Tax Representation

ICAEW TAX FACULTY

TAXREP 10/07

WRITTEN SUBMISSION TO THE HMRC FRONTIERS AND INTERNATIONAL TAX TREATY TEAM ON THE ANNUAL REVIEW OF THE DOUBLE TAXATION AGREEMENTS (DTAs) AND DOUBLE CONTRIBUTION AGREEMENTS (DCAs).

Contents **Paragraphs**

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INTRODUCTION

1. We are writing in response to the letter of 21 December 2006 from Steve Reszetniak, Senior Policy Adviser, in which we were asked to provide comments on what should be the UK Government's priorities in the year to March 2008 in its review, updating and extension of the existing network of DTAs and DCAs.

2. Although the DCA network is very small it is becoming increasingly important for the two networks to be matched in the light of the increasing convergence of the two imposts.

3. We also note that the UK has not concluded any new gift & inheritance tax treaties in the last 10 years despite the increase in cross-border migration. For example, there are several hundred thousand expatriate British citizens living in Spain, with which there is currently no treaty. While there may not have been a great demand from these British citizens for change this may be because the double taxation is effectively suffered only after their deaths.

4. In the balance of this document we refer only to DTAs.

EXECUTIVE SUMMARY

5. We recommend that this annual review should be carried out from a more strategic viewpoint.

6. We believe HMRC should indicate as part of the review the issues it wishes to pursue, particularly for renegotiations and protocols. With a network of more than 100 DTAs this is likely to be the majority of the workload in relation to DTAs. The review that we are proposing could be along the lines of most other formal consultations when HMRC sets out the issues for discussion or proposals which may be in varying degrees of completeness.

DETAILED COMMENTS

Article 13 – Capital Gains

Investment funds

7. In a number of countries where the disposal of shares by a non resident is taxable, members of partnerships are often treated as associated for the purpose of deciding whether ownership thresholds are exceeded in deciding if the gain is to be taxed (South Africa is an example of this). Limited partnerships are very often the preferred vehicle for funds seeking transparency. Disapplication of any such association of partners (particularly if there is no other connection between them) would give access to article 13 protection for investors consistent with this transparency.

Substantial Shareholding Exemption

8. It is difficult to give effect to the Substantial Shareholding Exemption for UK based companies where the other contracting state taxes share disposals. While there are a number of strategies to overcome this problem it would be more satisfactory if this problem was addressed within the DTAs themselves .

Article 27 – Assistance in the collection of taxes

9. If the UK takes the lead in introducing this new article while other countries are hesitant in doing so, this will cause UK treaties to become uncompetitive. A proper debate on this latter issue is appropriate in the light of the absence of any discussion on the provisions introduced as sections 174-6 Finance Act 2006.

The growth of generalised anti-avoidance provisions

10. UK treaties are bound to become uncompetitive if the domestic anti-avoidance agenda enters into the treaty network as a disproportionate approach is bound to increase treaty shopping rather than decrease it.

11. We are concerned by this potential development and we would welcome comments from HMRC.

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APPENDIX 1

WHO WE ARE

1. The Institute of Chartered Accountants in England and Wales ('ICAEW') is the largest accountancy body in Europe, with more than 128,000 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.

2. The Institute operates under a Royal Charter, working in the public interest. It is regulated by the Department of Trade and Industry 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, including taxation.

3. The Tax Faculty is the focus for tax within the Institute. It is responsible for tax representations on behalf of the Institute.