

[35.02.06] Foreign Branch Double Taxation Relief

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Introduction

The purpose of this manual is to outline how relief from double taxation may be claimed in respect of foreign tax paid on a company's foreign branch profits where the income is recognised for tax purposes in Ireland in an earlier period than in the foreign branch territory. This information was originally published in Statement of Practice SP-CT June 2014.

1. Timing mismatch in recognition of income

A company, which is resident in Ireland, is liable to corporation tax on its worldwide income including income of any branch or agency through which it trades in a territory outside the State. The income of the branch or agency may also be charged to tax in the other territory. In general, double taxation is prevented by the company claiming relief under the relevant double taxation agreement or, in the absence of such an agreement, under the unilateral relief provisions in the Taxes Consolidation Act 1997. Relief is granted by reducing the Irish tax on the doubly taxed income by the foreign tax on that income.

Differences can arise between the profits of a foreign branch computed in accordance with Irish rules (i.e. the Irish measure of the branch profits) and the profits of the branch computed in accordance with foreign rules in the branch territory. This arises in the insurance sector, in particular, due to substantial differences in the timing of recognition of investment gains and acquisition expenses and differences in the valuation of policyholder liabilities between Ireland and the foreign branch territory. For example, some countries allow tax returns to be based on regulatory surplus, which would typically be prepared on a more conservative basis with larger claims reserves and earlier recognition of expenses than would be case under GAAP or IFRS.

These differences may lead to double taxation where income is recognised for tax purposes in different periods in Ireland and the foreign branch territory. When the income concerned is recognised for tax purposes in Ireland for an earlier period than in the foreign branch territory, there will be no double taxation relief because there will be no doubly-taxed income when that income is taxed in Ireland. When the income is subsequently recognised for tax purposes in the other territory there may be no Irish tax on the income against which to relieve the foreign tax.

This Statement of Practice provides a measure of relief where, in the circumstances described above, an overall loss of foreign tax credit would otherwise arise. Relief is provided by means of a carry back of foreign tax credit.

2. Grounds on which relief may be claimed

Where part of an accounting period could not otherwise be allowed as a tax credit against Irish corporation tax for that accounting period, **solely as a result of differences in the timing of recognition of income for tax purposes in Ireland and another territory**, 87.5 per cent of that part of the foreign tax may be allowed as a credit against Irish corporation tax which has been paid in respect of foreign branch profits for a preceding accounting period **as a result of differences in the timing of recognition of income for tax purposes in Ireland and the other territories**.

In identifying the foreign tax that cannot be relieved as a credit 'solely as a result of differences in timing of recognition of income'; the amount of unrelieved foreign tax that is attributable to other factors must be excluded. These other factors may include, for example, the following:

- differences arising due to tax rates in the two jurisdictions
- permanent disallowance or prohibition of expenses
- exemption of income
- R&D credits
- differences arising due to loss relief¹

Any remaining unrelieved foreign tax may be carried forward as a credit against Irish corporation tax in respect of branch profits of succeeding accounting periods in the normal way.

3. Administrative Practice

Where a claim is made by reference to this Statement of Practice, relief will be given by repayment of corporation tax of the accounting period for which a credit is claimed in accordance with this Statement of Practice.

A claim is subject to the general 4-year time-limit on claims for repayment of tax contained in Section 865 of the Taxes Consolidation Act 1997. The claim must be made within four years after the end of the accounting period to which the claim for repayment relates.

¹ except insofar as the difference in the loss of relief available in Ireland and the other territories arises solely as a result of the differences in the timing of recognition of revenue and/or expenses between Ireland and the foreign branch territory

Relief will be given in respect of foreign tax when it has been paid, provided a claim has been made in respect of the earlier accounting period within the general 4-year time-limit. The claim must specify the amount of Irish corporation tax that has arisen for that accounting period in respect of so much of the foreign branch profits as will be recognized for tax purposes in the foreign branch territories concerned in a later period. The claim must specify that amount of the profits and it must provide full details of the timing differences concerned.

This practice may not be applied to credit foreign tax more than once against Irish tax nor to credit foreign tax that is not ultimately paid (without repayment or set off) in the foreign jurisdiction.

4. Commencement

This Statement of Practice will come into effect as respects foreign tax paid for periods commencing on or after 1 January 2013.

The practice should be relied upon only to the extent that a claim is made in good faith. Revenue will monitor claims made under this Statement of Practice and may amend or withdraw this practice at any time as respects relief in respect of any foreign tax in respect of a period commencing on or after the date of notice of such amendment or withdrawal.