

FINANCE ACT 2014

EXPLANATORY NOTES

INTRODUCTION

Section 292: Amounts Allowed by Way of Double Taxation Relief

Summary

1. This section amends two provisions of Taxation (International and Other Provisions) Act 2010 (TIOPA).
2. Firstly, the section 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 section 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 Section

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

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which received Royal Assent on 17 July 2014*

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 loan relationship, derivative contract or intangible fixed asset 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 all non-trading credits brought into account under Part 5 CTA09 through other provisions such as Part 6 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.

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20. The section 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.