# Notes for Guidance - Taxes Consolidation Act 1997

## Finance Act 2024 edition

# Part 35
# Double Taxation Relief

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Revenue
Cáin agus Custaim na hÉireann
Irish Tax and Customs

**Notes for Guidance - Taxes Consolidation Act 1997**
**Finance Act 2024 edition**

# PART 35
# DOUBLE TAXATION RELIEF

## CHAPTER 1
*Principal reliefs*

### Overview

This Chapter gives effect under Irish law to double taxation agreements, applies ***Schedule 24*** as the mechanism for granting relief under such agreements, and elaborates the manner of giving relief in certain circumstances.

### 826 Agreements for relief from double taxation

#### Summary

This section provides that double taxation agreements, air transport agreements or tax information exchange agreements made by the Government shall take effect once an Order approved by Dáil Eireann has been made and the Oireachtas enacts legislation that makes the Order part of Irish law. This will be done by listing (in ***Schedule 24A***) all existing international tax agreements entered into by the State. The mechanism to give relief from double taxation is set out in ***Schedule 24***. The section also sets out the manner in which an order under the section is to be made. Tax information exchange agreements are agreements that can be entered into by the Government with the government of another jurisdiction for the exchange of information between the tax authorities of each jurisdiction. The agreements provide for information to be exchanged on request. Air transport agreements provide relief from double taxation to air transport undertakings and their employees on profits, income or capital gains.

The section also, for ratification purposes, includes references to certain other Conventions, including –

- The Joint Council of Europe/OECD Convention on Mutual Administrative Assistance in Tax Matters also provides for mutual assistance between Parties to the Convention in relation to the exchange of information, recovery of taxes and service of documents, and
- The Multilateral Convention to Implement Tax Treaty Related Measures to Prevent Base Erosion and Profit Shifting (BEPS), signed by Ireland on 7 June 2017, provides a mechanism for countries to transpose the BEPS recommendations into existing tax treaties without the need for separate bilateral negotiations. At the time that the Multilateral Convention was signed and prior to ratification, each government must inform the Depository of its intended approach to reserve or notify in relation to any articles or provisions. The extent to which any arrangements with treaty partners may be modified will depend on the compatibility between the reservations and notifications made by Ireland and those made by our treaty partners. The recommendations will help reduce opportunities for international tax avoidance.

#### Details

***Double Taxation Treaties***

Where the Government makes an order declaring that — ***(1)***

- arrangements for double taxation relief have been made with the government of another territory in relation to income tax, corporation tax on income or gains or similar taxes, or arrangements for exchange of information have been made with the government of another territory in the case of taxes of any kind or description imposed by the laws of the State or the laws of that other territory, and
- those arrangements should have the force of law,

and the order is referred to in ***Part 1*** of ***Schedule 24A***, then the arrangements are to have the force of law. This is, however, subject to the certain qualifications under this section.

An order made by the Government will have the force of law from the date on which it is referred to in ***Part 1*** of ***Schedule 24A***.

***Air Transport Agreements***

Where the Government makes an order declaring that — ***(1A)***

- arrangements have been made with the government of another territory in relation to affording relief from double taxation to air transport undertakings and their employees on profits, income or capital gains, and
- those arrangements should have the force of law,

and the order is referred to in ***Part 2*** of ***Schedule 24A***, then the arrangements are to have the force of law. This is, however, subject to the certain qualifications under this section.

An order made by the Government will have the force of law from the date on which it is referred to in ***Part 2*** of ***Schedule 24A***.

***Tax Information Exchange Agreements***

Where the Government makes an order declaring that — ***(1B)***

- arrangements have been made with the government of another territory in relation to exchanging information to prevent and detect tax evasion in the case of taxes of any kind in the State or in the other country concerned, and such other matters giving relief from double taxation as the Government considers appropriate, and
- those arrangements should have the force of law,

and the order is specified in ***Part 3*** of ***Schedule 24A***, then the arrangements are to have the force of law. This is, however, subject to the certain qualifications under this section.

An order made by the Government will have the force of law from the date on which it is referred to in ***Part 3*** of ***Schedule 24A***.

***Joint Council of Europe/OECD Convention on Mutual Administrative Assistance in Tax Matters***

Where the Government makes an order declaring that — ***(1C)***

- it has become a signatory to the *Joint Council of Europe/OECD Convention on Mutual Administrative Assistance in Tax Matters*, or any Protocol thereto, and
- that Convention, or any Protocol thereto, should have the force of law,

and the order is specified in ***Part 4*** of ***Schedule 24A***, then the Convention or any Protocol thereto are to have the force of law. This is, however, subject to the certain qualifications under this section.

An order made by the Government will have the force of law from the date on which it is referred to in ***Part 4*** of ***Schedule 24A***.

***Agreements with non-governmental representative authorities***

Where the Government makes an order declaring that— ***(1D)***

- arrangements for double taxation relief have been made with a non-governmental representative authority of another territory in relation to income tax, corporation tax on income or gains or similar taxes or arrangements for exchange of information have been made with a non-governmental representative authority of another territory in the case of taxes of any kind or description imposed by the laws of the State or the laws of that other territory, and
- those arrangements should have the force of law,

and the order is specified in Part 1 of Schedule 24A, then the arrangements are to have the force of law. This is however, subject to the qualification as a set out under this section.

An order made by the Government will have the force of law from the date on which it is referred to in *Part 1* of *Schedule 24A.*

***Multilateral Convention to Implement Tax Treaty Related Measures to Prevent Base Erosion and Profit Shifting (BEPS)***

Where the Government makes an order declaring that — ***(1E)***

- it has become a signatory to the *Multilateral Convention to Implement Tax Treaty Related Measures to Prevent Base Erosion and Profit Shifting* and
- that Multilateral Convention should have force of law,

and the order is specified in ***Part 5*** of ***Schedule 24A***, then the Convention should have the force of law.

An order made by the Government will have the force of law from the date on which it is referred to in ***Part 5*** of ***Schedule 24A***.

***Schedule 24A***

***Part 1*** of ***Schedule 24A*** lists all the existing double taxation agreements. ***Part 2*** of the Schedule lists the only current air transport agreement, which is with the USSR. ***Part 3*** lists all existing tax information exchange agreements. ***Part 4*** is for the future listing of the *Joint Council of Europe/OECD Convention on Mutual Administrative Assistance in Tax Matters*, or any Protocol thereto. ***Part 5*** is for the future listing of the *Multilateral Convention to Implement Tax Treaty Related Measures to Prevent Base Erosion and Profit Shifting.* ***(1)(b), (1A)(b), (1B)(b), (1C)(b) (1E)(b)***

Where the Government is proposing to make an order under this section, a draft of the order must be laid before Dáil Éireann and the order is not to be made until Dáil Éireann has passed a resolution approving the draft order. ***(6)***

An order made by the Government may be revoked and a revoking order may contain any transitional arrangements considered by the Government to be expedient. ***(5)***

Arrangements made with the head of a foreign state are regarded as made with the government of that state. Arrangements which cover periods before the arrangements were made or which contain provisions in relation to income or capital gains which are not subject to double taxation are to be valid. ***(3) & (4)***

Where arrangements apply from a certain date and the arrangements apply to corporation tax for the part of an accounting period which falls after that date, such apportionments as are necessary are to be made on a time basis. ***(8)***

***Schedule 24*** contains the mechanisms for granting relief under double taxation agreements by providing for a credit for foreign tax against tax payable in the State. ***(2)***

Where a double taxation agreement, air transport agreement, tax information exchange agreement or the *Joint Council of Europe/OECD Convention on Mutual Administrative* ***(7)***

*Assistance in Tax Matters*, or any Protocol thereto, is given the force of law, Revenue is not prevented from disclosing information to an authorised officer of the government concerned, or of a party to the Convention, or any Protocol to the Convention, as the case may be, where such information is required to be disclosed under the agreement, or the Convention, or any Protocol to the Convention, as the case may be.

The Revenue Commissioners are entitled to make regulations to ensure the application of agreements as they were intended to apply and in particular — ***(9)***

- to ensure that relief does not accrue to persons not entitled to it, and
- for authorising the recovery of tax where a payment was made without deduction of tax in compliance with the arrangements and it is discovered that the arrangements do not, in fact, apply to the payment.

The regulations can require recovery of the tax by an assessment on the recipient or by deduction from future payments. No such regulations have been made.

An arrangement entered into with a non-governmental representative authority shall, for tax purposes, be treated like any other double taxation agreement made with a foreign Government. Accordingly, references to a "country" are deemed to include a reference to a "territory" and references to a "government" are deemed to refer to an "authority of a territory outside the State". **(10)**

## 826A Unilateral relief from double taxation

The section provides for unilateral relief from double taxation to be given in certain circumstances set out in ***Schedule 24***, where relief from double taxation is not available under a tax treaty.

## 826B Repayment of tax in case of ceased company: double taxation relief

### Summary

Included within Ireland's double taxation treaties are provisions which allow for an adjustment to the profits of a company where those profits have been subject to tax in both jurisdictions that are party to the agreement. Such an adjustment can be made by:

- correlative adjustment; or
- mutual agreement procedure,

upon which it may be the case that a repayment of tax is found to be properly due to a company.

This section provides, subject to satisfaction of all the relevant conditions, that where:

- a correlative adjustment or mutual agreement reached gives rise to a repayment of tax, and
- the company that would have been entitled to that repayment of tax has ceased to exist,

then that repayment of tax may be made to another group company.

This section ensures that Ireland can give effect to outcomes arising from certain specified procedures that are provided for in Ireland's double tax treaties.

## Details

### *Definitions*

Key definitions include:

'chargeable period' has the meaning assigned to it by ***section 321***; ***(1)***

'controlling interest' has the meaning assigned to it by ***section 111A***;

'correlative adjustment' means an adjustment of profits under the terms of an arrangement having the force of law by virtue of ***subsection (1)*** or ***(1B)***, as the case may be, of ***section 826***;

'effective 90 per cent subsidiary' must be construed in accordance with ***subsection (2)***;

'mutual agreement reached' means an agreement reached between the competent authority of the State and a competent authority of another jurisdiction in accordance with a mutual agreement procedure under an arrangement having the force of law by virtue of ***subsection (1)*** or ***(1B)***, as the case may be, of ***section 826***;

'ultimate parent entity' means a company that owns, directly or indirectly, a controlling interest in any other company and that is not owned, directly or indirectly, by another company with a controlling interest in it;

'valid application' must be construed in accordance with ***subsection (4)***.

***Subsection (2)*** provides the meaning, for the purposes of ***section 826B***, of 'effective 90 per cent subsidiary' of another company, referred to as the parent company.

In order for a company to be considered an effective 90 per cent subsidiary of the parent company the following three conditions must be satisfied: ***(2)(a)***

- the company must be a 90 per cent subsidiary, within the meaning of ***section 9***, of the parent company (i.e. the parent company must own 90 per cent of that company's ordinary share capital) and subject to the requirement of ***paragraph (b)*** which is outlined below (i.e. the ordinary share capital can be held directly or indirectly); ***(2)(a)(i)***
- the parent company must be beneficially entitled to not less than 90 per cent of any profits available for distribution to equity of holders of that company; and ***(2)(a)(ii)***
- the parent company would be beneficially entitled to not less than 90 per cent of the assets available for distribution to equity holders of that company in the case of a winding up. ***(2)(a)(iii)***

For the purposes of ***paragraph (a)(i)*** of ***subsection (2)*** the ordinary share capital can be held directly or indirectly. ***(2)(b)***

For the purposes ***paragraph (a)(ii)*** and ***(a)(iii)*** of ***subsection (2) sections 413***, ***414***, ***415*** and ***418*** will apply, with any necessary modifications, but without regard to ***section 411(1)(c)***, in determining the percentage of profits or assets to which a company is beneficially entitled. ***(2)(c)***

***Paragraph (a)*** of ***subsection (3)*** sets out, for the purposes of the section, the conditions for a company to be considered a 'ceased company', which are as follows: ***(3)(a)***

- the company has 'ceased to exist', ***(3)(a)(i)***

- the company, but for its cessation, would be entitled to a repayment of tax and the repayment arises following either a correlative adjustment or mutual agreement reached, ***(3)(a)(ii)***
- the company is not a transferor company for the purposes of ***section 865(10)***, and ***(3)(a)(iii)***
- immediately prior to the company ceasing to exist that it was an 'effective 90 per cent subsidiary' of an ultimate parent entity (referred to as a "group parent company"). ***(3)(a)(iv)***

***Paragraph (b)*** of ***subsection (3)*** sets out, for the purposes of the section, the conditions to be considered eligible to be a 'group repayment company', the first condition of which is that the company is resident in the State. In addition, the company must be: ***(3)(b)***

- the group parent company, ***(3)(b)(i)***
- an effective 90 per cent subsidiary of the group parent company, or ***(3)(b)(ii)***
- where the company that was the group parent company at the time the ceased company ceased to exist, has itself ceased to exist, and at time the group parent company ceased to exist, it was an effective 90 subsidiary of another ultimate parent entity (referred to as "the successor group parent company"), the nominated group repayment company is either the successor group parent company or an effective 90 per cent subsidiary of the successor group parent company. ***(3)(b)(iii)***

Provided the conditions of ***paragraph (a)*** and ***(b)*** are satisfied then the group parent company or the successor group parent company may submit a 'valid application' (the conditions of which are outlined ***subsection (4)***) to the Revenue Commissioners to have ***sections 864*** and ***865*** apply as if the group repayment company was in fact the ceased company (i.e. the group repayment company would effectively "step into the shoes" of the ceased company for the purposes of the repayment) only in respect of the repayment arising as a result of the correlative adjustment or mutual agreement reached.

***Subsection (4)*** sets out when an application will be considered a valid application for the purposes of ***section 826B***. ***(4)***

A valid application is an application that:

- is submitted by the group parent company or successor group parent company, and
- includes all the information that Revenue may reasonably require to determine whether the conditions in ***paragraphs (a)*** and ***(b)*** of ***subsection (3)*** have been satisfied.

***Subsection (5)*** provides that where the Revenue Commissioners (or an officer authorised by them) are of the opinion, having received a valid application, that it would be appropriate, in order to give effect to a correlative adjustment or mutual agreement reached, for ***sections 864*** and ***865*** to apply, in respect of the chargeable period as if the group repayment company were the ceased company, then: ***(5)(a)***

- ***sections 864*** and ***865*** shall apply on that basis, and ***(5)(b)(i)***
- the Revenue Commissioners (or an officer authorised by them) shall notify the group parent company, or successor group repayment company, or where it is a different company the group repayment company that ***sections 864*** and ***865*** will apply on that basis. ***(5)(b)(ii)***

The ceased company shall not be entitled to a repayment of tax for the chargeable period arising from the correlative adjustment or the mutual agreement reached. ***(5)(b)(iii)***

Any repayment to which this section applies shall not exceed the amount which would have made to the ceased company had it not ceased to exist. ***(6)***

The Revenue Commissioners may authorise any of their officers to perform any functions or duties required by this section. *(7)*

***Subsection (8)*** contains a 'main purpose' anti-avoidance rule to ensure that this section operates as intended. *(8)*

This section shall apply to mutual agreements reached, and correlative adjustments in respect of which a determination has been made, on or after the date of passing of Finance Act 2024. *(9)*

## 827 Application to corporation tax of arrangements made in relation to corporation profits tax under old law

This section provides that any arrangements made under section 361 of the Income Tax Act 1967 (that section was the predecessor of ***section 826***) or any earlier corresponding provision in relation to corporation profits tax apply to corporation tax in the same way as they were intended to apply to corporation profits tax and not as they apply in relation to income tax. However, this is subject to any arrangements made after 31 March 1976 which make other requirements. The section has no effect on Revenue's right to disclose information to authorised officers of territories with which double taxation arrangements are in force under ***section 826(7)*** or of the procedures for claims, and appeals, relating to credit for foreign tax under ***paragraph 12*** of ***Schedule 24***.

## 828 Capital gains tax: double taxation relief

### Summary

This section gives the Government authority, on the same lines as for income tax, to enter into arrangements with the governments of other territories to afford relief from double taxation in respect of capital gains tax and provides the mechanism for giving relief. It also deals with foreign tax paid in a territory with which Ireland does not have a double taxation treaty.

### Details

***Section 826*** and ***Schedule 24*** are adapted for the purposes of capital gains tax and, by substituting in that section references to capital gains and capital gains tax, respectively, for references to income and income tax, enables the Government to enter into the necessary arrangements with the Governments of other countries for the avoidance of double taxation of capital gains. *(1)*

Where relief for capital gains tax borne in another territory may be due, that relief can be set off only against capital gains tax chargeable in the State. If the capital gains tax suffered abroad exceeds the Irish capital gains tax chargeable, the excess is not eligible for set off against Irish tax on income. *(2)*

The disclosure of information to the Revenue authorities of another territory is authorised for the purposes of relief from double taxation of capital gains. *(3)*

Foreign capital gains tax which cannot be taken into account for credit purposes under a double taxation agreement is treated as an allowable deduction in computing chargeable gains on the disposal of the asset in question. *(4)*

## 829 Treatment for double taxation relief purposes of foreign tax incentive reliefs

## Summary

This section provides that tax spared under foreign law is, where a double taxation agreement between the territory concerned and Ireland so provide, to be treated as having been payable. The concept known as "tax sparing" relates to the giving of a credit against Irish tax or other double taxation relief in respect of foreign tax which has not actually been paid because the tax concerned has been foregone by the country concerned because of a relief from tax available in that country which is designed to promote industrial or other development in that country.

## Details

Any tax which would have been payable in the territory concerned but for a relief under the law of that territory given with a view to promoting certain developments outside of the State is treated for the purposes of giving double taxation relief as tax payable in the territory if a double taxation agreement between that territory and Ireland so provides. ***(2)***

This treatment applies to any relief given with a view to promoting industrial, commercial, scientific, educational or other development in a territory outside of the State. ***(1)***

The Revenue Commissioners are given a general power to make regulations for the purpose of giving effect to the tax-sparing relief. No such regulations have been made. ***(3)***

# CHAPTER 2
*Miscellaneous*

## **Overview**

This Chapter contains the reliefs arising by virtue of the EU Parent/ Subsidiaries Directive and certain other miscellaneous provisions concerning double taxation relief.

## **830 Relief to certain companies liable to foreign tax**

### Summary

This section provides a measure of double taxation relief for companies which derive dividends or interest, which have been subjected to "external tax", from the investment in foreign subsidiaries of profits which have been relieved from income tax, corporation profits tax or corporation tax under the "export sales relief" or the "Shannon" provisions. The relief is confined to interest and dividends arising in countries with which double taxation agreements are not in force.

### Details

"external tax" is tax payable in the country in which the company paying the tax is resident and which tax equates with Irish income tax or corporation tax or both these taxes. The country must be a country to which this section applies. Tax payable under the law of a province, state or similar division of a country or tax levied by a municipality or local authority cannot equate to Irish income or corporation tax. ***(1)***

This section applies to countries with which Ireland does not have a double taxation treaty. ***(2)***

Where a company (referred to as the "investing company", that is, the Irish resident company which has obtained "export sales relief" or "Shannon" relief or certain other reliefs) pays corporation tax on some part of its income arising in a territory to which the section applies and where the 3 conditions specified are fulfilled the Revenue Commissioners may grant such relief as is just. The relief is not to exceed one-half of the ***(3)*** corporation tax which would otherwise be payable on the income or the amount of the foreign tax on the income, whichever is the less.

The conditions which must be fulfilled are —

- the income must be a dividend or interest received from a subsidiary company (the paying company) resident in the foreign territory (that is, a company not less than one-half of the voting power in which is controlled directly or indirectly by the company claiming the relief),
- the dividend or interest must be shown to have arisen from an investment by the investing company in the paying company which was made out of profits in respect of which the investing company has received export sales relief under Part XXV of the Income Tax Act, 1967 and Part IV of the Corporation Tax Act, 1976 (where the export sales relief is at a rate less than 100%, only that lesser percentage of those profits is to be taken into account in calculating the total "exports" profits which can give rise to the qualifying investment) or out of profits which were disregarded under the old Shannon provisions in the Finance (Miscellaneous Provisions) Act, 1958, Part XXV of the Income Tax Act, 1976 or Part V of the Corporation Tax Act, 1976 (the relief does not apply to Shannon relief under the Finance Act, 1980),
- the investing company must have paid tax on the income in the foreign territory.

External tax paid includes external tax paid directly and underlying external tax that is, tax paid in the foreign territory by the paying company (the subsidiary) on its income and out of which the dividend or interest is paid to the investing company (the parent). ***(4)(a)***

The method in ***paragraph 8*** of ***Schedule 24*** of computing the "underlying" tax appropriate to a dividend which is used in the general double taxation relief also applies to the computation of "underlying" tax for the purposes of this section. ***(4)(b)***

The relief only applies in the case of territories with which Ireland does not have a double taxation agreement. There is an over-riding limitation on the relief which ensures double taxation relief is not given under the section to the extent that the aggregate of the foreign tax and the double taxation relief would exceed Irish corporation tax which would be payable if all of the income had arisen in the State. ***(5)(a)***

For the purpose of computing the amount of the Irish tax below which the aggregate of the Irish and foreign taxes may not be reduced, the amount of the foreign dividend to be included in the computation is the gross amount of the dividend (before deduction of withholding tax) increased by any underlying tax which the parent company is regarded under ***subsection (4)*** as having paid. ***(5)(b)***

Relief under the section is to be given as a credit against the corporation tax on the income referred to in ***subsection (3)(a)***. ***(6)***

A 6 year time limit applies to claims and an appeal procedure for matters in dispute applies. ***(7)***

**Example**

An Irish parent company receives a distribution from a foreign subsidiary in which it has invested profits in respect of which it (the parent company) had received "exports" relief, in an accounting period ending 31 December 2001.

| | € | € |
|---|---|---|
| Foreign subsidiary | | |
| Profits | 100 | |
| Foreign corporate tax, say | 30 | 30 |
| Dividend declared | 70 | |
| Withholding tax, say | 14 | 14 |
| Net dividend received by Irish parent | 56 | |
| Total foreign tax | | 44 |
| Normal Irish liability | | |
| Net dividend | 56 | |

| | | |
|---|---|---|
| Irish corporation tax | 11.20 | |
| Irish liability if no allowance made for foreign tax | | |
| Profits | 100 | |
| Irish corporation tax | 20 | |
| The limits imposed on the relief by ***subsection (3)*** are — | | |
| One-half of the normal Irish liability | | |
| i.e. x 11.20 = | 5.60 | |
| Or the foreign tax, if less i.e. | | 44 |
| The relief is, therefore, €5.60 and | | |
| the Irish liability is €11.20 – 5.60 = | | €5.60 |

There is a further limitation on the relief so that the Irish tax and the foreign tax together must not be less than the Irish tax which would be payable on the gross foreign profits —

| | € |
|---|---|
| Reduced Irish liability | 5.60 |
| Foreign tax | 44 |
| Total tax suffered | 49.60 |
| Irish liability on gross profits | 20 |

Therefore, no restriction is necessary and the Irish corporation tax on the dividend is —

| | € | € |
|---|---|---|
| Net dividend | 56 | |
| Corporation tax 56 @ 20% | | = 11.20 |
| less relief | | 5.60 |
| Net corporation tax payable | | 5.60 |

## 831 Implementation of Council Directive No. 90/435/EEC concerning the common system of taxation applicable in the case of parent companies and subsidiaries of different Member States

### Summary

This section implemented EU Council Directive 90/435/EC as amended by EU Council Directive 2003/123/EC on the common system of taxation applicable in the case of parent companies and their subsidiaries of different Member States (generally referred to as the Parent/Subsidiaries Directive). Since 2012 EU Council Directive 2011/96 (as amended) has replaced the implementing Directive as amended.

The Directives are concerned with relieving double taxation in the case of cross border dividend flows within the EU from a subsidiary to its parent company. Generally, the Directives seek to eliminate withholding tax and reduce double taxation of the profits out of which the dividends are paid either by exempting the dividends from tax in the hands of the parent company or allowing the parent company to reduce tax payable by it on the dividends by foreign tax borne by the subsidiary on the distributed profits.

Where the flow of profits is from a "subsidiary" to a "parent company" owning 5 per cent or more of the subsidiary's share capital a number of reliefs, as set out below, apply to distributions of profit in respect of the shareholding of 5 per cent or more.

- No withholding tax is to be deducted from the distributions by the subsidiary's country of residence.
- No withholding tax is to be deducted by the parent company's country of residence.
- The parent company's country of residence is either to —
    - exempt the parent company from corporation tax (or its equivalent) on the distributions from the subsidiary (the exemption method), or

- allow credit for the "underlying" corporation tax or equivalent foreign tax suffered by the subsidiary on the profits out of which the distribution is made (the credit method). This is the method applied by Ireland.

By bilateral agreement Member States are permitted to substitute a voting rights criterion for the shareholding criterion for the determination of a parent-subsidiary relationship. They may also, by bilateral agreement, add the condition that the shareholding or voting rights relationship must be in existence for 2 years for a parent-subsidiary relationship to exist. These options have been exercised by Ireland.

## Details

### *Definitions*

"bilateral agreement": the Directive provides at Article 3.2 for derogations from the 5 per cent shareholding requirement. These derogations are to be agreed bilaterally between Member States. While they would probably be agreed within a double taxation convention or by a protocol to such a convention the definition allows for any other form of intergovernmental agreement. ***(1)(a)***

"company" and "company of a Member State": these two definitions are related. The second definition's sole function is to clarify the meaning of the phrase used in the definition of "company" but not elsewhere in the section. Irish companies which come within the scope of the Directive are set out in the Annex 1 to the Directive and are companies incorporated or existing under Irish law, bodies registered under the Industrial and Provident Societies Act, building societies incorporated under the Building Societies Acts, trustee savings banks within the meaning of the Trustee Savings Bank Act 1989.

"distribution" is given a wide meaning to include all flows of profits, other than genuine interest payments, between parent and subsidiary companies. The meaning of the term "distribution" is determined by reference to the taxation laws of the country of residence of the subsidiary.

"foreign tax" is a tax, other than an Irish tax, which is listed in the Directive as part of its definition of "company of a Member State". The Directive mentions substitute taxes and these are also included in the definition of "foreign tax".

"parent company": this is taken from Article 3.1(a) of the Directive. It encompasses both a foreign subsidiary of an Irish parent company and an Irish subsidiary of a foreign parent company.

This also provides for the possibility that either one or both of the derogations allowed by Article 3.2 will be agreed between the Irish Government and the government of another Member State. It does this by referring to a bilateral agreement —

- providing for an additional 2 year continuous relationship requirement for there to be a parent-subsidiary relationship.
- providing for the 5 per cent shareholding requirement being replaced by a 5 per cent voting rights requirement. Alternatively, a 2 year continuous 5 per cent voting rights relationship may be required for there to be a parent-subsidiary relationship.

Where such provisions of a bilateral agreement exist they are to govern the application of the definition of "parent company" to companies covered by the bilateral agreement.

"the Directive" means Council Directive No. 2011/96/EU of 30 November 2011[1], as amended.

1 OJ No. L345 29.12.2011, p8.

***Construction***

The concept of one company being a subsidiary of another is explained by reference to the term "parent company". All references to "subsidiary" in the section are references to one company's (the subsidiary's) status in relation to another. If a company would be a "parent company" by reference to its interest in another company the other company is its subsidiary. ***(1)(b)***

In order to ensure that this section accurately reflects the terms of the "Parent company-subsidiary" directive, words or expressions are in general given the same meaning as they have in the Directive. ***(1)(c)***

***Relief***

Credit for foreign tax on any distribution is to be set against Irish corporation tax on distributions received. ***(2)***

The foreign tax to be credited is any withholding tax charged by a Member State pursuant to a derogation duly given under Article 5 of the Directive.

Tax borne by lower tier subsidiaries can be offset against tax payable on a dividend received by an Irish parent company from its direct subsidiary. The shareholding requirement before such relief is available is that at each tier there must be a holding of at least 5 per cent. It should be noted that ***Schedule 24*** contains a similar provision generally but two holding thresholds are involved. The first is a holding requirement at each tier. The second is an overall holding requirement by the parent company in each lower tier subsidiary. The minimum holding requirement in both cases is 5 per cent. However, as the second holding requirement does not apply under the Directive, it is disapplied for the purposes of ***section 831***.

Distributions from foreign subsidiaries are exempt from the Irish withholding tax administered by Irish paying agents of foreign dividends in the unlikely event that they were received through an Irish paying agent.

In accordance with the Directive these reliefs do not apply to distributions on a winding up. In addition, the distributions must be chargeable to Irish corporation tax. If they were not, it would be inappropriate to give credit to the parent company for foreign tax.

The foreign tax credited under ***subsection (2)(a)(ii)*** or ***(2A)*** is the tax suffered by the subsidiary on the part of its profits out of which the distribution is made. The provisions of ***Schedule 24*** which set out rules for computing the foreign tax to be credited are adopted for the purposes of implementing the Directive. ***(3)***

Because the criterion for parent-subsidiary treatment in most Irish double taxation treaties differs from that set out in this section it could happen that an Irish parent company could be entitled to have a tax credit in respect of a dividend paid to it by another Member State while at the same time being allowed credit for foreign tax against its liability to Irish tax on the dividend. The tax credit paid to the parent company by the other Member State would be a refund of part of the corporation tax paid by the subsidiary on the profits out of which the dividend is paid. The credit under this section is restricted by the amount of any tax credit paid to the parent company by the other Member State.

A parent company is not entitled to claim credit for foreign tax if it would be entitled to a credit for such tax under any other provision of the Irish tax code and double tax treaties. ***(2)***

***Subsidiary treated as transparent entity***

This concerns an unusual scenario  where, say a company in one Member State (Member State B) is a subsidiary of a company in another Member State (Member State A) but Member State A regards the subsidiary as being transparent for tax purposes. In such ***(2A)*** circumstances, Member State A would tax the parent company on its share of profits as they arise (rather than waiting for a dividend to be received). If this situation arises, the Directive allows Member State A to continue to tax the profits as they arise but requires it to give credit to the parent company for an appropriate share of tax paid by the subsidiary and lower tiers of subsidiaries. This scenario was covered by the Directive because some of the companies covered by  annex 1 are regarded as transparent in some Member States.

Where, by virtue of the legal characteristics of a subsidiary, the parent in Ireland is taxable on its share of the subsidiary as they arise (i.e. effectively treated as a partner), credit is to be allowed against the tax on these profits for an appropriate proportion of certain foreign tax specified in ***paragraphs (a)*** and ***(b)*** to the extent that such credit is not already given (for example, under a tax treaty). The foreign tax concerned is:

- any foreign tax borne by the subsidiary,
- tax borne by lower tiers of subsidiaries that is treated under ***paragraph 9B*** of ***Schedule 24*** as borne by the immediate subsidiary. (***Schedule 24*** makes such a provision generally but subject to two holding thresholds, one at each tier and the other an overall holding requirement by the parent in the ultimate subsidiary. The overall holding requirement does not apply for the purposes of ***subsection (2A)***).

The section applies without prejudice to double taxation agreements so that the reliefs available under such agreements and the provisions in agreements for exchange of information are unaffected by the section. ***(4)***

### *Dividend Withholding Tax*

Dividend withholding tax (DWT) under ***Chapter 8A*** of ***Part 6*** does not apply to a distribution made by an Irish resident subsidiary company to its parent company resident in another Member State. However, the subsidiary company is required to furnish to Revenue details of the distribution in accordance with ***section 172K***. ***(5)***

The non-application of DWT does not have effect, however, if the majority of the voting rights in the parent company are controlled by persons who are resident outside of tax treaty countries or EU Member States unless it can be shown that the parent company exists for genuine commercial reasons and is not part of a tax avoidance scheme, including a scheme to avoid DWT. ***(6)***

### Finance Act 2015 Amendment

Section 34 Finance Act 2015 introduced a new ***subsection (7)*** which has effect in respect of distributions made or received on or after the passing of Finance Act 2015. ***Subsection 7*** transposes Council Directive No. 2015/121/EU which amended the PSD to include a common minimum anti-avoidance rule across EU States. This rule means that the benefits of the section will not be granted to an arrangement or series of arrangements which has been put in place for the main purpose or one of the main purposes of obtaining a tax advantage that defeats the purpose of the Directive and is not genuine having regard to all the facts and circumstances. ***(7)(a)***

An arrangement shall be regarded as not genuine to the extent that it is not put in place for valid commercial reasons which reflect economic reality. ***(7)(b)***

An arrangement may comprise of more than one step. ***(7)(c)***

## 831A  Treatment of distributions to certain parent companies

### Summary

This section provides benefits comparable to those in the 1990 EU Parent/Subsidiaries Directive to companies resident in Switzerland.

The background to this is the agreement between the EU and Switzerland under which Switzerland undertook to adopt equivalent measures to those in the EU Savings Directive.

Implementation of the Savings Directive was conditional on, amongst other things, agreements being entered into with certain countries including Switzerland. An agreement was concluded with Switzerland in 2004. One of the terms of the agreement with Switzerland was that Swiss companies would be afforded the benefits of the 1990 Parent/Subsidiaries Directive.

Under the agreement with Switzerland, dividend payments of the type covered by the Directive made by subsidiary companies in Ireland to their parent companies in Switzerland are to be paid without deduction of tax. The conditions under which they are to be paid without deduction of tax are set out in the section.

The principal conditions are:

- the recipient must be a company resident in Switzerland (and not resident outside the EU or Switzerland under a tax treaty) or a Swiss branch of a company of another Member State,
- the recipient must be subject to tax in Switzerland, and
- the company must be a type of company specified in the agreement with Switzerland.

The new rules apply from 1 July 2005.

## Details

### *Definitions*

"company" is defined as a company that is tax resident in Switzerland and that satisfies both of the following conditions:

- it must be a type of company that is mentioned in the agreement between the EU and Switzerland providing for measures equivalent to those in the EU Savings Directive. ***(1)(a)(i)***
- it must be subject to tax in Switzerland and not be exempt. ***(1)(a)(ii)***

"parent company" is defined as a company which controls 25% of the voting power in another company. ***(1)(a)***

"tax" is defined in relation to Switzerland as any tax in Switzerland that corresponds to income tax or corporation tax in Ireland. ***(1)(a)***

A company is regarded as a subsidiary of another company if the other company holds such rights as are sufficient to enable it to be regarded as a parent company. ***(1)(b)***

### *Non-application of Withholding tax*

Dividend withholding tax under ***Chapter 8A*** of ***Part 6*** does not apply to a distribution made to a parent company resident in Switzerland by its subsidiary which is an Irish-resident company. ***(2)***

The new section applies as respects distributions made on or after 1 July 2005, the date on which the EU Savings Directive is scheduled to come into effect.

# **831B Participation exemption for certain foreign distributions**

## Summary

Section 831B provides for a corporation tax exemption referred to as a 'participation exemption'. The measure provides for a simplified method of double tax relief for qualifying foreign dividends and other types of distributions (referred to as a 'relevant distribution'). The principal conditions are:

- the relevant distribution must be made by a 'relevant subsidiary' in respect of its shares to a 'parent company' on or after 1 January 2025,
- the parent company must be Irish resident, or resident for foreign tax purposes in an EEA state and not generally exempt from foreign tax,
- the relevant subsidiary must be a company that is resident for foreign tax purposes in a 'relevant territory' and not generally exempt from foreign tax, both at the date the distribution is made and throughout the 5 year period prior to this date,
- the parent company must hold a 'qualifying participation' in the relevant subsidiary, being a holding of at least 5 per cent of the ordinary share capital with regards to the ownership of ordinary shares and entitlement to profits on a distribution and a share of assets on a winding up,
- the qualifying participation must be held for a continuous period of at least 12 months,
- the relevant distribution must be made either (i) out of profits, or (ii) out of assets (where the underlying shares if sold would qualify for exemption under section 626B), of the relevant subsidiary,
- the relevant distribution cannot be deductible for foreign tax purposes, it must constitute income in the hands of the recipient and it cannot be interest or similar income from a debt claim,
- the parent company must otherwise be chargeable to corporation tax on the distribution under Case III of Schedule D, or under Case IV in the case of certain dividends from preference shares, and
- the parent company must claim the participation exemption in its tax return.

Foreign tax refers to a tax that corresponds to Irish corporation tax, that generally applies to income, profits and gains of a company and that is imposed at a nominal rate greater than zero per cent.

A relevant territory means an EU/EEA state or a jurisdiction with which Ireland has a double tax agreement that is not on the EU Code of Conduct Group list of non-cooperative jurisdictions.

The parent company can choose each year whether to claim the participation exemption in its annual tax return or to tax the income and claim relief under section 21B and/or Schedule 24, if applicable. A claim for the participation exemption will apply to all relevant distributions for the accounting period.

## Details

***Definitions*** ***(1)***

"**EEA Agreement**" means the Agreement on the European Economic Area signed at Oporto on 2 May 1992, as adjusted by all subsequent amendments to that Agreement.

"**EEA state**" means a state which is a contracting party to the EEA Agreement. This includes Member States of the European Union, Iceland, Liechtenstein and Norway.

"**foreign tax**", in relation to a territory other than the State, means a tax which-

- is equivalent to Irish corporation tax,
- generally applies to income, profits and gains of a company that is tax resident in that territory, and
- is imposed at a nominal rate greater than zero per cent.

"**listed territory**" means a jurisdiction included in Annex 1 of the EU Code of Conduct's list of non-cooperative jurisdictions for tax purposes (the 'EU list'). This definition links to ***section 835YA***, a provision relating to Controlled Foreign Company rules, which is amended annually to take account of updates made to the EU list during the year. The meaning is modified for the purposes of ***section 831B*** so that the EU list applies to distributions made on or after 1 January in a given year. In that regard references to 'an accounting period beginning' are be read as references to 'the making of a distribution'.

"**parent company**", in relation to a relevant subsidiary, means a company that holds a qualifying participation in the relevant subsidiary and-

(a) is Irish tax resident, or

(b) where it is not Irish tax resident -

- is resident for foreign tax purposes in an EEA state, and
- is not generally exempt from foreign tax.

"**qualifying participation**" is to be construed in accordance with ***subsection (2)***.

"**reference period**", in relation to a relevant distribution, means the 5 year period immediately before the date the relevant distribution is made.

"**relevant distribution**" means a distribution, or part of a distribution, that-

(a) represents income in the hands of the recipient for corporation tax purposes, and

(b) is made by a relevant subsidiary in respect its share capital either out of the profits or out of the assets of the relevant subsidiary.

In this definition, profits has the same meaning as in ***section 21B*** and refers to the amount of accounting profits after taxation. The profits are to be taken as those required to be presented to the company's shareholders at its AGM, or where there is no requirement, the profits prepared in accordance with an accounting framework that is recognised where the company is incorporated as presenting a fair view of the profits of the period concerned.

A distribution is made out assets of a company where that company bears the cost of the distribution. Distributions made out of assets are subject to an additional requirement as set out in ***subsection (5)(b).***

The following amounts cannot be treated as a relevant distribution–

(I) a distribution, or that part of a distribution, that is deductible for tax purposes in any territory outside the State,

(II) a distribution in a winding up,

(III) any interest or other income from debt claims providing rights to participate in a company's profits (profits has the same meaning as in ***section 21B***),

(IV) any amount considered to be interest equivalent (within the meaning of interest limitation rules in ***section 835AY***), and

(V) any dividend paid or other distribution made by an offshore fund (offshore fund is construed in accordance with ***section 743***).

"**relevant period**", in relation to a relevant distribution means the period-

(a) beginning on the date that is 5 years immediately before the date the relevant distribution is made, or if the relevant subsidiary making the relevant distribution was incorporated or formed after that date, then the date the relevant subsidiary was incorporated or formed,

(b) until the date the relevant distribution is made.

"**relevant subsidiary**", in relation to a relevant distribution, means a company that meets certain residence and company taxation conditions throughout the relevant period and at the date of making the relevant distribution.

(a) The company must be resident for foreign tax purposes and not generally exempt from foreign tax in the relevant territory, both on the date on which it makes the relevant distribution and throughout the relevant period. A company is not precluded from being a relevant subsidiary if it moves its tax residence from one relevant territory to another during the relevant period. The general taxation provision does not exclude a company which is generally subject to tax at the company level but which may avail of an exemption for certain sources of income (e.g. a company that avails of a participation exemption regime in another jurisdiction).

(b) This is an anti-avoidance provision that excludes companies that acquired the business or assets of another company in the 5 year period prior to making the distribution, where the other company is not resident in a relevant territory. It provides that a company cannot be a relevant subsidiary where, at any time during the reference period (which is the 5 year period preceding the date of the relevant distribution), the company acquired-

- a business or part of a business, or
- the assets or greater part of the assets used for the purposes of another business

from another company that satisfies certain residence criteria.

The other company must have been resident for foreign tax purposes in a relevant territory from the start of the reference period (or from the date the other company was incorporated or formed, if later) until the date the acquisition of the business or assets takes place.

(c) The is an anti-avoidance provision that excludes companies that merged with a company that is not resident in a relevant territory, during the 5 year period prior to making the distribution. It provides that a company cannot be a relevant subsidiary where, at any time during the reference period, the company was formed through a merger with another company that does meet certain residence criteria. The other company must have been resident for foreign tax purposes in a relevant territory from the start of the reference period (or from the date the other company was incorporated or formed, if later) until the date the merger takes place.

"**relevant territory**' means an EEA state other than the State, a territory with which Ireland has a double tax agreement in force, or a territory with which Ireland has signed a double tax treatment that has not yet come into force. It cannot, however, be a listed territory i.e. a territory on the EU list of non-cooperative jurisdictions for tax purposes.

***Qualifying participation***

***Subsection (2)*** sets out the three main criteria for establishing whether a company holds a qualifying participation in a relevant subsidiary. ***(2)***

The company must have a minimum 5% direct or indirect holding of ordinary share capital in the relevant subsidiary, whereby it owns at least 5% of the ordinary share capital and is beneficially entitled to at least 5% of the profits, and if the company was wound up, at least 5% of the assets, available for distribution to equity holders of the relevant subsidiary. ***(a)***

There are various rules that must be applied in order to determine whether the conditions in paragraph (a) are met. ***(b)***

(i) Provisions (2) – (10) of ***section 9*** are applied in determining ownership of share capital, including shares held through intermediate companies. ***(b)(i)***

(ii) A holding of ordinary share capital in a relevant subsidiary cannot be established by reference to share capital- ***(b)(ii)***

(I) that is owned directly on a trading account of the holder so that a profit on a sale of the shares would be treated as a trading receipt of the holder's trade, or

(II) that is owned indirectly and is-

(A) held through an intermediary company that is not Irish tax resident or that is not resident for foreign tax purposes in a relevant territory, or

(B) is owned directly by another company on a trading account so that a profit on the sale of the shares would be treated as a trading receipt of that other company.

(iii) ***Sections 413*** to ***419*** (which deals with company group relief) apply to ensure holdings are genuine and cannot be contrived. ***(b)(iii)***

(I) ***Section 411(1)(c)*** is disregarded in so far as it relates to ***sections 413*** to ***419***. The deletion of ***section 411(1)(c)*** means, *inter alia*, the different territorial scope and definition of a 'relevant territory' for the purposes of ***section 411*** do not apply to this section.

(II) The meaning of 'the relevant accounting period' in ***section 419(1)***, as applied in ***sections 414, 415*** and ***417***, is modified so that it refers to the accounting period current at the time in question.

***Exemption***

An exemption from corporation tax is available to a parent company where a relevant subsidiary makes a relevant distribution to that parent company in an accounting period. ***(3)***

The exemption applies where in an accounting period:

***(a)*** a relevant subsidiary makes a distribution to a parent company of the relevant subsidiary, and either the full distribution is a relevant distribution or part of the distribution is a relevant distribution, and ***(a)***

***(b)*** the parent company would (if this exemption did not apply) otherwise be chargeable to corporation tax on the relevant distribution under either: ***(b)***

***(i)*** Case III of Schedule D (i.e. income arising from possessions outside the State). A distribution that represents a Schedule D Case I trading receipt of the parent company is therefore not in scope of the exemption. ***(b)(i)***

The amount on which the parent company would be chargeable to corporation tax under Case III cannot be computed in accordance with the provisions applicable to Case I. This refers to circumstances where ***section 77(5)*** (relating to certain foreign trades) or ***section 110(2)*** applies. A company that is a ***section 110*** company cannot avail of the participation exemption.

or

***(ii)*** Case IV of Schedule D in accordance with ***section 138***, which applies to dividends on certain preference shares. ***(b)(ii)***

Where the conditions listed above are met, and subject to ***subsections (5)*** to ***(8)***, corporation tax will not be chargeable on the relevant distribution. The exempt amount will not be taken into account in computing income of the parent company for corporation tax purposes. Any part of a distribution that does not qualify as a relevant distribution is not exempt.

The exemption will not apply where another provision of the Corporation Tax Acts takes precedence, for example, the general anti-avoidance rule (GAAR) in ***section 811C***.

***Single claim for double tax relief***

A parent company who avails of the participation exemption will not be entitled to any other form of tax relief for any tax paid in a relevant territory in respect of the exempted relevant distribution. This is in line with general principles of double tax relief, whereby relief for foreign tax cannot exceed any Irish tax due on the relevant income. ***(4)***

***Minimum holding period***

The parent company must hold the minimum 5% qualifying participation in the relevant subsidiary for a continuous period of at least 12 months in order for the exemption to apply. That period must include the date on which the relevant distribution is made by the relevant subsidiary to the parent company. ***(5)(a)***

Where a distribution is made shortly after a 5% qualifying participation is acquired, the parent company may still claim the exemption provided the 12 month holding period is subsequently met and provided all other conditions for relief are satisfied.

***Additional requirement for distributions made out of assets***

An additional requirement is in place where the relevant distribution is made in respect of a relevant subsidiary's share capital out of the assets of that relevant subsidiary. If the shares of the relevant subsidiary were disposed of by the parent company on the date the distribution is made, any chargeable gain on that disposal must be capable of qualifying for exemption under ***section 626B***. Distributions out of assets are therefore subject to requirements set out in ***section 626B***, which includes, for example, a trading test. This requirement does not apply to distributions to the extent that they are made out of profits of the relevant subsidiary. ***(5)(b)***

***Exclusions***

The participation exemption does not apply to a relevant distribution made to life assurance companies where the distribution is instead taxed under the provisions of Chapter 1 and 3 of Part 26 (i.e. Old Basis Business provisions for life assurance companies). Any New Basis Business income taxable under Case I of Schedule D is also excluded by virtue of ***subsection (3)(b)(i)***. Any New Basis Business parent companies that have dividends taxable under Case III may be eligible for the participation exemption where the other qualifying conditions of this section are met. ***(6)(a)***

The participation exemption does not apply to a relevant distribution made to a company that is an undertaking for collective investment within the meaning of ***section 738***. ***Section 738*** sets out the taxation regime for funds that were authorised before the gross-roll-up regime was introduced. ***(6)(b)***

***Targeted anti-avoidance rule***

The benefits of the participation exemption will not be available where a relevant distribution arises in respect of an arrangement, or part of an arrangement, which— ***(7)(a)***

- has been put in place for the main purpose of, or one of the main purposes of which is, obtaining a tax advantage, and ***(a)(i)***

- is not genuine having regard to all the facts and circumstances. An arrangement, or part of an arrangement, is regarded as not genuine to the extent that it is not put into place for valid commercial reasons which reflect economic reality. ***(a)(ii) & (b)***

***Tax return claim***

The participation exemption will not apply unless the parent company makes a claim, referred to as a 'relevant claim', in the tax return (CT1) for the accounting period in which the relevant distribution is made by a relevant subsidiary. ***(8)***

A relevant claim applies to all relevant distributions made to the parent company in the accounting period by all relevant subsidiaries in respect of which that parent company holds a qualifying participation. Therefore, a claim for the participation exemption cannot be made on a dividend by dividend or subsidiary by subsidiary basis.

## 832 Provisions in relation to Convention for reciprocal avoidance of double taxation in the State and the United Kingdom of income and capital gains

### Summary

This section elaborates on the application in certain circumstances of the 1976 double taxation agreement with the United Kingdom.

### Details

"the Convention" is the 1976 double taxation agreement between Ireland and the United Kingdom. ***(1)***

The application of the 1976 agreement is subject to the rules, set out in ***section 73***, for the computation of income arising in the United Kingdom for the purposes of assessment under Case III of Schedule D. ***(3)***

These provide that the remittance basis of assessment in respect of income from securities and possessions abroad which may be claimed by individuals who are not domiciled or not ordinarily resident in the State is not to apply to income arising in the United Kingdom. It also provides that the tax in respect of income (other than income from stocks, shares or rents) arising in the United Kingdom is to be computed on the same basis as if it had arisen in the State.

In the case of United Kingdom friendly societies carrying on a life assurance business in the State, the expenses of management to be taken into consideration for the purposes of relief for such management expenses under ***section 707*** are to be the expenses attributable to contracts made on or after 6 April 1976. ***(4)(a)***

In computing the income of such United Kingdom friendly societies to be charged to corporation tax, income attributable to contracts of assurance effected before 6 April 1976 is not to be taken into account. ***Section 726*** lays down the method of computing the chargeable income of an overseas life assurance company by way of a formula which determines the taxable portion of the income from the investments of the life assurance fund. The taxable portion is the amount which bears the same proportion to the total income from the investments as the average of the liabilities to policy holders whose proposals were made through a branch in the State bears to the average of the liabilities to all the policy holders. Liabilities on foot of Irish contracts of assurance made before 6 April 1976 are to be excluded in arriving at the average of the liabilities to policy holders whose proposals were made through the Irish branch. ***(4)(b)***

The provisions regarding such United Kingdom friendly societies are to be construed as one with ***Part 26*** which deals with the taxation of life assurance companies. ***(4)(c)***

## 833 Convention with the United States of America

This section was deleted by section 48 of, and Schedule 3 to, the Finance Act, 1998 with effect from 1 January 1998 for corporation tax purposes and 6 April, 1998 for income tax and capital gains tax purposes. The double taxation agreement made under ***section 826*** with the United States of America – Double Taxation Relief (Taxes on Income and Capital Gains) (United States of America) Order, 1997 (S.I. No. 477 of 1997) refers – is now in force.

## 834 Relief in respect of ships documented under laws of United States of America

This section was deleted by section 48 of, and Schedule 3 to, the Finance Act, 1998 with effect from 1 January 1998 for corporation tax purposes and 6 April, 1998 for income tax and capital gains tax purposes. The double taxation agreement made under ***section 826*** with the United States of America – Double Taxation Relief (Taxes on Income and Capital Gains) (United States of America) Order, 1997 (S.I. No. 477 of 1997) refers – is now in force.

## 835 Saver for arrangements made under section 362 of Income Tax Act, 1967

Section 362 of the Income Tax Act, 1967, a provision regarded as redundant was repealed by the Finance Act, 1987, with a saver for sea and air transport double taxation agreements already entered into under the section. ***Section 826*** contains powers similar, but wider in ambit, to those in section 362 of the Income Tax Act, 1967 in relation to the entering into double taxation agreements by the Government. This section provides that despite the repeal of section 362 of the Income Tax Act, 1967 arrangements entered into by Orders made under that section continue to have the same force of law as if the 1987 repeal had not been effected.