

DOUBLE TAXATION RELIEF

Double Taxation Treaties

The OECD is an organisation of developed countries whose purpose is to expand world trade and maintain stability. The OECD has published a model double taxation convention which forms the basis for most double taxation agreements between “Western” countries.

The main function of double taxation treaties is to avoid double tax on the same income and to determine which country has the right to tax income of particular types and particular origin. Double taxation treaties also provide for the exchange of information between Revenue bodies and mutual assistance in collecting tax.

The Irish UK Double Taxation Treaty applies where the same income is subject to tax under both Irish and UK tax legislation. The treaty is available to residents of the UK and Ireland. There is a special definition of “residence” for this purpose. The Treaty may override national rules where it applies. For example, where an individual is deemed resident in both Ireland and the UK under the respective national laws of Ireland and the UK, the treaty has overriding rules.

The Double Tax Treaty contains rules dealing with different types of income. For some types of income, one country only can tax and the income is exempt from tax in the other country. In other cases, one country has primary right to tax and the other country gives a credit. The country where the source of income is, usually has primary right to tax.

Business Profits of a UK Branch or Permanent Establishment

When a business is carried on by an Irish resident company through a branch or permanent establishment in the United Kingdom, the business profits earned by the

permanent establishment are taxable in the United Kingdom and in Ireland. The UK has the primary right to tax income and capital gains arising from a business conducted by an Irish resident company through a branch or permanent establishment in the UK.

Income earned by a UK branch of an Irish company is income of the Irish company. It is directly taxable in Ireland. The income is inherently income of the Irish Company with the UK Branch. The U.K. branch is in effect only a presence of the Irish Company in the U.K.

The Double Taxation Treaties commentary goes into a good deal of detail as to what constitutes a permanent establishment. See our separate note on a permanent establishment.

Double taxation relief is available in Ireland in respect of UK corporation tax paid on the branch's trading profits and capital gains. The amount of credit given for UK tax cannot exceed the Irish tax charged on the same income. The Irish effective rate of income is not determined by the tax rate but by the actual effective tax rate involved. The UK effective rate of tax is ascertained by dividing the total amount of the UK income tax by the gross income as computed by the UK tax for that source. Any UK tax not relieved by way of credit will be allowed as a deduction from the UK income included.

Dividends

The Double taxation treaty provides for a withholding tax of a maximum of 10% on payment of interest and 15% on dividends. Where the recipient holds a least 25% of the shares in the paying company, the rate is 5%. See our separate note on Double Tax relief on dividends.

Employment Income

A non-resident is taxable in respect of the UK duties of his employment. A resident of Ireland is exempt from taxation in the UK unemployment income if the following conditions are met; the recipient is not present in the UK for more than 182 days in the

tax year; and the remuneration is paid by on behalf of an employer who is not resident in the UK and the remuneration is not borne by a permanent establishment takes place in the UK start

Pensions

An individual is to be taxed only in a state of residents on pension or similar remuneration paid to him in respect of a past employment even that employment was and not conducted in the state of receipt.

This does not apply to public pensions and income paid by a governmental authority. These latter types of income are taxable in the country of payment.

Other Income

The treaty provides that other income, not specifically mentioned is to be taxable in the place where the recipient is resident start

Calculation of the Relief

The amount of credit to be allowed for UK tax cannot exceed the Irish tax charged on that income. This is ascertained by calculating the “effective rate” of Irish tax on the income. This is the rate determined by expressing the Irish tax as a percentage of the aggregate of the total UK income. The total UK income means UK income before deducting personal tax credits and reliefs. The UK income to be included is the gross foreign income, before deducting UK tax credits and withholding tax.

In calculating the liability to Irish income tax, the UK income to be included is arrived at by “grossing up” the UK income net of tax at the lower of the Irish and UK effective rates. Grossing up by the effective rate means calculating the gross sum which after deduction of the effective rate yields the net UK income.

UK tax is to be allowed as a credit against the Irish tax on the same profits or income.

Any UK tax which is not relieved by way of credit (due to the above restriction) will be allowed by way of a deduction from the UK income to be included in the Irish tax calculation.

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.

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