

# Finance Act 2018

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## Controlled foreign companies

27. (1) The Principal Act is amended by inserting the following Part after Part 35A:

“PART 35B

Implementation of Articles 7 and 8 of Council Directive (EU) 2016/1164 of 12 July 2016 (Controlled Foreign Companies)

Chapter 1

*Interpretation*

### **Interpretation**

**835I.** (1) In this Part—

‘accounting profit’, in relation to an accounting period of a controlled foreign company, means the amount of profit, before taxation, shown in the profit and loss account, without regard to any—

(a) capital gains or capital losses, or

(b) dividends or other distributions which would be exempted from the charge to tax in determining the controlled foreign company’s corresponding chargeable profits in the State;

‘amount of foreign tax’ means the amount of any tax paid or borne by a controlled foreign company in respect of the controlled foreign company’s profits for the accounting period;

‘arrangement’ means—

(a) any transaction, action, course of action, course of conduct, scheme, plan or proposal,

(b) any agreement, arrangement, understanding, promise or undertaking, whether express or implied and whether or not enforceable or intended to be enforceable by legal proceedings, and

(c) any series of or combination of the circumstances referred to in paragraphs (a) and (b),

whether entered into or arranged by one or two or more persons—

(i) whether acting in concert or not,

(ii) whether or not entered into or arranged wholly or partly outside the State, or

(iii) whether or not entered into or arranged as part of a larger arrangement or in conjunction with any other arrangement or arrangements,

but does not include an arrangement referred to in section 826;

'chargeable company' means a controlling company, or a company connected with the controlling company, which performs, either itself or through a branch or agency, relevant Irish activities on behalf of a controlled foreign company group;

'chargeable income' means the undistributed income of a controlled foreign company which is subject to a controlled foreign company charge;

'company' means a body corporate or an unincorporated association;

'connected' shall be construed in accordance with section 10;

'controlled foreign company' means a company which is—

(a) not resident in the State, and

(b) controlled by a company or companies resident in the State;

'controlled foreign company charge' means a charge made under section 835R(2);

'controlled foreign company group' means the controlled foreign companies, taken together, of a controlling company;

'controlling company' means a company resident in the State which controls a controlled foreign company;

'corresponding chargeable profits in the State' means those profits or gains of a controlled foreign company which would be the controlled foreign company's profits or gains for corporation tax or capital gains tax purposes for an accounting period if the assumptions specified in section 835O were to apply to that company;

'corresponding corporation tax in the State' means the amount of corporation tax and capital gains tax which would be chargeable in the State in respect of the controlled foreign company's corresponding chargeable profits in the State for the accounting period in accordance with section 835P if the assumptions specified in section 835O were to apply to the company;

'creditable tax' shall be construed in accordance with section 835S;

'EEA Agreement' means the Agreement on the European Economic Area signed at Oporto on 2 May 1992, as adjusted by the Protocol signed at Brussels on 17 March 1993;

'foreign chargeable profits' means—

- (a) the profits of a controlled foreign company as determined for tax purposes under the laws of the controlled foreign company's territory of residence, or
- (b) where the laws of the controlled foreign company's territory of residence do not require profits to be determined for tax purposes, the profits of the controlled foreign company as determined in accordance with the generally accepted accounting practice applicable in the controlled foreign company's territory of residence;

'foreign company charge' means a charge under the laws of a territory, other than the State, which is similar to the controlled foreign company charge;

'key entrepreneurial risk-taking function' shall be construed in a manner consistent with the use of that term in the OECD Report;

'non-trading income' means the income of a controlled foreign company which would be included in the controlled foreign company's corresponding chargeable profits in the State if the assumptions specified in section 835O were to apply to the company, other than income which would be chargeable to tax under Case I or II of Schedule D, were those assumptions to apply;

'OECD Report' means the 2010 Report on the Attribution of Profits to Permanent Establishments of the Organisation for Economic Co-Operation and Development dated 22 July 2010;

'profit and loss account', in relation to a controlled foreign company, means the profit and loss account, income statement or equivalent as prepared in accordance with international accounting standards or in accordance with generally accepted accounting practice, but where—

(a) accounts are not prepared in accordance with international accounting standards or generally accepted accounting practice, or

(b) no accounts are prepared for the accounting period in question,

that expression means the profit and loss account which would be prepared in accordance with generally accepted accounting practice;

'relevant assets and risks' means the assets which a controlled foreign company has, or has had at any time, and the risks which a controlled foreign company bears, or has borne at any time, where those assets or risks would not have been employed or undertaken, as the case may be, but for relevant functions performed in the State on behalf of the controlled foreign company;

'relevant function' means a significant people function or a key entrepreneurial risk-taking function;

'relevant Irish activities' means relevant functions performed in the State on behalf of a controlled foreign company group, where such relevant functions are relevant to—

(a) the legal or beneficial ownership of the assets included in the relevant assets and risks of the company or companies in the controlled foreign company group, or

(b) the assumption and management of the risks included in the relevant assets and risks of the company or companies in the controlled foreign company group;

'relevant Member State' means a state, other than the State, which is a Member State of the European Union, or not being such a Member State, a state which is a contracting party to the EEA Agreement;

'significant people function' shall be construed in a manner consistent with the use of that term in the OECD Report;

'tax advantage' means—

- (a) a reduction, avoidance or deferral of any charge or assessment to tax, including any potential or prospective charge or assessment, or
- (b) a refund of or a payment of an amount of tax, or an increase in an amount of tax, refundable or otherwise payable to a person including any potential or prospective amount so refundable or payable,

arising out of or by reason of an arrangement, including an arrangement where another arrangement would not have been undertaken or arranged to achieve the results or any part of the results, achieved or intended to be achieved by the arrangement;

'undistributed income' shall be construed in accordance with section 835Q.

(2) For the purposes of this Part, a company shall be treated as an 'associated company' of another company where—

- (a) one of them, directly or indirectly, possesses or is beneficially entitled to, or is entitled to acquire, not less than 25 per cent of the share capital or issued share capital of the other company,
- (b) one of them, directly or indirectly, is entitled to exercise, or to acquire the rights to exercise, not less than 25 per cent of the voting power of the other company,
- (c) one of them is beneficially entitled to not less than 25 per cent of any profits available for distribution to equity holders of the other company, or

(d) in respect of those companies, a third person—

(i) directly or indirectly—

(I) possesses or is beneficially entitled to, or is entitled to acquire, not less than 25 per cent of the share capital or issued share capital of each of them, or

(II) is entitled to exercise, or to acquire the rights to exercise, not less than 25 per cent of the voting power of each of them,

or

(ii) in respect of each of them, is beneficially entitled to not less than 25 per cent of any profits available for distribution to equity holders in the company.

### **Meaning of 'control'**

**835J.** (1) For the purposes of this Part, a person shall be taken to have control of a company if such person exercises, or is able to exercise or is entitled to acquire, control, whether direct or indirect, over the company's affairs, and in particular, but without prejudice to the generality of the foregoing, if such person possesses or is entitled to acquire—

- (a) the greater part of the share capital or issued share capital of the company or of the voting power in the company,
- (b) such part of the issued share capital of the company as would, if the whole of the income of the company were distributed among the participators (without regard to any rights which such person or any other person has as a loan creditor), entitle such person to receive the greater part of the amount so distributed,
- (c) such rights as would, in the event of the winding up of the company or in any other circumstances, entitle such person to receive the greater part of the assets of the company which would then be available for distribution among the participators, or
- (d) any part of the issued share capital of the company and thereby control the composition of its board of directors.

(2) For the purposes of subsection (1), a person shall be treated as entitled to acquire anything which such person is entitled to acquire at a future date or will at a future date be entitled to acquire.

(3) For the purposes of subsection (1), there shall be attributed to any person any rights or powers of a nominee for such person, that is, any rights or powers which another person possesses on such person's behalf or may be required to exercise on such person's direction or behalf.

(4) For the purposes of subsection (1), there may also be attributed to any person all the rights and powers of—

- (a) any associated company, within the meaning of section 835(2), of such person,

(b) any company of which such person has, or such person and associates of such person have, control,

(c) any 2 or more companies of which such person has, or such person and associates of such person have, control,

(d) any associate of such person, or

(e) any 2 or more associates of such person,

including the rights and powers attributed to a company or associate under subsection (3), but excluding those attributed to an associate under this subsection, and such attributions shall be made under this subsection as will result in the company being treated as under the control of persons resident in the State if it can be so treated.

(5) In this section, 'participator', 'associate', 'director' and 'loan creditor' have the same meanings as they have in Part 13.

### **Accounting periods**

**835K.** (1) For the purposes of this Part, an accounting period of a controlled foreign company shall begin—

(a) where the company was not a controlled foreign company immediately prior to a date on which it became a controlled foreign company, on that date, and

(b) where the company continues to be a controlled foreign company, immediately after the end of the previous accounting period,

and references in this subsection and subsection (2) to an accounting period are references to such a period as determined by virtue of the application, by subsection (3), of certain provisions of section 27 for the purposes of this section.

(2) An accounting period of a controlled foreign company shall end—

(a) when the company ceases to be a controlled foreign company in accordance with this Chapter,

(b) when the company becomes or ceases to be resident in a territory, or

(c) when the company ceases to have any sources of income.

- (3) Without prejudice to subsections (1) and (2) of this section, subsections (3), (5) and (7) of section 27 shall apply for the purpose of this section as they apply for the purposes of corporation tax, except to the extent those provisions relate to a company becoming or ceasing to be within the charge to corporation tax.
- (4) Where it appears to a Revenue officer that the beginning or end of any accounting period of a controlled foreign company is uncertain, he or she may determine as an accounting period of the company such period, not exceeding 12 months, as appears to him or her appropriate, and that period shall be treated for all purposes as an accounting period of the company unless the officer on further facts coming to his or her knowledge sees fit to revise it.
- (5) Where the Revenue Commissioners make a determination under subsection (4), they shall issue a notice in writing of the determination to the controlling company of the controlled foreign company concerned.
- (6) A controlling company aggrieved by a determination made under subsection (4) may appeal such determination to the Appeal Commissioners, in accordance with section 949I, within the period of 30 days after the date of the notice issued under subsection (5) in respect of the determination.

### **Application of Part to a controlled foreign company**

**835L.** Where in any accounting period a company is a controlled foreign company, the provisions of this Part shall apply accordingly in relation to that accounting period, except as otherwise provided for in this Part.

### **Determination of residence**

- 835M.** (1) Subject to subsection (6), for the purposes of this Part, a controlled foreign company shall be regarded as being resident for an accounting period in the territory in which, throughout that period, it is subject to tax by reason of domicile, residence or place of management.
- (2) Where there are two or more territories falling within subsection (1) in any accounting period, the company shall in that accounting period be regarded as being resident—
- (a) where, throughout the accounting period, the company's place of effective management is situated in one of the territories, in that territory,



- (b) where, throughout the accounting period, the company's place of effective management is situated in two or more of the territories and immediately before the end of the accounting period more than 50 per cent of the company's assets are situated in a territory, in the territory in which those assets are situated, or
- (c) where neither paragraph (a) nor (b) applies and immediately before the end of the accounting period more than 50 per cent of the company's assets are situated in one of the territories, in that territory.
- (3) Where in an accounting period there is no territory falling within either of subsection (1) or (2), the company shall be regarded as being resident in the territory in which it is incorporated or formed.
- (4) For the purpose of subsection (2), the amount of the company's assets are to be determined by reference to their market value immediately before the end of the accounting period.
- (5) In this section, 'market value' shall be construed in accordance with section 548.
- (6) Nothing in this section shall require a company to be regarded as being resident in a territory other than the territory in which it is regarded, for the purposes of any arrangements having the force of law by virtue of section 826(1), as being resident.

### **Adjustment to amount of foreign tax**

- 835N.** (1) Where an amount of foreign tax is paid or borne by a company under the laws of the territory in which the controlled foreign company is resident in respect of the aggregate profits of that controlled foreign company and one or more other companies (in this subsection referred to as the 'consolidated companies'), taken together as a single taxable entity, the amount of tax shall be apportioned between the consolidated companies on a just and reasonable basis for the purpose of calculating the amount of foreign tax paid or borne by the controlled foreign company.
- (2) This subsection applies where an amount of income of a controlled foreign company is taken into account in determining the foreign chargeable profits of the controlled foreign company for an accounting period, but such income is not taken into account in determining the corresponding chargeable profits in the State of the company for the accounting period.

- (3) Where subsection (2) applies, the income to which subsection (2) refers shall not be taken into account in determining the amount of foreign tax paid or borne by the controlled foreign company for the accounting period.
- (4) This subsection applies where an amount of expenditure of a controlled foreign company is not taken into account in determining foreign chargeable profits of a controlled foreign company for an accounting period, but such expenditure is taken into account in determining the corresponding chargeable profits in the State of the company for the accounting period.
- (5) Where subsection (4) applies, the expenditure to which subsection (4) refers shall be taken into account in determining the amount of foreign tax paid or borne by the controlled foreign company for the accounting period.

### **Corresponding chargeable profits in the State**

**835O.** (1) For the purpose of determining the corresponding chargeable profits in the State of a controlled foreign company for an accounting period, it shall be assumed—

- (a) (i) that the company is resident in the State at all times during the accounting period,
  - (ii) if the accounting period is not the company's first accounting period, that the company has been resident in the State since its first accounting period,
  - (iii) except where the company ceases to be regarded as a controlled foreign company in accordance with this Chapter in the accounting period, that the company will continue to be resident in the State in subsequent accounting periods, and
  - (iv) where the company was resident in the State in the accounting period immediately prior to its first accounting period, that the residence assumed in accordance with this paragraph is not continuous with its residence in the State immediately prior to its first accounting period,
- (b) that the company is, has been and will continue to be within the charge to corporation tax,
  - (c) that the accounting periods of the company, as determined in accordance with section 835K, are accounting periods for corporation tax purposes,

- (d) that there is no change in the place or places at which the company carries on its activities,
  - (e) that the company is not a close company within the meaning of section 430,
  - (f) where any allowance, credit, deduction, relief or repayment under the Tax Acts is dependent upon the making of a claim or election, that the company has made that claim or election which would give the maximum amount of allowance, credit, deduction, relief or repayment and that the claim or election was made within any applicable time limit,
  - (g) that the company is neither a member of a group of companies nor a member of a consortium for any purposes of the Tax Acts, and
  - (h) that the company is not entitled to relief under Part 35 in respect of any amount of income, profits or gains for tax paid on such income, profits or gains under the laws of the company's territory of residence.
- (2) In this section, references to the first accounting period of a controlled foreign company are references to the accounting period in which the company first falls to be regarded as a controlled foreign company in accordance with this Chapter.
- (3) Nothing in this section affects any liability to, or the computation of, corporation tax in respect of a trade which is carried on by a controlled foreign company through a branch or agency in the State.

### **Corresponding corporation tax in the State**

- 835P.** The corresponding corporation tax in the State of a controlled foreign company for an accounting period shall be the sum of—
- (a) the corporation tax that would be charged at the rate specified in section 21(1)(f) on that part of the corresponding chargeable profits in the State for the accounting period which would consist of profits chargeable to tax under Case I or II of Schedule D,
  - (b) the corporation tax that would be charged at the rate specified in section 21A(3) on that part of the corresponding chargeable profits in the State for the accounting period which would consist of profits which would be chargeable to tax under Case III, IV or V of Schedule D, and

(c) the capital gains tax that would, in accordance with section 78 or otherwise, be charged on that part of the corresponding chargeable profits in the State for the accounting period which would consist of chargeable gains,

if, for the purpose only of determining under which Case of Schedule D the corresponding chargeable profits would be chargeable to tax, the assumption in section 835O(1)(d) did not apply and the activities carried on by the controlled foreign company in its territory of residence were deemed to be carried on in the State.

## Chapter 2

### Controlled foreign company charge

#### **Undistributed income**

**835Q.** (1) For the purposes of this Part, the undistributed income of a controlled foreign company for an accounting period shall be its distributable profits for the accounting period, less any relevant distributions made in respect of the accounting period.

(2) For the purposes of subsections (1) and (3), the distributable profits of a controlled foreign company for an accounting period shall be the amount included in the accounting profits of the company which, notwithstanding any prohibition on the making of a distribution under the laws of the territory in which the controlled foreign company is resident or otherwise, are available for distribution to members of the company and which can reasonably be attributed to relevant Irish activities performed by a controlling company or a company connected with the controlling company for that accounting period.

(3) For the purpose of subsection (1), a relevant distribution made in respect of an accounting period means an amount determined by the formula—

$$A \times (B/C)$$

where—

A is the amount of the distribution made in respect of the accounting period,

B is the amount of the distributable profits for the accounting period, and

C is the amount of the accounting profit of the controlled foreign company for the accounting period.

(4) The reference in subsection (3) to the amount of the distribution made in respect of the accounting period is a reference to such an amount—

(a) as is distributed to—

(i) a person who is, by virtue of the laws of a relevant Member State, resident for the purposes of tax in a relevant Member State which imposes, without any reduction computed by reference to the amount of such distribution, a tax that generally applies to distributions receivable in that territory, by persons, from sources outside that territory, or

(ii) a person resident in the State,

(b) as is paid or payable—

(i) during the accounting period, or

(ii) within 9 months after the end of the accounting period,

and

(c) where subparagraph (i) of paragraph (a) applies, as has been subject to tax in the relevant Member State referred to in that subparagraph.

(5) The reference in subsection (4)(c) to tax is a reference to tax that has been paid and has not been and does not fall to be repaid, in whole or in part, to the controlled foreign company or any other person on the making of a claim or otherwise.

(6) For the purpose of this section, a distribution made in respect of an accounting period shall be regarded as being made out of the distributable profits of that period to the extent of that profit and, in relation to any excess of the distribution over that profit, out of the most recently accumulated distributable profits.

### **Controlled foreign company charge**

**835R.** (1) In this section, 'participation' means—

(a) a, direct or indirect, possession of, or beneficial right to, or right to acquire, share capital or issued share capital of a company,

(b) a, direct or indirect, right to exercise, or to acquire the rights to exercise the voting power of a company, or

(c) a beneficial right to any profits available for distribution to equity holders of a company.

(2) Subject to subsections (5), (9) and (10), where in an accounting period of a controlled foreign company—

(a) a controlled foreign company group has undistributed income, and

(b) relevant Irish activities in relation to the controlled foreign company group are performed by a chargeable company,

a controlled foreign company charge shall be made on the chargeable company for the accounting period of the chargeable company, as determined in accordance with section 27, in which the accounting period of the controlled foreign company ends.

(3) The controlled foreign company charge made under subsection (2) shall be of an amount equal to the undistributed income of the controlled foreign company group to the extent that such income can reasonably be attributed to relevant Irish activities performed by the chargeable company.

(4) The undistributed income to be attributed to relevant Irish activities for the purpose of subsection (3) shall be determined by reference to the amount that would be payable by persons dealing at arm's length in relation to those activities, but the amount so attributed shall, in respect of each of the controlled foreign companies in the controlled foreign company group, not exceed an amount determined by the formula—

$$UI \times AP$$

where—

UI is the undistributed income of the controlled foreign company, and

AP is the aggregate of the controlling company and the chargeable company's participation in that controlled foreign company, expressed as a percentage of the total participation in that company.

(5) Subsection (2) shall not apply in relation to undistributed income—

- (a) attributable to relevant Irish activities performed by a chargeable company under arrangements where—
- (i) it is reasonable to consider that—
- (I) such arrangements would be entered into by persons dealing at arm's length, or
- (II) the essential purpose of the arrangements is not to secure a tax advantage,
- or
- (ii) the arrangements are subject to the provisions of section 835C,
- or
- (b) which has previously been assessed to a controlled foreign company charge under this section.
- (6) Subject to subsection (7), corporation tax shall be charged in respect of the controlled foreign company charge at the rate specified in—
- (a) section 21(1)(f), in so far as the undistributed income attributable to the relevant Irish activities would be chargeable to tax under Case I of Schedule D, had it been income accruing to the chargeable company, and
- (b) section 21A(3), in so far as the undistributed income attributable to the relevant Irish activities would be chargeable to tax under Case III, IV or V of Schedule D, had it been income accruing to the chargeable company.
- (7) The amount of corporation tax chargeable in accordance with subsection (6) shall be reduced by the amount of any creditable tax, as determined under section 835S, in respect of the accounting period concerned.
- (8) Subject to subsection (7), no relief, deduction or set off of any description shall be allowed against a controlled foreign company charge.
- (9) This section shall not apply to undistributed income which is attributable to an asset or risk, whether on an individual basis or taken together as an aggregate, where the increase in the controlled foreign company's undistributed income as against the undistributed income of the controlled foreign company where it—
- (a) did not hold, or had not held, the asset to any extent, or

(b) did not bear, or had not borne, the risk to any extent,

is negligible.

(10) This section shall not apply in relation to an accounting period of a controlled foreign company where, in that accounting period—

(a) the controlled foreign company did not at any time hold assets or bear risks under an arrangement where it would be reasonable to consider that the essential purpose of the arrangement was to secure a tax advantage, or

(b) the controlled foreign company did not have any non-genuine arrangements in place.

(11) For the purpose of subsection (10)(b), a controlled foreign company shall be regarded as having non-genuine arrangements where—

(a) the controlled foreign company would not own the assets or would not have borne the risks which generate all, or part of, its undistributed income, but for relevant Irish activities performed relating to those assets and risks, and

(b) it would be reasonable to consider that the relevant Irish activities were instrumental in generating that income.

### **Creditable tax**

**835S.** (1) In this section, 'relevant tax' means a tax chargeable and payable under the laws of a territory, other than the State, which corresponds to corporation tax.

(2) For the purposes of this Part, the creditable tax for an accounting period shall be the aggregate of—

(a) the amount of foreign tax paid or borne in respect of the chargeable income of the controlled foreign company for that accounting period, and

(b) the amount of relevant tax paid on a foreign company charge in respect of the chargeable income of the controlled foreign company for that accounting period.

(3) In subsection (2), references to an amount paid or borne does not include so much of any such amount as has been or falls to be repaid to the controlled foreign company or any other person on the making of a claim or otherwise.



- (4) The amount of the creditable tax to be allowed against corporation tax in respect of any controlled foreign company charge for an accounting period shall not exceed the corporation tax attributable to that charge under section 835R for that period.

## Chapter 3

### Exemptions

#### **Effective tax rate exemption**

**835T.** (1) Section 835R shall not apply in relation to an accounting period of a controlled foreign company where subsection (2) applies.

(2) This subsection applies where the amount of foreign tax which is paid or borne by a controlled foreign company for an accounting period is not less than the difference between—

- (a) the corresponding corporation tax in the State for that accounting period, and
- (b) the amount of such foreign tax paid or borne for the accounting period.

(3) The amount of foreign tax which is paid or borne by a controlled foreign company for an accounting period shall be determined in accordance with section 835N.

#### **Low profit margin exemption**

**835U.** (1) In this section, 'relevant operating costs' means the operating costs, as construed in accordance with international accounting standards or generally accepted accounting practice, incurred by a controlled foreign company for an accounting period, but excluding—

(a) the costs of goods purchased by the controlled foreign company, other than goods used by the company in the territory in which it is resident for the accounting period, and

(b) any amounts incurred on behalf of, or paid to, an associated company.

(2) Subject to subsection (3), where in an accounting period the accounting profits of a controlled foreign company are less than 10 per cent of its relevant operating costs, section 835R shall not apply.

(3) Subsection (2) shall not apply where—

- (a) any arrangements are entered into,
- (b) as a consequence of such arrangements subsection (2) would, apart from this subsection, apply, and
- (c) it would be reasonable to consider that the main purpose, or one of the main purposes, of the arrangements is to secure that subsection (2) applies.

### **Low accounting profit exemption**

**835V.** (1) Subject to subsections (2) and (3), where in an accounting period—

(a) the accounting profits of a controlled foreign company are less than €750,000 and the amount of those profits representing non-trading income is less than €75,000, or

(b) the accounting profits are less than €75,000,

section 835R shall not apply.

(2) Where an accounting period is less than 12 months, the amounts referred to in subsection (1) shall be reduced proportionately.

(3) This section shall not apply where—

(a) any arrangements are entered into,

(b) as a consequence of such arrangements subsection (1) would, apart from this subsection, apply, and

(c) it would be reasonable to consider that the main purpose, or one of the main purposes, of the arrangements is to secure that subsection (1) applies.

(4) A reference in subsection (3) to the application of subsection (1) includes a reference to the application of that subsection as modified in accordance with subsection (2).

### **Exempt period exemption**

**835W.** (1) In this section—

‘exempt period’ shall be construed in accordance with subsection (3);

‘subsequent period condition’ means the condition which is satisfied where the circumstances specified in subsection (4) apply.

- (2) Section 835R shall not apply in relation to an accounting period of a controlled foreign company where—
- (a) the accounting period ends during an exempt period, and
  - (b) the subsequent period condition is satisfied by the controlled foreign company.
- (3) An exempt period shall begin when a company first becomes a controlling company in relation to the controlled foreign company concerned (in this section referred to as the 'relevant time') and shall end 12 months from the relevant time.
- (4) The subsequent period condition shall be satisfied by a controlled foreign company where—
- (a) the company ceases to be regarded as a controlled foreign company in accordance with Chapter 1, or
  - (b) the controlled foreign company charge does not apply,
- in the first accounting period of the company beginning immediately after the exempt period.
- (5) Where the accounting period of a controlled foreign company begins during an exempt period, but does not end during that period, the undistributed income of the controlled foreign company, as determined on a just and reasonable basis, which—
- (a) arises during the exempt period, and
  - (b) would otherwise be subject to the controlled foreign company charge under section 835R,
- shall be exempt from such charge.
- (6) This section shall not apply in relation to a controlled foreign company where—
- (a) immediately before the relevant time the controlled foreign company was not carrying on a business, unless subsection (7) applies to that company, or
  - (b) the controlling company in respect of the controlled foreign company was subject to this Part (as respects the controlled foreign company) on 1 January 2019.
- (7) This subsection shall apply to a controlled foreign company where—

- (a) the controlled foreign company is incorporated or formed immediately before the relevant time for the purpose of controlling one or more other companies, and
  - (b) an exempt period begins in relation to one or more of the companies, referred to in paragraph (a), controlled by the controlled foreign company at that relevant time.
- (8) This section shall not apply in relation to a controlled foreign company where—
- (a) any arrangements are entered into, and
  - (b) it would be reasonable to consider that the main purpose, or one of the main purposes, of the arrangements is to secure—
    - (i) a tax advantage for any person, or
    - (ii) that subsection (2), would, apart from this subsection, apply.

#### **Relief for certain distributions**

**835X.** (1) Where a distribution made in respect of an accounting period is made by a controlled foreign company out of chargeable income in respect of a previous accounting period, the corporation tax paid on the controlled foreign company charge attributable to that income shall be allowed as a credit against the tax chargeable in respect of the distribution.

- (2) Where a distribution made in respect of an accounting period is made by a controlled foreign company in part out of chargeable income in respect of a previous accounting period and in part out of other income or profits, the distribution shall be treated as if it consisted of two distributions made out of chargeable income and out of other income or profits respectively, and subsection (1) shall apply to such part of the distribution as is made out of chargeable income as it applies to a distribution made wholly out of chargeable income.

#### **Relief on certain disposals of shares or securities in a controlled foreign company**

**835Y.** (1) In this section, 'chargeable gain' shall be construed in accordance with section 545.

(2) This section shall apply where a controlling company or a company connected with the controlling company (either of which is in this section referred to as a 'disposing company'), disposes of shares or securities in a controlled foreign company or in a company connected with the controlled foreign company (either of which is in this section referred to as the 'disposed company') and a controlled foreign company charge has been made on a disposing company by reference to its interest in the disposed company.

(3) This subsection applies where—

(a) the disposing company is the only chargeable company in relation to the disposed company,

(b) the disposing company is not a chargeable company in relation to the disposed company and the chargeable company does not have any interest in the disposed company, or

(c) the disposing company is a chargeable company in relation to the disposed company and, in relation to that disposed company, there exists another chargeable company which does not have an interest in the disposed company.

(4) For the purpose of computing the chargeable gain accruing to the disposing company on a disposal of shares or securities referred to in subsection (2)—

(a) where subsection (3) applies, an amount shall be allowable as a deduction under section 552(1)(a) from the consideration for the disposal, being an amount determined by the formula—

$$A \times (B/C)$$

where—

A is the amount of the controlled foreign company charge relating to the controlled foreign company,

B is the number of shares or securities in the disposed company disposed of by the disposing company, and

C is the total number of shares or securities in the disposed company owned by the disposing company immediately before the disposal,

or

(b) where subsection (3) does not apply, an amount shall be allowable as a deduction under section 552(1)(a) from the consideration for the disposal, being an amount determined by the formula—

$$D \times (E/F)$$

where—

D is the amount of the controlled foreign company charge relating to the controlled foreign company,

E is the number of shares or securities in the controlled foreign company disposed of by the disposing company, and

F is the total number of shares or securities in the controlled foreign company.

(5) Where, before a disposal referred to in subsection (2)—

(a) a distribution is made by the controlled foreign company,

(b) the distribution is made out of the chargeable income which has been subject to the controlled foreign company charge referred to in subsection (2), and

(c) section 835X applies in relation to that distribution,

paragraphs (a) and (b) of subsection (4) shall apply as if the references to A and D, respectively, in the formulae in those paragraphs were a reference to the amount of the controlled foreign company charge relating to the controlled foreign company as reduced by the amount of the controlled foreign company charge which corresponds to the chargeable income represented by the distribution.

(6) Where an amount, representing all or part of a controlled foreign company charge, has been allowed as a deduction under subsection (4), no further deduction shall be given under this section in respect of—

(a) where the amount represents all of a controlled foreign company charge, the controlled foreign company charge, or

(b) where the amount represents part of a controlled foreign company charge, that part of the controlled foreign company charge.

(7) For the purposes of identifying the shares or securities disposed of, in so far as the shares or securities are of the same class, shares or securities acquired at an earlier time shall, for the purposes of this section, be deemed to have been disposed of before shares or securities acquired at a later time.”.

(2) (a) In this subsection—

(i) “controlling company” has the same meaning as it has in Chapter 1 of Part 35B of the Principal Act, as inserted by *subsection (1)*, and

(ii) “accounting period” has the same meaning as it has in section 27 of the Principal Act.

(b) *Subsection (1)* applies as respects an accounting period of a controlling company commencing on or after 1 January 2019.

# Finance Act 2018

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## Exit tax, etc. - substitution of new Chapter 2 of Part 20 of Principal Act

32. The Principal Act is amended, with effect from 10 October 2018, by substituting the following for Chapter 2 of Part 20:

### “Chapter 2

Provisions relating to exit tax, etc.

#### **Charge to exit tax**

627. (1) (a) In this section and in sections 628 and 629:

‘designated area’, ‘exploration or exploitation activities’ and ‘exploration or exploitation rights’ have the same meanings respectively as in section 13;

‘Directive’ means Council Directive (EU) 2016/1164 of 12 July 2016<sup>8</sup> laying down rules against tax avoidance practices that directly affect the functioning of the internal market;

‘exploration or exploitation assets’ means assets used or intended for use in connection with exploration or exploitation activities carried on in the State or in a designated area;

‘market value’ means the amount for which an asset can be exchanged or mutual obligations can be settled between unconnected willing buyers and sellers in a direct transaction;

‘relevant event’ means one of the events referred to in subsection (2);

‘tax’ means corporation tax or capital gains tax chargeable by virtue of subsection (2);

‘the new assets’ and ‘the old assets’ have the meanings respectively assigned to them by section 597;

‘third country’ means a territory other than the State or another Member State;



'transfer', in relation to assets, means any transaction whereby (apart from the effect of this section) no liability to corporation tax or capital gains tax in respect of the assets, the subject of the transfer, arises, notwithstanding that those assets remain under the legal or economic ownership of the same entity.

(b) For the purposes of subsection (2), paragraph (c) of section 29(3) shall apply as if the reference in that paragraph to a trade were to a business and as if the references to a branch or agency were to a permanent establishment.

(c) A word or expression that is used in this Chapter and is also used in Article 5 of the Directive shall have the meaning in this Chapter that it has in that Article.

(2) For the purposes of the Capital Gains Tax Acts, a company shall be deemed to have disposed of the assets referred to in paragraph (a) or, as the case may be, (b) or, in the case of paragraph (c), to have disposed of all its assets (other than assets excepted from that paragraph by subsection (6)) and to have immediately reacquired the assets at their market value (at the time of the occurrence of the event concerned) on the occurrence of any of the following events:

(a) the company, being a company that is resident in a Member State (other than the State), transfers assets from a permanent establishment in the State to its head office or to a permanent establishment in another Member State or in a third country;

(b) the company, being a company that is resident in a Member State (other than the State), transfers a business (including the assets of the business) carried on by a permanent establishment of that company in the State to another Member State or to a third country; or

(c) the company ceases to be resident in the State and becomes resident in another Member State or in a third country.

(3) (a) In this subsection 'relevant assets' has the same meaning as in section 29(1A)(a).

(b) Subsection (2) shall not apply to—

(i) relevant assets or shares deriving their value or the greater part of their value directly or indirectly from relevant assets (other than shares quoted on a stock exchange), or

(ii) assets referred to in section 29(3)(d).

- (c) Section 29(1A)(c) shall apply in calculating the portion of the value of shares attributable directly or indirectly to relevant assets.
- (d) This subsection shall be construed as being in addition to the provision, with respect to the interpretation of this section, made by virtue of the definition of 'transfer' in subsection (1) and, in particular, the words contained therein concerning non-liability to corporation tax and capital gains tax.
- (4) (a) Tax shall, notwithstanding subsection (3) of section 28, be chargeable at the rate of 12.5 per cent in respect of chargeable gains accruing on a disposal of assets to which subsection (2) applies (in paragraph (b) referred to as a 'deemed disposal of an asset'), but this is subject to paragraph (b).
- (b) A chargeable gain accruing on a deemed disposal of an asset arising from the occurrence of an event referred to in subsection (2) shall be chargeable at the rate specified in subsection (3) of section 28 where the event forms part of a transaction to dispose of the asset and the purpose of the transaction is to ensure the chargeable gain accruing on the disposal of the asset is charged to tax at the rate specified in paragraph (a) rather than the rate specified in subsection (3) of section 28.
- (c) In this subsection 'transaction' has the meaning assigned to it by section 811C.
- (5) Section 597 shall not apply where a company referred to in subsection (2)(c)—
- (a) has disposed of the old assets, or of its interest in those assets, before the event referred to in subsection (2)(c), and
- (b) acquires the new assets, or its interest in those assets, after that event,
- unless the new assets are excepted from this subsection by subsection (6).
- (6) Where at any time after the event referred to in paragraph (c) of subsection (2) the company referred to in that paragraph carries on a trade in the State through a permanent establishment—
- (a) any assets which, immediately after the event referred to in subsection (2)(c), are situated in the State and are used in or for the purposes of the trade, or are used or held for the purposes of the permanent establishment, shall be excepted from subsection (2), and

(b) any new assets which, after that time, are so situated and are so used or so held shall be excepted from subsection (5),

and references in this subsection to assets situated in the State include references to exploration or exploitation assets and to exploration or exploitation rights.

(7) This section shall not apply to an asset—

(a) which relates to the financing of securities,

(b) which is given as security for a debt, or

(c) where the transfer takes place in order to meet prudential capital requirements or for liquidity purposes,

where the asset is due to revert to the permanent establishment or the company, as the case may be, within 12 months of the transfer.

### **Value of certain assets to be accepted for purposes of Capital Gains Tax Acts**

**628.** Where exit tax is charged in a Member State (other than the State) in respect of an asset by virtue of Article 5(1) of the Directive, the value of that asset established under the law of that Member State for the purposes of that charge to tax shall be taken, for the purposes of the Capital Gains Tax Acts, as the acquisition cost of that asset unless that value does not reflect its market value.

### **Deferral of exit tax**

**629.** (1) In this section—

‘2010 Directive’ means Council Directive 2010/24/EU of 16 March 2010<sup>9</sup> concerning mutual assistance for the recovery of claims relating to taxes, duties and other measures;

‘chargeable period’ means a year of assessment or an accounting period, as the case may be;

‘disposal of assets’ means a disposal of migrated assets;

‘EEA Agreement’ means the Agreement on the European Economic Area signed at Oporto on 2 May 1992, as adjusted by the Protocol signed at Brussels on 17 March 1993;

'electronic means' has the meaning assigned to it in section 917EA;

'migrated assets' means the assets the chargeable gain on the deemed disposal of which was taken into account in determining the amount of tax;

'migration date' means the date on which a disposal is deemed to have been made by virtue of section 627(2);

'relevant period', in respect of which a statement under paragraph (b) of subsection (5) is to be made, is the calendar year immediately preceding the 21-day period in which the statement is to be made, except that in respect of the first statement of the 5 statements referred to in that subsection, such period shall be the period commencing on the migration date and ending on the last day before the beginning of the calendar year in respect of which the next statement is to be made;

'relevant territory' means a Member State (other than the State) or a third country which is a party to the EEA Agreement that has concluded an agreement with the State or the European Union equivalent to the mutual assistance provided for in the 2010 Directive;

'specified date' means—

(a) in relation to corporation tax, the last day of the period of 9 months starting on the day immediately following the relevant event, but in any event not later than day 23 of the month in which that period of 9 months ends, or

(b) in relation to capital gains tax payable in respect of a year of assessment in which the relevant event occurs, 31 October in the tax year following that year.

(2) Subject to the provisions of this section, a company which is chargeable to tax may elect to pay that tax in 6 equal instalments at yearly intervals, the first instalment of which shall be due and payable on the specified date, and the remaining instalments shall be due and payable respectively on each of the next 5 anniversaries of the specified date.

(3) Subsection (2) shall not apply to assets referred to in section 627(2) which have been transferred to a third country unless that country is a party to the EEA Agreement and has concluded an agreement with the State or the European Union equivalent to the mutual assistance provided for in the 2010 Directive.

(4) Where an election is made to pay tax in accordance with subsection (2), that tax shall be payable in 6 equal instalments at yearly intervals in accordance with that subsection.

(5) (a) An election under subsection (2) shall:

(i) be made in the return under section 959I—

(I) where the tax is corporation tax, for the accounting period which ends on the migration date for the company, or

(II) where the tax is capital gains tax, for the year of assessment in which the migration date for the company occurs,

and that return shall be made by electronic means (in accordance with Chapter 6 of Part 38);

(ii) specify—

(I) the migration date,

(II) the relevant territory to which the migrated assets were transferred,

(III) the amount of tax, and

(IV) that an election is being made to pay tax in accordance with section 629 (2) of the Taxes Consolidation Act 1997 ;

and

(iii) provide such other information as may be required by the Revenue Commissioners for the purposes of this section.

(b) Where an election is made to pay tax in accordance with subsection (2), the company concerned shall within 21 days of the end of each of the 5 calendar years which follow the year in which the migration date occurs deliver to the Revenue Commissioners a statement, notwithstanding that the company has not received a notice to prepare and deliver such a statement, by such electronic means and in such form and format as the Revenue Commissioners may specify, in respect of the relevant period, for the purposes of tax—

- (i) specifying whether the company is treated under the laws of a relevant territory as resident for the purposes of income tax or corporation tax (or any tax imposed in that territory which corresponds to income tax or corporation tax) in that territory throughout that relevant period, and
- (ii) providing such other information as may be required by the Revenue Commissioners for the purposes of this section.

(6) Notwithstanding subsections (2) and (4), if, with respect to the company referred to in section 627(2), any of the events specified in subsection (7) occurs, then any amount of tax which has not been paid at the time of the event, and any interest charged on that amount in accordance with subsection (9), shall become due and payable on the occurrence of that event.

(7) Each of the following is an event referred to in subsection (6):

- (a) the assets referred to in section 627(2) are sold or otherwise disposed of;
- (b) the assets referred to in section 627(2) are transferred to a third country, but this is subject to subsection (8);
- (c) the company ceases to be resident in a Member State and becomes resident in a third country or the business carried on by a permanent establishment of the company is transferred to a third country, but this is subject to subsection (8);
- (d) the company becomes insolvent or a liquidator is appointed to the company; or
- (e) the company fails to pay the instalments referred to in subsection (2) on the due date and this failure has not been rectified within 12 months of that date.

(8) A reference in subsection (7)(b) or (c) to a third country does not include a reference to a third country that is a party to the EEA Agreement if it has concluded an agreement with the State or the European Union equivalent to the mutual assistance provided for in the 2010 Directive.

(9) (a) Where tax becomes due and payable at any time under this section, simple interest shall be payable on the amount of that tax and shall be calculated, from the specified date until the date of payment, for any day or part of a day during which the amount of tax remains unpaid, at the prevailing rate specified in the Table to subsection (2)(c)(ii) of section 1080, and such interest shall be due and payable when the tax concerned is due and payable.

(b) Interest charged on tax shall be added to each of the instalments referred to in subsection (2) and shall be paid at the same time as such instalment is due.

(10) The Revenue Commissioners may, where it appears to them that the deferral of tax would otherwise present a serious risk to collection of that tax, require a company which has made an election under subsection (2) to give security, or further security, of such amounts and in such form and manner as they may determine, for the payment of tax, within 30 days from the date of service on the company of a notice in writing.

(11) Subsection (10) shall not apply to a company to which section 629A applies.

(12) All amounts of tax and interest shall be paid to the Collector-General.

(13) Any amount of tax and interest payable in accordance with this section shall be payable without the making of an assessment.

(14) (a) The Collector-General may, at any time before the end of the period beginning with the date on which tax was due and payable by reference to this section and ending 3 years after the time when a statement under subsection (5)(b), specifying the amount of that tax, is made and delivered to the Collector-General, serve on—

(i) a company which is or, during the period of 12 months ending with the date when tax became due and payable, was a member of the same group (within the meaning of section 629A(1)) as a company to which section 627(2) applies, or

(ii) a person who is, or during the period mentioned in subparagraph (i) was, a controlling director (within the meaning of section 629A(1)) of a company to which section 627(2) applies,

a notice—

(I) stating the amount which remains unpaid of the tax payable and the date on which the tax became due and payable, and

(II) requiring the company referred to in subparagraph (i) or the person referred to in subparagraph (ii), as the case may be, to pay that amount within 30 days of service of the notice,

and, in the event of the serving of such notice, the amount referred to in subparagraph (l) shall be so payable by the company or person concerned, as the case may be.

(b) Any amount which a person is required to pay by a notice under this subsection may be recovered from the person as if it were tax due by such person, and such person may recover any such amount paid on foot of a notice under this section from the company concerned.

(c) A payment in pursuance of a notice under this subsection shall not be allowed as a deduction in computing income, profits or losses for any tax purposes.

(15) Without prejudice to the provisions of this section, the provisions of the Corporation Tax Acts and the Capital Gains Tax Acts, as appropriate, relating to the collection and recovery of corporation tax, capital gains tax, and interest, shall apply, with any necessary modifications, to the collection and recovery of tax and interest payable in accordance with this section as they apply to any other corporation tax, capital gains tax, and interest.

### **Tax on non-resident company recoverable from another member of group or from controlling director**

**629A.** (1) In this section—

‘chargeable period’ means a year of assessment or an accounting period, as the case may be;

‘control’ shall be construed in accordance with section 432;

‘controlling director’, in relation to a company, means a director of the company who has control of the company;

‘director’, in relation to a company, has the same meaning as in section 116, and includes any person within section 433(4);

‘group’ has the meaning which would be given by section 616 if in that section references to residence in a relevant Member State were omitted and for references to ‘75 per cent subsidiaries’ there were substituted references to ‘51 per cent subsidiaries’, and references to a company being a member of a group shall be construed accordingly;



'specified period', in relation to a chargeable period, means the period beginning with the specified return date for the chargeable period (within the meaning of section 959A) and ending 3 years after the time when a return under Chapter 3 of Part 41A for the chargeable period is delivered to the Collector-General;

'tax' means corporation tax or capital gains tax chargeable by virtue of section 627(2);

'taxpayer company' means a company which is chargeable to tax by virtue of section 627(2).

- (2) This section shall apply at any time on or after 10 October 2018 where tax payable by a company for a chargeable period (in this section referred to as 'the chargeable period concerned') is not paid within 6 months after the date on or before which the tax is due and payable.
- (3) The Revenue Commissioners may, at any time before the end of the specified period in relation to the chargeable period concerned, serve on any person to whom subsection (4) applies a notice—
  - (a) stating the amount which remains unpaid of the tax payable by the taxpayer company for the chargeable period concerned and the date on or before which the tax became due and payable, and
  - (b) requiring that person to pay that amount within 30 days of the service of the notice.
- (4) (a) This subsection shall apply to any person, being—
  - (i) a company which is, or during the period of 12 months ending with the time when the gain accrued was, a member of the same group as the taxpayer company and which is resident in the State, and
  - (ii) a person who is, or during that period was, a controlling director of the taxpayer company or of a company which has, or within that period had, control over the taxpayer company and who is resident in the State.
- (b) This subsection shall apply in any case where the gain accrued before 10 October 2019, with the substitution in paragraph (a)(i) of 'beginning with 10 October 2018, and' for 'of 12 months'.

(5) Any amount which a person is required to pay by a notice under this section may be recovered from the person as if it were tax due by such person, and such person may recover any such amount paid on foot of a notice under this section from the taxpayer company.

(6) A payment in pursuance of a notice under this section shall not be allowed as a deduction in computing any income, profits or losses for any tax purposes.

**Transitional provision (power to serve notice under former section 629 not affected)**

**629B.** (1) The substitution of this Chapter effected by section 30 of the *Finance Act 2018* does not affect the power of the Revenue Commissioners to serve, on or after 10 October 2018, a notice such as is referred to in subsection (3) of the section 629 that was contained in this Chapter before 10 October 2018 (the 'former section 629') and, accordingly, the provisions of the former section 629 shall be deemed to remain in force in respect of tax payable, as referred to in subsection (2) of that section, that has not been paid within the period as specified in that subsection, notwithstanding —

(a) that the date on which that period expires is a date falling on or after 10 October 2018, or

(b) that the date on which the specified period (as defined in the former section 629) in relation to the chargeable period (as defined in that former section) concerned in the matter expires is a date falling on or after 10 October 2018.

(2) This section is without prejudice to the generality of the Interpretation Act 2005 and, in particular, section 27 of that Act as that section relates to a liability arising under the section 627 or 628 that was contained in this Chapter before 10 October 2018.

**Company ceasing to be resident on formation of SE or SCE**

**629C.** If at any time a company ceases to be resident in the State in the course of—

(a) the formation of an SE by merger, or

(b) the formation of an SCE,

then, whether or not the company continues to exist after the formation of the SE or (as the case may be) the SCE, the Tax Acts and the Capital Gains Tax Acts shall apply to any obligations of the company under this Act in relation to liabilities accruing and matters arising before that time—

(i) as if the company were still resident in the State, and

(ii) where the company has ceased to exist, as if the SE or (as the case may be) the SCE were the company.”.

<sup>8</sup> OJ No. L193, 19.7.2016, p.1

<sup>9</sup> OJ No. L84, 31.3.2010, p.1