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Insurance Tax Insight
Foreign branch double taxation relief
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Statement of Practice

The Revenue Commissioners have recently issued a statement of practice on the calculation of foreign branch double taxation relief in certain situations where timing differences arise regarding the recognition of income at the level of an Irish company, compared with the recognition of the same income at the level of a foreign branch.

Previous practice

In the absence of this Statement of Practice, broadly, where income is recognised for tax purposes in Ireland in an earlier accounting period than that of the foreign branch territory, no double taxation relief would be available because no double-taxed income would arise in Ireland in the relevant accounting period.

Revised practice

The Statement of Practice applies to foreign tax paid for accounting periods commencing on or after 1 January 2013, and provides relief in the circumstances described above where an overall loss of foreign tax credits otherwise would occur. The relief is provided by way of a carryback of foreign tax credits (the amount of the credit allowed to be carried back is 87.5% of the foreign tax paid at the level of the foreign branch in respect of income that had been previously recognised for Irish tax purposes, at the level of the Irish company, in an earlier accounting period).

The change of practice is of relevance to the insurance sector, particularly in the context of Irish insurance companies with foreign branches, where timing differences for accounting and tax purposes may arise between jurisdictions in relation to when the income or expense is recognised.

A tax refund claim under this statement of practice must be made within four years after the end of the accounting period in which the double-taxed income was first recognised in Ireland.

Example

By way of example, suppose an Irish insurance company has a French branch. Under IFRS rules, the branch has an accounting profit of €10 million in FY2012 and has an accounting loss of €2 million in FY2013. The branch results over FY2012 and FY2013 are made up as follows:

	2012	2013
Unrealised investment gains	7,000,000	Nil
Other trading profits/ (losses)	3,000,000	(2,000,000)
IFRS accounting profits	10,000,000	(2,000,000)

In FY2012, the branch profits of €10 million are recognised for tax purposes in Ireland. However, in France, assume unrealised investment gains are ignored until they are realised for French tax purposes.

	French computation	Irish computation
IFRS Accounting Profits	10,000,000	10,000,000
Deduct unrealised gains	(7,000,000)	
Taxable profits	3,000,000	10,000,000
French tax @ 33%	990,000	
Irish tax @ 12.5%		1,250,000

Broadly, the Double Tax Relief available in Ireland in FY2012 is as follows:

Irish measure of taxable branch profits	10,000,000
Total foreign tax	(990,000)
Net foreign income	9,010,000
Foreign effective rate	9.9%
Irish effective rate	12.5%
Gross up net foreign income at the lower foreign rate	10,000,000
Maximum credit is limited to foreign tax incurred	(990,000)

Irish Corporation Tax Computation in FY2012	
Taxable profits	10,000,000
Tax payable @ 12.5%	1,250,000
Less double tax credit	(990,000)
Tax due	260,000

Therefore, in FY2012, some branch profits remained within the charge to Irish corporation tax which could not be fully relieved by foreign tax credits.

In FY2013, investment gains of €7 million are realised and are subsequently recognised for French tax purposes. However, as such gains were taxed in Ireland in the prior year and the branch is in a loss position in FY2013, there will be no Irish tax arising in respect of the French branch in FY2013.

	French computation	Irish computation
IFRS accounting losses	(2,000,000)	(2,000,000)
Add realised gains	7,000,000	__________
Taxable profits/ (losses)	5,000,000	(2,000,000)
French tax @ 33%	1,650,000	
Irish tax @ 12.5%		Nil

Therefore, in the absence of the Statement of Practice, there is no credit relief in Ireland for the French tax arising in FY2013 despite the fact that the realised gains had been taxed in Ireland in the earlier period.

The Statement of Practice now provides for relief by means of a carry back of foreign tax credit where the foreign tax arises solely as a result of differences in the timing of recognition of income for tax purposes in Ireland and another territory.

Under the statement of practice and where Irish corporation tax has arisen in an earlier accounting period, the Irish company is entitled to make a claim whereby 87.5% of the foreign tax may be allowed as a credit against Irish corporation tax which has been paid in respect of the foreign branch profits for a preceding accounting period.

In the example above, the French tax arising in FY2013 is €1,650,000. The amount of foreign tax that is potentially allowed to be carried back is €1,443,750 (i.e. €1,650,000 @ 87.5%). However, the credit is limited to the Irish corporation tax which has been paid in respect of the foreign branch profits i.e. €260,000.

In computing the level of tax relief available in the earlier accounting period, a taxpayer must consider the Irish corporation tax attributable to the double-taxed income, while ignoring the impact of any other factors that could have affected the level of relief that may have been available (such as differences arising due to tax rates in the two jurisdictions, permanent disallowance or prohibition of expenses and exemption of income).

Deloitte observations

This is a welcome development for the Irish insurance sector and further enhances Ireland's double taxation relief regime for Irish insurance companies with operations in foreign jurisdictions. Although the statement of practice mainly was drafted with respect to the insurance sector, it also may apply to other situations.

The Statement of Practice applies in respect of foreign tax paid for accounting periods commencing on or after 1 January 2013. However, as noted above, there is a timing issue in terms of making a claim for a refund and such claims must be made no later than four years after the end of the accounting period in which the double-taxed income was first recognised in Ireland. If this situation applies to you, then we recommend that you should consider submitting any refund claims at the earliest available opportunity.

While the Statement of Practice acknowledges that any "unrelieved foreign tax" may be carried forward as a credit against Irish corporation tax on branch profits of subsequent accounting periods, currently the wording of the law may mean that it is not possible to carry forward unused foreign tax credits in certain cases.

Taking the example outlined above, you may have noted that the foreign tax suffered in respect of the French branch in FY2013 was €1,650,000. While the Statement of Practice permits a claim to be made in FY2012 to carry back €260,000 of this foreign tax, the Irish insurance company has not obtained any relief in Ireland for €1,390,000 of the remaining French tax (i.e. €1,650,000 less €260,000).

Under existing Irish tax legislation, the Irish insurance company must calculate their excess foreign tax credits available for carry forward by reference to the expense deduction available against the Irish measure of the foreign income. However, in the example above, the branch is in a loss position in FY2013. Therefore, no expense deduction is available and by extension, no relief is available to carry forward the unrelieved foreign tax of €1,650,000.

Deloitte and the insurance industry continue to make representations to the Department of Finance and the Revenue Commissioners on this matter. It is our preference that Irish tax legislation would be amended so that the carry forward of excess tax credits is permitted by reference to the foreign tax paid (as opposed to being computed by reference to expense deduction available). This would be of particular importance to the insurance industry as it is not unusual for foreign tax to arise in respect of a foreign branch where no Irish corporation tax arises on the same branch due to a branch loss.

The foreign tax credit regime has been enhanced and improved over the years and the Department of Finance are to be commended for such improvements. However, to further enhance Ireland's competitiveness, it would be beneficial if corporate taxpayers were given the alternative of opting for either a foreign tax credit regime or branch exemption regime.

A branch exemption regime is generally simpler and more transparent for taxpayers and in any case the foreign tax credit regime as it currently operates is set up, broadly, to ensure no further Irish tax arises on foreign branch profits. A branch exemption regime already exists in a number of other EU counties.

About this edition

This publication is designed to keep readers abreast of current developments, but it is a general guide only and is not intended to be a comprehensive statement of the law or regulations and not an exhaustive treatment of those current developments. Accordingly, the information in this publication is not intended to constitute tax, accounting, legal, investment, consulting, or other professional advice or services. It therefore cannot be relied on to cover specific situations; application of the principles set out will depend upon the particular circumstances involved and we recommend that you obtain professional advice before acting or refraining from acting on any of the contents of this publication.

Deloitte would be pleased to advise readers on how to apply the principles set out in this publication to their specific circumstances. If you would like to discuss any of the issues set out in this newsletter please contact your usual Deloitte contact or any of the Deloitte insurance contacts listed on the following page and they will be able to help you.

More information can be found on the Deloitte Ireland Insurance Website

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