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Via email: taxtreaty.team@hmrc.gov.uk

Dear Jo

Stakeholder Consultation: Review of Double Taxation Treaties 2022/23

We refer to your letter dated 10 January 2022 and take this opportunity to input into your review of the priorities for the UK's network of double taxation agreements (DTAs) for the coming year. We would also like to attend the virtual meeting on 22 February 2022. Please could you send a meeting request/details to Sacha Dalton, International Taxes Technical Officer (sdalton@ciot.org.uk).

As an educational charity, our primary purpose is to promote education in taxation. One of the key aims of the CIOT is to work for a better, more efficient, tax system for all affected by it – taxpayers, their advisers and the authorities. Our comments and recommendations on tax issues are made solely in order to achieve this aim; we are a non-party-political organisation. Our stated objectives are for a tax system which includes greater simplicity and clarity, so people can understand how much tax they should be paying and why, and greater certainty, so businesses and individuals can plan ahead with confidence.

We welcome the confirmation in your letter that, following the UK's exit from the EU at the end of 2020, HMRC will continue to prioritise renegotiation of European DTAs to try and replicate the benefits of the Interest and Royalty and Parent and Subsidiary Directives. As we have previously noted, UK companies have also lost the benefit of the Merger Directive and would, therefore, benefit from a new addition to Article 13 of the OECD Model for treaties with EU/EEA members that would extend the Merger Directive bilaterally.

This update regarding the continued focus on the renegotiation of European DTAs is helpful in terms of us framing our response to this current request for input into this year's review. We welcome the updates and discussion that comes in meetings with the Tax Treaty Team (and we look forward to the meeting in February 2022). However, these updates generally follow our input into the next year's review. In future, it would be helpful if a general update around other matters that stakeholders have raised as priorities in previous years' review could be given alongside the request for input. The Tax Treaty Team may note that our comments below in response to the particular questions are very similar to the comments we made last year. The availability of more information around the progress in relation to these suggested priorities would help us understand what may be possible in the coming year and allow us to focus our comments, and manage our expectations, better.

Q1: How could our existing DTAs be improved?

We would like to reiterate the points that we made in response to the DTA review last year around how the mutual agreement procedure (MAP) provisions in the UK's treaty network are being managed and how they can be improved.

In particular, we would like to encourage the government to step up the UK's policy for seeking to negotiate mandatory binding arbitration provisions in its treaty network, to reflect the UK's support of such provisions in the discussions around Action 14 of the G20/OECD BEPS project and the changes to the DTA landscape as a result of the OECD Multilateral Instrument (MLI).

This work will become increasingly important as the Global Anti-Base Erosion (Pillar 2) Model Rules published by the OECD/G20's Inclusive Framework on BEPS in December begin to be adopted across the globe.

Q2: Are there any aspects of recently signed DTAs that could be improved?

We do not have any comments on any aspects of recently signed DTAs. However, as we mentioned last year, we note that additional guidance in respect of the MLI's new articles (and in particular the PPT and anti-fragmentation provisions) from the UK's treaty partners would be useful, and we would welcome anything the UK can do to encourage this.

As we have said previously, with regard to the MLI, we find the synthesised texts of the DTAs that have been amended as a result of the ratification of the MLI to be very helpful, and appreciate HMRC's efforts to produce these in a timely manner, and often more quickly than other jurisdictions.

Q3: Are there aspects of our existing DTAs that are un-competitive compared with agreements those treaty partners have made with other countries?

In this regard, as we have previously noted and we understand is recognised by HMRC, following Brexit the UK's DTAs with EU member states are less competitive when compared to the Directives operating between EU countries. Accordingly, we welcome the priority to be given to renegotiating European DTAs. In terms of priority, we remain of the view that the treaties with Germany and Italy are the most important to seek to renegotiate, due to the size of their economies.

In addition, we have received from members some further suggestions around aspects of our existing DTAs that are un-competitive compared with agreements those treaty partners have made with other countries:

- The UK/Canada has a 5% dividend withholding tax rate and 10% for royalties – which are high rates between two such large countries.
- The UK/Singapore treaty has a withholding tax rate on royalties of 8% - whereas the Netherlands were able to recently negotiate 0%. It also has a Service PE clause, which is not uncommon for Asian treaties but is not in the OECD Model.
- The UK/China treaty also maintains a Service PE clause. In addition, the definition of 'equipment' for the royalty clause is undefined and, therefore, could be construed quite broadly.

- The UK/India treaty is not competitive with G7/EU countries with respect to withholding tax – with rates of 10% compared to 5% for many other countries. It also has a Service PE clause.

With regard to the Service PE clause, we recognise that although not in the OECD Model, it is in the UN Model. To the extent that a Service PE clause is insisted upon, we would suggest that the UK government resists the inclusion of the new UN Model 12A technical services in any negotiations.

Last year, we commented on the practical limitations of some aspects of HMRC's process for treaty clearance¹. Taxpayers are experiencing significant delays in receiving treaty clearances. This leads to delayed payments of interest by commercial entities, the result of which includes a delay in any withholding tax that may be payable to HMRC, as well as considerable commercial inconvenience.

We appreciate the added strain that HMRC's customer services have been under as a result of the COVID-19 pandemic, and we will raise this issue more generally via the usual channels through which we feed in our members experience of HMRC's customer service. However, we would welcome an update from the Tax Treaty Team around any consideration that has been given to moving these procedures to a fully online process. Whilst we recognise that there would be a cost to implementing a new online system, working towards this would fit in with the overall aim of the government to modernise the tax system. In our view taxpayers would welcome an online system, which could be developed initially with a few key jurisdictions (including the US); for example, procedures could be introduced so that the form can be submitted to a central mailbox by email for certification. An online system would likely speed up processes considerably for the benefit of taxpayers, as well as for HMRC and other tax administrations.

Q4: Are there any gaps in the DTA network?

We understand that the priorities for businesses continue to be DTAs with Peru and Brazil in particular.

Yours sincerely

David Murray
Chair, International Taxes Committee

The Chartered Institute of Taxation

The Chartered Institute of Taxation (CIOT) is the leading professional body in the United Kingdom concerned solely with taxation. The CIOT is an educational charity, promoting education and study of the administration and practice of taxation. One of our key aims is to work for a better, more efficient, tax system for all affected by it – taxpayers, their advisers and the authorities. The CIOT's work covers all aspects of taxation, including direct and indirect taxes and duties. Through our Low Incomes Tax Reform Group (LITRG), the CIOT has a particular focus on improving the tax system, including tax credits and benefits, for the unrepresented taxpayer.

¹ The treaty clearance processes remain quite archaic, requiring a form to be printed, sent to an overseas tax authority and certified before being sent back to HMRC. Even if the Passport Scheme applies, the online form has to be printed and sent to an overseas authority (although in that case it may be possible to get the certificate of residence first). A similar issue arises the other way, with getting certificates of residence from HMRC.

The CIOT draws on our members' experience in private practice, commerce and industry, government and academia to improve tax administration and propose and explain how tax policy objectives can most effectively be achieved. We also link to, and draw on, similar leading professional tax bodies in other countries. The CIOT's comments and recommendations on tax issues are made in line with our charitable objectives: we are politically neutral in our work.

The CIOT's 19,000 members have the practising title of 'Chartered Tax Adviser' and the designatory letters 'CTA', to represent the leading tax qualification.