Corporation tax: treatment of tax-free income of non-resident banks, insurance businesses, etc.

This document should be read in conjunction with Chapter 4 of Part 3, section 63, section 706, section 726 and Part 36 of the Taxes Consolidation Act 1997.

Document last reviewed April 2025

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Executive summary

The purpose of this manual is to outline the taxation of non-resident banks etc operating in Ireland, as provided for under **section 845 TCA 1997**.

1 Non-resident banks, etc.

The effect of **section 845 TCA 1997**, is that, in computing the profits (or losses) derived by a non-resident person from carrying on in the state a banking business, an insurance business or a business consisting wholly or partly in dealing in securities (including stocks and shares: **section 845(3)(a) TCA 1997**):-

(a) income from securities which is exempt in the hands of a non-resident person under **section 63 or 706 TCA 1997**, is, notwithstanding the exemptions, to be included in trading receipts, but

(b) income from securities which is exempt under **section 43, 49 or 50 TCA 1997** in the hands of a person who is not ordinarily resident (such exemption being dependent on the terms of issue of the securities, which cannot be contravened) continues to be excluded from the trading receipts.

As regards cases under (b) however, in arriving at the business profit (or loss) -

(i) no deduction is to be allowed for any expenses attributable to the acquisition or holding of, or to any transactions in, the securities. However, interest on borrowed money is allowed in certain circumstances - see paragraph (iii) below;

(ii) any profits or losses attributable to the acquisition or holding of, or transactions in, the securities are to be excluded;

(iii) **section 846 TCA 1997**, provides that certain interest on money borrowed for the purpose of acquiring the securities is to be regarded as ineligible for relief. The amount ineligible for relief is, broadly, interest calculated on all money borrowed for the purposes of the business (except borrowed money the interest on which would not under the ordinary rules be allowable in computing the profits - or loss - or as a charge on income, e.g. interest which is charged to capital) which is outstanding in the accounting period, up to the total cost of the securities held for the purpose of the business in that period. Where the cost of a holding of tax-free securities has fluctuated in the accounting period, that cost is to be taken to be the average cost of acquisition of the initial holding, and of any subsequent additions during the period, applied to the average amount of the holding in the accounting period. (This rule is to be applied separately to securities of different classes). The interest is to be calculated at a rate equal to the average rate of interest in the accounting period on money borrowed for the purposes of the business. (See example below)

2 Non-resident life assurance companies

In the case of an overseas life assurance company (i.e., an assurance company having its head office outside the State but carrying on life assurance business through a branch or agency in the State: **section 706(1), TCA 1997**). In computing, under **section 726 TCA 1997**, the proportion of the investment income of the company's life assurance fund to be charged to corporation tax, investment income to which **section 63 or 706, TCA 1997** applies is to be taken into account.

The following example illustrates the method of calculating the “amount ineligible for relief” under **section 846 TCA 1997.**

3 Example

A non-resident bank trades in the State through a branch or agency.

In its accounting period of twelve months to March 31, 2022, it borrows money for the purposes of its business and purchases "tax-free securities".

The amount of money borrowed and outstanding in the accounting period is -

€300,000 for 4 months - equivalent to	€100,000 for 12 months.
€600,000 for 2 months - equivalent to	€100,000 for 12 months
€400,000 for 6 months - equivalent to	€200,000 for 12 months
(Average) amount outstanding in the accounting period	€400,000

The interest paid in the accounting period on the money borrowed was -

€300,000 for 4 months at 11 per cent	€11,000
€600,000 for 2 months at 10.5 per cent	€10,500
€400,000 for 3 months at 10.5 per cent	€10,500
€400,000 for 3 months at 10 per cent	€10,000
	€42,000

The average rate per cent of interest on money borrowed was therefore -

$$\frac{42{,}000 \times 100}{400{,}000} = 10.5 \text{ per cent.}$$

Tax-Free securities all of the same class, were held in the accounting period -

€200,000 (nominal) held for 12 months
€300,000 (nominal) held for 6 months,
€400,000 (nominal) held for 3 months.

These were bought for -

€200,000 nominal at 0.75, cost	€150,000
€300,000 nominal at 0.80, cost	€240,000
€400,000 nominal at 0.825, cost	€330,000
€900,000 nominal, cost	€720,000

The average cost of acquisition was therefore $\frac{720{,}000}{900{,}000}$ = 0.80

€200,000 nominal held for 12 months, i.e.	€200,000 for 12 months
€300,000 nominal held for 6 months, equivalent to	€150,000 for 12 months

€400,000 nominal held for 3 months, equivalent to €100,000 for 12 months.

Average (nominal) amount of the holding in the accounting period €450,000

€450,000 nominal at average cost of acquisition, 0.80 €360,000

This amount, €360,000, is less than the amount of money borrowed and outstanding in the accounting period, €400,000. The "amount ineligible for relief" is therefore -

€360,000 at 10.5 per cent. = €37,800.

If the average holding in the accounting period were greater than the average amount of borrowed money, €400,000, the amount ineligible for relief would be -

€400,000 at 10.5 per cent. = €42,000.