

Notes for Guidance - Taxes Consolidation Act 1997

Finance Act 2021 edition

Part 25

Industrial and Provident Societies, Building Societies and Trustee Savings Bank

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PART 25

INDUSTRIAL AND PROVIDENT SOCIETIES, BUILDING SOCIETIES, AND TRUSTEE SAVINGS BANKS

CHAPTER 1

Industrial and provident societies

Overview

This Chapter provides special rules relating to the taxation of industrial and provident societies.

698 Interpretation (Chapter 1)

“loan interest” is any interest payable by the society in respect of any mortgage, loan, loan stock or deposit.

“share interest” is any interest, dividend, bonus or other sum payable to a shareholder of the society by reference to the shareholder’s holding in the share capital of the society.

“society” is a society registered under the Industrial and Provident Societies Acts, 1893 to 1978.

References to the payment of share or loan interest include references to the crediting of such interest.

699 Deduction as expenses of certain sums, etc

Summary

This section provides that certain sums are allowed to be deducted as expenses in computing the profits or gains of an industrial or provident society chargeable to tax under Case I of Schedule D. The sums so allowable are certain discounts, rebates, dividends or bonuses granted to members of the society and share or loan interest paid by the society for the purposes of the trade. The section also provides that any writing-down allowance, balancing allowance or balancing charge to be made to or on a society in respect of capital expenditure incurred on the construction of a building or structure, or on the purchase of patent rights, is to be calculated as if the capital allowances or charges which, but for the fact the society was exempt from tax, would have been made to or on to the society in respect of that expenditure for the year 1962–63 or earlier had in fact been made.

Details

Deductions

In determining the profits or gains of an industrial or provident society chargeable under Case I of Schedule D, the following deductions are allowed — **(1)**

- discounts, rebates, dividends or bonuses granted by the society to the members of the society or other persons which are calculated by reference to the size of their transactions with the society, and
- share or loan interest paid by the society wholly and exclusively for the purposes of the trade.

Capital allowances

Where a writing-down allowance, balancing allowance or balancing charge is to be made to or on an industrial or provident society in respect of capital expenditure incurred on the construction of a building or structure, it is to be calculated as if every annual allowance, balancing allowance or balancing charge which, but for the fact the society was exempt from income tax at the time, would have been made to or on the society for the year 1962–63 and earlier years in respect of that expenditure had in fact been made. (2)(a)

Where a balancing allowance or balancing charge is to be made to or on an industrial or provident society in respect of capital expenditure incurred on the purchase of patent rights, it is to be calculated as if every annual allowance which, but for the fact the society was exempt from income tax at the time, would have been made to or on the society for the year 1962–63 and earlier years in respect of that expenditure had in fact been made. (2)(b)

700 Special computational provisions

This section provides special rules in relation to share and loan interest paid by a credit union and an industrial and provident society. Such interest is not treated as a distribution. It is to be paid without deduction of income tax and is to be chargeable to tax under Case III of Schedule D, except where it is payable to a person whose usual place of abode is outside the State. (In respect of dividends paid by credit unions on or after 1 January, 2001 refer to **Chapter 5 of Part 8**.) For the purposes of computing an industrial and provident society's corporation tax liability, interest paid by the society under **section 243** (allowance of charges on income) is offset against the company's total profits. Every industrial and provident society must make a return to the Revenue Commissioners each year on or before the next 31 January stating the share or loan interest paid in excess of €89 to members in the year of assessment ending before that date. If the society fails to do so, it is not entitled to a deduction for the interest paid. If a society does not make a full return it is not entitled to a deduction under **section 97(2)(e)** (computational rules and allowable deductions), **243** (allowance of charges on income) or **699(1)** (deduction as expenses of certain sums) for share interest or loan interest paid, and any additional tax due as a result of this restriction is to be raised by means of an amended assessment.

701 Transfer of shares held by certain societies to members of society

Summary

This section provides that where an agricultural or fisheries co-operative transfers shares it owns in a subsidiary company to the co-operative members in return for the cancellation of the members' shares in the co-operative, the transfer is deemed not to be a distribution and the disposal of the shares is treated for capital gains tax purposes as not giving rise to a chargeable gain or an allowable loss. The co-operative members are treated as if the shares in the company which are transferred to them were acquired at the same price and at the same time at which they acquired their shares in the co-operative.

Details

Definitions

“company” is linked back to the definition of that term in **section 5**. It covers all corporate bodies but does not include a European Economic Interest Grouping (EEIG) (1)

– see **Part 43** for provisions relating to EEIGs.

“consideration” is consideration in money or money’s worth.

“control” is defined by reference to the rules set out in **section 432**.

“society” is a society registered under the Industrial and Provident Societies Acts, 1893 to 1978, which is an agricultural or fishing society within the meaning of **section 133(1)(a)**.

“the appropriate number”, in relation to a member’s original shares in a society, is defined because the assets of the society may consist of more than just its shareholding in the subsidiary company. In such a case only that part of the society’s members’ shares (“the appropriate number”) referable to the assets of the society represented by its shareholding in the company are to be cancelled as part of the transfer arrangements. The appropriate number is determined by the formula — (2)(a)

$$\frac{A \times B}{C} \times \frac{D}{B}$$

- A is the market value of the shares in the company owned by the society immediately before the transfer.
- B is the total number of shares in the society that are in issue immediately before the transfer.
- C is the market value of the total assets of the society immediately before the transfer.
- D is the number of the shares in the society owned by the member immediately before the transfer.

Conditions

The conditions which must be met to avail of the relief are — (2)(b)

- the transfer of the shares in the company to the member must be in respect of and in proportion or as near as possible in proportion to that member’s holding of shares (the original shares) in the society,
- no consideration for the transfer must be given or received from a member other than the cancellation of the member’s shares in the society, and
- the members’ shares in the society must be cancelled on or as soon as possible after the transfer.

Tax treatment

The transfer of shares is not treated as a distribution and is deemed to be made for an amount which results in a no gain/no loss for the society. (3)

The cancellation of the members’ shares in the society is not treated as a disposal. (4)(a)

Each member is treated as if the shares transferred to him/her by the society were acquired at the same time and price at which he/she acquired the original shares (that is, his/her shares in the society). If the original shares were acquired at different times, provision is made for apportionment on a just and reasonable basis. (4)(b)

The above tax treatment does not apply unless the transfer of shares is made for genuine commercial reasons and is not part of a tax avoidance arrangement. (5)

Returns

A society availing of this section must include details of the number of shares cancelled in its corporation tax return. (6)

CHAPTER 2 *Building societies*

Overview

This Chapter and *Schedule 16* ensure that the amalgamation of building societies and the conversion of a building society to a limited company are tax neutral events.

702 Union or amalgamation of, transfer of engagement between, societies

Where on an amalgamation of 2 or more building societies, within the meaning of the Building Societies Acts, 1874 to 1989, a disposal of assets between the societies takes place, that disposal does not give rise to a chargeable gain or an allowable loss.

703 Change in status of society

Where a building society converts from a mutual society to a limited company in accordance with the provisions of the Building Societies Act 1989, *Schedule 16* applies to ensure that the conversion does not give rise to adverse tax consequences.

CHAPTER 3 *Trustee savings banks*

Overview

This Chapter and *Schedule 17* facilitate both the amalgamation of 2 or more trustee savings banks and the reorganisation of trustee savings banks into companies without imposing adverse tax consequences.

704 Amalgamation of trustee savings banks

Where 2 or more trustee savings banks amalgamate under the Trustee Savings Banks Act 1989, those banks are treated for tax purposes as if they were the same person. The amalgamation is effectively ignored for tax purposes.

705 Reorganisation of trustee savings banks into companies

The Trustee Savings Banks Act 1989 authorises the Minister for Finance to reorganise one or more trustee savings banks into a company. In general, the provisions of *Schedule 17* facilitate such a reorganisation without imposing adverse tax consequences.