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Ref: IT

17 February 2025

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

Dear Jo

Stakeholder Consultation: Review of Double Taxation Treaties 2025/26

We refer to your letter dated 28 January 2025 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 Wednesday 12 March 2025. 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.

Before responding to the questionnaire sent with your letter, we take this opportunity to raise some practical issues around tax treaties.

Administration of clearances for payments of interest

HMRC's process for treaty clearance for interest is still 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.

Has HMRC considered moving these procedures to a fully online process? We recognise that there would be a cost to implementing a new online system but working towards this would fit in with the government's priority for HMRC to drive and support the commitment to modernise the administration of tax to improve both the customer experience and compliance. 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

Alternatively, it would be more efficient if this could be updated to a self-assessment process for the taxpayer, as can be found with some of the UK's main business partners, such as the US and Ireland. Could consideration be given to this?

We also note that, currently, on completion of the clearance process, HMRC will issue a direction to the payer of the interest that the treaty rate applies. However, the wording of the direction usually contains conditions around the identity of the lender and will cease if there is a change in the residence, status or business details, including changes in name, address or ownership of the recipient of the income (by way of business sale, transfer or merger). While it is understandable that a clearance would cease to apply on a change of residence of the lender, or if the debt is transferred to a different lender, some of the conditions appear unduly onerous. For example, change of address of the lender or borrower, company name or ownership. We would like to understand the rationale for these conditions. Do they relate to concerns that HMRC may have about beneficial ownership/treaty avoidance or money-laundering?

Collection of taxes

We understand that the UK government has unpublished memorandums of understanding (MOUs), or other arrangements, that have been agreed with other treaty states, and that these are particularly relevant in the context of assistance in the collection of taxes. We understand that MOUs exist, for example, with India and Pakistan, as well as South Africa, but do not know how prevalent these are. Currently, the only way of finding out about these is to make a freedom of information request. This process is not very satisfactory and was criticised by two appeal court judges in *Ben Nevis (Holdings) Ltd v. HMRC* [2013] EWCA Civ 578, who called for all MOUs to be freely available (see paras. 41 and 57-61 of that Court of Appeal judgment). We wonder why HMRC would not publish the MOUs in the same way they publish treaties?

Further, when it comes to assistance in collection of taxes, as the EU Directive on Mutual Assistance for the Recovery of Claims will fall away in December this year, where an applicable treaty does not contain an assistance in collecting a tax debt clause (which most do not), that process will going forward be governed by the OECD/Council of Europe Convention on Mutual Administrative Assistance in Tax Matters (MAATM), as implemented into UK domestic law. However, in some respects the UK implementation of the MAATM is inconsistent with the MAATM itself (see, for instance, in respect of 'conservancy'). It is understood that HMRC does not use measures of conservancy, and they are not referenced in the UK regulations. However, the MAATM notes that an applicant state can request the requested state to take measures of conservancy (and, so far as we are aware, the UK has not placed a reservation against this article (article 12) of the MAATM). HMRC's guidance on this point (DMBM560325) is not clear.

More generally, the guidance on the MAATM and how it works (DMBM560200 onwards) would benefit from some revision to improve clarity and make it more user-friendly. During this year we will be moving towards the MAATM model as the sole means of facilitating mutual assistance in the recovery of debt claims. Therefore, greater transparency and clarity on approach from HMRC would be welcome.

Questionnaire

Q1: How could our existing DTAs be improved?

(a) Mutual agreement procedure (MAP)

We would like to reiterate the points that we made in response to previous years' DTA reviews around how the MAP provisions in the UK's treaty network are being managed and how they can be improved.

In particular, we continue 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 (BEPS MLI).

This work is increasingly important as the Global Anti-Base Erosion (Pillar 2) Rules come into force across the globe. In this regard, we also note the tax certainty provisions, including a binding multilateral certainty process, in the draft Multilateral Convention to implement Amount A of Pillar One (MLC) published in October 2023, reflecting the current consensus among members of the Inclusive Framework. The continued focus on achieving tax certainty, so far as possible, is welcome.

We understand that taxpayers can encounter practical difficulties in relation to the MAP process, and it is an area where there can be a lack of clarity for taxpayers (despite its aims to the contrary), primarily arises as a rest of the number of years it can take to reach a conclusion.

(b) Non-discrimination rules

UK treaty policy has for very many years been to exclude article 24(6) of the OECD Model (non-discrimination rules apply to all taxes and not just those covered by the treaty). We suggest that this policy should be reconsidered. We now see some countries imposing taxes, such as Spain proposing punitive taxes on foreign owners of Spanish property, which will primarily affect UK citizens. Most other European countries are protected by EU or EEA law. A reconsideration of this policy will also go some way to helping prevent other potentially discriminatory taxes introduced, for example, by EU Member States or the US if they invoke retaliatory taxes under the Internal Revenue Code.

(c) Article 5 – permanent establishments

In 2023 we responded to the consultation on Reform of UK law in relation to transfer pricing, permanent establishment and Diverted Profits Tax.

This consultation considered proposals to align the UK domestic definition of permanent establishment (PE) with Article 5 in the 2017 OECD Model. We said that we are undecided about this. Doing so would be a simplification, for both taxpayers and tax administrators, and we support the principle of aligning with the OECD Model. However, the concerns expressed by businesses about the potential impact of the changes to Article 5 (that the changes would cause less certainty and, potentially, lead to a proliferation of PEs) remain valid; insufficient time has passed to conclude that they are not giving rise to the problems foreseen. The last government said, in the Summary of Responses, that it will continue to consider whether to align the UK domestic definition of a PE with the definition set out in Article 5 of the 2017 OECD Model Tax Convention (MTC) in light of stakeholder comments.

We note that the Corporate Tax Roadmap, published with the Budget in October 2024, promised further consultation in this area and we will engage with this, and not that it is expected in Spring 2025.

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

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

Also, we continue to find the synthesised texts of the DTAs that have been amended as a result of the ratification of the BEPS MLI to be very helpful and re-iterate our appreciation of HMRC's efforts to produce these in a timely manner, and often more quickly than other jurisdictions.

In recent years, the Tax Treaty Team has considered the increase in remote working across a border for shorter term and more permanent periods. We have said that businesses can find it challenging to apply the PE rules in the context of remote work. We have suggested that guidance from HMRC (and the OECD) would be welcome. In this regard, we note and welcome the recent updates to the HMRC's International Manual (for example, paragraph INTM264435 – Non-residents trading in the UK: permanent establishments: domestic and treaty law: fixed place of business – which has some helpful examples).

We would also welcome an update from HMRC around whether any consideration has been given as to whether it would be desirable in the future to re-negotiate the taxing rights within treaties that underpin the current rules around the treatment of income flowing from remote and hybrid working (for example, the employment income article). As we have said previously, we recognise that this would not be straightforward, and discussion may be required at an international level to achieve a broad consensus on the most appropriate way forward (we understand that this discussion has begun at the OECD).

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

As we have previously noted, and we understand is recognised by HMRC, following the UK's exit from the EU, the UK's DTAs with EU member states are less competitive, when compared to the Directives operating between EU countries. We welcome the confirmation in your letter that HMRC continues to prioritise renegotiation of European DTAs to try and replicate the benefits of the Interest and Royalty and Parent and Subsidiary Directives.

However, also as 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.

We welcome that some progress has been made during 2024, and welcome the new DTA with Romania, and the agreement of final texts with Portugal and Estonia. Going forward, 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 to the treaties with EU member states, there are several existing DTAs where the UK is no longer getting the most favourable withholding tax rates and should seek more competitive rates. This could be done by amending the withholding tax rates in the treaties, or the agreement's most favoured nation clauses where an agreement on rates is not achieved. The following DTAs are pertinent:

- 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%.
- 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.

Q4: Are there any gaps in the DTA network?

We understand that priorities for businesses continue to be the DTAs with Peru and Brazil. In this regard, we welcome that a first time DTA has been agreed with Peru, in addition to the treaty signed with Brazil. We hope that the UK can work with Peru and Brazil to ensure that these are fully ratified as swiftly as possible.

There are also gaps in the DTA network in Africa, with very few with Francophone countries and similarly some Commonwealth countries, for example Tanzania.

Yours sincerely

David Murray
Chair, International 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.