
DOUBLE TAXATION RELIEF AVOIDANCE: REPAYMENT OF FOREIGN TAX

Who is likely to be affected?

1. Companies taking advantage of tax regimes which provide for the repayment of tax following the payment of a dividend but in respect of which full credit is claimed by another group company.

General description of the measure

2. Legislation will be introduced in Finance Bill 2009 to put beyond doubt that, where foreign tax paid under the laws of any territory is repaid, double taxation relief (DTR), whether by way of credit or deduction, will be denied or withdrawn even if the tax has been repaid to a person other than the claimant.

Operative date

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

Current law and proposed revisions

4. Current legislation requires that where there has been a change in the amount of tax payable under the laws of a foreign territory, a company which has claimed DTR in respect of that tax is obliged to notify HM Revenue & Customs (HMRC) and to amend its claim or its computations accordingly.
5. A UK company with a permanent establishment (PE) in a particular country will pay tax on its profits in that country and claim credit for that tax against its UK tax liability. But, if subsequently that company pays a dividend to its parent company, the foreign country will repay a substantial amount of the tax paid to that parent company.
6. Similarly, a subsidiary of a UK company operating in that country will pay tax on its profits. Again, if a dividend is paid to its parent a substantial element of the tax is repaid to the parent company.

7. The PE or subsidiary is usually set up specially and an income bearing asset or function is transferred into it.
8. In both instances full credit for the tax repaid is still claimed.
9. The measure will deny DTR by credit or deduction, or if already given, will withdraw it where there has been a repayment of tax regardless of who receives the repayment.

Further advice

10. 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 Martin Brooks on 020 7147 2651 (email: martin.brooks@hmrc.gsi.gov.uk). Information about Budget measures is available on the HM Revenue & Customs website at www.hmrc.gov.uk