

## **Tax Treatment of Certain Dividends**

This document should be read in conjunction with  
section 21B of the Taxes Consolidation Act 1997

### **Part 02-02-03a**

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## 1. Introduction

The purpose of this manual is to outline the corporation tax treatment of certain foreign dividends received by Irish resident companies as set out in section 21B TCA 1997.

This manual explains the circumstances and conditions that permit certain dividends received by an Irish resident company out of the trading profits of a non-resident company that is resident, in an EU Member State, in a country with which Ireland has a double tax treaty in force, in a country which Ireland has signed a double tax treaty which has yet to come into force, in a country which has ratified the Joint Council of Europe/OECD Convention on Mutual Assistance in Tax Matters or in a non-treaty country where the company is owned directly or indirectly by a quoted company, to be charged to tax at the 12.5% rate of corporation instead of the 25% rate. Trading profits of non-resident companies are allowed to pass up through tiers of companies by way of dividend payments so that, when ultimately paid to a company within the charge to corporation tax in the State, that company will be taxed on the dividends received by it at 12.5%. Where dividends do not qualify for to be charged at the 12.5% rate, they will continue to be charged at the 25% rate.

This manual sets out--

- a) The nature of dividends that qualify and the conditions that must be satisfied;
- b) The rules for identifying the underlying trading profits out of which dividends are paid for the purpose of determining the rate of tax to be applied to those dividends;
- c) The conditions that allow the full amount of a dividend received by a company to be charged at the 12.5 % rate, notwithstanding that a part of the dividend may not be paid out of trading profits; and
- d) Special rules that apply in the case of companies that are portfolio investors.

## 2. Definitions

“Profits” of a company for a period is defined as the profits of the company according to its Profit and Loss Account, or Income Statement, for the period. A Profit and Loss Account is likely to be relevant where the company’s accounts are prepared under local generally accepted accounting principles. Where a company uses International Financial Reporting Standards (“IFRS”) in the preparation of its accounts, the profits will appear in the Income Statement that, under IFRS, is the equivalent of the Profit and Loss Account.

Where a company is required to present a Profit and Loss Account or Income Statement to its shareholders at its AGM, the profits are to be taken as the profits after taxation according to that Profit and Loss Account or Income Statement.

Where the company is not required to present its Profit and Loss Account or Income Statement at its AGM, the profits are to be taken as the profits after taxation according to the Profit and Loss Account, or Income Statement, prepared by the company based on an accounting framework that is recognised where the company is incorporated, is generally accepted as presenting a fair view of the profits of the period concerned.

“Relevant territory” is defined as an EU Member State, a country, not being an EU Member State, with which either Ireland has a double tax treaty in force or with which Ireland has signed a double tax treaty which has yet to come into force or a country, not being one of the foregoing, which has ratified the Convention on Mutual Assistance in Tax Matters (referred to in *section 826(1C)*). It includes the State. The inclusion of the State is relevant where a dividend is paid by an Irish company to its parent company in a Member State or a country with which Ireland has a tax treaty and is then paid on as a dividend to that company’s parent in the State.

“Trading profits” means the aggregate of the following two amounts—

The first amount is the proportion of the company’s profits that arise from trading. This is so much of the profits of the company as are, on a just and reasonable basis, attributable to the carrying on of a trade by the company.

The second amount is so much of the profits of the company as are attributable to the amount of dividends received by the company that are treated as trading profits of the company. This will be an “after tax” amount. These are dividends received by the company out of trading profits of other companies in relevant territories.

Trading profits do not include amounts attributable to the profits of an excepted trade within the meaning of *section 21A*, or to dividends paid out of such profits. An excepted trade is a trade of dealing in or developing land, a trade of working minerals or a trade consisting of petroleum activities. The profits of such a trade are subject to tax at the 25% corporation tax rate. Dividends paid out of the profits of those

activities should also be subject to tax at that rate.

### 3. Interpretation rules

The references in the section to companies by which dividends are paid refer only to companies that are resident in relevant territories or companies, the principal class of shares of which, or where the company is a 75% subsidiary of another company, the principal class of shares of that other company, are substantially and regularly traded on a recognised stock exchange.

Of note, there is no strict legal definition of a “recognised stock exchange”. However, if reference is made to the particular stock exchange in publications such as the Financial Times or the Wall Street Journal, then provided that the stock exchange is located in a relevant territory, it can be deemed to be ‘recognised’ for the purposes of section 21B.

A company is a 75% subsidiary company of another company, if and so long, as a minimum of 75% of the ordinary share capital of that company is owned by a company that is quoted on a recognised stock exchange. The provisions of sections 412 to 418 apply for the purpose of determining whether a company is a 75% subsidiary of another company.

In circumstances where, as part of a joint venture, a company is wholly owned by two companies which are both quoted on a recognised stock exchange, and the company is not a 75% subsidiary of either company, Revenue is prepared to accept that it may be regarded as a company for the purposes of this section. In such a case, sections 412 to 418 will apply with necessary modifications.

A dividend received by the company that is paid out of trading profits of another company will be treated as being received out of trading profits. The same will apply to a dividend that is paid out of income of a company that is treated under the section as trading profits. This includes income that consists of a dividend received by a company out of the trading profits of another company and which is paid on as a dividend to a third company.

Dividends are treated as paid out of profits of a period, as set out below.

There are three scenarios:

- a. If the dividend is paid for a specified period, the dividend will be treated as paid out of the profits of that period,
- b. If the dividend is not paid for a specified period but out of specified profits, the dividend will be treated as being paid out of the period in which those profits arose,
- c. If the dividend is neither paid for a specified period, nor out of specified profits, the dividend will be treated as paid out of profits of the last period for which accounts of the company were made up that ended before the payment of the dividend.

Rules are provided for a situation where a dividend that is treated as paid for a particular period exceeds the distributable profits for that period. The rules provide that where, in the case of a period identified in *paragraphs (a), (b) or (c)* as the period for which a dividend is paid, the total dividend exceeds the profits available for distribution, the excess is to be treated as paid out of the profits of the company for the immediately preceding period (or so much of those profits as have

not already been distributed, or treated as distributed). A dividend paid that exceeds distributable profits can be brought back through years in this manner to determine the period that it is to be treated as paid for.

## 4. Additional rules

Certain rules apply to determine the appropriate proportion of a dividend that is treated as paid out of trading profits. Where the dividend is paid out of specified profits, the proportion of the dividend chargeable at 12.5% is equal to the proportion of the trading profits included in the specified profits. Where the dividend is not paid out of specified profits of a period, the proportion of the dividend chargeable at 12.5% is equal to the proportion the trading profits included in the total profits for the period out of which the dividend is paid.

In certain cases, a dividend paid by a company for a period can be treated as being paid out of trading income notwithstanding that some of it may be paid out of other income of the company, including non-trading income and dividends received by it from companies that are not resident in a relevant territory. This will apply where certain profits and assets conditions are met.

The **profits condition** requires that not less than 75% of the total profits of the dividend paying company must consist of trading profits. It should be noted that this 75% test can be met by the company's own trading profits or by a combination of such profits and dividends, received by that company from companies resident in relevant territories out of trading profits of those companies, that are treated as trading profits of the dividend paying company.

The **asset condition** requires that a minimum of 75% of the assets of the dividend receiving company and all companies of which it is a parent (with a holding threshold of 5% applying for this purpose in accordance with *section 626B*) are trading assets. In calculating whether this condition is met no account is to be taken of assets of any of those companies that consist of shares held by it in another of those companies or loans made by one of those companies to another of those companies.

Once the 75% income and asset tests are met, the dividends will qualify to be taxed at the 12.5% rate irrespective of the source of the dividends.

## 5. Applicability

The section applies where a company receives a dividend chargeable to tax under Case III of Schedule D and the dividend is paid to it by another company out of its trading profits. A dividend is chargeable under Case III where it is received from a non-resident company. A dividend received from an Irish resident company is not chargeable under Case III but is regarded as franked investment income and is exempt from further tax in the hands of the receiving company.

## 6. Portfolio investors

Special rules apply in the case of portfolio investors. Dividends from portfolio investments that are chargeable to tax under Case III are treated as paid out of trading profits and are taxable at 12.5%. Dividends from portfolio investments that would otherwise be included as trading receipts of a trade are given the same treatment as franked investment income and are exempt from

corporation tax. A portfolio investor is an investor that does not own, directly or indirectly either alone or together with a person who is connected with it (within the meaning of *section 10*), more than 5% of the share capital or voting rights of the other company.

## 7. Claims

Where a company proves that the section applies and makes a claim in that behalf, *section 21A(3)* (which applies the 25% rate of corporation tax to certain income of companies – including in particular income of companies that is chargeable under Case III of Schedule D) will not apply to dividends or any part of the dividends received by a company from another company out of trading income of the other company. A company must be able to demonstrate that they are entitled to the benefits of the section. If they can demonstrate this they will be entitled to avail of the benefits under self-assessment. In the event of an audit they may be required to prove that they meet the conditions of the section.

A claim under the section is to be included with a company's annual return of profits for the accounting period concerned.