



Double taxation relief: revenue protection

Who is likely to be affected?

Companies which make claims for double taxation relief (DTR) may be affected by this measure.

General description of the measure

The measure will make two changes to the DTR rules to prevent avoidance.

Policy objective

The measure reinforces the UK's DTR policy that relief for foreign tax should only be given where income has been doubly taxed, once in the UK and once in a foreign territory.

Background to the measure

This measure was announced at Autumn Statement 2013.

Detailed proposal

Operative date

Both changes in this measure will have effect from 5 December 2013.

This measure will have effect on non-trading credits for accounting periods beginning on or after 5 December 2013, with transitional provisions where accounting periods straddle this date.

The amendment to the rules on refunded tax credits will take account of payments made by the foreign tax authority on or after 5 December 2013.

Current law

Part 2 of Taxation (International and Other Provisions Act) 2010 (TIOPA 2010) sets out rules allowing foreign tax to be credited against UK tax in certain circumstances.

The overarching principle of the DTR rules is that relief is allowed against UK tax on the same income or gain on which foreign tax has been suffered.

Section 42 imposes a limit on the amount of credit for foreign tax against corporation tax to $R \times IG$, where R is the corporation tax (CT) rate payable by the company and IG is the amount of income or gain on which foreign tax has been suffered.

Section 34 provides that if credit is claimed for foreign tax and a payment in respect of that tax has been made by a tax authority to a connected person, the amount of credit is reduced by the amount of the payment.

Section 112 provides that where foreign tax is paid but no credit is claimed and relief is given as a deduction from the foreign income assessable to UK tax, that deduction is reduced if the foreign tax is repaid.

Section 80 and Section 115 provide that where any adjustment is necessary because of a payment made by a non-UK tax authority, the taxpayer claiming relief by credit or deduction must notify HMRC within one year of the repayment.

Proposed revisions

Legislation will be introduced in Finance Bill 2014 to put beyond doubt that Section 42 is to be applied separately to each non-trading credit from a loan relationship or an intangible fixed asset, so that credit for foreign tax arising on such a non-trading credit is limited to the amount of CT on that non-trading credit.

Legislation will also be introduced in Finance Bill 2014 to amend Sections 34 and 112 TIOPA 2010 to reduce the credit allowed or deduction given where a repayment is made by a foreign tax authority and there are arrangements in place which enable another person to receive the repayment of foreign tax.

Summary of impacts

Exchequer impact (£m)	2013-14	2014-15	2015-16	2016-17	2017-18	2018-19
	+ 10	+ 20	+5	nil	nil	nil
	These figures are set out in Table 2.1 of the Autumn Statement and have been certified by the Office for Budget Responsibility. More details can be found in the policy costings document published alongside the Autumn Statement.					
	This measure supports the Exchequer in its commitment to protect revenue.					
Economic impact	The measure is not expected to have any significant economic impacts.					
Impact on individuals and households	The measure has no impact upon individuals and households as it is a corporate measure.					
Equalities impacts	The measure only affects corporate entities, not individuals, and no impacts have been identified.					
Impact on business including civil society organisations	This measure is expected to have no impact on compliant businesses or civil society organisations.					
Operational impact (£m) (HMRC or other)	This measure is expected to have negligible operational impact.					
Other impacts	Other impacts have been considered and none have been identified.					

Monitoring and evaluation

The measure will be monitored through monitoring the number of DTR avoidance schemes and through regular communication with taxpayers and practitioners affected by the measure.

Further advice

If you have any questions about this change, please contact Paula Jarnecki on 03000 585583 (email: paula.jarnecki@hmrc.gsi.gov.uk) or Daniel Berry on 03000 585972 (email: daniel.berry@hmrc.gsi.gov.uk).

Declaration

David Gauke MP, Exchequer Secretary to the Treasury has read this Tax Information and Impact Note and is satisfied that, given the available evidence, it represents a reasonable view of the likely costs, benefits and impacts of the measure.

1 Limit on double taxation relief against corporation tax

- (1) TIOPA 2010 is amended as follows.
- (2) For section 34(1)(b) (reduction in credit: payment by reference to foreign tax) substitute—
 - “(b) a tax authority makes a payment by reference to that tax, and that payment—
 - (i) is made to P or a person connected with P, or
 - (ii) is made to some other person directly or indirectly in consequence of a scheme that has been entered into.”
- (3) In section 34, after subsection (3) insert—
 - “(4) In subsection (1)(b)(ii) “scheme” includes any scheme, arrangement or understanding of any kind, whether or not legally enforceable, involving a single transaction or two or more transactions.”
- (4) For section 112(3)(b) (deduction from income for foreign tax (instead of credit against UK tax)) substitute—
 - “(b) a tax authority makes a payment by reference to that tax, and that payment—
 - (i) is made to P or a person connected with P, or
 - (ii) is made to some other person directly or indirectly in consequence of a scheme that has been entered into,”.
- (5) In section 112, after subsection (7) insert—
 - “(8) In subsection (3)(b)(ii) “scheme” includes any scheme, arrangement or understanding of any kind, whether or not legally enforceable, involving a single transaction or two or more transactions.”
- (6) In section 42(4) (provisions relating to the limit imposed by section 42(2) on credit against corporation tax) for the “and” after “(as defined in section 44),” substitute—

“section 49B, which requires subsection (2) to be applied separately to certain non-trading credits, and”.
- (7) After section 49A insert—

“49B Applying section 42(2) to non-trading credits from loan relationships etc

 - (1) Subsection (2) applies for the purposes of section 42(2) if—
 - (a) the company has a non-trading credit relating to an item, and
 - (b) there is in respect of that item an amount of foreign tax for which, under the arrangements, credit is allowable against United Kingdom tax.
 - (2) Credit for the foreign tax in respect of that item must not exceed—

$$R \times (NTC - D)$$
 where—
 - R has the same meaning as in section 42(2),
 - NTC is the amount of the non-trading credit, and
 - D is the amount given by subsection (3).
 - (3) D in the formula in subsection (2) is calculated as follows—

Step 1

Calculate the total amount (“TNTD”) of the non-trading debits which are to be brought into account by the company in the same accounting period, and in respect of the same thing, as the non-trading credit.

Step 2

Calculate the total (“A”) of the amounts which, as amount D, have already been deducted under subsection (2) from other non-trading credits which are to be brought into account in the same period and in respect of the same thing.

Step 3

Calculate the amount given by –
$$\text{TNTD} - \text{A}$$

Step 4

If the amount calculated at step 3 is greater than or equal to NTC, then D equals NTC.

Otherwise, D is the amount calculated at step 3.

- (4) In this section –
- “non-trading credit” means –
 - (a) a non-trading credit for the purposes of Part 5 of CTA 2009 (which is about loan relationships but also has application in relation to deemed loan relationships and derivative contracts), or
 - (b) a non-trading credit for the purposes of Part 8 of CTA 2009 (intangible fixed assets), and
 - “non-trading debit” means –
 - (a) a non-trading debit for the purposes of Part 5 of CTA 2009, or
 - (b) a non-trading debit for the purposes of Part 8 of CTA 2009.”
- (8) The amendments made by subsections (2), (3), (4) and (5) have effect in relation to payments made by a tax authority on or after 5 December 2013.
- (9) The amendments made by subsections (6) and (7) have effect in relation to accounting periods beginning on or after 5 December 2013.
- (10) For the purposes of subsection (9), an accounting period beginning before, and ending on or after, 5 December 2013 is to be treated as if so much of the period as falls before that date, and so much of the period as falls on or after that date, were separate accounting periods.

EXPLANATORY NOTE

LIMIT ON DOUBLE TAXATION RELIEF AGAINST CORPORATION TAX

SUMMARY

1. Clause [X] amends two provisions of Taxation (International and Other Provisions) Act 2010 (TIOPA).
2. Firstly, the clause extends the existing rule that relief for foreign tax is to be reduced if a payment is made by a tax authority by reference to that tax to the claimant or a person connected with the claimant. The new rule will also apply where a payment is made to a person who has made arrangements to receive the payment.
3. Secondly, the clause limits the amount of relief for foreign tax on a non-trading credit from a loan relationship or intangible fixed asset to the amount of UK tax on that net amount of the credit after deducting related debits. It responds to avoidance schemes that seek to exploit mismatches between the amounts of UK and foreign income.

DETAILS OF THE CLAUSE

4. Subsection 2 extends section 34(1)(b) TIOPA so that it applies where a person claims credit for foreign tax and a payment is made by a tax authority to that person, to a connected person or another person who has entered into a scheme to receive the payment, the foreign tax credit must be reduced by the amount of the payment.
5. Subsection 3 inserts a new section 34(4) to define what is meant by “scheme” in section 34(1)(b).
6. Subsection 4 amends section 112(3)(b) TIOPA so that where a deduction has been given to a person for foreign tax and a payment by reference to that tax is made by a tax authority to the person, to a connected person or another person who has entered into a scheme to receive the payment, the amount of the deduction is to be reduced accordingly. It is the equivalent to subsection 2 in the circumstances where there is no claim to relief for foreign tax and instead a deduction for foreign tax is allowed.
7. Subsection 5 inserts a new section 112(8) to define “scheme” in identical terms to new section 34(4).
8. Subsection 6 adds a signpost to section 42(4) to show that in applying the limit on credit for foreign tax in section 42(2), that rule must be read with the new section 49B.
9. Subsection 7 inserts the new section 49B into TIOPA.

10. New section 49B(1) sets out the circumstances where the operative rule in new section 49B(2) applies. These are where a company has a non-trading credit (as defined in new section 49B(4)) relating to an item where credit for foreign tax is allowable against UK tax under either a treaty arrangement or as unilateral relief. A simple example would be where the company receives interest from a foreign source after deduction of withholding tax.
11. New section 49B(2) is the main operative rule. It states that any credit for foreign tax against UK tax in respect of a non-trading credit on an item cannot exceed the amount of corporation tax on the amount of the non-trading credit less an amount of certain non-trading debits (“D”) which is given by the formula in new section 49B(3).
12. New section 49B(3) sets out the calculation of “D”. The subsection identifies non-trading debits in respect of the same “thing” (such as a loan relationship) that gives rise to the non-trading credit, and for the same accounting period. The total of these debits is reduced by any amounts that have already been deducted under the new rule from other non-trading credits. “D” is then taken as the smaller of this remaining amount and the amount of the non-trading credit to ensure that the calculation in new section 49B(2) does not produce a negative amount.
13. The purpose of new sections 49B(2) and (3) taken together is to identify the amount of ‘profit’ within the wider non-trading profit that directly relates to the non-trading credit on the loan relationship or other thing giving rise to a claim for relief for foreign tax. The relief is then limited to the amount of corporation tax on that amount. In practice, there will often not be any debits within the scope of new section 49B(3) so this amount will simply be the amount of the non-trading credit in question, but the rule is there to deal with the circumstances where debits do arise.
14. New section 49B(4) defines “non-trading credit” and “non-trading debits”. There are two types of non-trading credits. Firstly, non-trading credits for the purposes of the loan relationship rules in Part 5 of the Corporation Tax Act 2009 (CTA09) (which will include non-trading credits on relationships treated as loan relationships under Part 6 of CTA09 and on derivative contracts arising under Part 7 CTA09). Secondly, non-trading credits for the purposes of the intangible fixed assets rules in Part 8 of CTA09. “Non-trading debits” are defined in similar terms.
15. Subsection 8 is the commencement provision for the amendments to section 34. The changes take effect for payments made by a tax authority on or after 5 December 2013.
16. Subsections 9 and 10 are the commencement provisions for new section 49B(2). Subsection 9 says that the new rule applies for accounting periods beginning on or after 5 December 2013, subject to subsection 10, which applies where an accounting period straddles that date. In those circumstances the new rule applies as if the accounting period is split into two separate accounting periods, one relating to the period before 5 December 2013 and one relating to the period on or after that date.

BACKGROUND NOTE

17. The existing legislation in section 34 TIOPA applies where credit for foreign tax is allowed to a person and the foreign tax authority makes a payment by reference to that tax to that person, or to someone connected with that person. The rule requires the relief for foreign tax to be reduced by the amount of that payment.

18. The amendments to sections 34 extend the circumstances where there will be a reduction in credit following payments by the foreign tax authority. The rule will also apply where the payment is made to another person as a consequence of a scheme that has been entered into. This will stop attempts to get around the existing legislation.

19. A non-trading profit arises under the loan relationship rules where the total amount of the non-trading credits brought into account exceed the total amount of non-trading debits. Where the non-trading credit relates to an item such as interest that has suffered foreign tax then relief for some or all of that foreign tax may be available to set against UK tax on the non-trading profit.

20. The clause provides for a limit on the amount of such relief to the amount of corporation tax on the amount of the non-trading credit, after deduction of any related debits, to which the foreign tax relates. This will make clear that schemes that attempt to exploit mismatches between the foreign and UK tax treatment of items of income in order to effectively cross-credit the foreign tax against UK tax on other income are not effective.

21. If you have any questions about this change, or comments on the legislation, please contact Amanda Robinson on 03000 586062 (email: amanda.s.robinson@hmrc.gsi.gov.uk) or Daniel Berry on 03000 585972 (email: daniel.berry@hmrc.gsi.gov.uk).