

Treatment of Dividends on Certain Preference Shares

Part 06-03-01

This document should be read in conjunction with section 138 of the Taxes Consolidation Act (TCA) 1997

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1 Introduction

Section 138 TCA 1997 is an anti-avoidance measure that aims to remove certain tax advantages attaching to artificial preference share arrangements. Under these arrangements, lending institutions offered loans, dressed up as the acquisition of preference shares, at a low rate of interest because the yield was received in a tax-free form.

2 Application

The section provides, that in the case of dividends paid in respect of preference shares issued under such artificial arrangements, the dividend would be liable to Corporation Tax under Case IV Schedule D in the hands of the recipient company [section 138(3)(b)].

2.1 Exclusions

Section 138(1) excludes, from the meaning of preference shares, preference shares (including preference stock) which:

- 1) are quoted on a stock exchange in the State,
- 2) are unquoted preference shares but which carry similar rights, as to dividends and capital, to those generally found in the case of fixed-rate dividend shares quoted on a stock exchange in the State, or
- 3) are non-transferable preference shares issued on or after the 6 April 1989 by a company carrying on a financial service trade in the IFSC or in the Shannon Customs-Free Airport Area to a company:
 - none of whose shares are held directly or indirectly by a person resident in the state (the shares must be 100% foreign owned) and
 - whose only income chargeable to corporation tax would, (if this provision had not been enacted) consist of dividends on the said preference shares.