
DOUBLE TAXATION RELIEF AVOIDANCE: BANKS USING MANUFACTURED OVERSEAS DIVIDENDS

Who is likely to be affected?

1. Banks and financial institutions using avoidance schemes involving manufactured overseas dividends (MODs).

General description of the measure

2. Legislation will be introduced in Finance Bill 2009 to deny relief for foreign withholding tax where the recipient of a MOD has not borne the economic cost of the tax.

Operative date

3. The measure will have effect on and after 22 April 2009.

Current law and proposed revisions

4. The current MOD rules and regulations aim to give the recipient of a MOD (or any payment deemed to be a MOD) the same relief for foreign tax as the recipient of the real dividend. Changes to section 736B of and Schedule 23A to the Income and Corporation Taxes Act 1988 will ensure that no relief is given by way of a credit or deduction where the recipient of a MOD has not borne the economic cost of the foreign tax.
5. The measure will counter a complex tax-driven scheme which, apart from the tax advantage, produces a pre-tax loss. The scheme involves the sale and repurchase (repo) of a foreign shareholding between two bank group companies. Part of the repo agreement involves what is in substance the obligation to pay an amount that represents an overseas dividend. The MOD rules apply to this deemed payment and although the recipient receives an amount representing the full amount of the overseas dividend without any deduction of foreign tax, it nonetheless obtains an entitlement to a deduction for the foreign tax.
6. The measure will deny a deduction for foreign tax where the economic cost of the tax has not been borne by the company.

Further advice

7. If you have any questions about this change, please contact Richard Rogers on 020 7147 2625 (email: richard.rogers@hmrc.gsi.gov.uk) or Amanda Robinson on 020 7147 3345 (email: amanda.s.robinson@hmrc.gsi.gov.uk). Information about Budget measures is available on the HM Revenue & Customs website at www.hmrc.gov.uk