

FINANCE ACT 2009

EXPLANATORY NOTES

INTRODUCTION

Section 59: Double Taxation: Payments Made by Reference to Foreign Tax

Summary

1. **Section 59** deals with situations where double taxation relief is claimed for foreign tax but, by reference to that tax, a payment is made by a tax authority to either the claimant or a connected person. The section limits the relief to the amount of the foreign tax paid minus the payment made to the claimant or connected person.

Details of the Section

2. Subsection (2) introduces a new section 804G into the Income and Corporation Taxes Act 1988 (ICTA). The new section provides for the credit for foreign tax to be reduced by the amount of any payment made by a tax authority to the claimant or a person connected with the claimant by reference to the foreign tax.
3. New section 804G(1) will apply if credit falls to be allowed for foreign tax to any person and a payment is made by a tax authority to that person, or to any connected person, by reference to the foreign tax. In such cases, the amount of the credit is to be reduced by an amount equal to that payment.
4. Subsections (3) to (7) make consequential changes to section 806 of ICTA, which gives the time limits for claims for credit in respect of foreign tax. Section 806(2) allows a claim to be made or amended at any time if the amount of foreign tax is varied and requires taxpayers who have made a claim for credit to advise HMRC if the amount of foreign tax is subsequently reduced. The amendments ensure that section 806 applies to a payment as described in section 804G(1) as it does to a repayment of foreign tax.
5. Subsection (9) introduces new subsections (3A) and (3B) into section 811 of ICTA. Section 811 allows deductions from taxable profit to be made for foreign tax.
6. New subsection (3A) will apply if income of a person has been reduced under section 811(1) by any sum and a payment is made by a tax authority to that person, or to any connected person, by reference to the foreign tax. In such cases, the amount of that person's income is to be increased by an amount equivalent to that payment.
7. Subsections (10) to (12) make consequential amendments to subsections (4) to (8) of section 811. Subsections (4) to (8) provide that if the foreign tax is reduced a corresponding adjustment to the amount of income may be made at any time. A taxpayer who deducts foreign tax from income must advise HMRC by notice if the amount of tax is subsequently reduced. The effect of the amendments is that section 811(4) to (8) also apply where a payment as described in new subsection (3A) is made.
8. The term "connected person" throughout the section is defined by reference to section 839 ICTA.

*These notes refer to the Finance Act 2009 (c.10)
which received Royal Assent on 21 July 2009*

9. Subsection (13) provides that the provisions in the section will have effect in relation to payments that are made on or after 22 April 2009.

Background Note

10. The UK believes it is important for business operating internationally that relief for double taxation should be available. But where credit is claimed for foreign tax and a payment is made by a tax authority either to that person or to a connected person by reference to that tax then relief should be restricted to the net amount.
11. This section will therefore limit the relief given to the amount of the foreign tax paid minus the payment made by a tax authority.