

Ref: IT

23 November 2022

Tax Treaty Team
BAI – Customer Strategy and Tax Design
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Via email: taxtreaty.team@hmrc.gov.uk

Dear Sirs

Stakeholder Consultation: Review of Double Taxation Treaties 2023/24

We refer to your letter dated 21 October 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 12 December 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 December). However, these updates generally follow our input into the next year's review. As we have previously requested, 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.

Permanent Establishments – hybrid working

In September 2022 we responded to the request for input into in relation to the permanent establishment (PE) implications of remote working¹.

In addition to the points raised in that response around the need for guidance and consistency, has any consideration been given 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)? 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. However, it seems to us that, as things stand, the UK could become a net loser of tax base as a result of there being many high paid financial and professional jobs in the UK that lend themselves to working from home/remote working.

Questionnaire

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) Rules are adopted across the globe. The UK government confirmed in the Autumn Statement that it will implement the Pillar 2 framework in the UK from 31 December 2023. In this regard we also note that the arbitration provisions in relation to Pillar 1 remain subject to negotiation and agreement, but are likely to be part of a new MLI implementing those rules.

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 have mentioned previously, we note that additional guidance in respect of the MLI's new articles (and in particular the principal purpose test 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.

In addition, we continue to 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 re-iterate our appreciation of 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?

¹ [220905 Review of treaty policy positions - CIOT response.pdf \(kc-usercontent.com\)](#)

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. In particular:

- the existing UK/Romania treaty provides for a 10% withholding tax on dividends and interest and rates of 15% or 10% on royalties. We would welcome an update on the negotiations of the new UK/Romania treaty.
- there is a dividend withholding tax under the existing UK/Czech Republic treaty of 5%.
- the UK/Poland double tax treaty does not replicate the EU interest and royalties directive, as it allows a 5% rate of withholding tax on interest and royalties.

More generally, we welcome the priority being given to renegotiating European DTAs. Notwithstanding the specific points above, 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, the suggestions from members raised with you last year around aspects of our existing DTAs that are un-competitive compared with agreements those treaty partners have made with other countries remain pertinent and are:

- 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.

One further point that has been raised with us is that, unlike many treaties with the UK, the business profits article of the UK/India treaty does not allow for the attribution of an arm's length amount of head office expenses in computing the profits of an Indian PE. Is this a point that HMRC could address with the Indian tax authorities?

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.

There are also gaps in the DTA network in Africa, with almost none with Francophone countries and some Commonwealth countries as well, for example Tanzania.

In terms of priorities, we would be interested in the policy objective of a treaty with Andorra, which, we understand, is being negotiated.

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.