

OVERSEAS ISSUES UNDER UK TAX LAW

General

This note looks at overseas tax issues from the UK perspective. This position is broadly similar to the equivalent Irish position.

A company resident in the UK is subject to Corporation Tax on its worldwide income. An overseas branch is an extension of the UK business. A branch is the company's presence in another jurisdiction. There must be some element of establishment in the other jurisdiction in order to constitute a branch. Generally a branch will be a presence with the ability to trade.

All of foreign branch profits of a UK resident company is taxable in the UK. They will be taxed as part of the UK trading profits. UK capital allowances are available on the branch assets. The branch trading losses are eligible for UK loss relief including group relief. UK trading losses can be offset against overseas branch profits.

In contrast, a UK company may decide to set up a subsidiary overseas. This is a separate legal entity. Dividends paid to the UK company are liable to tax in the UK. No UK capital allowances on the overseas assets are allowed. No relief is allowed for UK losses.

Profits from an overseas branch are normally taxed as UK trading profits. Dividends from an overseas company are included in the Corporation Tax computation as overseas dividend income.

The overseas income (either branch profit or dividends) may be subject to both overseas tax and the UK Corporation Tax. Relief for double taxation is given by a tax credit to the UK resident company.

Relief is given against overseas tax in the following way. In the case of a branch, the overseas income is included gross of overseas tax in the Corporation Tax computation. Double tax relief is given for the overseas tax suffered by way of credit against UK Corporation Tax liability. The amount of double taxation relief is limited to the lower of the amount of overseas tax on the overseas income or the UK Corporation Tax payable on the same overseas income.

There are two forms of overseas tax which may be payable on overseas income. A withholding tax may apply at source in the overseas country e.g. on dividends, interest, rent. Double taxation relief is always available for withholding tax. Generally there is no withholding tax on payments within the EU.

In addition, overseas tax may have been paid on the profits of the overseas company out of which dividends is paid. Relief for the underlying tax is only available where the UK resident company which receives the dividend controls more than 10% of the voting power of the overseas company.

Underlying tax is the overseas tax paid on the profits of the overseas resident company out of which the dividend is paid. Where relief on the underlying tax is available, the underlying tax is added to the gross amount of the overseas dividend and UK Corporation Tax is then charged on the total.

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.