OUTLINE FOR EXAMINATION OF BORDER TAX PRACTICES

Replies by Delegations

Addendum

In the reply submitted by the delegation of Ireland (Spec(69)4/Add.9), reference is made in section III, Miscellaneous - Other tax-related border adjustments and export rebate schemes, to Official Leaflet No. 4.

The text of this leaflet - Principal Income Tax and Corporation Profits Tax Reliefs Having Special Importance in Relation to Industrial Production - is reproduced hereunder.

PRINCIPAL INCOME TAX AND CORPORATION PROFITS TAX RELIEFS HAVING SPECIAL IMPORTANCE IN RELATION TO INDUSTRIAL PRODUCTION

Note: It will be appreciated that the following information is in a necessarily condensed form. It does not purport to set out, under any head, an exhaustive statement of the relevant law. Persons requiring further information should communicate with the Secretary, Revenue Commissioners, Dublin Castle.

1. Machinery and plant - (a)

For tax purposes deductions, usually based upon "written-down" value, are allowable annually against profits in respect of wear and tear of machinery and plant used in a trade (including a manufacturing enterprise). Subject to exceptions - the principal exception concerns road vehicles - the basic deductions in respect of wear and tear have been increased as from 6 April 1958, by one fourth.

As respects new machinery or plant (excluding road vehicles) provided on or after 1 April 1967, for use in any "undeveloped area" (within the meaning of the Undeveloped Areas Act, 1952) for the purposes of a trade or profession, a form of "free depreciation" has been introduced under which the writing off of such machinery or plant may be accelerated by increasing the deductions for wear and tear allowable under the general law by such an amount as the taxpayer may specify. Where, in the case of any item of machinery or plant, free depreciation is allowed for any year of assessment, no initial allowance (see paragraph 2) may be given for that or any subsequent year of assessment.
2. Machinery and plant - (b)

An "initial allowance" may normally be claimed in respect of capital expenditure incurred by a trader on or after 6 April 1956, on the provision of new machinery or new plant (excluding road vehicles) or of ships whether new or second-hand for the purpose of his trade. The amount of the allowance is one fifth of the expenditure and it is treated as diminishing the value of the machine, etc. on which subsequent wear and tear deductions are computed. In the case of such capital expenditure incurred between 14 December 1961, and 31 March 1967, the amount of the allowance is two fifths and, as regards such capital expenditure incurred between 1 April 1967, and 31 March 1971, the amount of the allowance is one half.

3. Machinery and plant - (c)

The sum of the annual deductions for tax purposes in respect of wear and tear plus the initial allowances (see paragraphs 1 and 2) may not exceed the cost to the trader of the machinery or plant less its scrap value when discarded. The annual deduction normally takes account of the expected "life" of the machine, etc. Where, however, the machinery or plant is owned by a trader and used by him in the working of a mine or quarry or the smelting of ore the trader may elect to have the annual wear deduction in respect of it computed by reference to the estimated "life" of the mine or quarry, or the estimated duration of the ore-smelting activity, and the probable value to the trader of the machinery or plant concerned at the end of the estimated period. The increase of one fourth in the basic rates of deduction as from 6 April 1958 (see paragraph 1), does not apply where such an election is made.

4. Machinery and plant - (d)

Where, on or after 15 April 1959, machinery or plant which has been used for the purposes of a trade ceases to belong to the trader, or permanently ceases to be used for the purposes of the trade, an allowance, called a "balancing allowance", may be made equal to the amount which has not been allowed for tax purposes of the capital expenditure incurred by the trader on the provision of the machinery or plant less any proceeds of sale, insurance, salvage or compensation moneys received in respect of the machinery or plant. If the proceeds of sale, etc. exceed the unallowed capital expenditure a "balancing charge" is made equal to the excess, or to the total amount of the tax allowances made to the trader, whichever is the less.

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1 An initial allowance of 50 per cent which is currently allowed in respect of capital expenditure incurred on new machinery and plant (excluding road vehicles) or on ships (whether new or second-hand) has been increased to 60 per cent.

2 The annual deductions have, with certain exceptions, been reduced to three statutory rates viz. 10 per cent, 12½ per cent and 25 per cent.
5. Machinery and plant - (e)

For the years up to and including 1959-60 a deduction called an "obsolescence allowance" could be claimed, for the purpose of computing trade profits, of so much of any amount expended in a year in replacing obsolete plant or machinery as was equivalent to the cost of the plant or machinery replaced after deducting from that cost (a) the total amount of any allowance in respect of wear and tear and any initial allowance (see paragraphs 1 and 2) made in respect of the plant or machinery replaced and (b) any sum realized by its sale.

As from the year 1960-61 the obsolescence allowance was superseded by the balancing allowances (see paragraph 4) but where machinery or plant provided before 15 April 1959, is replaced after that date, obsolescence allowance may still be claimed in lieu of balancing allowance, if the trader so elects.

6. Shipping investment allowance

Where capital expenditure is incurred by a trader, on or after 6 April 1957, on the purchase of a new (as distinct from a second-hand) ship for the purposes of his trade, an allowance of two fifths of the expenditure so incurred may be claimed - subject to withdrawal if the ship is sold before being used in the trade or within five years from the time when it begins to be so used. This allowance - the "shipping investment allowance" - is in substitution for, and not in addition to, the "initial allowance" already described (see paragraph 2) but, unlike the initial allowance, it is not treated as diminishing the cost of the ship for the purpose of wear and tear deductions nor is it taken into account in computing a balancing allowance or balancing charge. The wear and tear deductions in respect of the new ship would be at the basic rate, increased, as from 6 April 1958, by one fourth (see paragraph 1).

7. Industrial buildings, hotels, etc. - (a)

A trader may claim for tax purposes an initial allowance of one tenth of capital expenditure incurred by him on or after 30 September 1956, on the construction of an industrial building or structure (i.e. a mill, factory, or other similar premises or a hotel) to be occupied as such for the purposes of his trade. Expenditure is not regarded as incurred by the trader in so far as it is met directly or indirectly by the State, by any statutory board or by any public or local authority. In relation to allowance for 1959-60 and subsequent years, docks, wharves, piers, jetties, etc., rank as industrial buildings or structures and expenditure on the cutting and levelling of land in the course of preparing it as a site for, say, a factory, is treated as part of the cost of

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1The terminal date of the initial allowance of 20 per cent has been extended from 31 March 1968 to 31 March 1971.
constructing the factory. The definition of industrial building or structure has been further widened to embrace holiday camps, with effect as from 1960-61, and market garden buildings, with effect as from 1966-67. The rate of initial allowance is increased from one tenth to one fifth in the case of capital expenditure on industrial buildings or structures, other than hotels, holiday camps or market garden buildings, incurred within the period from 14 December 1961 to 31 March 1968.

With effect as from 1967-68, the allowance may be claimed by a person who incurs capital expenditure on the construction of a building or structure for industrial use by a trader who is a tenant of his.

8. Industrial buildings, hotels, etc. - (b)

With effect as from 1960-61 an annual allowance may be claimed in respect of capital expenditure incurred on or after 30 September 1956, on the construction of industrial buildings or structures. The allowance is normally 2 per cent of the relevant expenditure but it is 10 per cent in the case of expenditure incurred on or after 1 January 1960, on the construction of hotels or holiday camps and expenditure on the construction of market garden buildings (which became eligible for the allowance with effect as from 1966/67). In the case of a building, etc. used for industrial purposes by a tenant the allowance may be claimed by the landlord.

Where an industrial building is sold, destroyed or ceases to be used and the residue of the expenditure on construction which has not been allowed for tax purposes exceeds the amount of any proceeds of sale, insurance, salvage or compensation moneys received, a balancing allowance may be claimed equal to the excess. If the proceeds of sale, etc., exceed the residue of the expenditure a balancing charge is made.

Where a building or structure is sold on or after 15 April 1959 while in use as an industrial building or structure, the allowance to the new owner is calculated by reference to the amount of the residue, at the time of sale, of the original expenditure which has not been allowed for tax purposes. The allowance is arrived at by dividing the residue by the number of years still to run between the date of sale and the fiftieth year of the life of the building or (in the case of a hotel or holiday camp the expenditure on the construction of which was incurred on or after 1 January 1960) between the date of sale and the tenth year of the life of the building.

In the case of industrial buildings (including hotels, etc.) which are outside the scope of the annual allowance by reason of their having been erected before 30 September 1956 there is provision whereby in 1960-61 and subsequent years (1966-67 and subsequent years in the case of market garden buildings), an annual deduction is made in the computation of profits equal to one third of the annual value of the premises for the purposes of Schedule A.
9. Export profits - (a)\(^1\)

A company which exports goods manufactured by it in the State may claim a relief from income tax and corporation profits tax on profits attributable to any relevant increases in export sales of such goods over corresponding export sales (if any) in the standard period. The relief has been available, in the case of income tax, since 6 April 1957 and, in the case of corporation profits tax since 1 October 1956. An amendment, effective as from 6 April 1960 enables account to be taken for the purposes of the relief, of export sales by wholesale of goods manufactured in the State by a concern other than the exporting company.

There are special provisions under which certain sales of bacon to the Pigs and Bacon Commission and of milk products (other than butter) to An Bord Biaime are treated, for the purposes of the relief, as export sales by the manufacturing company.

There are also special provisions as regards a company whose earnings consist of or include remuneration for services rendered in the State to another person by way of subjecting commodities or materials belonging to that person to any manufacturing process. The company may elect that, for purposes of the relief, any such remuneration for its services should be treated as an amount receivable from the sale of goods; and that, where the services are rendered to a non-resident person in relation to commodities or materials which have been imported into the State and, after the services have been rendered, the commodities or materials (or the products into which they have been converted) are exported out of the State while continuing to belong to the non-resident person, the remuneration should be regarded as an amount receivable from the sale of goods exported.

In all cases the standard period is the year to 30 September 1956, or, if the company so elects, the year to 30 September 1955.

\(^1\)The Finance Act, 1968, contains provision for the extension of the exports tax relief (i) to profits arising from the rendering to non-residents of design and planning services in connexion with chemical, civil, electrical or mechanical engineering works executed outside the State and (ii) to profits arising from sales between associated companies operating in the State which, apart from such sales, do not sell goods in the home market.
The relief from income tax may be claimed in any case for not more than fifteen consecutive years of assessment within the period from 6 April 1957, to 5 April 1980. The year of assessment which may be taken as the first year of claim is determined according to statutory provisions by reference to the facts of the case. If the first year of claim is the year 1957-58, relief is allowable at the rate of 50 per cent for that year and at the rate of 100 per cent for each of the fourteen succeeding years. Where the first year of claim is any of the years 1958-59 to 1965-66 relief may be claimed for fifteen consecutive years of assessment. In such cases relief is at the rate of 100 per cent for the years up to and including 1974-75 and at a reduced rate (see next sub-paragraph) for 1975-76 or any subsequent year within the fifteen-year period. In a case in which the first year of claim is subsequent to the year 1965-66 relief may be claimed for all years up to and including 1979-80, the relief being at the 100 per cent rate for the first ten years of claim (or for all years of claim where there are less than ten) and at a reduced rate (see next sub-paragraph) for any year or years in excess of ten.

The reduced rate of relief mentioned in the previous paragraph is 80 per cent, 65 per cent, 50 per cent, 35 per cent or 15 per cent according to whether the year of assessment concerned is the first, second, third, fourth or fifth year after the end of the period during which relief at the rate of 100 per cent was allowable to the particular company. As already indicated no relief may be given for any year subsequent to 1979-80 and the total number years of assessment for which relief (whether at the 100 per cent rate or at a reduced rate) may be allowed to a given company may not exceed fifteen.

In relation to corporation profits tax the relief may be claimed for a continuous period not exceeding fifteen years within the period from 1 October 1956 to 5 April 1980. The date on which the period of relief commences in a given case is governed by statutory provisions. If that date is not later than 6 April 1965, the duration of the period of relief is fifteen years. Where a part of the fifteen-year period falls before 6 April 1958, relief is allowable at the rate of 50 per cent for that part and at the rate of 100 per cent for the remainder of the period. Where the period of relief lies wholly between 5 April 1958 and 6 April 1975, the rate of relief is 100 per cent throughout. Where the period of relief extends beyond 5 April 1975, relief is allowable up to 5 April 1975 at the rate of 100 per cent and for the remainder of the period in accordance with a reducing scale of rates similar to that which applies in relation to income tax. If the period of relief commences after 6 April 1965, it continues up to 5 April 1980. In such a case the 100 per cent rate of relief applies for the first ten years of the period (or for the whole of the period if it is less than ten years) and the reducing scale of rates already mentioned applies for any balance of the period.
For the purposes of the reliefs described in this paragraph and in paragraph 10:

(a) Where one of two companies manufactures goods and the other exports them, and one of the companies holds over 90 per cent of the ordinary shares in the other, or persons having a controlling interest in one company hold, directly or indirectly, over 90 per cent of the ordinary shares in the other, the goods manufactured by the manufacturing company are, when exported by the exporting company, deemed to have been manufactured by the exporting company.

(b) Exports of fish produced within the State on a fish farm, and mushrooms, cultivated within the State, are treated in the same way as manufactured goods. Special provision is made in regard to (i) exports by publishing companies of books or greeting cards which might otherwise not qualify for relief and (ii) the building or repair of ships in Irish dockyards whether on home or foreign account.

10. Export profits - (b)

As an alternative to the relief of tax on profits from increases in exports which is described in paragraph 9, a company may claim relief from the income tax referable to its profit from the sale of all goods manufactured by it in the State and exported by it. As from 6 April 1960, the relief has been extended to profits from export sales by wholesale of goods manufactured in the State by a concern other than the exporting company.

The relief may be claimed in any case for not more than ten consecutive years of assessment. For a period of five consecutive income tax years commencing with the year 1958-59 or the year 1959-60 (or four consecutive income tax years commencing with 1958-59 where the first year of claim under paragraph 9 is 1957-58) relief may be claimed at the rate of 25 per cent. Relief at gradually reducing rates may be claimed for the five income tax years immediately following the end of the period during which relief at the rate of 25 per cent, is allowable to the particular company. The rate for the first of those five years is 20 per cent; for the second year, 15 per cent; for the third year, 10 per cent; and for the fourth and fifth years, 5 per cent.

(Corresponding relief from corporation profits tax operated for the period from 6 April 1958 to 30 September 1966.)

11. Mines - (a)

Allowances may, subject to the statutory provisions, be claimed against the profits of a mine in respect of capital sums spent in the development of the mine on searching for or testing deposits or winning access thereto or on the construction of certain works. The allowances are spread over the estimated life of the deposit or over twenty years whichever is the shorter period.
12. Mines - (b)

Profits to resident Irish companies (i.e. companies incorporated and managed and controlled in the State) from the working in the State of new mines of certain non-bedded minerals are exempt from tax for twenty years from the commencement of trading.

To qualify for the relief the new mine must come into production within the thirty years commencing on 6 April 1956.

13. Mines - (c)

In the case of "existing" coal mines in the State, i.e. mines at which commercial production was taking place at some time during the year to 20 September 1956, relief to the extent of one half tax is given in respect of profits from relevant excess output of coal over the output of a datum year (i.e., the year to 30 September 1955, or the year to 30 September 1956). This relief in respect of profits from increased output may be claimed as regards income tax for ten consecutive years of assessment the first of which may, subject to the statutory provisions, be the year 1957-58, the year 1958-59 or the year 1959-60.

The relief is confined to resident Irish companies.

(Corresponding relief from corporation profits tax operated for the ten years to 30 September 1966.)

14. Scientific research

An allowance may, subject to conditions, be claimed against profits of a trade in respect of capital or non-capital expenditure by the trader on scientific research relating to the trade. Where the capital expenditure is incurred after 5 April 1965, the entire amount may be written off in one year. There is also provision for certain tax advantages in respect of covenanted annual payments to (i) an Irish university or college for research purposes and (ii) to an Irish university, college or school, or to a trust fund, where the moneys are paid to promote teaching of the natural sciences.

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1 The minerals which qualify for the relief under present law are: barytes, felspar, serpentinous marble, quartz rock, soapstone, and ores of copper, gold, iron, lead, manganese, molybdenum, silver, sulphur and zinc.

2 Expenditure incurred or sums made available by a trader for scientific research which were before the passing of the Finance Act, 1968, excluded from tax relief if the research was not related to the particular trade carried on by the trader, now qualify for relief even where the research is not related to any trade.
15. Dividends: income tax and surtax - (a)

An Irish resident company is entitled, when paying dividends to its shareholders to deduct income tax at the rate which is appropriate. Where relief from income tax is given in the circumstances described in paragraphs 9, 10, 12 or 13 the rate of income tax deductible from relevant dividends is a rate reduced by reference to the relief. In this way a proportion of the relief from income tax is passed on to the shareholders. Provision is also made for a measure of relief from surtax to the recipient of the dividend.

16. Dividends: income tax and surtax - (b)

An individual who is resident solely in the State and who is the beneficial owner of shares or securities in an Irish resident company which complies with certain conditions may claim to have the income tax and surtax on the income from the shares or securities abated by one fifth.

(For the purpose of estate duty the value of such shares or securities may, subject to certain conditions, be reduced by one third where the deceased dies domiciled in the State.)

17. Double taxation agreements

Comprehensive agreements with the following countries are in force: Austria, Canada, Denmark, Germany, Sweden, Switzerland, United Kingdom and the United States. Agreements with Cyprus and France have been signed and agreements have been completed, but not yet signed, with Belgium, Finland, Italy, Luxemburg, the Netherlands, Norway and Zambia, while negotiations with Pakistan are at advanced stage. Sea and air transport agreements with Finland, Norway and South Africa are in force.

17a. Unilateral tax credit

The Finance Act, 1968, provides that a company in the State, which is in receipt of a dividend or interest from a foreign company in which not less than one half of the voting power is controlled by the investing company, will be entitled to relief to the extent of either one half of the Irish tax or the full external tax whichever is the lesser. The relief will apply where the dividend or interest arises from the investment in the foreign company by the Irish company of profits which have benefited from exports tax relief.

\[1\] As to dividends paid out of profits from "exempted trading operations" in relation to Shannon Airport, see paragraph 18.
18. Shannon Airport

With a view, primarily, to encouraging the use of Shannon Airport as an international trading and distributing centre the law provides, subject to conditions, for complete exemption from taxation, for a period of twenty-five years from 25 November 1958 (the date of passing of the Finance (Miscellaneous Provisions) Act, 1958), of profits derived from export businesses established within the confines of the customs-free area of the airport.

The Act provides for exemption from taxation in respect of profits of a company derived from trading operations certified by the Minister for Finance to be "exempted trading operations". The operations which may be so certified must fall within one or more of six specified categories, namely:

(a) the sale for export of goods produced, manufactured or processed in the airport;

(b) the sale for export of imported goods;

(c) the repair or maintenance within the airport of aircraft;

(d) the rendering, within the airport or outside the State of services entailing the use of aircraft or air transport;

(e) other trading operations which contribute to the use and development of the airport;

(f) trading operations ancillary to trading operations qualifying under any of the categories (a) to (e).

The foregoing categories are narrowed by other provisions, the broad effect of which is to secure that exemption from tax will not extend to profits attributable to trading operations carried on in the State outside the airport or to profits from the sale of goods, or the rendering of services, to persons resident in the State even if the relevant sales, etc., are made in the airport.

Profits derived from export businesses established within the customs-free area of Shannon Airport are completely exempt from taxation until November 1983. Exemption from tax does not extend to profits attributable to trading operations carried out in the State outside the airport or to profits from the sale of goods, or the rendering of services, to a person resident in the State. The Finance Act, 1968, provides, however, for the extension of "Shannon" relief to profits arising from sales between associated companies operating in the State, provided that the associated companies, apart from inter-company sales, do not sell goods on the home market.
So much of any dividend as is paid out of profits from exempted trading operations shall not be regarded as income or profits for income tax or corporation profits tax purposes.

A certificate given by the Minister for Finance is to remain in force for a period of twenty-five years from 25 November 1958, unless the company concerned ceases to trade in the airport or fails to comply with any condition subject to which the certificate was given.

19. Training of local staff before commencement of trading

In the case of any trade consisting of the production for sale of manufactured goods, a trader may claim an allowance in respect of certain expenditure incurred, before the commencement of trading, (but on or after 6 April 1959) on recruiting and training local staff. The allowance is spread equally over the first three years of trading.

20. Acquisition of patent rights

Where a trader incurs on or after 6 April 1960, capital expenditure for the purposes of acquiring patent rights (which have not been the subject of a sale before that date) he may claim an allowance, for tax purposes, in respect of the expenditure so incurred. The allowance is given by way of equal annual allowances spread over a period of seventeen years (corresponding to the normal statutory life of an Irish patent), or over the remaining life of the patent, if shorter. There is provision for balancing allowances or balancing charges where patent rights are sold, for less or more, as the case may be, than the residue of the expenditure which has not been allowed.

21. Expenditure on dredging

An annual allowance of 2 per cent may be claimed for 1960-61 and subsequent years in respect of capital expenditure incurred on or after 30 September 1956, on the dredging of a harbour, estuary or waterway for the benefit of a dock, etc., occupied by a trader for the purposes of his trade. Where such expenditure is incurred in the year or period on the profits of which the assessment on the trade for 1960-61 or any subsequent year is based an initial allowance of 10 per cent may also be claimed. Provision is made for the granting of a balancing allowance in the year of permanent discontinuance of the trade.

22. Acquisition of industrial "know-how"

The Finance Act, 1968, provides that, where expenditure is made to acquire industrial know-how for use in a trade, the cost will, where not allowable under existing law, be allowed as a deduction in computing the profits of the trade for the purposes of income tax, surtax and corporation profits tax. The relief does not apply where the know-how is acquired together with a trade or part of a trade acquired as a going concern, or where the vendor and purchaser are closely connected, e.g. in the case of companies under common control.