

DOUBLE TAXATION

Dividends from UK Companies

Where an Irish resident Individual or an Irish resident Company receives dividend income from a UK company, Irish Taxation implications arise. In the case of an individual the income received is part of the individual's total income subject to income tax at the current highest rate of 41%. Credit is available against Irish Income tax liability for Irish resident individuals against UK tax paid on the dividend and on the underlying tax on the company profits.

The receipt of a dividend from a UK subsidiary is potentially subject to Irish Tax at 25% (not 12 ½ %). This is unlike the position where dividends are received from an Irish resident companies, which were exempt from Irish Corporation Tax.

Due to a 2008 change, foreign dividends paid from trading profits are taxed at 12.5% (previously 25%). If the dividend is not paid from trading profits, it is taxed at 12.5% provided: (a) 75% or more of the paying company's profits are trading profits, or derived from trading profits arising in EU States or treaty countries.(b) 75% or more of the recipient's assets, on a consolidated basis, must consist of trading assets.

Where the recipient company owns not more than 5% of a paying company based in an EU State or treaty country, the dividend is also taxed at 12.5%.

The EU Parent / Subsidiary Directive reduces tax on dividends in groups between member states. The Directive requires relief to be given by way of exemption from withholding tax. Where a parent company receives a dividend from a subsidiary, credit is to be allowed on foreign tax against Irish corporation tax. A UK subsidiary company for the purpose of the Directive is one in which the Irish company has at least a 5% shareholding.

Irish Companies are entitled to credit for certain foreign tax paid against the Irish Tax charge in respect of the same income. The credit relates to the UK Corporation Tax which is deemed to be incurred on the dividend income. The calculation is as set out in our general note on double taxation.

Any excess tax credit arising from the dividend may be pooled by the Irish recipient company and be claimed as a credit against corporation tax arising on other dividend income. Because of the low Irish Corporate tax rate (12½%) the foreign tax on income which is available as a credit against the dividend may exceed the Irish tax in respect of it. Any excess can be offset against either other dividends of the same year or carried forward against future liabilities.

UK Perspective

A branch will normally be regarded as a permanent establishment and hence subject to both UK tax and overseas tax. A subsidiary incorporated overseas will not be taxed in the UK, provided it is centrally managed and controlled in the overseas country. It will be resident there for tax purposes and not in the UK.

Double taxation relief is also available in relation to underlying tax in relation to receipts by UK resident companies from abroad. This is available where dividend is received from an overseas company in which the UK company has at least 10% holding. Credit is allowed on the overseas tax paid on the profits of the overseas company. Amounts of withholding and underlying tax are added back to the net dividend to get the gross amount.

The rate of underlying tax is calculated by calculating the dividend and withholding tax is a percentage of the distributable profit of the company. Double taxation relief is given in the UK at the lower of the overseas tax suffered or the effective rate of Corporation Tax in the UK attributable to the overseas income.

Where there is excess foreign tax which cannot be relieved, it can be used in certain ways in the UK. In the case of branches it can be carried back with three years against UK Corporation Tax from the same branch. It can be carried forward indefinitely against UK Corporation Tax on profits from the same branch.

In the case of dividends the rules operate in the same way as branches allowing three year carry back. Where there are several overseas holdings onshore pooling allows excess foreign tax to be offset against UK Corporation Tax liability on certain other dividends.

This Guide is intended as an overview and broad outline of the matters covered in it. Its purpose is to inform and raise awareness. We are happy to offer specific legal advice on particular circumstances.

This Guide should not be relied on as a substitute for comprehensive legal advice with reference to the particular circumstances.

While we have taken due care in the preparation of this publication, we do not accept legal liability as a result of any reliance placed on anything in this Guide. The reader should rely only on specific legal or taxation advice.