

Budget 2009



BN60

22 April 2009

DOUBLE TAXATION RELIEF AVOIDANCE: CREDIT ABUSE

Who is likely to be affected?

1. UK banks participating in the avoidance schemes described below.

General description of the measure

2. Legislation will be introduced in Finance Bill 2009 to clarify legislation introduced in Finance Act (FA) 2005 which limits the credit for foreign tax paid on trade receipts of a bank to no more than the corporation tax arising on the relevant part of the trade profits. The measure will put it beyond doubt that this restriction applies to any banking receipt where that income is artificially diverted to a non-banking company in the bank's group.
3. The measure will also ensure that, in calculating the amount of double taxation relief (DTR) available, a proportion of a bank's average funding costs over all its transactions must be deducted, and that this cannot be avoided by the bank allocating a specific source of funds to specific investments.

Operative date

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

Current law and proposed revisions

5. The DTR rules are designed to ensure as far as possible that UK taxation does not impose a greater burden on UK residents doing business outside the UK than if the same business had been done in the UK. They do so by providing relief for foreign tax that is lawfully due and payable against tax on the UK profit in respect of the same foreign income.
6. Legislation introduced in FA 2005 closed down a number of DTR avoidance schemes used by banks. However, banks have since made use of artificial avoidance schemes. Some schemes involve the making of loans or other financial transactions through an investment subsidiary where the income is taxed differently from the parent company, which retains the costs of earning the income.

7. The current law provides that, where income that would have formed part of the trade receipts of a bank is instead received as investment income of a subsidiary which can claim DTR without the restrictions that would have applied to the parent, DTR is calculated as if it were trade income of the subsidiary.
8. The measure will put beyond doubt that the assumption should be that any income received by a member of a banking group is trade income, unless that assumption is not reasonable.
9. Although, in HM Revenue & Customs' view, the 2005 legislation already has this effect, some banks are self assessing their tax liabilities as if the legislation did not apply to them. This measure will put it beyond doubt that they may not self assess on this basis.
10. Other bank schemes have attempted to avoid the requirement to deduct the costs of making the loan or carrying out the transaction in the calculation of the amount of relief available, by using specific funds which do not have an associated funding cost. The measure will ensure that a bank's funding costs are always taken into account when calculating the relief due, even if the bank maintains records purporting to show that specific funds have been used to make the loan or carry out the transaction.

Further advice

11. If you have any questions about this change, please contact Amanda Robinson on 020 7147 3345 (email: amanda.s.robinson@hmrc.gsi.gov.uk) or Andrew Page on 020 7147 2673 (email: andrew.page@hmrc.gsi.gov.uk). Information about Budget measures is available on the HM Revenue & Customs website at www.hmrc.gov.uk