

FROM: Head of Taxation, Taxation Department
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SUBJECT: DOUBLE TAXATION RELIEF FOR NON-RESIDENT MEMBERS
ACTION POINTS: **Personal accountants and members who deal with their own tax affairs to claim relief accordingly.**
DEADLINE: **Effective immediately**

1. Introduction

- 1.1 The purpose of this bulletin is to advise members of two changes that took place in March 2000 to allow credit relief to be claimed by non-residents. The first is a result of new legislation in Schedule 30 Finance Act 2000. The second relates to claims that may now be made in respect of past years by members who are resident in another territory that is part of the European Economic Area (EEA).
- 1.2 All Lloyd's profits are taxable in the United Kingdom, whatever the residence of the member. In taxing these profits, the UK gives relief for foreign taxes.
- 1.3 Up until March 2000, the Inland Revenue applied different rules to members who were resident in the UK and to members who were resident outside the UK. Where the member was resident in the UK, the Inland Revenue allowed relief to be claimed either as a credit against the UK tax that was payable (credit relief), or taken as a deduction against profits (deduction relief) if the taxpayer so chose. Credit relief is generally more valuable than deduction relief, although the balance of advantage in any year will depend on whether there is sufficient UK tax to claim credit against.
- 1.4 However, where the member was not UK resident for tax purposes, relief was only given as a deduction from Lloyd's profits.

2. Members resident anywhere outside the UK

- 2.1 Section 794(2)(bb) ICTA 1988 (introduced by Paragraph 4 Schedule 30 Finance Act 2000) extends UK credit relief to all non-residents who are doing business in the UK through a branch or agency. This applies to all accounting periods that end on or after 21 March 2000.
- 2.2 The new legislation therefore applies to all non-UK resident Lloyd's members world-wide in respect of foreign tax paid on their Lloyd's income and has effect from 1999-2000 onwards. Members of Lloyd's resident in all other countries will be able to claim credit relief for non-UK tax paid on their Lloyd's income. This is, however, subject to the restriction on "own country tax" described in section 4 below.

3. Members resident in EEA countries: claims for past years

- 3.1 Also on 21 March 2000, the Inland Revenue announced that residents of other European Union and European Economic Area states would be entitled to claim credit relief for past years in respect of the profits of their UK branches.
- 3.2 This affects Lloyd's members who are resident, or were resident for the relevant year of assessment in any of the following territories:

Belgium, Denmark, Germany, Greece, Spain, France, Iceland, Ireland, Italy, Lichtenstein, Luxembourg, Netherlands, Norway, Austria, Portugal, Finland and Sweden.
- 3.3 The Inland Revenue's statement followed the judgement of the European Court of Justice of 21 September 1999 in the case of *Compagnie de Saint-Gobain v Finanzamt Aachen-Innenstad* (Case C-307/97). In that case the Court decided that that Germany could not deny a French resident company with a German branch double taxation relief in respect of the income of the branch if relief would be allowed to a German resident.
- 3.4 Although credit relief is not, strictly speaking, available in respect of "own country tax", see section 4 below for details of how the Inland Revenue will deal with claims for years up to and including 1998-99 in practice.
- 3.5 EEA resident individuals need not rely on the commencement date for section 794(2)(bb) ICTA 1988 to claim credit relief, as they can claim relief for past and current years by virtue of the European Court of Justice decision.
- 3.6 Any claims to credit relief for past years, to replace deduction relief, should be sent to the member's usual tax office. Claims are subject to the normal time limits, which means that members will generally be able to go back and revise the position for 1994-95 and following years if they wish to do so.

4. Own Country Tax

- 4.1 UK credit relief will not be given in respect of taxes that are paid in the member's own country of residence. For these taxes, if applicable, only deduction relief will be available.
- 4.2 In practice for years up to and including 1998-99, this restriction, applies to only two other EEA countries, namely France and Belgium. Members who are resident in either of these countries should, strictly speaking, only be able to have deduction relief for that country's taxes. However, the Inland Revenue have confirmed that they will not seek to apply the own country restriction for years up to and including 1998-99.
- 4.3 The restriction for own country tax will, however, be applied to all members who claim credit relief for 1999-2000 and subsequent years. This restriction will apply to all members, including residents of non EEA countries. Member who will be affected by this restriction include residents of Australia, Canada, New Zealand and the United States.
- 4.4 A breakdown of foreign tax by country is being shown on the revised CTA1s for 1999-2000 and on CTA1s for subsequent years.

5. Conclusion

- 5.1 This bulletin, which has been agreed with the Inland Revenue, is being sent to all members' agents, recognised auditors, personal accountants to individual members and members who deal with their own tax affairs.
- 5.2 If you have any questions please contact Roger Ramage on 020 7327 6852 or Maureen McLeod on 020 7327 6860.

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