

The Distribution Treatment of Interest to Residents of Tax Treaty Countries and EU Member Countries

Part 35-01-07

This document should be read in conjunction with section 130(2)(d)(iv) of the Taxes Consolidation Act 1997 and relevant Irish Tax Treaties.

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Introduction

This manual clarifies the application of section 130(2)(d)(iv) TCA 1997 in relation to payments of interest to residents of Tax Treaty Countries and EU Member Countries. It also clarifies related tax deductibility and DWT issues for pre-1976 and post-1976 tax treaties as well as the effect of non-discrimination articles. It also deals with the election provisions of sections 452 and 845A TCA 1997.

The manual confirms that Revenue does not require advance clearance to treat interest, which would fall to be a distribution under section 130(2)(d)(iv), as interest where applicable.

1. Payments to Residents of Tax Treaty Countries and EU Member Countries

The operation of section 130(2)(d)(iv) TCA in relation to payments of interest to residents of countries with which Ireland has a double taxation treaty and to residents of EU member countries is as follows -

Tax treaties pre-1976¹

In line with Revenue's established practice, interest which is treated as a distribution under section 130(2)(d)(iv) will continue to be regarded as interest for tax deductibility purposes. Such payments will also be treated as interest in line with the "interest" article in the relevant Double Taxation Agreement - unless they are treated under the relevant tax treaty as a dividend².

Therefore, Irish dividend withholding tax (DWT), when it applies, will normally be limited by the rate of source taxation applicable to interest in the relevant treaty.

Note

The legislative changes introduced by sections 452 and 845A TCA 1997³ have considerably reduced the instances where section 130(2)(d)(iv) may apply.

¹ Although there are 14 pre-1976 treaties: Austria, Belgium, Canada, Cyprus, France, Germany, Italy, Japan, Luxembourg, Netherlands, Norway, Pakistan, Switzerland and Zambia, the definition of "dividends" can be amended and broadened in later protocols, placing them in the same position as other post-1976 treaties.

² See OECD model tax convention commentary on Article 10.

³ Formerly sections 87 and 88 of the Finance Act 2001.

Tax treaties post-1976

DWT treatment will depend on the definition of “dividends” in the dividend article of the relevant treaty -

Where the definition of “dividends” is broader than the OECD model definition and allows for assimilation of interest treated as a distribution under section 130(2)(d)(iv), then DWT, when applicable, will apply up to the limit prescribed in the dividends article.

Where the treaty does not contain a broad definition of dividends, the position outlined above in relation to **pre-1976** treaties will apply, namely, DWT will be limited by reference to the provisions of the interest article.

Most treaties post-1976 include the non-discrimination provisions contained in paragraph 4 of Article 24 of the **OECD Model Tax Convention on Income and Capital**. Where this is the case, deduction of interest, otherwise disallowed by application of section 130(2)(d)(iv), will be permitted.

However, it should be noted that in some treaties there are references in paragraph 4 that permit the application of section 130(2)(d)(iv). Also, some tax treaties may not actually have a non-discrimination article and others may allow deductibility in provisions contained in the Exchange of Letters.

Separately, for payments to residents of EU Member States, section 130(2)(d)(iv) **will not** be applied - this will **not** depend on any provisions in a tax treaty with such a Member State.

Note The provisions of section 130(2)(d)(iii)(II) **will apply in all cases where** the amount of interest paid equates to an amount greater than a reasonable commercial return.

Advance Clearance

It has never been Revenue practice to insist on advance clearance for the treatment of interest as interest – which would otherwise fall within section 130(2)(d)(iv).

Elections under sections 452 or 845A TCA

Where a company elects under section 452 or section 845A that interest should not be characterized as a distribution under section 130(2)(d)(iv), then it will not be so re-characterised and will accordingly be treated as interest for Irish tax purposes. DWT will not apply as the payment will not be regarded as a distribution, but regard should be had to the question of withholding tax under section 246 TCA 1997.

Please refer to the Revenue website on the following link for texts of agreements and amending protocols [Double taxation treaties](#).