

## Tax treatment of payments received under the Brexit Voluntary Permanent Cessation Scheme

### Part 23-05-01

Document created December 2022

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## Introduction

In September 2022 the Government launched the Brexit Voluntary Permanent Cessation Scheme (hereafter referred to as “the Decommissioning Scheme”). The Decommissioning Scheme provides for compensation payments to certain fishing vessel owners in exchange for the permanent withdrawal of vessels from the polyvalent and beam trawl segments of the Irish fishing fleet and their removal from the EU register of sea fishing vessels.

Section 15 of the Finance (Covid-19 and Miscellaneous Provisions) Act 2022 inserts a new Chapter 5 into Part 23 of the Taxes Consolidation Act 1997 (“TCA 1997”) and provides for certain amendments to section 598 TCA 1997. The amendments provide specific tax treatment for elements of the income tax, corporation tax and capital gains tax liabilities that arise on receipt of payments under the Decommissioning Scheme. The purpose of this manual is to clarify the tax treatment of such payments.

The scheme is administered by An Bord Iascaigh Mhara (hereinafter referred to as “BIM”). All queries in relation to the application and operation of the scheme including eligibility criteria, the application process etc. should be directed to [BIM](#).

### 1 Treatment of Decommissioning Payments

The Decommissioning Scheme provides for a decommissioning payment (hereafter referred to as the “Brexit compensation sum”) which is made up of three components. Liability to tax may arise under different tax heads depending on which element of the Brexit compensation sum is being considered. The components are:

- Basic Payment, referred to as the compensation for the surrender of a sea-fishing boat licence (Capital Gains Tax (“CGT”))
- Catch Incentive Premium, referred to as the catch sum (Income Tax or Corporation Tax liability - trading)
- a crew payment amount (Income Tax or Corporation Tax liability - non-trading)

The Brexit compensation sum should be apportioned between each component as set out in the Statement for Grantee issued by BIM.

## 2 Relevant Vessel

The tax treatment set out in this manual applies to a licence holder who receives a Brexit compensation sum where a relevant vessel is decommissioned. A 'relevant vessel' means a sea-fishing boat which:

- is entered in the Register of Fishing Boats<sup>1</sup>;
- is used in the polyvalent and beam trawl segments of the fishing fleet;
- has spent at least 90 days at sea in either of the 2 years prior to decommissioning or during the calendar years 2018 and 2019;
- was constructed at least 10 years prior to the date of decommissioning.

### 2.1 Day at Sea

A "day at sea" for the purpose of Chapter 5 of Part 23 of the TCA 1997 has the same meaning as in Chapter I of the Annex to the Commission Delegated Decision (EU) 2021/1167 of 27 April 2021 which is **"any continuous period of 24 hours (or part thereof) during which a vessel is present within a defined fishing area and absent from port"**.

### 2.2 Licence holder

A licence holder means the holder of a sea-fishing boat licence in respect of a relevant vessel.

### 2.3 Decommissioned

A relevant vessel is decommissioned when it is removed from the Register of Fishing Boats.

## 3 Compensation for the surrender of a sea-fishing boat licence

The compensation for a sea-fishing boat licence is a payment which is capital in nature and subject to CGT.

## 4 Destruction of a relevant vessel

It is a requirement of the Scheme that decommissioned vessels are permanently disposed of or scrapped.

### 4.1 Capital Allowances implications of destruction of a relevant vessel

In general, as the vessel is an asset used for the purpose of the trade, capital allowances may have been claimed by the vessel owner. If the scrapping of the vessel gives rise to a balancing charge or balancing allowance, this is treated under the normal rules for capital allowances as set out in Part 9 TCA 1997.

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<sup>1</sup> As maintained under Section 74 of the Sea-Fisheries and Maritime Jurisdiction Act 2006.

Section 669N TCA 1997 provides that a balancing charge arising as a result of payments received under the Scheme will be spread equally over 5 years, commencing in the year in which the payment is paid.

However, as the scheme does not make a compensation payment directly related to the destruction of the vessel, this circumstance is unlikely to arise in practice.

#### 4.2 CGT implications of the destruction of a relevant vessel

The destruction of a relevant vessel is the disposal of a wasting asset for CGT purposes. In general, any gains arising on the disposal of a wasting asset is exempt from CGT under section 603 TCA 1997. However, wasting assets used for the purposes of a trade or profession, in respect of which capital allowances have or could have been claimed, do not qualify for this exemption. Instead, section 561 TCA 1997 provides for the CGT treatment to apply on the disposal of wasting assets which qualify for capital allowances.

##### Example 1 – CGT loss on relevant vessel restricted capital allowances granted

In general, expenditure which has qualified for capital allowances should not be excluded from the CGT "cost" of the asset. To the extent that a loss on an asset has been covered by capital allowances, however, it is not to be allowed again for CGT purposes.

Fisherman A purchased a relevant sea vessel in 2007 for €2 million, for which capital allowances were granted. In 2022 it was decommissioned under the Decommissioning Scheme when its value was €100,000. A's position is as follows:

Cost of asset	€2,000,000
Less value at disposal	€100,000
Loss	€1,900,000
Restrict by capital allowances granted	
Less Capital allowances granted	€1,900,000
No part of the loss is allowed to A.	Nil

The costs associated with the destruction of a relevant vessel are not strictly deductible under section 552 TCA 1997. However, as it is a requirement of the Scheme that decommissioned vessels are permanently disposed of or scrapped, costs incurred for that purpose may be deducted from the element of the decommissioning payment attributable to the vessel when computing the gain or loss on the vessel.

Given the age of vessels which may qualify for the scheme (the scheme applies only to vessels more than 10 years on the register), it is not likely that a capital gain would arise on their disposal.

## 5 Retirement Relief

Section 598 TCA 1997 provides for retirement relief on the disposal of “qualifying assets” by an individual who is aged 55 years or over. It is not available to incorporated bodies. “Qualifying assets” include assets used for the purposes of an individual's trade which, apart from tangible movable property, he/she has owned and used for that purpose throughout the 10-year period ending with their disposal. On meeting the relevant qualifying conditions, individuals may receive, within their lifetime, up to €750,000 on the disposal of a chargeable business asset (in the case of individuals aged 66 and over, a threshold of €500,000 applies) without being subject to tax. If the market value of the asset is more than the €750,000 or €500,000 thresholds, marginal relief may apply, which limits the capital gains tax payable to half the difference between the market value and the respective threshold.

Section 15 of the Finance (Covid-19 and Miscellaneous Provisions) Act 2022 amends section 598 TCA 1997 by the insertion of a new subsection 3B and provides that, in respect of payments made on foot of the Decommissioning Scheme, retirement relief may be available to individuals where they have held the asset in question and used it for the purpose of their trade for at least 6 years, rather than 10 years, prior to its disposal. In addition, the age limit of the individual who may seek to claim retirement relief in respect of payments made on foot of the Decommissioning Scheme is reduced from 55 years to 45 years.

While retirement relief can apply to gains accruing on the disposal of both fishing vessels and sea fishing licences, it should be noted that the ownership and use requirements referred to above do not apply to vessels as they are tangible movable property. They do, however, apply to the sea-fishing boat licences. Sea-fishing boat licences are renewed annually. Where a sea-fishing licence is held continuously for six years prior to decommissioning, the ownership requirements outlined above may be treated as being satisfied.

Where a vessel is replaced, a new licence may be required for the replacement vessel. For the purpose of section 598(3B) TCA 1997, the licence acquired for this purpose and held continuously for the six years prior to decommissioning may be treated as having been acquired at the same time, and having been used in the same manner, as the licence attaching to the replaced vessel. For further information in respect of retirement relief see [Tax and Duty Manual \(TDM\) Part 19-06-03](#).

### 5.1 Date of Disposal

For CGT purposes, the date of disposal is the date the licence for the decommissioned vessel is surrendered in accordance with the terms of the Scheme.

## 6 The Catch Sum and Temporary Tie Up Payment

The catch sum is compensation for income foregone and is calculated based on the catches of quota species covered under the Trade and Cooperation Agreement

averaged over the period 2018 and 2019. Due to State Aid rules, the amount of any Temporary Tie Up Payment (hereafter referred to as “TTUP”) received by a licence holder must be taken into account in computing the compensation receivable under the Decommissioning Scheme.

The TTUP Scheme is available for both the 2021 and 2022 calendar years. The TTUP is taxable under Case I of Schedule D in the chargeable period in which it arises.

Any amount previously paid under the TTUP scheme to a licence holder is included in the total catch sum due. The compensation payment made to the licence holder in respect of the catch sum (referred to as the “catch sum payment”) will therefore be made net of any TTUP already paid. As the catch sum payment is income in nature it is taxable under either Case I (Trading) or Case IV (Non-Trading) of Schedule D in the chargeable period in which it arises.

Section 6690(1) TCA 1997 provides that where a licence holder is chargeable to tax under Schedule D in respect of the catch sum payment, then the amount of their profits will be reduced by 50% of the total catch sum (which includes any TTUP received).

Section 6690(2) TCA 1997 provides that a licence holder who is availing of the Decommissioning Scheme may elect to have a deduction of up to 50% of the TTUP taken into account in the preceding period. This enables a licence holder to match the chargeable period in which a TTUP payment arises and is taxable with the related deduction.

The total amount of the profit reduced under S6690(1) and (2) when taken together may not exceed 50% of the total catch sum. As the profits are treated as reduced for the purposes of computing total income for the Tax Acts, the reduction also applies to PRSI and USC.

This relief is specific to the Decommissioning Scheme. Where a licence holder avails of the TTUP Scheme but does not avail of the Decommissioning Scheme, the TTUP is taxable in full.

#### **Example 2 – Licence holder receives TTUP only**

Jack receives TTUP of €10,000 in 2021 as compensation for ceasing to fish for one month. Jack is not participating in the Decommissioning Scheme. The TTUP forms part of Jack’s Case I trading profits in 2021. Jack is not entitled to claim a deduction of 50% of the TTUP.

#### **Example 3 – Licence holder receives TTUP and compensation payment under the Decommissioning Scheme in the same chargeable period**

John receives TTUP of €10,000 in 2022 as compensation for ceasing to fish for one month. John is participating in the Decommissioning Scheme. Under the Decommissioning Scheme, John is entitled to a catch sum of €100,000 as compensation for his income foregone. The catch sum amount paid to John under the Decommissioning Scheme is reduced by the TTUP received. In 2022, John

receives a catch sum payment of €90,000 under the Decommissioning Scheme and €10,000 under the TTUP Scheme, totalling €100,000.

John's Case I trading profits in 2022 are reduced by 50% of the total catch sum. This is a reduction of €50,000. John's combined taxable profits from both schemes are €50,000.

#### **Example 4 – Licence holder receives TTUP and compensation payment under the Decommissioning Scheme in different chargeable periods**

Jane received TTUP of €20,000 in 2021 as compensation for ceasing to fish for one month. Jane participates in the Decommissioning Scheme in 2022. Jane is entitled to a catch sum of €200,000 as compensation for her income foregone. The catch sum payment made to Jane in 2022 is reduced by the TTUP previously received. Jane receives a catch sum payment of €180,000 in 2022. In total, Jane has received €200,000 from both schemes.

Jane has two options available to her:

##### **Option 1: Catch sum reduction**

Jane's Case I trading profits in 2021 include TTUP of €20,000. Jane's Case I trading profits in 2022 include the catch sum payment received in the chargeable period (€180,000) which are reduced by 50% of the catch sum (€100,000). Jane's total taxable profits on the catch sum payment in 2022 are €80,000 (€180,000 less €100,000). Jane's combined taxable profits from payments under both schemes are €100,000.

##### **Option 2: TTUP Deduction and catch sum reduction.**

Jane's Case I trading profits in 2021 include TTUP of €20,000. She elects to take a deduction of 50% of the TTUP in 2021. Jane amends her 2021 Income Tax Return (Form 11) to include an additional deduction of €10,000, being 50% of the TTUP. Her taxable profits in 2021 from the TTUP scheme are reduced to €10,000.

In 2022, Jane's taxable profits include the catch sum payment received (€180,000). Her taxable profits may be reduced by 50% of the catch sum. The reduction of the total catch sum and the deduction of the TTUP taken together may not exceed more than 50% of the total catch sum. The reduction available to Jane in 2021 is limited to €90,000. Jane's taxable profits on the catch sum payment are reduced to €90,000.

As is the case in Option 1, Jane's combined taxable profits from payments under both schemes in 2021 and 2022 are €100,000. Option 2 allows Jane to match the period in which she received TTUP with the related deduction, but it does not alter her overall taxable profits on payments received from the schemes.

## **7 Crew Payment**

The Decommissioning Scheme provides that a portion of the decommissioning payment is to be paid onward by the licence holder to the crew as compensation for the crew's loss of income. The scheme terms require the licence holder to make these payments to the crew and to provide evidence to BIM of having done so within 4 weeks of receiving the initial payment.



Where a licence holder is in receipt of the crew payment while s/he is engaged in the trade, the payment is taxed as a trading receipt and a corresponding deduction is allowed for the subsequent payment to the crew member. The crew payment therefore generates no additional taxable profits in the hands of the licence holder. Where the crew payment is received after the licence holder has surrendered their fishing licence and ceased trading, this element of the payment shall be taxable as non-trading income in the hands of the licence holder under Case IV of Schedule D, and no corresponding deduction is allowed.

Where a licence holder is no longer engaged in the trade and is in receipt of a crew payment, section 669M TCA 1997 exempts the licence holder from tax on that payment where it is onward paid to the crew member within 3 months of receipt. Where section 669M TCA 1997 applies, the licence holder is also exempt from PRSI and USC on the crew payment.

This tax relief restores the licence holder to the position that they would have been in if the payment been received while they were engaged in the trade.

## 8 Crew Member

To qualify for a crew payment, a crew member must have worked at least 90 days at sea on a [relevant vessel](#) during both the 2020 and 2021 calendar years. In determining whether a crew member has satisfied the “[days at sea](#)” test, all relevant vessels which a crew member has worked on in the period may be taken into account (i.e. a crew member may take into account “days at sea” worked on two or more relevant vessels which are to be decommissioned).

Payments in respect of crew members will be available to individuals who are employees of the licence holder and to self-employed share fishers. The crew payment remains taxable in full in the hands of the crew member. Where a crew member is an employee of the licence holder and s/he has received a termination payment, s/he may be able to avail of certain tax reliefs and exemptions as set out in TDM [Part 05-05-19](#).