



Faculty of Taxation

TAXREP 49/03

Double Taxation Treaty Network Review – 2004-05

Note submitted in December 2003 by the Tax Faculty of the Institute of Chartered Accountants in England and Wales to the Inland Revenue in response to a request for comments on the annual review of the UK treaty network

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INTRODUCTION

1. We welcome the opportunity to respond to the letter addressed to the Chairman of the International Tax Committee of the Tax Faculty in relation to the forthcoming review of the UK's network of double taxation and double contribution agreements.

WHO WE ARE

2. The Institute is the largest accountancy body in Europe, with more than 123,000 members. Three thousand new members qualify each year. The prestigious qualifications offered by the Institute are recognised around the world and allow members to call themselves Chartered Accountants and to use the designatory letters ACA or FCA.
3. The Institute operates under a Royal Charter, working in the public interest. It is regulated by the Department of Trade and Industry (DTI) through the Accountancy Foundation. Its primary objectives are to educate and train Chartered Accountants, to maintain high standards for professional conduct among members, to provide services to its members and students, and to advance the theory and practice of accountancy (which includes taxation).
4. The Tax Faculty is the focus for tax within the Institute. It is responsible for technical tax submissions on behalf of the Institute as a whole and it also provides various tax services including the monthly newsletter 'TAXline' to more than 11,000 members of the ICAEW who pay an additional subscription.

GAPS IN THE NETWORK

5. The largest trading partner of the UK with which there is no comprehensive Double Taxation Agreement is **Brazil**.
6. We appreciate that negotiations undertaken with Brazil a few years ago proved unsuccessful but we believe it would be of benefit to seek to enter into a treaty with Brazil. We note that Brazil currently has comprehensive treaties with the majority of our fellow EU member states.
7. We also suggest that it would be appropriate to consider a treaty with **Libya** now that a number of UK companies are entering into trading relations with that country.
8. We appreciate that negotiations are in progress with **Iran** to introduce a comprehensive Treaty. We were concerned by the facts revealed in the Special Commissioners case of *F & Another v IRC* when the individual in question was not free to leave Iran until he had settled a taxation liability. We are concerned to ensure that no exchange of information article is agreed to for the Iran agreement

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until the UK Government has clear and categorical evidence that such a situation as was revealed by the Special Commissioners' case will not recur.

PROBLEMS WITH OUR EXISTING DTAS OR WHETHER ASPECTS OF OUR EXISTING DTAS ARE UN-COMPETITIVE

PERMANENT ESTABLISHMENTS

9. We are concerned to ensure that the existing 'permanent establishment rule' is maintained in the UK's future treaty negotiations and renegotiations. In particular, we welcome what we understand to be the UK's stance in respect of what in our view is arguably an unwarranted extension of the OECD definition of a permanent establishment. We refer in particular to the Italian Philip Morris case.

MUTUAL RECOVERY

10. The OECD Model Convention now incorporates Article 27 'Mutual Recovery'. We are concerned that if this Article is incorporated into Treaties with our small trading partners the UK could find itself as the 'collecting agent' for potentially doubtful taxation assessments raised in the Treaty country.

TREATY WITH JAPAN

11. We also believe the UK should seek to amend Article 14 of the Double Taxation Agreement with Japan as this is not in accordance with the OECD Model Convention which the Japanese have followed in the Treaty they have negotiated with the United States.

PROBLEMS REGARDING THE UK ENABLING LEGISLATION FOR TREATIES

12. We are extremely concerned that in the ACT Class 3 litigation the High Court has found that the UK is in breach of its international treaty obligations with several of its largest trading partners, including the US and Japan. This is all the more worrying having regard to the assurances we understand were given to the Law Society in November 2002 that as a general matter this was not the case. Although we understand that the High Court's decision is going to be appealed, we would still add our voice to that of the Law Society in calling for a review of the scope of section 788 and section 788(3) in particular, to ensure that there are no further instances of the UK being held to be in breach of its international treaty obligations by virtue of a particular construction of the enabling domestic legislation. In this regard, we agree with the Law Society that Article 27 of the Vienna Convention, to which the UK is a signatory, militates against the frustration of international treaty obligations via too narrowly drawn domestic enabling legislation.

IKY
23.12.2003