

Guidelines for Article 9 Correlative Adjustment claims

Part 35-02-09

This document should be read in conjunction with section 864 of the Taxes Consolidation Act 1997

This document should also be read in conjunction with the following Tax and Duty Manuals:

- [Tax and Duty Manual Part 35-02-08](#) - Guidelines for requesting Mutual Agreement Procedure (“MAP”) assistance in Ireland; and
- [Tax and Duty Appeals Manual](#) - Tax and Duty Appeals Manual

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1 Introduction

This TDM sets out –

- the basis on which a company can claim a correlative adjustment;
- that the claim will be reviewed by Revenue; and
- the options available to the company when the review is completed.

2 Making a claim for a Correlative Adjustment

2.1 What is a correlative adjustment?

A correlative adjustment is defined as an adjustment of profits under the terms of a Double Taxation Agreement (“DTA”) which Ireland has entered into with another country (“the treaty partner”). The purpose of a correlative adjustment is to provide an enterprise¹ of Ireland, i.e. a company resident for treaty purposes in Ireland, with relief from double taxation² that would otherwise result from an adjustment, to an arm’s length amount, of the profits of an associated enterprise of the treaty partner, i.e. a company resident for treaty purposes in the treaty partner³.

Correlative adjustment cases arise where a company has accepted a treaty partner adjustment **unilaterally**: Without involving the Irish Competent Authority, the company has accepted, including on the final outcome of an appeal, an adjustment that was raised by the foreign tax administration and has paid the additional foreign tax resulting from the adjustment. A subsequent claim for a correlative adjustment by an Irish associated company is treated differently by Revenue from a Mutual Agreement Procedure (“MAP”) assistance request, as the correlative adjustment claim does not require negotiation or agreement between the Irish and treaty partner Competent Authorities.

2.2 Legal basis for a Correlative Adjustment claim

In order to make a claim for a correlative adjustment, there must be a DTA in place between Ireland and the country concerned (“the treaty partner”).

¹ Enterprise is the term used in DTAs: It includes a company.

² The double taxation arising is not two countries taxing the same income of the same person, i.e. juridical double taxation. It is economic double taxation, where two countries tax the same profits in the hands of separate, but associated, companies.

³ The term ‘correlative adjustment’ is similar to the term ‘corresponding adjustment’ used by the OECD. The Glossary to the OECD’s Transfer Pricing Guidelines for Multinational Enterprises and Tax Administrations (2017) defines a “corresponding adjustment” as “an adjustment to the tax liability of the associated enterprise in a second tax jurisdiction made by the tax administration of that jurisdiction, corresponding to a primary adjustment made by the tax administration in a first tax jurisdiction, so that the allocation of profits by the two jurisdictions is consistent”.

A claim for a correlative adjustment can be made under the Article, in the Irish DTA with the relevant treaty partner, that is equivalent to Article 9 of the OECD **Model Tax Convention on Income and Capital** (“MTC”).

Article 9(1) of the MTC authorises the adjustment of profits of a company if, as a result of non-arm’s length conditions in place between it and an associated company, the profits of the first company differ from arm’s length profits. Economic double taxation would then arise as a result of the first company being charged to tax on profits by Country A that are also charged to tax in the hands of an associated company in Country B.

Article 9(2) of the MTC sets out that where Country A has raised an arm’s length adjustment and charged tax on profits of a Country A company that have already been taxed in Country B, then Country B is to make an adjustment to the profits of the associated Country B company, to the extent Country B accepts that the Country A adjustment was an arm’s length adjustment.⁴

Claims to Revenue for correlative adjustments will be made by reference to the article, of the Irish DTA with the treaty partner concerned, that is equivalent to Article 9 **Associated Enterprises** of the MTC. The equivalent article in the relevant DTA may contain two paragraphs, respectively similar to paragraphs (1) and (2) of Article 9 of the MTC.

However, in some DTAs the article equivalent to the MTC Article 9 is a single-paragraph article, the text of which is similar to paragraph (1) of the MTC Article 9. Such single-paragraph articles imply the same entitlement as is made explicit in two-paragraph articles: An Irish DTA single-paragraph **Associated Enterprises** article entitles an Irish company to claim correlative adjustments, for adjustments made to the profits of an associated company in the treaty partner country in so far as those treaty partner adjustments are adjusting non-arm’s length profits to arm’s length profits.

⁴ In relation to those DTAs that do not currently contain an MTC Article 9(2) equivalent, Ireland has signed the Multilateral Convention to Implement Tax Treaty Related Measures to Prevent Base Erosion and Profit Shifting (“MLI”), which came into force for Ireland in May 2019. Ireland fully adopted MLI Article 17, which contains MTC Article 9(2)-type provisions. Where an Irish DTA does not currently include an Article 9(2) but the treaty partner is an MLI signatory and has fully adopted Article 17 of the MLI, the relevant DTA will be modified by the MLI to include the MTC Article 9(2). The relevant changes will not be effective for a specific treaty until the MLI is in force for both Ireland and the relevant treaty partner country. The OECD provides an up-to-date list of parties and signatories to the MLI and their respective positions [here](#).

3 Review of a Correlative Adjustment claim by a Revenue Officer

3.1 Determination by Revenue Officer under Section 864(1) TCA 1997

The extent of relief, as representing arm's length adjustments, on foot of correlative adjustment claims will be determined by Revenue officers authorised for the purposes of section 864(1) TCA 1997⁵. Where relief is due, assessments will be amended and tax repaid under section 959AA TCA 1997⁶.

Correlative adjustments will not include any relief for interest or penalties imposed by the treaty partner; nor will any relief be given for **secondary adjustments** or repatriation of profits (see section 3.4 of this TDM) implemented under treaty partner laws.

3.2 Authorisation under Section 864(1) TCA 1997

Determinations made by a Revenue officer under section 864(1) TCA 1997 must be made by an officer authorised by the Revenue Commissioners for the purposes of that section.

Procedures for Revenue authorisation applications are available [here](#).

The following material is either exempt from or not required to be published under the Freedom of Information Act 2014.

[...]

3.3 Claim using a prescribed form

Section 864(1) TCA 1997 provides that claims made under that provision shall be made in such manner and form as the Revenue Commissioners may prescribe. Revenue has prescribed form number [CA1](#) which companies should complete and submit when making a claim for a correlative adjustment.

⁵ DTAs are part of the Tax Acts and Capital Gains Tax Acts referred to in section 864(1)(b) TCA 1997, being enactments – statutory instruments – relating to income tax, corporation tax and capital gains tax (section 1(2) TCA 1997 and section 2(1) Interpretation Act 2005).

⁶ As regards subsection(2)(c) of section 959AA TCA 1997, the adjustment of the profits of the associated company in the treaty partner country will generally be a fact or matter arising by reason of an event after the return for the Irish company has been delivered, typically the treaty partner tax administration's intervention or, less frequently, a self-correction by the treaty partner associated company adjusting its profits from a non-arm's length amount to an arm's length amount. In such circumstances section 959AA TCA 1997 provides that repayment can be made notwithstanding section 865(4) TCA 1997. Repayment of tax on foot of either an intervention or self-correction will be subject to confirmation of treaty-partner tax paid (see section 4.1 of this TDM).

Companies are required to submit all information and documentation as set out in the Appendix to this TDM. The information and documentation listed in that appendix is the same as that set out in Appendix 3 to Revenue's published [Guidelines for requesting Mutual Agreement Procedure \("MAP"\) assistance in Ireland](#)

All completed claim forms and supporting information and documentation should be submitted to the Revenue Division or Branch dealing with the company's affairs using Revenue's MyEnquiries⁷ facility. The secure Revenue File Transfer System⁸ (RFTS) may also be used for larger submissions. A copy of the submission should also be provided to the Transfer Pricing Branch of the International Tax Division⁹.

To avoid any questions arising in relation to a company's right of appeal, where

- a correlative adjustment claim has been made before the first publication of this TDM,
- having reviewed the claim, Revenue proposes to refuse the whole or part of the claim, and
- the company disagrees with Revenue's proposed approach,

the company should be invited to complete the prescribed claim form, with a view to receiving a determination of the claim by the authorised Revenue officer under section 864 TCA 1997, which may then be appealed by the company (see section 4.2 of this TDM).

3.4 Prohibition of deduction for sums paid

Section 81(2)(o) TCA 1997 prohibits the deduction of any sum paid or payable under an agreement or understanding between associated companies for an adjustment made by a foreign tax administration, in respect of which a DTA correlative adjustment claim could be made, or for a similar foreign tax administration adjustment where no DTA applies.

⁷ [MyEnquiries](#) is a structured online contact facility that allows customers to securely send and receive correspondence to and from Revenue instead of using email.

⁸ Companies wishing to use the RFTS can contact Revenue to obtain further information on using this system. Contact details for Revenue Divisions can be found [here](#).

⁹ Transfer Pricing Branch can be contacted at TransferPricing@revenue.ie or Transfer Pricing Branch, International Tax Division, Office of the Revenue Commissioners, Dublin Castle, D02 F342, Dublin 2, Ireland.

4 Outcome of claim for a Correlative Adjustment

Revenue officers will review the appropriateness of a claim made and will only make a correlative adjustment to the profits of the Irish company concerned to the extent that the treaty partner adjustment is shown to be an adjustment from a non-arm's length profit to an arm's length profit, and is shown to be appropriate, both in principle and as regards the amount. Accordingly, a claim may be wholly or partly accepted, or it may be wholly refused.

4.1 Revenue makes a full repayment to the taxpayer

Where, following a review of the correlative adjustment claim, full relief is to be given by repayment, confirmation must first be obtained from the treaty partner tax administration that tax has been paid on the amount of the adjustment in the treaty partner, in respect of which the correlative adjustment will be made. That confirmation must also be obtained where partial relief is to be given by repayment.

To obtain such a confirmation, the Revenue officer will contact the Competent Authority team in the Transfer Pricing Branch of the International Tax Division who will make the request in writing to the treaty partner's Competent Authority¹⁰.

To the extent that a refund is due to the taxpayer, the taxpayer will be required to submit revised computations for the affected accounting period(s) to Revenue. Revenue will amend assessments and make any resulting repayments under section 959AA TCA 1997.

4.2 Revenue refuses the correlative adjustment claim in whole or in part

Revenue, in giving notice of its refusal of the whole or part of the claim, will set out the basis for that determination. Under section 864 TCA 1997, if a correlative adjustment claim is wholly or partly refused by the officer determining the claim, the company concerned may appeal that determination to the Tax Appeal Commissioners. Any appeal must be submitted within 30 days of the notice of the determination and must be made in accordance with section 949I TCA 1997.

When they are being notified of a determination, companies should be advised of their right, under subsection (1A) of section 864 TCA 1997, to appeal the determination. Section 2.4 of Revenue's [Tax and Duty Appeals Manual](#) contains information on notifying taxpayers/agents of their right of appeal.

¹⁰ The treaty partner tax office contact details, requested in the prescribed form, should assist in seeking this confirmation.

5 Option to seek MAP following a Correlative Adjustment claim

If the correlative adjustment claim is wholly or partly refused by Revenue, a company may request MAP assistance from the Competent Authority in Revenue's International Tax Division, provided the request is within the time limit for a MAP request set out in the relevant DTA.

Section 4 of Revenue's [Guidelines for requesting Mutual Agreement Procedure \("MAP"\) assistance in Ireland](#) sets out a company's entitlement to request MAP assistance following a correlative adjustment claim and deals with time limits for seeking a MAP.

The time limit for submitting a request for MAP assistance is determined by the relevant DTA. Generally, Ireland's DTAs follow Article 25 of the OECD **Model Tax Convention** and provide that a request for MAP assistance under a DTA must be submitted within 3 years from the first notification of the action resulting in taxation not in accordance with that DTA.

However, some Irish DTAs provide for a different time limit. Companies should always consult the relevant DTA at an early stage to ensure that, if they wish to seek MAP assistance, they submit the request within the specified time limit¹¹. The text of Ireland's DTAs and their amending Protocols, which should be read together, are available [here](#).

¹¹ In order to ensure that its request is made within the time permitted under the relevant tax treaty, a *protective* MAP request may be submitted. In such cases the requester should clearly state that the request should not be examined by the Competent Authority until further notification is received from the company to do so. A protective MAP request does not mean that the Irish or treaty partner Competent Authority automatically accepts that the MAP request is justified. It should also be noted that even if the Irish Competent Authority is prepared to commence MAP discussions in relation to the case, the treaty partner Competent Authority may not be prepared to do so and the Irish Competent Authority has no power to compel its engagement.

Appendix: Information and documentation required to be submitted with a claim for a Correlative Adjustment

To enable Revenue to examine the merits of a claim for correlative adjustment, companies should:

- i. Quote the legal basis for the claim i.e. the relevant article(s) in Ireland's double taxation agreements (including a statement as to why the agreement quoted is the relevant agreement);
- ii. Set out how the relevant enterprises are associated;
- iii. Explain what the transfer pricing policy was prior to the audit of the associated enterprise in the other country (attaching a copy of all documentation evidencing that policy e.g. intercompany legal agreements, transfer pricing study, benchmarking study, economist report, and other expert advice);
- iv. Set out those elements of the transfer pricing policy that the other country did not agree with and why, and how the associated enterprise sought to rebut the other country's findings, including copies of all relevant correspondence;
- v. Set out how the final agreement with the other country was arrived at to include the following details:
 - a. An explanation of the final adjustment;
 - b. The quantum of the adjustment agreed and the financial years covered;
 - c. An explanation as to how the original transfer pricing policy was not arm's length and how the final adjustment is arm's length in accordance with OECD principles, including evidence supporting the arm's length nature of the adjustment;
 - d. The process by which agreement was reached including an account (if relevant) of the considerations leading to acceptance of the adjustment as opposed to litigation or MAP;
 - e. A copy of the settlement agreement; and
 - f. A copy of the assessments issued by the tax authority of the other country.
- vi. State how effect was given to the adjustment in practice including an explanation of the accounting treatment;
- vii. State clearly whether any portion of the adjustment relates to secondary adjustments such as imputed or notional interest on intercompany balances;
- viii. State clearly whether any portion of the adjustment relates to interest on unpaid taxes or statutory penalties;

- ix. State whether any previous or subsequent years are to be audited where there is a prospect of similar issues arising; and
- x. State whether there are audits being undertaken by other countries that might affect the profits of the Irish associated enterprise.

As a claim for correlative adjustment is essentially a one-sided review of a matter concerning potential double taxation, in order to ensure an efficient and expeditious review process, Revenue expects to be provided with all relevant information that was provided to the tax authority in the other country.