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Irish Tax Monitor

The Roundtable December 2022

Double Taxation

In the December 2022 issue of the *Irish Tax Monitor* Roundtable a contributor wrote 'In addition to the benefits associated with such a territorial tax system, further consideration should be given to engaging in a broad simplification of existing double tax relief mechanisms to bring greater clarity for companies operating internationally.' In your opinion what would be the most beneficial double tax areas, outside of an elective foreign branch profit and dividend exemption that a territorial tax system could accommodate, that could be revised to improve the system for companies that operate internationally?

Angela Fleming, Partner & Head of Financial Services Tax, BDO: There are few tax advisors who would argue against the simplification of Schedule 24. The existing credit provisions, while they may ultimately result in an effective exemption position, are so overly complex, they have the effect of diminishing their benefit purely based on the time it takes to try to explain them to clients. And, of course, it is not always the case that an effective exemption is achieved. There are many instances, particularly when dealing with start-up and/or loss making companies, that little to no benefit is obtained.

Angela Fleming

Currently, the provisions relating to credit relief for trading income are a patchwork of provisions, with an almost entirely different set of rules attaching to different types of income. For example, while credit pooling relief is available for interest, this is not the case for royalties (which instead have a form of pooling relief, but for deductions only). One way of simplifying Schedule 24 would be to provide the same set of rules for all forms of trading receipts, regardless of their nature. This would include interest and royalties, but should also extend to service fees and leasing income.

Constraints on the ability to utilise unrelieved foreign tax suffered by way of deduction have been introduced into legislation in recent years. In my opinion, it is important to recognise withholding taxes as the business expense that they are. And thus, any simplification of the double tax rules presents an opportunity to clarify that where relief is not available under the credit provisions, that a deduction should be available under the general principals of section 81 as expenditure wholly and exclusively laid out for the purposes of the company's trade.

While I welcome the recent commitment by the Government to consider options for a move towards a territorial corporation tax system, I fear that the complexity involved in introducing such a regime, alongside the introduction of Pillar Two provisions, will sideline any overhaul of double tax relief rules generally. However, it is important that we capitalise on this opportunity to consider all of these rules holistically to produce a new set of rules that are effective, as well as easy to administer.

Corporation Tax

Can you outline the most recent changes to relief for terminal loss in a trade, and how the relief works for Irish corporate taxpayers?

Lee Kavanagh, Senior, Financial Services Tax, BDO: The recent change was a clarification by Revenue of the timeframe in which terminal loss relief may be claimed. But first, let's have a quick recap on the relief generally.

Terminal loss relief is a sometimes overlooked relief available to companies who have ceased trading. A terminal loss is a trading loss incurred within the 12 months before the date of cessation. It can be used to reduce the taxable income of the same trade arising in the three years immediately prior to those 12 months.

Section 397 TCA 1997 specifies the conditions and rules for a company making a claim for terminal losses in a trade. It is important to note that a terminal loss relief claim can only be made in instances where the losses cannot otherwise be utilised by the company and terminal loss relief claims must be utilised against income from a later accounting period in priority to an earlier accounting period.

In many cases, accounting periods may fall partly outside of the 12 month period or 3 year period discussed above. Where accounting periods fall partly outside of these periods, losses and income are required to be apportioned for terminal loss relief claims for these periods. For example, where a company ceases to trade on 30 June 2022 and has

Lee Kavanagh

trading losses for the 6 months ended 30 June 2022 of €75,000 and losses for the 12 months ended 31 December 2021 of €100,000, the losses must be apportioned to calculate the total amount of losses available for terminal loss relief. In this case, the total amount of losses available for terminal loss relief would be €125,000 being the losses of €75,000 for the 6 months ended 30 June 2022 and the €50,000 (€100,000 x 6/12) apportioned losses for the final 6 months of the accounting period ended 31 December 2022. These losses can then be carried back and utilised against the trading profits of the same trade for the immediately preceding 3 years.

The Revenue Tax and Duty Manual was recently updated to clarify that a terminal loss relief claim must be made by a company within 4 years from the end of the accounting period in which the terminal loss was incurred by the company. Previously, the Revenue guidance stated that a claim for terminal loss relief is subject to the 4-year time limit provided for in the provisions of Section 865 TCA 1997. This could have been interpreted so that a repayment of tax paid in the earlier years of the throwback period could be time-barred by the 4-year time limit unless the terminal loss relief claim was made vey soon following the cessation of the company's trade. The Income Tax guidance is much clearer on the 4-year timeframe for making a terminal loss relief claim for Income Tax purposes and details why amended assessments for earlier assessments are allowed even where they are outside of the 4-year timeframe. The recent update to the Revenue guidance for corporates clarifies that a repayment of tax for the throwback periods should be available for corporates even if the throwback periods are outside of the 4-year timeframe provided that the company has made a terminal loss relief claim within 4 years from the end of the accounting period in which the terminal loss was incurred by the company.

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