

## SCHEDULE 24 Relief from Income Tax and Corporation Tax by Means of Credit in Respect of Foreign Tax

Sections 826 and 833.

ITA67 Sch10; F(MP) A68 s3(2) and Sch Ptl; F(No.2) A70 s1(c); FA74 s86 and Sch2 Ptl; CTA76 s23(2) to (4) and s166 and Sch4 Ptl and II; FA95 s60

### Interpretation

1. (1) In this Schedule, except where the context otherwise requires—

“arrangements” means arrangements for the time being in force by virtue of section 826 or section 12 of the Finance Act, 1950 ;

“the Irish taxes” means income tax and corporation tax;

“foreign tax”, in relation to any territory in relation to which arrangements have the force of law, means any tax chargeable under the laws of that territory for which credit may be allowed under the arrangements.

(2) Any reference in this Schedule to foreign tax shall be construed, in relation to credit to be allowed under any arrangements, as a reference only to tax chargeable under the laws of the territory in relation to which the arrangements are made.

### General

2. (1) Subject to this Schedule, where under the arrangements credit is to be allowed against any of the Irish taxes chargeable in respect of any income, the amount of the Irish taxes so chargeable shall be reduced by the amount of the credit.

(2) In the case of any income within the charge to corporation tax, the credit shall be applied in reducing the corporation tax chargeable in respect of that income.

(3) Nothing in this paragraph shall authorise the allowance of credit against any Irish tax against which credit is not allowable under the arrangements.

### Requirements as to residence

3. Credit shall not be allowed against income tax for any year of assessment or corporation tax for any accounting period unless the person in respect of whose income the tax is chargeable is resident in the State for that year or accounting period.

### Limit on total credit— corporation tax

4. (1) The amount of the credit to be allowed against corporation tax for foreign tax in respect of any income shall not exceed the corporation tax attributable to that income.

(2) For the purposes of this paragraph, the corporation tax attributable to any income or gain (in this subparagraph referred to as “that income” or “that gain”, as the case may be) of a company shall, subject to subparagraphs (3) to (5), be the corporation tax attributable to so much (in this paragraph referred to as “the relevant income” or “the relevant gain”, as the case may be) of the income or chargeable gains of the company computed in accordance with the Tax Acts and the Capital Gains Tax Acts, as is attributable to that income or that gain, as the case may be.

(3) For the purposes of subparagraph (2), the relevant income of a company attributable to an amount receivable from the sale of goods ) shall be the sum which would for the purposes of that section be taken to be the amount of the income of the company referable to the amount so receivable.

(4) Subject to subparagraph (5), the amount of corporation tax attributable to the relevant income or gain shall be treated as equal to such proportion of the amount of that income or gain as corresponds to the rate of corporation tax payable by the company (before any credit for double taxation relief) on its income or chargeable gains for the accounting period in which the income arises or the gain accrues (in this paragraph referred to as “the relevant accounting period”); but, where the corporation tax payable by the company for the relevant accounting period on the relevant income or gain is reduced by virtue of—

(a) section 448 by any fraction, the rate of corporation tax payable by the company on its income and chargeable gains for the relevant accounting period shall be treated as reduced by that fraction,

(b) section 713 (3) or 738 (2), the rate of corporation tax payable by the company on its income and chargeable gains for the relevant accounting period shall be treated as the standard rate of income tax by reference to which the corporation tax so payable is reduced, and

(c) section 723 (6), the rate of corporation tax payable by the company on its income and chargeable gains for the relevant accounting period shall be treated as 10 per cent,

for the purposes of computing the corporation tax attributable to that relevant income or gain, as the case may be.

(5) Where in the relevant accounting period there is any deduction to be made for charges on income, expenses of management or other amounts which can be deducted from or set off against or treated as reducing profits of more than one description—

(a) the company shall for the purposes of this paragraph and sections 449 and 450 allocate every such deduction in such amounts and to such of its profits for that period as it thinks fit, and

(b) (i) the amount of the relevant income or gain shall be treated for the purposes of subparagraph (4),

(ii) the amount of any income of a company treated for the purposes of section 449 as referable to an amount receivable from the sale of goods (within the meaning of that section) shall be treated for the

purposes of that section, and

(iii) the amount of the income of a company treated for the purposes of section 450 as attributable to relevant payments (within the meaning of that section) shall be treated for the purposes of that section,

as reduced or, as the case may be, extinguished by so much (if any) of the deduction as is allocated to it.

#### Limit on total credit— income tax

5. (1) The amount of the credit to be allowed against income tax for foreign tax in respect of any income shall not exceed the sum which would be produced by computing the amount of that income in accordance with the Income Tax Acts, and then charging it to income tax for the year of assessment for which the credit is to be allowed, but at a rate (in this paragraph referred to as “the specified rate”) ascertained by dividing the income tax payable by that person for that year by the amount of the total income of that person for that year.

(2) For the purpose of determining the specified rate, the tax payable by any person for any year shall be computed without any reduction of that tax for any credit allowed or to be allowed under any arrangements having effect by virtue of section 826 but shall be deemed to be reduced by any tax which the person in question is entitled to charge against any other person, and the total income of any person shall be deemed to be reduced by the amount of any income the income tax on which that person is entitled to charge as against any other person.

(3) Where credit for foreign tax is to be allowed in respect of any income and any relief would but for this subparagraph be allowed in respect of that income under section 830, that relief shall not be allowed.

6. Without prejudice to paragraph 5, the total credit to be allowed to a person against income tax for any year of assessment shall not exceed the total income tax payable by the person in question for that year of assessment, less any tax which that person is entitled to charge against any other person.

#### Effect on computation of income of allowance of credit

7. (1) Where credit for foreign tax is to be allowed against any of the Irish taxes in respect of any income, this paragraph shall apply in relation to the computation for the purposes of income tax or corporation tax of the amount of that income.

(2) Where the income tax or corporation tax payable depends on the amount received in the State, that amount shall be treated as increased by the amount of the credit allowable against income tax or corporation tax, as the case may be.

(3) Where subparagraph (2) does not apply—

(a) no deduction shall be made for foreign tax (whether in respect of the same or any other income), and

(b) where the income includes a dividend and under the arrangements foreign tax not chargeable directly or by deduction in respect of the dividend is to be taken into account in considering whether any, and if so what, credit is to be allowed against the Irish taxes in respect of the dividend, the amount of the income shall be treated as increased by the amount of the foreign tax not so chargeable which is to be taken into account in computing the amount of the credit, but

(c) notwithstanding anything in clauses (a) and (b), where any part of the foreign tax in respect of the income (including any foreign tax which under clause (b) is to be treated as increasing the amount of the income) cannot be allowed as a credit against any of the Irish taxes, the amount of the income shall be treated as reduced by that part of that foreign tax.

(4) In relation to the computation of the total income of a person for the purpose of determining the rate mentioned in paragraph 5, subparagraphs (1) to (3) shall apply subject to the following modifications:

(a) for the reference in subparagraph (2) to the amount of the credit allowable against income tax there shall be substituted a reference to the amount of the foreign tax in respect of the income (in the case of a dividend, foreign tax not chargeable directly or by deduction in respect of the dividend being disregarded), and

(b) clauses (b) and (c) of subparagraph (3) shall not apply,

and, subject to those modifications, shall apply in relation to all income in the case of which credit is to be allowed for foreign tax under any arrangements.

Special provisions as to dividends

8. (1) For the purposes of this paragraph, the relevant profits shall be—

(a) if the dividend is paid for a specified period, the profits of that period,

(b) if the dividend is not paid for a specified period but is paid out of specified profits, those profits, or

(c) if the dividend is paid neither for a specified period nor out of specified profits, the profits of the last period for which accounts of the body corporate were made up which ended before the dividend became payable;

but if, in a case within clause (a) or (c), the total dividend exceeds the profits available for distribution of the period mentioned in clause (a) or (c), as the case may be, the relevant profits shall be the profits of that period together with so much of the profits available for distribution of preceding periods (other than profits previously distributed or previously treated as relevant for the purposes of this paragraph) as is equal to the excess, and for this purpose the profits of the most recent preceding period shall first be taken into account, then the profits of the next most recent preceding period, and so on.

(2) Where, in the case of any dividend, foreign tax not chargeable directly or by deduction in respect

of the dividend is under the arrangements to be taken into account in considering whether any, and if so what, credit is to be allowed against the Irish taxes in respect of the dividend, the foreign tax not so chargeable to be taken into account shall be that borne by the body corporate paying the dividend on the relevant profits in so far as it is properly attributable to the proportion of the relevant profits represented by the dividend.

9. Where—

(a) the arrangements provide, in relation to dividends of some classes but not in relation to dividends of other classes, that foreign tax not chargeable directly or by deduction in respect of dividends is to be taken into account in considering whether any, and if so what, credit is to be allowed against the Irish taxes in respect of the dividends, and

(b) a dividend is paid which is not of a class in relation to which the arrangements so provide,

then, if the dividend is paid to a company which controls, directly or indirectly, not less than 50 per cent of the voting power in the company paying the dividend, credit shall be allowed as if the dividend were a dividend of a class in relation to which the arrangements so provide.

Miscellaneous

10. Credit shall not be allowed under the arrangements against the Irish taxes chargeable in respect of any income of any person if the person in question elects that credit shall not be allowed in respect of that income.

11. Where under the arrangements relief may be given either in the State or in the territory in relation to which the arrangements are made in respect of any income, and it appears that the assessment to income tax or to corporation tax made in respect of the income is not made in respect of the full amount of that income or is incorrect having regard to the credit, if any, which is to be given under the arrangements, any such additional assessments may be made as are necessary to ensure that the total amount of the income is assessed and the proper credit, if any, is given in respect of that income, and where the income is entrusted to any person in the State for payment, any such additional assessment to income tax may be made on the recipient of the income under Case IV of Schedule D.

12. (1) In this paragraph—

“the relevant year of assessment”, in relation to credit for foreign tax in respect of any income, means the year of assessment for which that income is to be charged to income tax or would be so charged if any income tax were chargeable in respect of that income;

“the relevant accounting period”, in relation to credit for foreign tax in respect of any income, means the accounting period for which that income is to be charged to corporation tax or would be so charged if any corporation tax were chargeable in respect of that income.

(2) Subject to paragraph 13, any claim for an allowance by means of credit for foreign tax in respect of

any income shall be made in writing to the inspector not later than 6 years from the end of the relevant year of assessment or the relevant accounting period, as the case may be, and, if the inspector objects to any such claim, it shall be heard and determined by the Appeal Commissioners as if it were an appeal to the Appeal Commissioners against an assessment to income tax and the provisions of the Income Tax Acts relating to the rehearing of an appeal and to the statement of a case for the opinion of the High Court on a point of law shall, with the necessary modifications, apply accordingly.

13. Where the amount of any credit given under the arrangements is rendered excessive or insufficient by reason of any adjustment of the amount of any tax payable either in the State or in the territory in relation to which the arrangements are made, nothing in the Tax Acts limiting the time for the making of assessments or claims for relief shall apply to any assessment or claim to which the adjustment gives rise, being an assessment or claim made not later than 6 years from the time when all such assessments, adjustments and other determinations have been made, as are material in determining whether any, and if so what, credit is to be given.