Notes for Guidance - Taxes Consolidation Act 1997

Finance Act 2021 edition

Part 28
Purchase and Sale of Securities

December 2021

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PART 28
PURCHASE AND SALE OF SECURITIES

CHAPTER 1
Purchase and sale of securities

Overview

Chapter 1 of ***Part 28*** is primarily directed against a practice known as "bond washing" which could otherwise be practised by dealers in securities or exempt bodies. Without these provisions, a "loss" could be created by the purchase of a security "cum div" (where the price reflects the accumulated interest payable on the security) and its subsequent sale "ex div" (where the price does not reflect the accumulated interest on the securities). Shortly before interest on a security is paid the security goes "ex div". The register of the security is closed and the person who was the registered owner immediately before that time receives the interest payment. The person who purchases the security in the "ex div" period does not receive the interest payment and the purchase price reflects this.

The Chapter also provides for specific tax treatment for exchanges of shares held as trading stock as well as securities exchanged under the Exchange Programme in Irish Government bonds, initiated by the National Treasury Management Agency.

748 Interpretation and application (*Chapter 1*)

Summary

This section contains definitions used in ***Chapter 1*** and ***Schedule 21***. It also provides that, subject to a number of exceptions, the provisions apply to a person who purchases a security "cum div", sells it "ex div" and receives the interest/distribution from the security. The provisions do not apply where the securities have been held, generally for over 6 months, and in certain limited circumstances, with the agreement of the Revenue Commissioners, a period of over 1 month will suffice.

Details

"distribution" has the same meaning as in the Corporation Tax Acts. ***(1)***

"interest" includes distributions and other dividends.

"gross interest" means the distribution together with the tax credit

"net interest" means the distribution without the tax credit.

"person" includes a body of persons and trustees of a trust or fund.

"securities" includes stocks and shares. Securities are similar if they have the same rights and entitlements as the originals.

These definitions apply also for the purposes of ***Schedule 21***.

This Chapter applies to the purchase of securities by a person (in the Chapter called the "first buyer") and their subsequent sale by the first buyer, where the transaction results in interest being paid to the first buyer. ***(2)***

The Chapter does not apply if the securities are held for over — ***(3)***

- 6 months (the reference in the provision is to the first buyer "taking steps to dispose of the securities" – see below), or

- 1 month and in the opinion of the Revenue Commissioners the sale and purchase are at market price and no prior arrangement or agreement for the sale is in place.

The reference to "taking steps to dispose of the securities" in ***subsection (3)*** is to be construed as a reference to — *(5)*

- the acquisition of an option to sell the securities, if the securities were sold as a result of the exercise of such an option, and
- the sale of the securities, in any other case.

The order in which securities acquired at different times are sold is determined on a "last in, first out" (LIFO) basis. It is also provided that the person selling similar securities cannot be under any greater liability to tax than if the original securities were sold. *(6)*

At the commencement of a trade securities are deemed to be sold by the previous owner at market price and acquired by the new owner at the same price. Where participants in a trade change but the trade itself continues, the new participants are deemed to have done all the actions that the predecessors did. *(7)*

749 Dealers in securities

Summary

This section provides that where the first buyer is a dealer in securities, the purchase price of any securities acquired by the first buyer is reduced by the interest element contained within that price. This element is calculated in accordance with ***Schedule 21***. The section contains a number of exceptions to this rule and also provides that a transaction is not caught by both the anti-bondwashing provisions of this Chapter and the anti-dividend stripping provisions in ***Chapter 2*** of this Part.

Details

General rule

Subject to the other provisions of this section, where the first buyer is a dealer in securities, the purchase price of any securities acquired by the first buyer is reduced by an appropriate amount of the interest element contained within that price when computing the profits arising from, or loss sustained in, the trade. This appropriate amount in respect of the interest is calculated in accordance with ***Schedule 21***. *(1)*

Irish Stock exchange members

If in the opinion of the Revenue Commissioners, the first buyer is a genuine discount house or a member of the Irish Stock exchange as a dealer the reduction in the acquisition price of any securities acquired by the first buyer provided for by ***subsection (1)*** is not to apply. *(2)*

Overseas securities

The general rule in ***subsection (1)*** will not apply for a chargeable period in relation to short-term purchases of overseas securities (purchased on or after 1 January 2003) if: *(2A)(a)*

- those securities are purchased by a dealer in securities in the ordinary course of the dealer trade,
- the interest payable in respect of all such overseas securities to which this Chapter applies is brought in as a trading receipt in computing the dealer's profits for the chargeable period, and
- the dealer elects in writing, by the specified return date for the chargeable period in question, that credit for any foreign tax on that interest which might otherwise be due by virtue of ***Part 14*** or ***35*** or ***Schedule 24*** is not to be allowed.

"overseas securities" is defined as securities issued by a government of a territory outside the State, by a foreign local authority, foreign local government, foreign public authority, or any other body of persons not resident in the State. ***(2A)(b)***

"specified return date for the chargeable period": this is the return filing date and has the same meaning as in ***section 959A***.

Effect of election under subsection (2A)

Where an election is made in accordance with ***subsection (2A)(a)(ii)*** then: ***(2B)***

- credit for foreign tax shall not be allowed, notwithstanding the provisions of ***Parts 14*** and ***35*** and ***Schedule 24*** which provide for such a credit,
- the election is to be included in the return which the dealer makes for self-assessment purposes under ***Chapter 3 of Part 41A***, and
- the election is to have effect only for the chargeable period for which it is made. Therefore, an annual election is required with the annual self-assessment return.

Irish Government securities

The provisions of ***subsection (1)*** will also not apply for a chargeable period in relation to short-term purchases of Irish Government securities (which are not chargeable assets for the purposes of the Capital Gains Tax Acts by virtue of ***section 607***) if those securities are purchased by a dealer in securities in the ordinary course of the dealer's trade and the interest payable in respect of all such securities to which this Chapter applies is brought in as a trading receipt in computing the dealer's profits for the chargeable period. This provision also applies as respects securities purchased on or after 1 January 2003. ***(2C)***

Interaction with Chapter 2

The section ensures that a transaction is not caught by both the anti-bondwashing provisions of this Chapter and the anti-dividend stripping provisions in ***Chapter 2*** of this Part. ***(3)***

750 Persons entitled to exemption

This section is aimed at preventing bond-washing by exempt bodies such as exempt approved pension schemes and charities. It debars a claim for exemption on an interest receipt (calculated in accordance with ***Schedule 21***) in so far as that receipt comes within these general provisions. Any tax due to be paid cannot be set off against tax (if any) deducted from annual payments under ***section 238***, and is not allowed as a charge on income for corporation tax purposes.

751 Traders other than dealers in securities

Summary

This section contains provisions corresponding to those against dividend-stripping (***sections 752*** and ***753***) and ensures that measures against "cum div" and "ex div" dealings also apply to non-financial entities.

Details

In determining any tax repayment due to a person who is not a dealer in securities in respect of any trading income, any interest computed in accordance with ***Schedule 21*** and any tax paid on that interest is to be disregarded. In addition, these provisions are carried through for corporation tax purposes. ***(1)***

There is also provision to prevent a company, not engaged in a financial trade, from ***(2)***

setting off tax paid on such interest received against any withholding tax deducted under ***section 238*** on any annual payments made by it.

751A Exchange of shares held as trading stock

Summary

This section is concerned with a financial trader who exchanges shares held as trading stock for other shares where the exchange is brought about by a takeover or merger involving the company which issued the shares held by the trader. Under the existing capital gains tax code such an exchange is not treated as giving rise to a capital gains tax liability. This liability is deferred until the replacement shares are disposed of.

This section provides a similar deferral of tax liability under the income tax and corporation tax codes which apply to financial traders.

Details

Definitions

"new holding" is the new securities held after the exchange. ***(1)***

"original shares" is the shares held before the exchange.

Application

Subsections (4) and ***(5)*** are applied solely to persons assessable on the profits of a trade of dealing in securities under Case I of Schedule D. ***(2)***

The section is applied to the same kind of exchanges as ***sections 584*** to ***587*** would apply if the person concerned was not assessable under Case I of Schedule D. These sections contain the comparable capital gains tax provisions. There is one exclusion namely the Exchange Programme in Irish Government bonds which is being initiated by the National Treasury Management Agency and which is taxed under special rules (***section 751B***). ***(3)***

Tax treatment

In computing the profits assessable to tax under Case I of Schedule D — ***(4)***

- the exchange is not regarded as a disposal, and
- the original shares and new holding are treated as the same asset.

This treatment is qualified in circumstances where cash or some other consideration may also change hands in addition to the share exchange. The proportion of the value of the total transaction which represents this consideration is considered a taxable receipt and only the balance is subject to the special rules. ***(5)***

These rules are applied with the necessary modifications in the tax computation of the life fund of life assurance companies. There are specific rules associated with the taxation of life assurance companies. Their tax liability cannot, however, be less than the liability which would arise if they were chargeable to tax under Case I. This is known as the notional Case I computation. If such a situation were likely to arise, the taxable amount is adjusted by reducing the amount of management expenses of the company which are deductible. The purpose of this subsection is to ensure that in making the notional Case I computation the provisions of this section will apply. ***(6)***

751B Exchange of Irish Government bonds

Summary

The section provides special tax treatment for the Exchange Programme in Irish

Government bonds which has been initiated by the National Treasury Management Agency (NTMA). The purpose of the programme is to redeem existing bonds, which may be trading in the market at a substantial premium because of the high interest rate attaching to them, for an amount of equal value of newly issued securities reflecting the current lower rates of interest. This provision defers the capital gains tax liability arising on the exchange of the securities until the earlier of either the sale or redemption of the new securities. The tax will then be due but calculated at the tax rate prevailing at the date of the exchange. It is the tax, not the gain, which is carried forward. Because the exchange may take place part way through an interest payment period, the interest accrued up to that time is chargeable to tax immediately and only the balance of the tax liability is deferred.

The provision has relevance for traders in securities such as banks and general insurance companies as well as life assurance companies and collective funds. Individuals are exempt from capital gains tax on the disposal of Government bonds.

Details

Definitions

"chargeable period" is an accounting period in the case of a company and a year of assessment for any other person. ***(1)***

"the exchange" is the exchange of securities under the Exchange Programme in Irish Government bonds as designated by NTMA.

"investor" is the person exchanging bonds under the exchange programme.

"last payment day" is the last day interest on the bonds was paid subject to the qualification that if the old securities were bought at or soon after issue then strictly speaking there has been no last payment date. The definition deems the date of issue of the securities to be the last payment date in those circumstances.

"new securities" and "old securities" are the securities involved in the exchange.

"securities" is all Government and Semi-State securities as defined in ***section 36***.

Application

Special rules are provided for taxing — ***(2)***

- financial traders (***subsections (3)*** and ***(5)***), and
- non-traders including collective funds and the life funds of life assurance companies (***subsection (6)***).

Tax treatment: financial traders

In the case of financial traders, etc an amount of tax, "the deferred tax", is calculated according to one of two possible formulae.

Where the investor is chargeable in respect of interest on a "receipts basis" the formula —

$$A – B – C.$$

Where the investor is chargeable in respect of interest on an "accruals basis" the formula —

$$A – B.$$

In both cases —

A is the tax due apart from this section.

B is the tax due as if the "exchange" was not recognised for tax purposes but, in a case where the investor is charged on an accruals basis, it includes tax on interest accrued in that period.

C is the tax on accrued interest earned but not yet received by the investor and which is built into A. This is because the market value at the date of exchange includes this accrued interest.

The "receipts basis" means any interest received in a chargeable period is brought into charge in that period.

The "accruals basis" means that interest earned though not necessarily received in a chargeable period is brought into charge. For example, where the chargeable period is a calendar year and interest of €10 is paid on 30 September each year, the amount brought into charge is the interest accrued from 1 January to 30 September in that year (€7.50) plus a further amount of interest accrued between 1 October and 31 December in the same year (€2.50). On an ongoing basis there should not be any material difference in the amounts brought into charge on either basis.

The formula A – B – C produces the correct result for persons assessable on a "receipts basis", the purpose of which is to isolate what is known as the "clean price" gain (not including any accrued interest), calculate the tax on this and defer this amount of tax.

(3) The alternative formula A – B applies to persons chargeable to tax on interest on an "accruals basis". The meaning of "B" in this situation is refined to ensure it includes the interest accrued in that chargeable period. In this situation both "A" and "B" contain the tax on interest accrued from the start of that chargeable period or the date of purchase of the old security, whichever is later, to the day the exchange takes place. The difference between A and B in these circumstances is, in fact, the tax on the "clean price" gain. It is, therefore, not necessary to include "C" in this formula.

(4) The calculation of accrued interest referred to in "C" is provided for.

(5) The investor may elect that these provisions apply and consequently the amount of "deferred tax" is excluded from the tax computation for the chargeable period in which the exchange takes place. This tax is deferred until the chargeable period in which the new securities are either disposed of or redeemed, whichever is earlier, and is payable in addition to the other tax due for that chargeable period. The rules of Self Assessment (***Part 41A***) apply accordingly.

Tax treatment: Non-traders

(6) In the case of non-traders —

- If an investor so elects, then, subject to ***section 815*** (bond washing), the capital gains tax liability is calculated but deferred until either the new securities are sold or redeemed, whichever is earlier.
- ***Section 815*** applies to the accrued interest and, with the modified use of the section as referred to in ***paragraph (b)***, undertakings for collective investment and the life funds of life assurance companies are also included. The bondwashing legislation does not normally apply to undertakings for collective investment or the life funds of life assurance companies because of the special tax treatment which applies to these institutions. However, for the purposes of this exchange programme alone, such institution are effectively made subject to ***section 815*** in order that the accrued interest can be charged to tax immediately.

Time limit for elections

(7) The election referred to in ***subsections (5)*** and ***(6)*** must be made within 2 years. This election affords an investor the option of applying this section to a particular transaction

and so defer a tax liability. Otherwise any gain accruing on the exchange is taxed immediately. This latter option might be taken if the investor was likely to make a loss on the transaction.

Cessation

These special tax rules do not apply to bond exchanges which occur after 31 December, 1999.

CHAPTER 2

Purchases of shares by financial concerns and persons exempted from tax, and restriction on relief for losses by repayment of tax in case of dividends paid out of accumulated profits

Overview

Chapter 2 of ***Part 28*** is directed against a tax avoidance scheme involving a device commonly known as "dividend stripping" by which a profit is made out of tax —

- through the acquisition of shares in companies which have accumulated reserves, and
- the taking of a dividend on those shares.

The avoidance device involves the acquisition by company A of shares in company B. A dividend is declared and paid to company A. This is franked investment income in the hands of company A. The shares in company B are subsequently sold at a loss reflecting the fact that the accumulated reserves in company B have already been paid out. The loss to company A on this purchase and sale transaction would normally be used to claim a repayment of any tax credit attaching to the dividends paid by company B (***section 157***). Dealers in securities are in a specially favourable position to do this. The device can also be practised by exempt bodies to claim a repayment of the tax credits and can also be used, in the case of a non-financial trader with trading losses. These losses can be used to claim a repayment of the tax credit.

The provisions of this Chapter ensure that, in general terms, the price paid for the shares is to be reduced, in computing the body's profit or loss by the extent of the dividends earned before the acquisition of the shares. As in ***Chapter 1*** of this Part the broad effect is that this artificial loss is not now created.

752 Purchases of shares by financial concerns and persons exempted from tax

Summary

This section is the main provision designed to prevent avoidance of tax by the dividend-stripping device. The section affects persons who deal in financial securities as well as persons who enjoy an exemption from tax and are entitled to claim repayment of tax (for example, charities, pension schemes, etc).

Details

"dividends" includes all distributions. ***(1)***

"gross amount" or "gross dividend" is the dividend (distribution) including the tax credit.

"distribution" has the same meaning as in the Corporation Tax Acts.

"company" is an Irish resident body corporate. ***(2)(a)***

"control" broadly means the power of a person to secure that the affairs of the company

are conducted in accordance with that person's wishes.

"person" includes any body of persons as well as a trust.

"share" includes stock other than loan stock, etc.

"shares of a class to which this section applies" means, in general, the share capital of a company other than preference shares. Shares are of a different class if their rights, etc are distinguishable.

The above definitions apply also for the purposes of ***Schedule 22***.

The subsection also contains provisions for determining when 2 trades are under the same control. ***(2)(b)***

In general, where a body acquires 10 per cent or more of the issued share capital of a company which is of a class to which this section applies, and receives a dividend within 10 years from the date of acquisition, the net dividend, if and so far as it is paid out of pre-acquisition profits is to be treated as a trading receipt. In considering whether there is a 10 per cent shareholding regard is to be had to all shares of the class in question which were — ***(3)***

- acquired within 10 years of the date of the dividend payment,
- held by dealing concerns under the same control, and
- acquired by dealing concerns acting in concert.

There are also provisions relating to persons exempt from tax on dividends corresponding to those relating to financial concerns in ***subsection (3)***. The net effect is that where dividends are received in the circumstances of ***subsection (3)*** no relief by way of repayment of tax or otherwise is to be available in respect of such a dividend, to the extent that it is paid out of pre-acquisition profits. ***(4)***

Account is to be taken in the application of ***subsections (3)*** and ***(4)*** of the acquisition of shares by persons acting in concert. ***(5)***

A mechanism for identifying the order in which shares acquired at different times are sold is outlined and that is on a "first in, first out" (FIFO) basis. ***(6)***

When a new trade commences any shares which form part of the stock-in-trade at that date are deemed to have been acquired at that date. The same applies to a change of ownership. ***(7)***

The computation in ***Schedule 22*** determines the extent to which profits are accumulated before any particular date. ***(8)***

753 Restriction on relief for losses by repayment of tax in cases of dividends paid out of accumulated profits

Dividend stripping by non-financial concerns with trading losses are prevented by this section.

Where in any year of assessment, or where appropriate, accounting period a person carries on a non-financial trade and receives a dividend of the kind referred to in ***section 752***, then in determining any repayment of tax due as a result of set off of trading losses, the "stripped" dividend taken by such a concern is to be left out of account. Similarly any tax credit attaching to such dividends is disregarded (this aspect is no longer relevant as tax credits do not attach to distributions made on or after 6 April 1999).

CHAPTER 3

Stock borrowing and repurchase agreements

Overview

This Part provides for the tax treatment of stock borrowing and repurchase (repo) arrangements.

In substance, both stock borrowing and repo agreements are a form of short-term lending and are reflected in the accounts of the participants as such. However, the form of the transaction involves the temporary transfer of the legal title of stock (e.g. shares) from one party to another, with a simultaneous commitment to reverse the transaction in the future.

This legislation operates to ensure the tax treatment follows the substance of such transactions where they are concluded within 12 months or less (being a short-term loan) where specified criteria are met.

753A Interpretation (Chapter 3)

Section 753A sets out the definitions for the purposes of the Chapter. A number of these definitions were originally from the Stamp Duties Consolidation Act 1999 (SDCA) and have been modified to ensure they relate to qualifying securities only.

The definitions are as follows–

'Act of 1999' means the Stamp Duties Consolidation Act 1999 (SDCA).

'building society' means a building society within the meaning of the Building Societies Act, 1989, or a society established in accordance with the law of any other Member State of the European Communities which corresponds to that Act.

'equivalent stock' refers to qualifying securities of an identical type, nominal value, description and amount as was so obtained from the stock seller or specific acceptable equivalents where the original qualifying securities have-

- been paid, converted, subdivided, consolidated, redeemed, or
- been made the subject of a takeover, call on partly paid stock, capitalisation issue, rights issue, distribution or other similar

Equivalent stock should only apply to qualifying securities which are equities quoted on a recognised stock exchange and not to interest bearing, discounted or premium-bearing securities, within the meaning of section 135(8).

'financial transaction' refers to a transaction that consists of both—

a) a stock borrowing or stock transfer where the stock seller or the stock buyer is
   - a qualifying institution and
   - the other party to the transaction is not an individual or a partnership, **and**

b) the corresponding stock return for that stock borrowing or repurchase agreement,

where it is reasonable to consider that the transactions (and any associated agreements,

arrangements or transactions), are in substance, an interest bearing loan.

'investment undertaking' is the name given to the "investment vehicle" which comes within the gross-roll-up regime. The vehicle can be—

- unit trust schemes authorised under the Unit Trusts Act, 1990,
- collective investment vehicles set up under the European Communities (Undertakings for Collective Investment in Transferable Securities) Regulations, 1989 as amended or extended from time to time – referred to as the "UCITS Regulations,"
- investment companies authorised and designated by the Central Bank, or
- investment limited partnerships within the meaning of the Investment Limited Partnership Act, 1994 which was granted an authorisation before 13 February 2013.

'lender' refers to a person who lends qualifying securities to a borrower in a stock borrowing transaction.

'manufactured payment' means a payment (made directly or indirectly) by a stock buyer to a stock seller, to reimburse the stock seller for any distribution or interest arising to the stock buyer as a result to the transfer of title to the qualifying securities under the financial transaction.

'pension scheme' is —

- an exempt approved scheme within the meaning of section 784 (this is basically an occupational pension scheme which is approved by the Revenue Commissioners for tax purposes and which is established under irrevocable trusts), or
- a retirement annuity contract or trust scheme to which section 784 or 785 apply (these are pension contracts of a type often availed of by individuals, particularly the self-employed).

'qualifying institution' means—

- a company within the charge to corporation tax,
- an investment undertaking
- a pension scheme
- a foreign pension scheme exempt from tax under section 790B,
- a person who is exempt from income or corporation tax in respect of interest, annuities or distributions by virtue of being a body of persons, trust or corporate established for charitable purposes only, or
- a building society.

'qualifying securities' means—

- interest bearing, discounted or premium-bearing securities, or
- equities quoted on a recognised stock exchange.

'repo seller' refers to a person who sells qualifying securities to a stock buyer by way of a stock transfer pursuant to a repurchase agreement.

'repo buyer' refers to a person who buys qualifying securities from a stock seller by

way of a stock transfer pursuant to a repurchase agreement.

'repurchase agreement' refers to an agreement between a stock seller and a stock buyer where the stock seller agrees to sell qualifying securities to the stock buyer on terms that

- the stock seller will repurchase the qualifying securities , and
- the stock buyer will resell the qualifying securities,

within 12 months of the date of the initial stock transfer between the parties.

'security' has the same meaning as it has in Chapter 2 of Part 6. This means that-

- the term "security" includes securities not creating or evidencing a charge on assets, and
- any loan capital (whether secured or not) is capable of being a security and the interest on an unsecured loan or a premium on its repayment could be a distribution.

'stock borrower' refers to a person who borrows qualifying securities from a lender by way of a stock borrowing.

'stock borrowing' refers to a transaction where a stock buyer obtains qualifying securities from a stock seller and promises to provide to the stock buyer with equivalent stock within 12 months of the date of the original transfer.

'stock buyer' refers to a stock borrower in a stock borrowing or a repo buyer in a repurchase agreement.

'stock return' refers to the return of qualifying securities within 12 months of the initial repurchase agreement transaction or stock borrowing, as the case may be.

'stock transfer' refers to the transfer of qualifying securities by a stock seller to a stock buyer pursuant to a repurchase agreement.

'stock seller' refers to a lender in a stock borrowing or a repo seller in a repurchase agreement.

753B Application

Summary

This section sets out when this Chapter applies and the applicable tax treatment where this Chapter applies.

Details

This Chapter shall apply to financial transactions entered into on or after 1 January 2020 other than- ***(1)***

1. Transactions involving equities quoted on a recognised stock exchange which are lent across dividend payment dates unless:
    - the dividend is paid in cash, **and**
    - the stock seller would have been entitled to a refund of (or exempt from) any tax withheld on dividends paid/accrued under:

  - domestic law, or
  - the terms of a tax treaty

  had they not entered into the financial transaction and received the dividend directly instead.

2. Transactions involving interest bearing, discounted or premium-bearing securities, which are lent across coupon payment dates unless

   - The stock seller would have been entitled to a refund of (or exempt from) any tax withheld on interest paid/accrued under
     - domestic law, or
     - the terms of a tax treaty

     had they not entered into the financial transaction and received the interest directly instead, **or**

   - Both parties to the transaction are subject to the interest withholding tax provisions.

Where this Chapter applies to a financial transaction, one should consider the substance of the financial transaction (being short term lending) rather than its legal form (being the sale and repurchase of qualifying securities) so that— ***(2)***

1. The disposal/reacquisition of qualifying securities or equivalent stock are not treated as disposals/ acquisitions for CGT purposes.
2. Any financial gains arising or accruing to a stock seller or a stock buyer
   - under a financial transaction, and
   - (where applicable) the corresponding repurchase agreement

   shall be treated as if they arose from the lending of money or money's worth at interest.
3. Any manufactured payment shall be—
   - deductible against dividends received by the stock buyer in accordance with section 753C(2) and (3)
   - taxed as a dividend in the hands of the stock seller in accordance with section 753(5) and (6).

753C Payment and receipt of dividends or interest and manufactured payments under a stock borrowing or repurchase agreement

Summary

This section sets out the tax treatment of dividend/interest payments made to stock buyers under financial transactions across dividend/coupon payment dates and their corresponding manufactured payments.

Details

A 'specified amount' for the purposes of this section is ***(1)***

"an amount of interest or a distribution arising or accruing to a stock buyer in respect

of qualifying securities, or equivalent stock held by the stock buyer as a result of a financial transaction".

Subsections (2) and (3) set out the tax treatment of manufactured payments under a qualifying financial transaction:

In charging a specified amount to tax the stock buyer may deduct from that amount any corresponding manufactured payment made to the stock seller, but the deduction available may not exceed the dividend received by the stock buyer- ***(2)***

- after the application of any foreign tax relief, but
- before the application of encashment tax.

No deduction is available at all to the stock buyer in respect of a manufactured payment where: ***(3)***

- the stock buyer is exempt from tax in respect of the specified dividend or interest, or
- no amount of tax payable would arise in respect of the dividend or interest under self-assessment after the application of any foreign tax credits.

A manufactured payment is not deductible against anything but the interest or dividend to which it relates

Where the manufactured payment is lower than the dividend or interest received by the stock buyer, the excess dividend or interest shall be taxable as interest income in the hands of the stock buyer. ***(4)***

Manufactured payments shall generally be treated as if they were dividends/interest received directly by the stock seller unless the manufactured payment is greater than the corresponding dividend/interest received by the stock buyer (net of any foreign withholding tax but prior to the application of encashment tax). Where this occurs, the stock seller shall be chargeable to tax under Case IV of Schedule D in respect of that excess amount. ***(5) and (6)***

753D Refund of dividend withholding tax

Summary

This section sets out when and how a stock seller may claim a refund of dividend withholding tax paid by a stock buyer under a financial transaction.

Details

A refund of dividend withholding tax may be claimed by a stock seller where **all** of the following apply to a qualifying financial transaction: ***(1)***

- a dividend is paid to a stock buyer as a result of a stock borrowing or repurchase agreement
- the corresponding stock return for that transaction has taken place
- the dividend received by the stock buyer was subject to Irish dividend

withholding tax (DWT)

- the stock seller would either have been entitled to either—
  - a repayment of that DWT, or
  - receive the dividend without deduction of that DWT

  if they had not entered into the financial transaction and had instead received that distribution directly,

- the stock seller has not been compensated by the stock buyer (or any connected party) for the DWT referred to in paragraph (c), or any part of that DWT, **and**

- the stock buyer is not entitled to a repayment, credit, deduction or other relief for the DWT referred to in paragraph (c) or any part of that DWT under
  a) section 831
  b) an arrangement having the force of law by virtue of section 826(1)
  c) Schedule 24, or
  d) any other provision (including under the law of a territory other than the State)

(2) Where a stock seller is entitled to claim a refund of DWT, the stock seller must provide **all** of the following information with their claim.

- confirmation that the stock buyer received a dividend under a stock borrowing or repurchase agreement, and that DWT was withheld from that amount,

- a signed declaration from the stock buyer that that stock seller is not entitled to any repayment, credit, deduction or similar in respect of that DWT,

- confirmation that the stock seller—
  a) was the legal owner of the qualifying securities or equivalent stock—
     - immediately prior to the financial transaction, and
     - immediately following the financial transaction,
  b) would have received the dividend directly had the stock borrowing or repurchase agreement not been entered into, and
  c) would have either been entitled to—
     - a repayment of that DWT or
     - to receive the dividend without the deduction of that DWT

     had the dividend been received directly by that stock seller,

- a dividend voucher (or eVoucher),

- the relevant DWT exemption declaration, and

- any other information or documentation the Revenue Commissioners may deem appropriate.

753E Anti Avoidance

Summary

This section sets out a number of anti-avoidance provisions that apply to the tax treatment of qualifying financial transactions under this Chapter.

Details

Definitions ***(1)***

'the Acts' are

- The Tax Acts
- The Capital Gains Tax Acts
- The Stamp Duties Consolidation Act 1999
- The Value Added Tax Act of 2010

and any instrument or enactment relating to those Acts.

'tax advantage' has the same meaning in this section as section 811C. A "tax advantage" is, essentially, the effect which the would-be tax avoider is trying to achieve through a tax avoidance scheme. It includes reducing the amount of tax payable, avoiding the payment altogether, deferring the payment, generating a refund or payment of tax to the tax avoider or increasing the amount of a refund or other amount payable to the tax avoider.

'transaction period' refers to the period where a stock borrowing or stock transfer pursuant to a repurchase agreement has taken place, but its corresponding stock return has not yet taken place.

This Chapter does not apply to any financial transaction where it would be reasonable to consider that- ***(2)***

- the financial transaction has not been undertaken for bona fide commercial reasons, **and**
- forms part of any arrangement or scheme of which the main purpose, or one of the main purposes, is the avoidance of tax.

In determining the- ***(3)***

a) capital (both share capital and loan capital),

b) voting rights, and

c) entitlement to assets on a winding up,

of each party to a stock borrowing or stock transfer pursuant to a repurchase agreement regard shall be had to the amounts held by each party-

- immediately prior to that stock borrowing or stock transfer taking place, and
- during the transaction period,

and the percentage holding of each for the transaction period shall be the amount that does not give rise to a tax advantage for that party to the financial transaction (or an associated entity of that party).

753F Records

Summary

This section sets out the records that a qualifying institution is required to maintain when undertaking a financial transaction.

Details

Records pursuant to a financial transaction must be kept for a period of 6 years from the date of the stock return. Such records include, but are not limited to- ***(1)***

- the name and address of both parties to the financial transaction,
- the agreement underlying the financial transaction and any documentation in respect of any associated agreements, arrangements or transactions,
- the type, nominal value, description, and amount of the qualifying securities (including any equivalent stock thereof) involved in the financial transaction,
- the date of the stock borrowing or stock transfer and the date of the corresponding stock return,
- details of any manufactured payments arising as a result of the financial transaction,
- details of any interest rate or rate of return applicable to the financial transaction, and
- details of the fees, profits, margins or other financial gain accruing, charged or expected to arise as a result of the financial transaction.

Where a qualifying institution is- ***(2)***

- an investment undertaking,
- pension scheme, or
- a scheme, the income of which, in whole or in part, is exempt from income tax under section 790B,

any records required to be maintained shall be maintained by a person who-

a) is authorised to act on behalf of, or for the purposes of, the qualifying institution and

b) habitually does so.