

Taxation of “Net” funds

Part 27 / Chapter 1

This document should be read in conjunction with section 738 TCA 1997

Document last reviewed April 2024



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1. Introduction

The regime covered by this manual is generally referred to as the “old domestic” or “net” regime and applies to domestic collective funds established prior to 1 April 2000. All funds set up on or after 1 April 2000 are taxed under the “gross- roll-up” regime - see [Tax and Duty Manual \(TDM\) Part 27-01a-02](#).

Section 738 TCA 1997 sets out the taxation regime for undertakings for collective investment. Under this regime the undertaking (whether incorporated or not) is liable to tax at the standard rate (but see [paragraph 2.4](#) below) on its profits, income and gains. The unitholder is not liable to tax on distributions out of the fund.

2. Tax Computation

2.1 Account Period

An undertaking for collective investment which is not a company may base its taxation computations on an accounting period ending in the year of assessment. The assets of the undertaking are deemed to have been disposed of and reacquired on the last day of the accounting period ending in the year of assessment.

2.2 Computation of Profits

The general income tax principles apply in calculating the income chargeable to tax, where the undertaking is not a company. Tax computations should be prepared accordingly. To do otherwise could lead to mismatches between income and associated credits (for example credits for tax deducted).

Management expenses of a revenue nature are allowable in calculating the income/gains chargeable to tax. Such expenses would be charges in the accounts of the undertaking.

2.3 Umbrella Funds

Only one tax computation and return of income form should be filed in respect of an umbrella fund.

2.4 Tax Rates

Whether the undertaking for collective investment is a company or not a company, the standard rate of tax (20%) applies to income arising and gains accruing up to and including 7 February 2012. Finance Act 2012 introduced an increased rate of 30% to income arising and gains accruing on or after 8 February 2012.

2.5 Credit for Foreign Tax

A fund is regarded as a body of persons resident in the State and as such is entitled to double taxation relief in accordance with the various DTA conventions. Where credit cannot be allowed under the DTA conventions for tax paid abroad, a deduction will be allowed for such tax, since it will have the effect of reducing the income/gains available for distribution.

The following paragraphs address specific issues which have arisen in calculating credit for foreign tax:-

- a) The expenses of the fund for the period should be apportioned on the basis of the gross income of the fund (Irish and foreign) from all sources.
- b) The Irish effective rate

$$= \frac{\text{tax payable (before any credit for foreign tax)} \times 100}{\text{Total income}}$$

The total income is the income of the fund after deduction of the full amount of the expenses. For example, if for a chargeable period a fund has Irish income €16,000, foreign income €8,000 and expenses €3,000, the total income is €21,000.

It is accepted that losses brought forward should not be deducted in arriving at total income for the purposes of above computation, as this could have the effect of excessively inflating the Irish effective rate.

- c) The foreign effective rate

$$= \frac{\text{foreign taxes available for credit} \times 100}{\text{net foreign income} + \text{foreign taxes available for credit}}$$

The treatment of expenses (at (a) above) requires that the gross foreign income (i.e. net foreign income + foreign taxes available for credit) be reduced by the appropriate share of the expenses. In the example (at (b) above), the appropriate share of the expenses is

$$\frac{€1,000}{€24,000} \quad (€3,000 \times \frac{€8,000}{€24,000})$$

If the foreign taxes available for credit amount to €1,200, the foreign effective rate is

$$\frac{€1,200 \times 100}{€8,000 - €1,000} = 17.14\%$$

- d) The net foreign income (i.e. net of all foreign taxes whether at or above the treaty rate) should be re-grossed at the lower of the Irish or foreign effective rates of tax (which have been calculated in accordance with (b) and (c) above).
- e) The appropriate income tax credit is the difference between the net foreign income and the re-grossed amount (at (d) above).

In all calculations any tax which was or is to be recovered from the foreign jurisdiction is treated as foreign income and not foreign tax.

2.6 Losses

Apart from the provisions of the TCA which allow the set-off of losses against profits (including capital gains), there is no specific provision in **section 738 TCA 1997** which allows the set-off of income losses against capital gains. However, for undertaking for collective investment which are not companies, the restriction of the charge in **section 738(2)(d)(ii)** to income or gains available for investment or distribution to unit holders has the effect of allowing such set-off. Where the losses are brought forward from an earlier period they have the effect of reducing the income/gains available for investment or distribution to unit holders and are allowed under this provision also.