The charge to and rates of Corporation Tax

Part 02-02-02

Document last reviewed in January 2024

This document should be read in conjunction with sections 21 and 21A of the Taxes Consolidation Act 1997

(See also Tax and Duty Manuals Part 02-02-01 and Part 02-02-05)

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1. Corporation Tax [12.5%]

Section 21(1) TCA 1997 provides that:

Corporation tax shall be charged on the profits of companies at the rate of:

- 32 per cent for the financial year 1998,
- 28 per cent for the financial year 1999,
- 24 per cent for the financial year 2000,
- 20 per cent for the financial year 2001,
- 16 per cent for the financial year 2002, and
- 12½ per cent for the financial year 2003 and each subsequent financial year.

The 12.5% rate is the standard rate of corporation tax since 2003. While section 21 refers to profits, the 12.5% rate applies generally to the trading income of a company. Section 21A applies a higher rate of 25% to non-trading income (as well as certain specified activities – see below). Also, certain companies engaged in manufacturing [i.e. those which commenced manufacturing prior to 23 July 1998] were eligible for the reduced 10% rate until end 2010.

Finally, capital gains (other than gains from disposals from development land) are computed in accordance with capital gains tax principles and are now chargeable to corporation tax at the rate of 33%. [note: Section 44, Finance (No. 2) Act 2008 increased the rate of CGT from 20% to 22% in the case of a relevant disposal made on or after 15 October 2008. Section 14, Finance Act 2009 increased the rate of CGT from 22% to 25% in the case of a relevant disposal made on or after 8 April 2009. Section 55, Finance Act 2012 increased the rate of CGT from 25% to 30% in the case of a relevant disposal made on or after 7 December 2011. Section 43, Finance Act 2013 increased the rate of CGT from 30% to 33% in the case of a relevant disposal made on or after 6 December 2012.]

2. Shipping activities

Profits from qualifying shipping activities arising to a company carrying on a qualifying shipping trade (see notes for guidance on section 407 TCA for explanations of these terms) are taxable at the rate of 12½ per cent from financial year 2001.

Likewise, **Tonnage Tax** profits of shipping companies which elect and qualify for the Tonnage Tax scheme are taxable at the rate of 12½ per cent (it is based on the net tonnage of the ships). For further information on Tonnage Tax see TDM Part 24a-00-01, Notes for guidance Part 24A and Schedule 18B

3. Exclusion of income tax

Income tax is not chargeable on the income of a company (apart from income arising to it in a fiduciary or representative capacity) if:

- the company is resident in the State, or
- the income is, in the case of a company not so resident, within the chargeable profits of the company as defined for the purposes of corporation tax [section 21(2) TCA].

In the case of a non-resident company, corporation tax is charged by virtue of section 25:

- on the income and chargeable gains of the company where the income or gains are attributable to a branch or agency in the State, and
- on –
  (i) profits or gains which are chargeable to tax under Case V of Schedule D, and
  (ii) chargeable gains (other than gains realised on development land) which are attributable to assets, the profits or gains from which were chargeable under Case V of Schedule D.

Any other income arising in the State and any other chargeable gains accruing to a non-resident company are chargeable to income tax or capital gains tax, as the case may be, instead of corporation tax. (see TDM Part 02-02-04 "Certain non-resident companies within the charge to corporation tax").

4. Exclusion of capital gains tax

A company is not chargeable to capital gains tax on gains accruing to it but is instead chargeable to corporation tax in respect of such gains. However, by virtue of sections 648/649 TCA gains realised by companies from disposals of development land are chargeable to capital gains tax and not corporation tax. [section 21(3)].

5. Higher rate of corporation tax [25%]

(Section 21A TCA 1997)

This section provides that a higher rate of corporation tax, namely, 25 per cent, is to be charged for the financial year 2000 and subsequent financial years on certain profits of companies.

The profits in question are income chargeable under the following Cases of Schedule D —

- Case III (for example, interest not taxed at source, interest on Government securities, foreign income),
- Case IV (for example, royalties, miscellaneous income), and
- Case V (that is, rental income from land and buildings in the State).

Also included are profits from excepted trades i.e., working minerals, petroleum activities, and dealing in or developing land other than profits from construction operations (which is taxable at the standard corporation tax rate).

Section 11 Finance Act 2009 abolished the effective 20% rate that applied to trading profits from dealing in residential development land (previously provided for under section 644B TCA by reducing by one-fifth the tax, which is charged in accordance with section 21A) with effect from 1 January 2009. Profits or gains on dealing in residential development land are now charged at the general rate of corporation tax that applies to dealing in land, which is 25%.

6. Definitions [section 21A (1) TCA 1997]

"**Excepted trade**" is a trade which consists only of trading operations or activities which are excepted operations. In the case of a trade consisting partly of excepted operations and partly of other operations or activities, the part of the trade consisting of excepted operations, which is treated as a separate trade under subsection (2) is also an excepted trade.

"Excepted operations" means any one or more of the following operations or activities:

(*a*) dealing in or developing land, other than such part of that operation or activity as consists of:

(i) construction operations, or

(ii) dealing by a company in land which, in relation to the company, is qualifying land

(*b*) working minerals, and

(*c*) petroleum activities.

[Note: operations that fall under (i) and (ii) above are taxed at the standard rate of 12.5%] – see below for the definition of "qualifying land".

"Dealing in or **developing land**" is to be construed in accordance with Chapter 1 of Part 22 TCA which contains special provisions relating to the taxation of profits and gains from dealing in or developing land. In particular refer to the TCA guidance notes on section 640 for elaboration on the construction of this term (TCA Notes for Guidance TCA 1997).

"Construction operations" are any of the operations referred to in the definition of that term in section 530(1) (which provides definitions for the scheme of tax deduction from payments made to subcontractors in the construction, forestry and meat processing industries), other than operations which are part of, or related to:

- the drilling for or extraction of minerals, oil, natural gas, or
- the exploration for, or exploitation of, natural resources.

"Qualifying land" means land:

- on which a building or structure has been constructed by or for the company, and
- which has been fully developed by the company.

Land is regarded as fully developed by a company at the time of the disposal if, on the basis of a snapshot of the position at that time, it is reasonable to expect that there will be no further development of the land over the next 20 years except for any non-material development which the purchaser of the building might carry out for that person's use or enjoyment of the building concerned.

Such a development would not be regarded as material if the development is:

- exempt from the requirement to seek planning permission (see definition of "exempt development"), or
- a development which results in an increase in floor area of the building of no more than 20 per cent.

"Exempt development" is a development within Class 1 of Part 1 of the Second Schedule to the Local Government Planning and Development Regulations, 1994 which complies with the conditions and limitations related to that class and which are set out in the Regulations. This consists of the extension of a dwelling house by the construction or erection of an extension to the rear of the dwelling house or by the conversion for use as part of the dwelling house of any garage, store, shed or other similar structure attached to the rear or side of the dwelling house. The conditions are that the total floor area of any such extension cannot exceed 23 square metres.

"land" includes the foreshore and land covered by water, while "dry land" is land not permanently covered by water.

"minerals" is based on the definition of that term in section 3 of the Minerals Development Act, 1940, while "petroleum" has the same meaning as in section 2(1) of the Petroleum and Other Minerals Development Act, 1960.

"working", in relation to minerals, is based on the definition of that term in section 2(1) of the Minerals Development Act, 1979.

"petroleum activities" means any one or more of the following activities:

(*a*) petroleum exploration activities,

(*b*) petroleum extraction activities, and

(*c*) the acquisition, enjoyment or exploitation of petroleum rights.

"Petroleum exploration activities" means activities carried on in searching for deposits of petroleum, in testing or appraising such deposits or in winning access to such deposits for the purposes of such searching, testing or appraising;

"Petroleum extraction activities" means activities carried on in:

(*a*) winning petroleum from any land, including searching in that land and winning access to such petroleum,

(*b*) transporting as far as dry land petroleum so won from a place not on dry land, or

(*c*) effecting the initial treatment and storage of petroleum so won from any land.

The legislation does not confine either "petroleum exploration activities" or "petroleum extraction activities" to the company that owns or has the ultimate rights to the petroleum or that has won petroleum from land.

"Petroleum rights" means rights to petroleum to be extracted or to interests in, or to the benefit of, petroleum;

Note: **Petroleum** refers to hydrocarbon oil or natural gas in its natural state prior to treatment or removal of any liquids or impurities.

The Department of Communications, Climate Action and Environment has confirmed that when natural gas has been extracted and treated that this treated gas would not fall within the meaning of the term petroleum as defined in Section 2(1) of the Petroleum and Other Minerals Development Act 1960. Thus, a company engaged in trading in treated /refined natural gas obtained from a third-party supplier would not be subject to the 25% rate but would be subject to the standard 12.5% rate for trading income. In cases of uncertainty Revenue Legislation Services (RLS) will give an opinion on whether a particular petroleum business is subject to the 25% rate or the 12.5% standard rate.

Notes:

- Finance Act 2008 – Profit Resource Rent Tax, Petroleum Lease – see **Appendix A** to this Tax Instruction.

- Finance Act 2015 – Petroleum Production Tax - see **Appendix B** to this Tax Instruction.

- Section 23 TCA 1997 – "Application of section 13 for purposes of corporation tax". Section 13, which imposes a charge to income tax on profits or gains from exploration or exploitation activities carried on in the State's area of the Continental Shelf and from dealings in rights arising from such activities, applies also for the purposes of corporation tax.

7. Deemed separate trades [section 21A (2)]

If a trade consists partly of **excepted operations** and partly of other activities, each part is treated as a separate trade for the purposes of the section, and a just and reasonable apportionment of receipts and expenses is to be made between the two parts.

8. Charge to the higher rate [section 21A(3)(a)]

Corporation tax is charged at the rate of 25 per cent for the financial year 2000 and subsequent financial years on the profits of companies which consist of income chargeable under Case III, IV or V of Schedule D or of income of an excepted trade.

As a general rule charges on income are not allowed in calculating income from a particular source but are deducted from the profits of a company. If this rule were to be applied in the case of a company with an excepted trade, the amount charged to tax at the higher rate would be excessive. Accordingly, the general rule is modified so that charges on income paid wholly and exclusively for the purposes of an excepted trade which is taxed at the higher rate are to be deducted in calculating the income from that trade. [section 21A(3)(b)].

9. Exclusion of income from certain "insurance business" from higher rate charge [section 21A (4)]

Profits are not to be subject to the 25 per cent rate to the extent that they consist of income of trades of non-life insurance, reinsurance, and life business (in so far as it is attributable to shareholders of the company). General or non-life insurance is taxed as a trade under the rules of Case I of Schedule D. It is therefore taxed in the same way as other trades but with some differences which result from the application of practical rules rather than because of any statutory provisions. Corporation Tax is charged on the annual profits computed as for any trading i.e., 12.5%.

Appendix A[1]

Profit Resource Rent Tax

[Extract from Finance Act 2008 Explanatory Memorandum]

Section 45 of the Finance Act 2008 introduces a new Chapter, Chapter 3, into Part 24 of the Taxes Consolidation Act 1997. The new Chapter gives effect to the Government decision of 30 July 2007 that a **Profit Resource Rent Tax** will apply in the case of any petroleum lease entered into following on from an exploration licence awarded by the Minister for Communications, Energy and Natural Resources after 1 January 2007. The new tax, which will apply when profits exceed certain defined levels, is in addition to the corporation tax rate of 25% that currently applies to profits from petroleum activities.

A key feature of the new tax is that it is based on the profit ratio of a petroleum field, which is defined as the cumulative field profits (net of 25% corporation tax) for the field, divided by the accumulated level of capital investment in the field. Different rates of Profit Resource Rent Tax will apply, depending on the ratio, as follows:

Profit ratio	**Profit Resource Rent Tax rate**
4.5 or more	15%
3 or more and less than 4.5	10%
1.5 or more and less than 3	5%
less than 1.5	Nil

The new Chapter has the following sections:

Section 696B, which is the interpretation and application section, contains the following key definitions:

Taxable field, which is an area covered by a petroleum lease awarded on foot of an exploration licence awarded after 1 January 2007,

Cumulative field profits, which is the numerator in the profit ratio equation. For any accounting period of a company, this figure will be the sum of net profits (as defined) of the company in relation to a taxable field from 1 January 2007 up to the end of that accounting period, and

[1] Profit Resource Rent Tax is applicable to petroleum leases entered into following on from exploration licences awarded between 1 January 2007 and 17th June 2014.

Cumulative field expenditure, which is the denominator in the profit ratio equation. For any accounting period of a company, this figure will be the sum of the capital expenditure (as defined) incurred by a company in relation to a taxable field from 1 January 2007 up to the end of that accounting period.

Section 696B also provides for the "ring-fencing" of petroleum activities in respect of each taxable field, to ensure, for example, that a company cannot offset losses from any other activities against profits of a taxable field.

Section 696C contains the core rules about what the tax is and what it is being charged on. This section provides that the Profit Resource Rent Tax is an additional duty of corporation tax which applies when the profit ratio, calculated for an accounting period of a company in respect of a taxable field, is greater than or equal to 1.5. The rates of tax are graduated, as set out above.

Section 696D contains provisions in relation to groups of companies and provides, inter alia, for a situation where capital expenditure incurred by one company can be deemed to have been incurred by another company for the purposes of determining the cumulative expenditure, where one company is a subsidiary of the other or both are subsidiaries of a third company.

Section 696E provides for the submission of returns by companies in respect of the new licences granted on or after 1 January 2007. The returns will be submitted with the annual corporation tax return.

Section 696F contains the collection and general provisions in respect of the new tax. The normal corporation tax provisions for assessment, appeals, collection and recovery also apply to the Profit Resource Rent Tax. Interest charges will also apply in the case of late payment of the tax.

Appendix B

Petroleum Production Tax

[Extract from Finance Act 2015 Explanatory Memorandum]

Section 20 amends Part 24 of the Taxes Consolidation Act 1997 by inserting a new Chapter (Chapter 4) and gives effect to the government decision of 17 June 2014 that a petroleum production tax will apply in the case of any petroleum lease entered into on or after 18 June 2014[2]. Exploration licences arising from the exercise of a licensing option issued prior to 18 June 2014 are excluded and, in these circumstances, Profit Resource Rent Tax will be applicable. The new tax is in addition to the corporation tax rate of 25% that currently applies to profits from petroleum activities.

Petroleum production tax will apply on a field by field basis and be calculated on a field's net income using a rate that operates on a sliding scale basis. The tax rate is determined by reference to the profit ratio of a petroleum field having regard to the cumulative gross revenues and field costs of each field. Additionally, the new fiscal terms provide for a minimum tax rate of 5% to be charged, in each year of production, on the gross revenue (net of transportation costs) of a field where the amount of petroleum production tax payable on the sliding scale basis would be less. The tax rates are as follows:

Profit Ratio	Petroleum Production Tax
1.5	10%
>1.5 and <4.5	Rate determined by formula $10\% + [\frac{\text{R factor} - 1.5}{4.5 - 1.5} \times (40\% - 10\%)]$
≥4.5	40%

[2] Profit Resource Rent Tax is applicable to petroleum leases entered into following on from exploration licences awarded between 1 January 2007 and 17th June 2014.

The details are as follows:

Section 696G is the interpretation and application section and contains the key definitions used in the new Chapter 4.

Section 696H contains the details of the charge to the tax. This section provides that the petroleum production tax is an additional duty which applies at a rate of 5% on gross revenue less transportation costs or at a rate that operates on a sliding scale basis depending on the profitability of a field. This section also contains a transfer pricing provision to ensure that the disposal and acquisition of petroleum or a petroleum related asset is for a consideration equal to market value at the time of disposal and acquisition. **Section 696I** provides that petroleum production tax paid in respect of a field is deductible for corporation tax purposes.

Section 696J contains provisions in relation to groups of companies and provides, inter alia, that where expenditure is incurred by one company it can be deemed to have been incurred by another company for the purposes of determining the cumulative expenditure, where one company is a subsidiary of the other or both are subsidiaries of a third company.

Section 696K provides for the submission of returns by companies in respect of the new licences granted on or after 18 June 2014. The returns are required to be submitted with the annual corporation tax return.

Section 696L provides that petroleum production tax for a relevant period is payable on or before the day on which the return for that relevant period is due.

Section 696M contains the collection provisions in respect of the new tax. The corporation tax provisions for assessments and recovery also apply to petroleum production tax and interest charges also apply in the case of late payment of the tax. A company may appeal an assessment to the Appeal Commissioners, in accordance with section 949I, within 30 days after the date of notice of the assessment. No appeal may be made against an assessment until the company concerned makes the return and pays or has paid the amount of petroleum production tax payable on the basis of the return made to the Collector-General.