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Tax Treaty Team
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Via email: taxtreaty.team@hmrc.gov.uk

Dear Sirs/Madams

Stakeholder Consultation: Review of Double Taxation Treaties 2024/25

We refer to your letter dated 31 October 2023 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 Tuesday 12 December 2023. Please could you send a meeting request/details to Sacha Dalton, International Taxes Technical Officer (sdalton@ciot.org.uk) and also to Alastair Munro, Vice Chair of the CIOT International Taxes Committee (Alastair.I.Munro@uk.gt.com).

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. We welcome the progress that has been made in updating some of the UK's treaties with EU member states during 2023. 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.

Permanent Establishments – article 5

In August 2023 we responded to the consultation on Reform of UK law in relation to transfer pricing, permanent establishment and Diverted Profits Tax[1].

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.

Permanent Establishments – remote working

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 October 2023 update to the HMRC's International Manual (paragraph INTM264435 – Non-residents trading in the UK: permanent establishments: domestic and treaty law: fixed place of business).

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.

Questionnaire

Q1: How could our existing DTAs be improved?

We would like to reiterate the points that we made in response to previous years' DTA reviews 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 (BEPS MLI).

This work will become 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

[1] 230810 Transfer pricing permanent establishments and Diverted Profits Tax - CIOT response

the current consensus among members of the Inclusive Framework. The continued focus on achieving tax certainty, so far as possible, is welcome.

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

We have written to you recently regarding the new UK/Luxembourg double tax treaty[2], asking for clarification around its commencement and, in particular, implications for accounting periods that straddle the treaty commencement date. We suggest that it would be useful if HMRC could confirm their understanding of the application of the treaty in the circumstances where the consideration for the disposal of property is unascertainable at the date of a disposal.

We do not have any other comments on any aspects of 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.

In addition, 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.

Q3: Are there any 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. 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, as we say above, 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 raised with you in previous years 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.

[2] https://www.tax.org.uk/ref1240

- 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.

In addition, as we have previously raised with you, 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 priorities for businesses continue to be DTAs with Peru and Brazil in particular. In this regard, we welcome the progress made in relation to a treaty with Brazil, and we hope that the UK can work with Brazil to ensure it is fully ratified swiftly.

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.