

Notes for Guidance - Taxes Consolidation Act 1997

Finance Act 2023 edition

Part 14

Taxation of Companies Engaged in Manufactur- ing Trades, Certain Trading Operations Carried on in Shannon Airport and Certain Trading Op- erations Carried on in the Custom House Docks Area

December 2023



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Part 14 Taxation of Companies Engaged in Manufacturing Trades, Certain Trading Operations Carried on in Shannon Airport and Certain Trading Operations Carried on in the Custom House Docks Area

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PART 14
TAXATION OF COMPANIES ENGAGED IN MANUFACTURING
TRADES, CERTAIN TRADING OPERATIONS CARRIED ON IN
SHANNON AIRPORT AND CERTAIN TRADING OPERATIONS
CARRIED ON IN THE CUSTOM HOUSE DOCKS AREA

Overview

Part 14, apart from *sections 452* and *452A*, has been deleted / ceased. Since 1 January 2011, manufacturing relief is no longer available to manufacturing companies in the State.

CHAPTER 1
Interpretation and general

442 Interpretation (Part 14)

[This section was deleted by paragraph 20 of Schedule 1 to the Finance Act 2012.]

443 Meaning of “goods”

[This section was deleted by paragraph 20 of Schedule 1 to the Finance Act 2012.]

444 Exclusion of mining and construction operations

[This section was deleted by paragraph 20 of Schedule 1 to the Finance Act 2012.]

445 Certain trading operations carried on in Shannon Airport

[This section was deleted by paragraph 20 of Schedule 1 to the Finance Act 2012.]

446 Certain trading operations carried on in Custom House Docks Area

[This section was deleted by paragraph 20 of Schedule 1 to the Finance Act 2012.]

447 Appeals

[This section was deleted by paragraph 20 of Schedule 1 to the Finance Act 2012.]

CHAPTER 2
Principal Provisions

Overview

Except for *sections 452* and *452A*, this Chapter has been deleted / ceased.

448 Relief from corporation tax

[This section was deleted by paragraph 20 of Schedule 1 to the Finance Act 2012.]

449 Credit for foreign tax not otherwise credited

[This section was deleted by paragraph 20 of Schedule 1 to the Finance Act 2012.]

450 Double taxation relief

[This section was deleted by paragraph 20 of Schedule 1 to the Finance Act 2012.]

451 Treatment of income and gains of certain trading operations carried on in Custom House Docks Area from investments held outside the State

[This section was deleted by paragraph 20 of Schedule 1 to the Finance Act 2012.]

452 Application of section 130 to certain interest

Summary

This section is concerned with interest which may be payable by a company to a parent company outside the State. Under *section 130(2)(d)(iv)* such interest could be treated as a distribution and, therefore, would not be deductible as a trading expense.

As a result of direct foreign investment into Ireland many Irish companies are subsidiaries of foreign companies. The activities of such companies are often financed by monies lent to the Irish entity by the foreign parent and interest is payable to that parent.

Under *section 130(2)(d)(iv)* such interest, if it were payable to a non-resident company of which the Irish company is a 75 per cent subsidiary or associate, could be treated as a distribution and, therefore, would not be deductible as a trading expense. This section allows such interest to escape the ambit of *section 130(2)(d)(iv)* if a company so wishes where the interest is payable to a company which is a resident of a tax treaty country, or an EU Member State. In some cases, because of the circumstances of the company and/or the terms of a double taxation agreement, it may be more advantageous to the company to accept the application of *section 130(2)(d)(iv)*. Therefore, the application of the section is at the option of the company.

Since 1 February 2002 the section is extended to yearly interest paid to a non-resident company wherever resident.

Details

Definitions

“arrangements” are double tax treaties which are given the force of law by way of Government order under *section 826(1)(a)* or which will have the force of law on completion of the procedures set out in *section 826(1)*. (1)

“relevant territory” is a country which is a member of the EU, a country with which Ireland has a tax treaty in force or a country with which Ireland has signed a tax treaty which has yet to come into force.

“tax” is a tax imposed by a relevant territory which corresponds to Irish corporation tax.

Where a tax treaty is in force or there is a signed tax treaty which has yet to come into force with a relevant territory the rules of the tax treaty apply in determining whether the company is a resident of that territory. Where the country is an EU Member State and there is no tax treaty with that Member State the tax law of the country concerned determines whether the company is a resident of that country.

Interest payable to a company resident in a tax treaty country or EU Member State

The interest to which the section applies is interest which is a distribution by virtue only of *section 130(2)(d)(iv)*. It must, therefore, be interest payable to a non-resident (2)

company of which the Irish company is a 75 per cent subsidiary or associate. The word “only” is important in that it ensures that any excess interest is not covered by this section and is, in fact, treated as a distribution under *section 130(2)(d)(iii)(II)* which is designed to catch an excess over what is a “reasonable commercial return” on a loan.

The interest concerned must also be payable by a company in the course of its trade and be deductible for tax purposes but for the rule in *section 130(2)(d)(iv)*. Excluding the application of *section 130(2)(d)(iv)* should result in the interest being treated as a trading expense.

The interest must be payable to a company resident in a EU Member State, resident in a country with which Ireland has a double taxation agreement in force or resident in a country with which Ireland has signed a double taxation agreement.

The company has to claim the benefit of the section and that where it does so, the interest is excluded from the ambit of *section 130(2)(d)(iv)*.

Yearly interest payable to companies in non-treaty countries

The interest concerned must also be payable by a company in the course of its trade and be deductible for tax purposes but for the rule in *section 130(2)(d)(iv)*. Excluding the application of *section 130(2)(d)(iv)* should result in the interest being treated as a trading expense. (3A)

Yearly interest payable to a company resident in a country with which Ireland has a double taxation agreement or another EU Member State is dealt with in *subsection (2)* and is not within *subsection (3A)*.

Elections

An election has to be in writing and has to be submitted with the company’s return of profits for the period in question. (4)

452A Application of section 130 to certain non-yearly interest

Summary

This section enables a company that is paying interest to other group companies to have *section 130(2)(d)(iv)* disapplied in certain circumstances and applies in respect of accounting periods commencing on or after 1 January 2012.

Details

Definitions

Definitions of the terms used in the section are as follows: (1)

‘additional tax’ is defined in relation to a territory. It is calculated by the formula:

$$A \times B/100$$

where—

A is the specified amount for that territory in respect of the qualifying company for the accounting period, and

B is the rate per cent specified in *section 21(1)(f)* (currently 12.5%).

The application of this formula produces a notional amount of Irish tax that would be payable on the specified amount of interest (ie amount of interest that

is non-deductible under **section 130(2)(d)(iv)**) paid by the qualifying company to companies in a particular territory for an accounting period;

‘deductible amount’ is defined in relation to a territory for an accounting period. It is calculated by the formula:

$$C \times D/E$$

where-

C is the amount of non-deductible interest paid to that territory for the accounting period,

D is the specified tax (i.e. see below, essentially the lower of the notional Irish tax and the foreign tax paid) paid on that interest in that territory, and

E is the notional Irish tax on that interest;

‘foreign tax’ is the amount determined by the formula:

$$F \times G/100$$

where-

F is the amount of interest payable in an accounting period to a company carrying on a business in a territory, and

G is the rate of tax chargeable in that territory-

- on interest received in that territory from sources outside that territory, or
- where the amount of interest payable to the company carrying on business in that territory is taken into account in computing business profits of that company, on business profits of a company;

‘interest’ means interest other than yearly interest or interest to which **subsection (2B)** of **section 130**, **subsection (2)(a)** or **(3A)(a)** of **section 452** or **subsection (2)** of **section 845A** applies;

‘qualifying company’ is defined as a company that advances money in the ordinary course of a trade carried on in the State which includes the lending of money and for which any interest payable in respect of money so advanced is taken into account in computing the income of its trade;

‘specified amount’ is defined in relation to a territory and means the amount of interest payable for an accounting period by the qualifying company to a company or companies carrying on business in the territory where the interest payable is taken into account in computing the profits or gains of that business in that territory;

‘specified interest’ is defined as the interest payable by the company that, apart from this section, would be treated as a distribution by virtue of **section 130(2)(d)(iv)**;

‘specified tax’ is defined as the lesser of the notional Irish tax on the specified amount and the total foreign tax paid on the income.

Relief

Subsection (2) provides that **section 130(2)(d)(iv)** shall not apply to the deductible amount for a territory for an accounting period. (2)

Example

Treasury Company pays interest to Country A in the sum of €100,000 and Country B in the sum of €50,000.

Ireland does not have a tax treaty with either country.

The rate of tax in Country A is 30%.

The rate of tax in Country B is 10%.

Country A

The deductible amount in respect of Country A will be computed as follows:

$$C \times D/E$$

C = The “specified amount”,

D = “Specified tax” in relation to the “specified amount”,

E = “Additional tax” in relation to the “specified amount”,

C in this case = €100,000,

D in this case is €12,500 calculated as follows-

D is the lesser of -

“Additional tax” in relation to the “specified amount which is calculated as follows-

$$A \times B/100$$

$$€100,000 \times 12.5/100 = €12,500,$$

And aggregate of “foreign tax”-

$$€100,000 \times 30/100 = €30,000,$$

E in this case is €12,500 calculated as above.

The deductible amount for Treasury Company in this case is therefore €100,000:

$$C \times D/E$$

$$€100,000 \times €12,500/€12,500 = €100,000.$$

In summary, as the foreign rate of tax is higher than the Irish rate of tax, a full deduction is available for interest paid by Treasury Company.

Country B

The deductible amount in respect of Country B will be computed as follows:

$$C \times D/E$$

C = The “specified amount”,

D = “Specified tax” in relation to the “specified amount”,

E = “Additional tax” in relation to the “specified amount”,

C in this case = €50,000,

D in this case is €5,000 calculated as follows-

D is the lesser of -

“Additional tax” in relation to the “specified amount which is calculated as follows-

$$A \times B/100$$

$$€50,000 \times 12.5/100 = €6,250,$$

And aggregate of “foreign tax”

$$€50,000 \times 30/100 = €15,000,$$

E in this case is €6,250 calculated as above.

The deductible amount for Treasury Company in this case is therefore €40,000-

$$\begin{aligned} & C \times D/E \\ & €50,000 \times €5,000/€6,250 = €40,000 \end{aligned}$$

In summary, as the foreign rate of tax is lower than the Irish rate of tax, the deduction available for interest paid by Treasury Company is restricted.

Subsection 3 ensures that where withholding tax is deducted, under the provisions of Chapter 5 of Part 33 (*Outbound payments defensive measures*), on non-yearly interest, and such withholding tax is non-refundable, then the interest will not be re-classified as a non-deductible distribution under section **130(2)(d)(iv)** for Irish corporation tax purposes. (3)

453 Transactions between associated persons

[This section was deleted by paragraph 20 of Schedule 1 to the Finance Act 2012.]

454 Restriction of certain charges on income

This section ceased to have effect from 1 January 2003 (section 90(3) of the Finance Act 2001).

455 Restriction of certain losses

This section ceased to have effect from 1 January 2003 (section 90(3) of the Finance Act 2001).

456 Restriction of group relief

This section ceased to have effect from 1 January 2003 (section 90(3) of the Finance Act 2001).

457 Application of section 448 where profits are charged to corporation tax at the reduced rate

[This section was deleted by section 90(1)(c)(v) of the Finance Act 2001 as respects an accounting period ending on or after 6 March 2001.]