year under *section 382*) and any unused allowance carried forward from an earlier year of assessment in accordance with *section 304(4)*. However, capital allowances are not deductible where they are given to lessors of assets and buildings or to non-active partners in a trade carried on by a partnership (within the meaning of *section 409A*).

### **531AUA Universal social charge and approved profit sharing schemes**

#### **Summary**

This section removes a double charge to USC on both the initial market value of shares when they are appropriated to an approved profit sharing scheme trust and, later in the event of an early disposal, on the proceeds where those shares are sold under *section 512*, or where income, known as a capital receipt, is received under *section 513*.

#### **Details**

Where USC has been charged on the initial market value of shares when they are appropriated to an approved profit sharing scheme trust it is not subsequently charged on the locked-in value of those shares (within the meaning of *section 512(1)*) in the event of an early disposal of the shares or on the amount or value of a capital receipt (within the meaning of *section 513(1)*) where a capital receipt is subsequently received before the end of the required holding period for the shares.

### **531AV Married couples or civil partners**

#### **Summary**

This section provides that in joint assessment cases, an assessment made on the assessable spouse or nominated civil partner may incorporate USC due by the non-assessable spouse or other civil partner.

#### **Details**

Where an election has been made, or is deemed to have been made under *section 1018 or section 1031D* and has effect for a year of assessment, USC payable by the non-assessable spouse is to be charged, collected and recovered as if it was USC payable by the spouse assessable or nominated civil partner under *section 1017* or *section 1031C*.

### **531AW Repayments**

#### **Summary**

This section makes provision for repayments of USC.

#### **Details**

Any underpayments of USC are to be paid to the Collector-General and any repayments of USC overpaid are to be made by the Collector-General. (1)

Where an individual is not liable to USC because his or her aggregate income for a year of assessment does not exceed €13,000, any USC that is deducted is to be repaid by Revenue on receipt of a valid claim from the individual. (2)

### **531AX Restriction on deduction**

## Summary

USC operates independently of all other taxes.

## Details

USC paid in a year of assessment is a totally separate charge to any other tax liability (1) and cannot be used to reduce such other liabilities.

An individual cannot use any excess tax credits or reliefs that he or she may have to (2) reduce that individual's liability to USC.

## 531AY Recovery of unpaid universal social charge

### Summary

This section provides for the recovery of USC that is unpaid at the end of a year of assessment.

### Details

Where any USC is unpaid at the end of a year of assessment, and the employer has (1) received the appropriate notification from Revenue, the employer is to be treated as making a payment of relevant emoluments (amount to be determined in accordance with *subsection (2)*) to the employee in the following year of assessment.

The amount of the notional emoluments representing the unpaid USC is an amount (2) that, when it is charged to USC, would produce an amount of USC that is equal to the amount of the underpayment. This amount of notional emoluments is to be set out in the notification sent to the employer by Revenue.

The amount of the notional emoluments is to be apportioned over the subsequent year (3) of assessment in accordance with the way in which the employee is paid, i.e. weekly, monthly etc.

Revenue may adjust the employee's income tax tax credits or rate bands in the (4) subsequent year of assessment to collect the unpaid USC.

This subsection allows Revenue, where an assessment is not otherwise made, to make (5) an assessment to recover whatever amount of USC Revenue considers is unpaid for a particular year of assessment. Where such an assessment is made, the usual provisions of the Tax Acts in relation to assessment, collection and recovery of unpaid tax apply.

## 531AZ Repayments of, and recovery of unpaid, income levy

### Summary

This section applies *section 531AY* to provide for the recovery of unpaid income levy and to allow repayments of income levy to be made out of USC.

### Details

Where income levy remains unpaid in respect of an employee for the years of (1) assessment 2009 or 2010, certain provisions of *section 531AY* apply to the recovery of unpaid income levy as they apply to the recovery of unpaid USC. These are *subsections (1) to (3)* in relation to the making of notional emoluments and *subsection (4)* in relation to the adjustment of income tax tax credits and rate bands.

Any repayments of income levy paid for the years of assessment 2009 or 2010 can be (2) made out of USC where there is insufficient income levy paid for the year in which the



repayment is made.

### **531AAA Application of provisions relating to income tax**

#### **Summary**

Certain existing self-assessment provisions of the Tax Acts apply in relation to USC as they apply to income tax.

#### **Details**

The provisions of the Tax Acts relating to-

- the making of returns of income, the keeping of records, the making of enquiries and the exercise of powers, duties and responsibilities, (a)
- the making of assessments and the right to make enquiries by Revenue, (b)
- collection and recovery of unpaid income tax, and (d)
- penalties, offences, interest and other sanctions, (e)

apply, with any necessary modifications, to USC as they apply to income tax.

### **531AAB Regulations**

#### **Summary**

Revenue is empowered to make regulations for the proper implementation and administration of USC. The various matters in respect of which Regulations can be made are set out.

#### **Details**

Revenue may make regulations for the proper implementation and administration of USC and those regulations may include provision- (I)

- for requiring an employer to register for USC prior to paying emoluments, (a)
- for requiring an employer prior to making any payment of relevant emoluments to deduct or repay USC based on the rate(s) of charge in force for the particular year of assessment, (b)
- for the deduction of USC at the rate(s) of charge in force for the particular year of assessment for specified cases or categories of cases, (c)
- for specifying the manner in which deductions or repayments of USC are to be made from any payment of relevant emoluments made by an employer, (d)
- for making the person, who is required to make a deduction of USC, accountable for the charge and liable to pay it to Revenue and, when such a person is required to make a repayment of USC, for credit to be given for the repayment only when the repayment has been made, (e)
- for treating some persons, who are not employers, as employers in specified circumstances, (f)
- for the manner (including by electronic means) in which employers are to remit USC to Revenue and how such remittances are to be acknowledged, (g)
- for the period within which USC is to be remitted to Revenue, (h)
- for requiring an employer to submit to Revenue prior to the making of any emoluments details of relevant emoluments, USC and other relevant information and to do so in whatever time or form may be specified, (i)
- - (j)
- for requiring an employer to keep and maintain a register of employees chargeable to USC for delivery to Revenue, as and when required, (k)

- for the inspection by Revenue of payroll records and other documents to ensure that USC is properly operated, (l)
- for the collection and recovery of USC in respect of relevant emoluments that has not otherwise been recovered during a year of assessment, (m)
- for the collection and recovery of USC in respect of income other than relevant emoluments that has not otherwise been recovered during a year of assessment, (n)
- for the collection and recovery of USC from the employee rather than the employer in circumstances where the employer has failed to deduct USC, (o)
- for the collection and recovery of interest and penalties due from the employee that has not otherwise been recovered, (p)
- for the repayment, on the making of a claim to that effect, to an employer of USC that is in excess of the amount due and payable by the employer for a year of assessment, (q)
- for appeals against matters in the regulations and for which there is no other appeal procedure, (r)
- for the deduction, collection and recovery of USC in respect of notional payments, i.e. non-monetary emoluments such as perquisites and benefits-in-kind, and (s)
- for allowing Revenue to make various electronic systems available to employers and employees in relation to their USC obligations and to allow Revenue to provide for electronic systems of communications. (t)

References to relevant emoluments include notional emoluments. (2)

The regulations made under this section apply regardless of anything in *Part 18D* but taxpayers' other rights of appeal are not affected. (3)

If Revenue is satisfied that it is not necessary or appropriate for an employer to comply with any of the regulations made, a notification to that effect may be issued to the employer. (4)

The regulations to be made under this section must be approved by the Dáil. (5)

### **531AAC Care and management**

As with other taxes and duties, USC is under Revenue's "care and management" and *Part 37* (Administration) applies to USC as it applies to other taxes and duties.

### **531AAD Excess bank remuneration charge**

#### **Summary**

This section provides for an additional charge on certain remuneration, such as bonus payments, paid to employees of financial institutions that have received financial support from the State. This additional charge, "excess bank remuneration charge", is incorporated into the USC and applies in all respects as if it was USC except that it is charged at a higher rate of 45%.

#### **Details**

The definitions used in *section 531AAD* are: (1)

"excess bank remuneration charge" is construed in accordance with *subsection (7)*.

"relevant employee" means an employee of a specified institution who is resident in the State in a year of assessment or whose duties are performed wholly or partly in the State at any time in that year of assessment.

"relevant remuneration" is the remuneration that will be subject to the additional



charge and is any salary or benefits that is not regarded as ‘regular’ salary or benefits such as bonus payments.

“regular” is essentially an employee’s normal fixed remuneration package. It is defined in relation to relevant remuneration as salary, fees or benefits that do not vary with the performance of the business of the financial institution, the contribution of the employee to the performance of the business or the performance by the employee of his or her duties.

“specified institution” is a financial institutions in respect of which the Minister for Finance has made an order under the Credit Institutions (Financial Support) Act 2008 enabling financial support to be given and in respect of which financial support was actually given either under that Act or under the National Pensions Reserve Fund Act 2000.

A threshold of €20,000 is used to determine if an employee’s remuneration is to be regarded as relevant remuneration and thus subject to the additional charge. Where an employee has relevant remuneration in a year of assessment that exceeds €20,000, the entire amount, and not just the excess over €20,000, is chargeable. This provision ensures that certain employees whose remuneration may be commission-based are not subject to the additional charge. (2)

The chargeable event i.e. when relevant remuneration is regarded as being awarded in relation to a particular year of assessment, is determined by whether a contractual obligation to make the payment arises in a year of assessment or, in the absence of such a contractual obligation, the payment is made in a year of assessment. (3)

The chargeable amount is determined at the date of payment of the relevant remuneration as either the amount of money, or in the case of something other than money, its money’s worth. (4)

The market value is substituted for the value of relevant remuneration where its market value is higher than that value at the time of award. Market value is the price that an asset might be expected to fetch on a sale in the open market. (5)

Any condition or restriction on relevant remuneration that has the effect of reducing its market value is to be ignored in establishing the chargeable amount. (6)

This charging provision operates by disapplying the normal USC rates (i.e. 2%, 4%, 7% and 10%) in *section 531AN* in respect of any part of an employee’s aggregate income for a year of assessment that is relevant remuneration. Instead, the relevant remuneration is charged to “excess bank remuneration charge” at a higher rate of 45%. (7)

*Section 531AO(2)*, which obliges employers to deduct and charge USC at specified rates, is disappplied. Instead, an employer is obliged to charge relevant remuneration and deduct “excess bank remuneration charge” at the rate of 45% in the period 6 February 2011 (date of passing of the Finance Act 2011) to 31 December 2011 and in subsequent years of assessment. (8)

“excess bank remuneration charge” is payable **for** the tax year 2011. Employers may have made awards of relevant remuneration in the period 1 January 2011 to 6 February 2011 (date of passing of the Finance Act 2011) before they were obliged to deduct the charge. In such cases, employers were obliged to provide Revenue with certain information by 30 June 2011 to enable the charge to be collected from the employee. This information included the name and PPS number of any employee to whom relevant remuneration was awarded, the amount of such remuneration and the amount of USC, if any, that was deducted. (9)

Employers are obliged to send an annual return to Revenue by 14 January in the (10)

following year containing specified information about awards of relevant remuneration. This information includes the name and PPS number of any employee to whom relevant remuneration was awarded, the amount of such remuneration and the amount of excess bank remuneration charge that has been deducted and remitted in respect of that employee.

This section provides for an additional charge on certain remuneration, such as bonus payments, paid to employees of financial institutions that have received financial support from the State. This additional charge, “excess bank remuneration charge”, is incorporated into the USC and applies in all respects as if it was USC except that it is charged at a higher rate of 45%.

### Details

The definitions used in *section 53I AAD* are: (1)

“excess bank remuneration charge” is construed in accordance with *subsection (7)*.

“relevant employee” means an employee of a specified institution who is resident in the State in a year of assessment or whose duties are performed wholly or partly in the State at any time in that year of assessment.

“relevant remuneration” is the remuneration that will be subject to the additional charge and is any salary or benefits that is not regarded as ‘regular’ salary or benefits such as bonus payments.

“regular” is essentially an employee’s normal fixed remuneration package. It is defined in relation to relevant remuneration as salary, fees or benefits that do not vary with the performance of the business of the financial institution, the contribution of the employee to the performance of the business or the performance by the employee of his or her duties.

“specified institution” is a financial institutions in respect of which the Minister for Finance has made an order under the Credit Institutions (Financial Support) Act 2008 enabling financial support to be given and in respect of which financial support was actually given either under that Act or under the National Pensions Reserve Fund Act 2000.

A threshold of €20,000 is used to determine if an employee’s remuneration is to be regarded as relevant remuneration and thus subject to the additional charge. Where an employee has relevant remuneration in a year of assessment that exceeds €20,000, the entire amount, and not just the excess over €20,000, is chargeable. This provision ensures that certain employees whose remuneration may be commission-based are not subject to the additional charge. (2)

The chargeable event i.e. when relevant remuneration is regarded as being awarded in relation to a particular year of assessment, is determined by whether a contractual obligation to make the payment arises in a year of assessment or, in the absence of such a contractual obligation, the payment is made in a year of assessment. (3)

The chargeable amount is determined at the date of payment of the relevant remuneration as either the amount of money, or in the case of something other than money, its money’s worth. (4)

The market value is substituted for the value of relevant remuneration where its market value is higher than that value at the time of award. Market value is the price that an asset might be expected to fetch on a sale in the open market. (5)

Any condition or restriction on relevant remuneration that has the effect of reducing its market value is to be ignored in establishing the chargeable amount. (6)

This charging provision operates by disapplying the normal USC rates (i.e. 2%, 4%, 7% and 10%) in *section 531AN* in respect of any part of an employee’s aggregate income for a year of assessment that is relevant remuneration. Instead, the relevant remuneration is charged to “excess bank remuneration charge” at a higher rate of 45%. (7)

*Section 531AO(2)*, which obliges employers to deduct and charge USC at specified rates, is disappplied. Instead, an employer is obliged to charge relevant remuneration and deduct “excess bank remuneration charge” at the rate of 45% in the period 6 February 2011 (date of passing of the Finance Act 2011) to 31 December 2011 and in subsequent years of assessment. (8)

“excess bank remuneration charge” is payable **for** the tax year 2011. Employers may have made awards of relevant remuneration in the period 1 January 2011 to 6 February 2011 (date of passing of the Finance Act 2011) before they were obliged to deduct the charge. In such cases, employers were obliged to provide Revenue with certain information by 30 June 2011 to enable the charge to be collected from the employee. This information included the name and PPS number of any employee to whom relevant remuneration was awarded, the amount of such remuneration and the amount of USC, if any, that was deducted. (9)

or 2019 and subsequent years of assessment, employers are obliged to send an annual return to Revenue by 14 January in the following year containing specified information about awards of relevant remuneration. This information includes the name and PPS number of any employee to whom relevant remuneration was awarded, the amount of such remuneration and the amount of excess bank remuneration charge that has been deducted and remitted in respect of that employee. (10)

## **531AAE Property relief surcharge**

### **Summary**

This section provides for an increase in the Universal Social Charge (USC) in respect of income of certain individuals. It potentially only applies to those whose gross income in the year is at least €100,000, and then only to income, which is sheltered by any of the property or area-based incentive reliefs in that year. This means any of the accelerated property capital allowances under any of the incentive schemes as well as the residential lessor relief commonly known as section 23-type relief. The 5% property relief surcharge is payable, in addition to any other USC, which the person is obliged to pay on the income in question.

Where a person’s gross income is less than €100,000, no additional USC is payable, even if that person is using these property reliefs.

### **Details**

A series of definitions, used in the section are set out: (1)

“aggregate of the specified property reliefs” means the aggregate of the amount of any specified property relief used by the individual in a tax year;

“amount of specified property relief” refers to specified reliefs and means the amount of all such specified property relief used by the individual in a tax year;

“area-based capital allowance” is a reference to all of the accelerated capital allowances provided for under any of the designated area or urban or rural renewal schemes. It also includes all of the older schemes, which have formally ended or have been replaced in more recent times. Finally, these allowances also include allowances given in an earlier period and carried forward into a later one;

“balancing allowance” means any allowance made under *section 274*. This is a reference to the allowance which may apply upon the sale of a capital asset;

“specified capital allowance” means any specified relief, being a writing down allowance, a balancing allowance or any of the other property-based accelerated capital allowances provided for and includes any unused amount of such allowances carried forward from one chargeable period into a subsequent one in accordance with *Part 9*;

“specified individual” means an individual whose aggregate income (for USC purposes) for the year is €100,000 or more;

“specified property relief” means□

- (a) any area-based capital allowance or any specified capital allowance, or
- (b) any eligible expenditure, within the meaning of *Chapter 11 of Part 10*, to which *section 372AP* applies. This is a reference to what is commonly known as section 23-type relief and includes such relief as it is carried forward as losses from one year to the next;

“specified relief” means any relief arising under any of the provisions set out in *column (2) of Schedule 25B*. These are the reliefs to which the high earners restriction applies.

“writing down allowance” means any allowance provided for under *section 272* and includes an allowance as increased under *section 273*. This is the annual allowance, which may be written off against income in respect of a range of industrial buildings or structures and also includes circumstances in which “free depreciation” is or was allowed.

Any reference in the section to a specified property relief being used is to be interpreted as meaning that part of the relief to which full effect has been given. For example, if €100,000 of section 23-type relief is carried forward into a particular tax year and set against rental income of €20,000, then it is that latter amount which has been used. (2)

The property relief surcharge is applied at a rate of 5%. It is calculated on the basis of the amount of the specified individual’s aggregate income (for USC purposes) against which specified property relief has been used in that year. For example, if an individual has aggregate income of €150,000 in the year, that means that individual is a specified individual. If that specified individual uses €50,000 of specified property relief to shelter some of that income from tax, then the property relief surcharge of €2,500 (5% of €50,000) will apply. This charge is in addition to any “normal” USC, which the individual may have to pay. (3)

The provisions of *section 485C(3)* and *Schedule 25C* are applied to any amounts carried forward into the tax year 2012 or to any subsequent tax year. This is necessary as it allows the individual to determine how much relief is attributable to individual premises at any point in time. It also enables a segregation between reliefs and other commercial losses or expenses. These provisions are primarily in place for the purposes of the high earners restriction, which was introduced in 2007. In this case, the references to 2006 and 2007 are to be read as 2011 and 2012. (4)(a)

Specified reliefs to be used in any particular tax year are segregated into those which are specified property reliefs and those which are not. For the purposes of this section, those which are specified property reliefs are treated as being used in priority to those which are not specified property reliefs. (4)(b)

If the property relief surcharge is due to be paid by a specified individual in respect of the tax year 2012, then provision must be made for this by the deadline for the payment of preliminary tax (31 October 2012). Without this provision, the normal rules relating (5)

to preliminary tax payments would apply and since the surcharge did not exist in 2011, then no payment on account of the property relief surcharge would be due by that date. For the purposes of the payment of the surcharge, this section is treated as having been in place in the tax year 2011.

### **531AAF Delegation of functions and discharge of functions by electronic means**

#### **Summary**

This is the type of general delegation provision found throughout the Tax Acts that allows Revenue officers to carry out functions and acts that may be stated in the particular provisions to be carried out by the Revenue Commissioners. It also provides for the carrying out of such functions and acts by electronic means.

#### **Details**

The Revenue Commissioners may delegate acts and functions that are required to be carried out by them to Revenue officers or, if appropriate, they may allow such acts or functions to be performed or discharged through electronic means.