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[redacted]
HM Revenue and Customs

Via email: [redacted]; [redacted]

Dear [redacted]

The new UK/Luxembourg double tax treaty

We write to request HMRC's confirmation of our understanding in relation to the commencement of the new UK/Luxembourg double tax treaty. The [new double tax treaty and protocol between the UK and Luxembourg][1] (signed on 7 June 2022) will come into force on the completion of the exchange of letters between the territories. Once it comes into force, the new treaty and protocol will replace the current treaty.

Commencement

Article 29 of the new treaty provides that it will have effect:

a) in the United Kingdom:

(i) in respect of taxes withheld at source, to income derived on or after 1 January of the calendar year next following the year in which this Convention enters into force;

(ii) in respect of income tax and capital gains tax, for any year of assessment beginning on or after 6 April of the calendar year next following the year in which this Convention enters into force;

(iii) in respect of corporation tax, for any financial year beginning on or after 1 April of the calendar year next following the year in which this Convention enters into force;

[1] https://www.gov.uk/government/publications/luxembourg-tax-treaties?utm_source=6a97f50f-cf04-426c-acd0-ef05aaa5ffa0&utm_medium=email&utm_campaign=govuk-notifications&utm_content=immediate

Therefore, on the assumption that the treaty comes into force before the end of 2023 because each state informs the other that the domestic procedure for entry into force has been completed (art 29(1)), it will apply

- For withholding tax purposes, to income derived on or after 1 January 2024.
- For years of assessment beginning on or after 6 April 2024 for income tax and capital gains tax.
- For financial years beginning on or after 1 April 2024 for corporation tax.

A financial year in article 29(1)(a) (iii) of the new treaty has the same meaning as the term in UK domestic tax law (see Article 3(2)[2]). Schedule 1 to the Interpretation Act 1978 defines the 'financial year' as, in relation to matters relating to the Consolidated Fund, the National Loans Fund, or moneys provided by Parliament, or to the Exchequer or to central taxes or finance, the twelve months ending with 31st March. Schedule 1 definitions apply subject to a contrary intention (Interpretation Act 1978 section 5). The UK financial year is the period by reference to which corporation tax is chargeable[3].

We note Art 29(a) (iii) refers to 'any' financial year in Article 29. The reference to 'any' financial year appears to indicate that it applies to all financial years (as defined in UK domestic tax law) in the future not just the first. The addition of 'any' is not intended to extend to computational provisions in UK tax law such as an accounting period, period of account or accounting reference date.

Thus the treaty will have effect in the UK for corporation tax from 1 April 2024 and therefore for accounting periods that start after that time.

For the avoidance of doubt, please would you confirm that HMRC agrees with this analysis.

Accounting period straddling the treaty commencement date.

For a company with an accounting period that straddles 1 April 2024 for example, a calendar year accounting period ending on 31 December 2024, the existing treaty would apply to a gain accruing on or before 31 March 2024 and the new treaty to a gain accruing from 1 April 2024.

We are also working on the basis that the normal rules apply to any capital gains realised by a company, ie any deferred and ascertainable consideration is treated as arising at the time of the contract for sale becoming unconditional and taxed according to the rules in place at that time. For instance, a disposal taking place prior to 31 March 2024 where some of the consideration is deferred (and ascertainable) and received after 1 April 2024 can still benefit from the old treaty.

However, the position seems to be less clear where the consideration is 'unascertainable' (as defined in TCGA 1992 section 48A(4) and as determined in the case of *Marren v Ingles* 54 TC 76.

Firstly, it is unclear whether section 48A applies only for the purposes of capital gains tax (ie not corporation tax) on the basis that section 48A(7)(a) refers only to section 1A(3).

Secondly, if it is considered that section 48A would apply for the purposes of corporation tax it is not clear that any gain that is treated as arising on or after 1 April 2024 (as determined under 'step 3' in section 48A(2)) would fall to be

[2] Article 3(2).' As regards the application of the Convention at any time by a Contracting State, any term not defined therein shall, unless the context otherwise requires or the competent authorities agree to a different meaning pursuant to the provisions of Article 24, have the meaning that it has at that time under the law of that State for the purposes of the taxes to which this Convention applies, any meaning under the applicable tax laws of that State prevailing over a meaning given to the term under other laws of that State.'

[3] CTA 2009 sections 2(1),8(1)

taxed in the UK (by virtue of article 13 of the new treaty) where the original disposal of 'UK property rich shares' (falling within section 2B(4)(b)) arose before 1 April 2024. It would appear that the original disposal would not fall to be taxed in the UK under the existing treaty and the disposal of the '*Marren v Ingles* right' would not fall to be taxed in the UK (under either the existing or the new treaty (article 13)).

We would be grateful if you would provide HMRC's understanding in these circumstances.

Yours sincerely

Leigh Sayliss
Chair, Property Taxes Committee

The Chartered Institute of 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. 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 for the tax system include:

- A legislative process that translates policy intentions into statute accurately and effectively, without unintended consequences.
- Greater simplicity and clarity, so people can understand how much tax they should be paying and why.
- Greater certainty, so businesses and individuals can plan ahead with confidence.
- A fair balance between the powers of tax collectors and the rights of taxpayers (both represented and unrepresented).
- Responsive and competent tax administration, with a minimum of bureaucracy.

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.

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.

Our members have the practising title of 'Chartered Tax Adviser' and the designatory letters 'CTA', to represent the leading tax qualification.