



DOUBLE TAXATION RELIEF: FOREIGN NOMINAL RATES

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ICAEW welcomes the opportunity to comment on the draft clause ‘Double taxation relief: foreign nominal rates’ published by HMRC on 20 July 2022, a copy of which is available from this [link](#).

For questions on this response, please contact our Tax Faculty at taxfac@icaew.com quoting REP 7422.

The legislation drafter may wish to include a definition of the term “foreign nominal rate of tax” in the clause. A suggested definition is included in this representation.

This response of 14 September 2022 has been prepared by the ICAEW Tax Faculty. Internationally recognised as a source of expertise, the ICAEW Tax Faculty is a leading authority on taxation and is the voice of tax for ICAEW. It is responsible for making all submissions to the tax authorities on behalf of ICAEW, drawing upon the knowledge and experience of ICAEW’s membership. The Tax Faculty’s work is directly supported by over 130 active members, many of them well-known names in the tax world, who work across the complete spectrum of tax, both in practice and in business. ICAEW Tax Faculty’s Ten Tenets for a Better Tax System, by which we benchmark the tax system and changes to it, are summarised in Appendix 1.

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THE MEASURE

1. This draft clause prevents access to double tax relief (DTR) against corporation tax on overseas dividends where the DTR is calculated with reference to a 'foreign nominal rate of tax'. This is essentially a notional tax credit that is deemed to arise in the overseas territory concerned, rather than 'real tax' actually paid in that territory, but was permissible to claim in accordance with EU law.
2. Practically speaking, the clause is only of relevance to periods arising prior to 2009 when dividends generally become free from corporation tax. The clause applies to claims arising on or after 20 July 2022, unless they relate to accounting periods that are under appeal or enquiry at the time of the claim.

OUR CONCERN

3. Sub-clause (1) refers to "a foreign nominal rate of tax". This is a term that is not already defined in the Taxation (International and Other Provisions) Act (TIOPA) 2010 or in the draft clause.
4. Most international tax practitioners referring to this clause will understand what this term means. However, as it is not defined in the legislation, the drafter may wish to consider whether a definition would be useful to ensure that its meaning is clear.

OUR RECOMMENDATIONS

5. The drafter may wish to consider whether a definition of "a foreign nominal rate of tax" would be useful to prevent uncertainty.

SUGGESTED AMENDMENT

6. We suggest that a definition is included as a final sub-clause as follows:

(5) A "foreign nominal rate of tax" for the purposes of subsection (1) is a headline rate of corporate income tax paid in the territory concerned".

APPENDIX 1

ICAEW TAX FACULTY'S TEN TENETS FOR A BETTER TAX SYSTEM

The tax system should be:

1. Statutory: tax legislation should be enacted by statute and subject to proper democratic scrutiny by Parliament.
2. Certain: in virtually all circumstances the application of the tax rules should be certain. It should not normally be necessary for anyone to resort to the courts in order to resolve how the rules operate in relation to his or her tax affairs.
3. Simple: the tax rules should aim to be simple, understandable and clear in their objectives.
4. Easy to collect and to calculate: a person's tax liability should be easy to calculate and straightforward and cheap to collect.
5. Properly targeted: when anti-avoidance legislation is passed, due regard should be had to maintaining the simplicity and certainty of the tax system by targeting it to close specific loopholes.
6. Constant: Changes to the underlying rules should be kept to a minimum. There should be a justifiable economic and/or social basis for any change to the tax rules and this justification should be made public and the underlying policy made clear.
7. Subject to proper consultation: other than in exceptional circumstances, the Government should allow adequate time for both the drafting of tax legislation and full consultation on it.
8. Regularly reviewed: the tax rules should be subject to a regular public review to determine their continuing relevance and whether their original justification has been realised. If a tax rule is no longer relevant, then it should be repealed.
9. Fair and reasonable: the revenue authorities have a duty to exercise their powers reasonably. There should be a right of appeal to an independent tribunal against all their decisions.
10. Competitive: tax rules and rates should be framed so as to encourage investment, capital and trade in and with the UK.

These are explained in more detail in our discussion document published in October 1999 as TAXGUIDE 4/99 (see <https://goo.gl/x6UjJ5>).