

RECEIVERS – Draft of Proposed Legislation.

Note: The intention is to repeal section 96(3) and disapply section 52 of the TCA 1997 as it relates to receivers/mortgagees-in-possession where the following proposed new section applies.

New section

(1)(a) In this section—

‘chargeable period’ has the meaning assigned to it in section 321(2);

‘deficit’, in relation to a relevant property and a specified period, means an amount determined by the formula in the definition of “net receipts”, where the amount is less than zero and where the profits or gains arising from the property are chargeable under Case V of Schedule D;

‘net receipts’, in relation to a relevant property and a specified period, means an amount equivalent to the amount determined by the formula—

$$A - B$$

where the amount so determined is greater than zero, and where—

A is the aggregate amount of the receipts, and

B is the aggregate amount of the outgoings,

in respect of the property;

‘outgoings’, in relation to a relevant property, means a sum, or sums, of money expended by a specified person in a specified period in respect of any matter relating to income, profits or gains described or comprised in Schedule C, D or F (in this section referred to as ‘the Schedules’) arising from, or relating to, the property to the extent and in the manner that the sum so expended would be allowable, in accordance with the Schedules, as a deduction for the purpose of computing the amount of any income, profits or gains chargeable under the Schedules arising from, or relating to, the property;

‘receipts’, in relation to a relevant property, means a sum, or sums of money, received by a specified person in a specified period in respect of any matter relating to income, profits or gains described or comprised in the Schedules arising from, or relating to, the property, other than—

(i) the amount of any—

- (I) balancing charge (within the meaning of section 274 and, as the case may be, section 288), and
- (II) rent deemed to have been received under section 372AP(7),

in respect of the property, and

(ii) such sum, or sums, from which—

(I) appropriate tax, within the meaning of section 520, or

(II) deducted tax, within the meaning of section 530P,

has been deducted;

‘relevant income’, in relation to a specified period and any relevant property of a debtor, means the aggregate of the net receipts for the period in relation to that property, reduced by the lesser of—

- (i) the aggregate of any deficits for the period in relation to that property, and
- (ii) the aggregate of the net receipts in relation to the property, the profits or gains from which are chargeable under Case V of Schedule D;

‘relevant period’ means the period of time during which a mortgagee has possession of or, as the case may be, a receiver is appointed over relevant property and for the purpose of this section a ‘mortgagee’ includes—

- (i) any person having the benefit of a charge or lien, or
- (ii) any person deriving title to the mortgage under the original mortgagee;

‘relevant property’ means property of a debtor in respect of which a mortgagee is in possession or a receiver is appointed;

‘return date’, in relation to a specified period, means the date that falls 3 months after the end of the period;

‘specified period’ means a chargeable period, or part of a chargeable period, of the debtor falling within a relevant period;

‘specified person’, in relation to a relevant property and a specified period, means—

- (i) the receiver, or
- (ii) where no receiver is appointed, the mortgagee;

‘specified rate’ means—

- (i) 20 per cent, or
- (ii) where the debtor is a company, 10 per cent;

‘tax reference number’ has the same meaning as in section 891B(1).

(b) For the purposes of this section, where any person other than the specified person receives receipts in relation to a relevant property in a specified period, the provisions of this section shall apply as if that person is the specified person.

(2)(a) A specified person shall deduct from the relevant income for a specified period a sum at the specified rate, representing an amount of income tax, universal social charge or, as the case may be, corporation tax of the debtor (in this section referred to as ‘relevant tax’) and remit the relevant tax to the Collector-General in accordance with this section.

(b) Notwithstanding paragraph (a), a specified person may exercise the option not to deduct relevant tax from relevant income for a specified period where the specified person is satisfied that the relevant tax would, if so deducted and remitted to the Collector-General, be repayable in full in accordance with subsection (14), and the specified person shall keep and preserve such records as may be requisite in demonstrating to the satisfaction of an officer of the Revenue Commissioners the basis on which the option was exercised.

(3) A specified person shall, by the return date for each specified period, make a return to the Collector-General, in a form authorised by the Revenue Commissioners, which shall contain—

(a) the name, address and tax reference number of the specified person, and

(b) the following particulars:

(i) the name, and where known to the specified person, the address and tax reference number of the debtor,

(ii) the date the relevant period commenced,

- (iii) the specified period in respect of which the return refers,
- (iv) the amount, if any, of the relevant income for the specified period,
- (v) the amount, if any, of relevant tax deducted, and
- (vi) confirmation that the specified person has or, as the case may be, has not given to the debtor the statement referred to in subsection (5).

(4) The relevant tax for a specified period which is required to be included in a return in accordance with subsection (3), shall be due and remitted to the Collector-General by the return date without the making of an assessment, but relevant tax that has become so due may be assessed on the specified person by an assessment to income tax under Case IV of Schedule D (whether or not it has been remitted when the assessment is made) if that tax or any part of it is not remitted on or before the return date.

(5) A specified person shall at the time the return referred to in subsection (4) is due to be made or, where the debtor's address is not known to the specified person at the time, within 4 weeks of obtaining the address, give to the debtor a statement in writing containing the following:

- (a) the name, address and tax reference number of the specified person,
- (b) the name, address and, where known to the specified person, the tax reference number of the debtor,

(c) the specified period to which the statement relates, and

(d) particulars of—

(i) any relevant income and the amount and date of remittance of any relevant tax to the Collector-General, and

(ii) such other matters in relation to the relevant property, known to the specified person, as are required to enable the debtor make a return of income or profits for a chargeable period in accordance with the Tax Acts.

(6)(a) For the purpose of this subsection, ‘records’ includes accounts, books of account, documents and any other data maintained manually or by any electronic, photographic or other process.

(b) A specified person shall keep and retain for a period of 6 years after the end of the specified period records of receipts and outgoings and, where appropriate, such records as are referred to in subsection (2)(b), relating to that period, and on being so required by notice given in writing by an officer of the Revenue Commissioners, make such records available to the officer within the time specified in the notice.

(7) Any person who fails to comply with any of the obligations imposed on that person by subsections (2) to (6) shall be liable to a penalty of [€1,000] in respect of each such failure.

(8) Where it appears to an officer of the Revenue Commissioners that there is any amount of relevant tax which ought to have been but has not been included in a return under subsection (3), or where the officer is dissatisfied with any such return, the officer may make an assessment on the specified person in relation to the relevant tax to the best of the officer's judgment, and any amount of relevant tax due under an assessment made by virtue of this subsection shall be treated for the purposes of interest on unpaid tax as having been payable at the time when it would have been payable if a correct return under subsection (3) had been made.

(9) Where any item has been incorrectly included in a return as relevant income, an officer of the Revenue Commissioners may make such assessments, adjustments or set-offs as may in his or her judgment be required for securing that the resulting relevant tax is, so far as possible, the same as it would have been if the item had not been so included.

(10) Any relevant tax assessed on a specified person under this section shall be due within 1 month after the issue of the notice of assessment (unless that tax is due earlier under subsection (8)), subject to any appeal against the assessment, but no such appeal shall affect the date when any amount is due under that subsection.

(11) The provisions of the Tax Acts relating to—

(a) assessments to tax,

(b) appeals against such assessments (including the rehearing of appeals and the statement of a case for the opinion of the High Court), and

(c) the collection and recovery of tax,

shall, in so far as they are applicable, apply to the assessment, collection and recovery of relevant tax.

(12)(a) Any amount of relevant tax due to be remitted in accordance with this section without the making of an assessment shall carry interest at the rate of 0.0219 per cent per day for each day or part of a day from the date when the amount becomes due to be remitted until remitted.

(b) Subsections (3) to (5) of section 1080 shall apply in relation to interest payable under paragraph (a) as they apply in relation to interest payable under section 1080.

(c) In its application to any relevant tax charged by any assessment made in accordance with this section, section 1080 shall apply as if subsection (2)(b) of that section were deleted.

(13) Notwithstanding this section, the provisions of the Tax Acts relating to the computation of income, profits or gains of a debtor shall apply and, accordingly, the amount of any receipts and outgoings in relation to relevant property of the debtor shall be taken into account in computing the income, profits or gains.

(14)(a) Where, in relation to a chargeable period—

- (i) a debtor is within the charge to income tax or, as the case may be, corporation tax, and
- (ii) relevant tax has been deducted from relevant income for a specified period falling within the chargeable period in respect of relevant property of the debtor and remitted to the Collector-General in accordance with subsection (4),

the relevant tax shall be set against income tax and universal social charge or, as the case may be, corporation tax chargeable for the period (in this subsection referred to as “tax”) to the extent that the tax comprises offsettable tax.

(b) ‘Offsettable tax’ means an amount equivalent to the amount determined by the formula—

$$\frac{(A \times B) \times D}{C \quad E}$$

where—

- A is the amount of tax chargeable on income, profits or gains (other than chargeable gains) of the debtor from all sources for the chargeable period,

B is the aggregate of the amounts, if any, of income, profits or gains (referred to in this paragraph as “income”) of the debtor chargeable under the appropriate Cases or Schedules, as the case may be, for the chargeable period in respect of which relevant tax has been deducted—

- (i) after taking into account any allowance, charge, deduction or loss to which the debtor is entitled, or which is required to be made, in taxing that income (in this paragraph referred to as ‘allowable deductions’), and
- (ii) before taking into account any allowance, charge, deduction or loss (in this paragraph referred to as ‘general deductions’)

—

- (I) in a case where the debtor is a company, which is allowed or set off for the purposes of corporation tax against the total profits of the company, or
- (II) in any other case, to which the debtor is entitled, or which is required to be made, in taxing the debtor’s income from all sources,

C is the amount of income of the debtor from all sources (other than chargeable gains) for the chargeable period after taking into account allowable deductions in respect of those sources but before taking into account general deductions,

D is the number of days in the specified period, and

E is the number of days in the chargeable period.

(c) Notwithstanding sections 865 or 960H, where paragraph (a) applies and the amount of relevant tax deducted and remitted to the Collector-General in accordance with subsection (3) exceeds the amount of offsettable tax, the excess shall be repaid to the specified person.