



Double taxation agreements

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This note gives a short introduction to double taxation agreements (DTAs), and discusses some recent developments in this area.

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A. The purpose of double taxation agreements

The general purpose of DTAs was set out in a Inland Revenue press notice in May 2000:

Double taxation conventions aim to protect against the risk of a double tax burden, provide certainty of treatment for cross-border economic activity and prevent fiscal discrimination against UK business interests abroad. The business community has long welcomed such treaties as an essential part of the framework for international trade and plays an active part in the prioritisation of work in this area. Double taxation conventions also protect the Exchequer by including provisions to counter avoidance and evasion - not least by measures providing for the exchange of information between Revenue authorities.

There are more than 1,300 double taxation conventions world-wide - the United Kingdom has the largest network of conventions, covering over 100 countries. The United Kingdom has sought to encourage and maintain an international consensus on the appropriate tax treatment of cross border economic activity and thus promote international trade. The United Kingdom plays an important role in the Organisation for Economic Co-operation and Development in this field.¹

The Government's view on the value of these agreements was given in a written answer in December 1999:

Mr. Colman: To ask the Chancellor of the Exchequer what economic evaluation his Department has (a) undertaken and (b) commissioned of the overall balance of advantage of existing double tax agreements.

¹ Inland Revenue press notice 91/00, 2 May 2000

Dawn Primarolo: It is widely recognised in the United Kingdom and other leading industrialised countries that double taxation agreements encourage international trade and investment by relieving double taxation and providing certainty of tax treatment. Investment and income flows are taken into account in negotiating double taxation agreements. The business community is invited regularly to give its views on the priorities for negotiating new agreements and renegotiating existing agreements. The many representations made by business during our annual review of our network of agreements show the considerable value of these agreements to the United Kingdom, and in particular to UK business.²

The procedure for parliamentary scrutiny of these agreements was summarised in a second PQ at this time:

Mr. Colman: To ask the Chancellor of the Exchequer to what parliamentary scrutiny he proposes the UK's Double Taxation Agreement with the US will be subject.

Dawn Primarolo: New Double Taxation Conventions are laid before the House as a Schedule to a draft Order in Council. The usual procedure is that the draft Order is considered first by the Select Committee on Statutory Instruments and then by a Standing Committee on Delegated Legislation.³

The *CCH British Tax Guide* provides a good introduction to the subject of double taxation:

Double taxation occurs because of the impact of the domestic laws of more than one territory or country. Some countries assess tax on worldwide income derived by residents, while other countries assess tax on income having a source in their country; more than one country may regard the same taxpayer as resident in their country. It is generally recognised that this type of double taxation should be avoided since it can raise a barrier to the exchange of goods and services and the movement of capital and persons between countries. Persons will be unwilling to provide capital, goods or services in an overseas country if they are likely to be taxed on the income derived there from both in that country and in their country of residence.

Tax treaties represent the efforts of two or more countries to solve problems caused by the conflict of domestic tax systems. The main purposes of tax treaties are:

- to deal with instances of double taxation and thus reduce fiscal barriers between countries;
- to provide a climate of certainty of tax treatment for persons affected;
- to promote closer economic and political ties between countries; and
- to combat international tax evasion by the exchange of information between countries.

² HC Deb 21 December 1999 cc 582-3W

³ HC Deb 21 December 1999 c 581W

The UK has entered into a large number of treaties with other countries. [The Crown is empowered] to make arrangements with other countries as regards double tax relief in relation to: income tax; corporation tax on income and chargeable gains; and taxes of a similar character to these taxes imposed in the relevant foreign country.⁴

These powers extend to capital gains tax.⁵ Agreement may also be reached with other countries' governments in relation to inheritance tax.⁶

Three principal types of double tax agreement have been developed:

- comprehensive agreements relating to taxes on income, capital gains and capital;
- limited agreements dealing only with income and gains arising from shipping and/or air transport; and
- agreements relating to the taxation of estates, inheritances and gifts ...

There are three basic kinds of relief from double taxation:

Relief by exemption – certain categories of income are exempted from tax in whole or in part in one or other of the countries which are parties to a double taxation agreement (double tax treaty).

Relief by credit – tax charged in one country may be available as a credit in the other. Such relief may be available by virtue of a treaty, or unilaterally.⁷

Relief by deduction – tax charged in one country may be available as a deduction against the income on which it is charged .

In general, the comprehensive treaties negotiated by the UK with other countries have closely followed the model tax treaty of the Organisation for Economic Co-operation and Development (OECD). In 1963 the OECD produced a draft double taxation Convention and in 1977 a new model Convention was published. The OECD published a further revised Model Tax Convention in 1992.⁸

The OECD summarises its work in this area as follows:

Most types of income, especially business profits and investment income, double taxation is avoided in treaties based on the OECD Model Tax Convention by allocating taxing rights between the resident and source countries and by requiring the former to eliminate double taxation where there are competing taxing rights. Most bilateral tax treaties follow both the principles and the detailed provisions of the OECD Model. There are close to 350 treaties between OECD Member countries and

⁴ Under section 788 of the *Income & Corporation Taxes Act (ICTA) 1988*

⁵ Under section 277 of the *Taxation of Chargeable Gains Act 1992*

⁶ Under section 158 of the *Inheritance Taxes Act 1984*

⁷ (The most common United Kingdom approach to relieving double taxation is to tax the foreign income of a United Kingdom resident but to deduct the foreign tax paid on the item of income from the corresponding United Kingdom tax: Inland Revenue press notice IR14, 17 March 1998).

⁸ *CCH British Tax Guide* paras 135-000, 135-300

over 1,500 world-wide which are based on the Model, and it has had considerable influence on the bilateral treaties between non-member countries. As a sign of that influence, the Working Party on Tax Conventions and Related Issues has regular contact with non-OECD members to discuss developments in the Model and problems of application and interpretation of bilateral treaties.⁹

In February 1997 two new 'tax treaties' with Latvia and with Venezuela came into force, bringing the UK's total number of conventions to 100 - the largest network of tax treaties in the world. At the time, the then Financial Secretary to the Treasury, Michael Jack, made the following comments:

I am delighted that a flurry of tax treaties approved in December last year has brought up a very important century partnership. A partnership of good international relations and sound tax negotiating which is to the benefit of British business. Our extensive treaty network plays a vital part in opening markets for international trade and investment. These treaties are welcomed by business as a means of reducing tax-related barriers and providing certainty of treatment. The UK has every right to be proud of its position as world-leader in the field of tax treaties. Being first to reach the landmark of treaties with 100 countries is a notable achievement.¹⁰

In October 1997 the Paymaster General (then Financial Secretary) Dawn Primarolo, set out the present Government's position on DTAs, when the Standing Committee on Delegated Legislation considered four draft Orders, relating to existing treaties with Malaysia, Singapore, the Falkland Islands & Lesotho:

I am in an unusual position for a new Minister, as these treaties were concluded during the past 12 months and were agreed and approved by the previous Administration. Double taxation treaties are extremely important to the United Kingdom, as I am sure the shadow Minister agrees. Over the years, they have had cross-party support, because of the use of the OECD model and because of their recognised importance. I have every hope that they will continue to enjoy that traditional cross-party support.

Before I deal with the finer points of the orders, I want to confirm the Government's commitment to maintaining and, when circumstances permit, to extending the UK's lead in the area of double taxation agreements. That continues the previous Government's policy, which Labour Members supported. The orders do not increase the size of our network of about 100 bilateral tax treaties. It is just as important, however, to ensure that our existing treaties continue to meet the needs that they were designed to address and that they match our present requirements. The four treaties are part of that process.

For the benefit of new Members and, perhaps, to refresh the memories of the rest of us, I shall make a few general remarks about double taxation treaties. They are

⁹ OECD, "Taxation: Tax Treaties" source: <http://www.oecd.org>

¹⁰ Inland Revenue press notice 25/97, 12 February 1997

welcomed by the business community because they reduce the tax-related barriers to international trade and investment and provide certainty of treatment. They do that in the following ways: first, they reduce withholding tax on investment flows--again, that is a continuation of previous policy; secondly, they allocate tax rights, thus preventing double taxation; and thirdly, they provide a mechanism for tax authorities to resolve difficult cases. In a nutshell, that is the purpose of the treaties--they oil the international debate and ensure fair relations between the UK and other countries.¹¹

Speaking for the Opposition on this occasion, Tim Boswell, noted the following:

[Britain has been one of the] major players in formulating and considering the OECD model code, which is, as it were, the bible of the double tax buff. We have not done that for a purely disinterested reason: when the Revenue is forgoing revenue - which is the definition of what happens under a double taxation treaty - I always ask why it is doing so. The reason is that there is a strong United Kingdom interest in doing so, where the arrangements are proper. It is in the interests of the country to involve itself both in foreign direct investment and in portfolio investment. That is good for the country and, in the long run, will yield a flow of interest dividends, profits and remittances.

At the same time, there is an important mutual element in such investments; they build up the economies of the partner countries, which are co-signatories of the treaties. There is a genuine joint interest in these affairs ... I want to emphasise another, rather more internal, aspect of double tax treaties--their importance to individual investors. As a matter of equity, such people should not be taxed twice on profits that inhere twice.¹²

In the light of concerns about European tax harmonisation it is worth noting that, as a written answer in November 2001 explained, "double taxation treaties are a matter for member states not for the EU."¹³ Peter Luff raised this concern when the Standing Committee on Delegated Legislation considered two draft Orders, relating to new treaties with Lithuania and Jordan. The Paymaster General gave Mr Luff the following assurance: "I assure the hon. Member for Mid-Worcestershire that double taxations are bilaterally agreed between countries, and that that is the continued mechanism through which the treaties are agreed. There is no question of competence lying elsewhere. We have double taxation treaties with other European countries, which are current European Union members, and such treaties are the best way to make arrangements between countries."¹⁴

A full list of DTAs is published by the Inland Revenue on their internet site.¹⁵

¹¹ First Standing Committee on Delegated Legislation, Debate on Draft Double Taxation Relief (Taxes on Income) (Malaysia) Order 1997 etc, 29 October 1997

¹² *ibid.*

¹³ HC Deb 1 November 2001 c 800W

¹⁴ Second Standing Committee on Delegated Legislation, Debate on Draft Double Taxation Relief (Taxes on Income) (Lithuania) Order 2001 etc, 26 November 2001 c 6

¹⁵ <http://www.inlandrevenue.gov.uk/international/treaties1.htm>

B. Recent developments

In May 2000 the Revenue published details of its priorities in the double taxation field for the coming year:

Each year, the Government reviews the UK's treaty priorities to make sure they meet the needs of the business community. As part of this exercise the Inland Revenue monitors the treaty networks of other countries and consults other Government departments, representative bodies and UK companies. This process of consultation is widely welcomed. The results, balanced with an estimate of the available resources, are used to produce a working plan for the year ahead.

Progress to March 2000

DTA Negotiations have been held in the last 12 months with South Africa and the United States. During the same period, the House of Commons and the Privy Council have approved a comprehensive treaty with Kuwait.¹⁶ We have continued to work towards finalising new DTAs with France, Norway and Lithuania ...

Programme to March 2001 - and beyond

The top priority during the coming year will be the continuing negotiations with the United States. We aim to complete the outstanding work on new treaties with France, Germany, Lithuania, Norway and South Africa. We intend to continue negotiations with Chile, Jordan, and Namibia - and hope to conclude at least some of these during the coming year. We also hope to finalise Protocols to the existing treaties with Canada and the Netherlands.

We also have plans for exploratory talks about new or updated treaties with Australia, Bahrain, Georgia, Guinea, Hong Kong, Iran, Qatar, Slovenia and Taiwan. The work programme described above will continue into 2001/2002 – and we recognise that some parts of it may not begin in earnest before then. This reflects (a) the current concentration of our effort on the United States and (b) the reality that tax treaties are typically developed over a number of years.¹⁷

At the same time the Revenue gave details of its progress with Double Contribution Agreements:¹⁸

Double Contribution Agreements (DCAs) promote the free movement of labour and assist in maintaining the UK's position as an attractive inward investment location. Among other things, DCAs provide that, where a worker is sent on detachment from one country to the other, he and his employer are liable to contribute only to the

¹⁶ (The *Double Taxation Relief (Taxes on Income) (Kuwait) Order* SI 1999/2036, which entered into force on 1 July 2000: Inland Revenue press notice 141/00, 25 August 2000. The Order was debated by the Ninth Standing Committee on Delegated Legislation on 16 June 1999).

¹⁷ Inland Revenue press notice 91/00, 2 May 2000

¹⁸ The Revenue took policy responsibility for DCAs from the Department of Social Security from 1 April 1999 with the transfer of the Contributions Agency to the Revenue, under the *Social Security Contributions (Transfer of Functions, etc) Act 1999*.

"home" country's scheme - and they thus eliminate the liability to contribute simultaneously to the social security schemes of both countries. The UK has 14 bilateral social security agreements in force which include contribution provisions ...

Progress to March 2000

During 1999/2000 a new DCA with Japan was signed, agreement was reached at official level on a new DCA with Slovakia and parliamentary procedures were completed in respect of a new DCA with Korea ...

Programme to March 2001

The main priorities for the coming year are to bring the Japanese and Korean agreements into effect and to proceed to signature of a new DCA with Slovakia. We also hope to make progress on agreements under negotiation with Poland and Chile.¹⁹

Progress with this programme and the following year's priorities were set out in a press notice issued in March 2001:

Programme to 31 March 2002

The top priority during the coming year will be the continuing DTA negotiations with the United States. We aim to complete the outstanding work on new treaties with France, Jordan and South Africa. We intend to continue negotiations with Australia, Chile, Namibia, Qatar, Taiwan and the UAE. We also hope to complete the work on Protocols to the existing treaties with Canada and the Netherlands. On the DCA side we aim to complete the outstanding work on a new treaty with Slovakia and to continue negotiations with Chile.

New/Exploratory talks

We have plans for exploratory talks about new or updated DTAs with Croatia, Iran, Saudi Arabia and Slovenia.

Progress to 31 March 2001

The DTAs with Kuwait and Norway entered into force on 1 July 2000 and 21 December 2000 respectively. The DTAs with Lithuania and Hong Kong (a limited agreement on shipping) were signed and these will enter into force once all parliamentary procedures have been completed. Negotiations on DTAs have been held in the last 12 months with Australia, Canada, Chile, Georgia, Jordan, Namibia, Qatar, South Africa, Taiwan, the United Arab Emirates and the United States.

We have also continued to work towards finalising the new DTA with France. During 2000/01 DCAs with Korea and Japan entered into force on 1 August 2000 and 1 February 2001 respectively.²⁰

¹⁹ Inland Revenue press notice 91/00, 2 May 2000

²⁰ Inland Revenue press notice 66, 30 March 2001. A summary, along with a list of the UK's double taxation conventions, was published in *Inland Revenue Tax Bulletin* issue #53, June 2001 pp 861-4. This is available on the Revenue's site at: <http://www.inlandrevenue.gov.uk/bulletins/tb53.pdf>

Of these developments the completion of a new DTA with the United States of America in July 2001 has attracted most attention,²¹ as well as comment in the specialist press.²² In March 2002 the Government confirmed it was still “considering a number of matters relating to the application of the double taxation convention [with the USA]”²³ and a draft Order in Council was not laid until July 2002.²⁴ The Order was considered by the Standing Committee on Delegated Legislation on 28 October 2002.²⁵

Just prior to the draft Order being laid, the Government published its programme for the coming year (*emphasis added*):

Programme to 31 March 2003

The top priority during the coming year will be the ratification of the new DTA with the United States, which was signed on 24 July 2001. *We aim to complete all the outstanding work on new treaties with France, South Africa and Taiwan.* We intend to continue negotiations with Australia, Botswana, Chile, Georgia, Namibia and Slovenia. We also hope to complete the work on Protocols to the existing treaties with Canada and the Netherlands.

New/Exploratory talks

We have plans for exploratory talks about new or updated DTAs with Croatia, Iran, Italy (Protocol), Libya, Poland and the Federal Republic of Yugoslavia. Following agreement of the OECD Model Tax Information Exchange Agreement (TIEA) we also intend to commence negotiation of TIEAs with jurisdictions who have made commitments to co-operate with the OECD Harmful Tax Practices Initiative.

Recent developments

The limited shipping agreement with Hong Kong entered into force on 3 May 2001. A comprehensive DTA between the UK and the Hashemite Kingdom of Jordan was signed in Amman on 22 July 2001 and entered into force on 24 March 2002.

The DTA with the US was signed on 24 July 2001 and will enter into force once all the necessary parliamentary procedures have been completed. Negotiations on DTAs have been held since March 2001 with Australia, Botswana, Canada, Chile, France, Georgia, Jordan, Namibia, Saudi Arabia, Slovenia and Taiwan.²⁶

²¹ “Double tax treaty unites Chancellor with US counterpart” & “Civil servants go on tax defensive”, *Financial Times*, 25 July & 2 August 2001

²² for example, “US/UK tax treaty” & “Transatlantic changes”, *Tax Journal*, 6 & 13 August 2001; “New slant on an old convention I & II”, *Taxation*, 27 September & 4 October 2001.

²³ HC Deb 14 March 2002 cc 1227-8W

²⁴ Inland Revenue press notice 22 July 2002. The original text and the changes agreed to it were discussed in: “Transatlantic investment” & “Transatlantic problems”, *Taxation*, 31 January & 19 September 2002.

²⁵ First Standing Committee on Delegated Legislation, Debate on Draft Double Taxation Relief (Taxes on Income) (The United States of America) Order 2002 28 October 2002. The Committee also considered a new Protocol relating to the convention with Lithuania which it had initially approved on 26 November 2001 (first announced in Inland Revenue press notice 48/02), 22 May 2002.

²⁶ Inland Revenue press notice 19 July 2002

In fact the text of a new agreement with Taiwan, and a replacement agreement with South Africa, were agreed at this time.²⁷ In the case of the former the *Financial Times* carried a short story on the signing of a new agreement on 8 April:

Britain has signed an agreement with Taiwan to prevent-double taxation and tax-dodging. Officials say the deal will strengthen bilateral business ties. Talks were complicated by the lack of diplomatic relations between Taipei and London, which has only unofficial ties with Taiwan out of deference to China's claim to sovereignty. Taiwan's foreign ministry said the agreement, signed in London on Monday, would allow it to forge similar agreements with other governments. The tax pact is technically between the Taiwanese representative office in London and its British counterpart in Taipei. It remains short of the full tax treaties the UK has signed with countries it recognises. Britain has pacts covering intellectual property and culture with Taiwan, so the accord breaks no new diplomatic ground. It was completed after demands for action from UK companies.²⁸

²⁷ Inland Revenue press notice 57/02, 9 July 2002; Inland Revenue press notice 23 July 2002

²⁸ "Tax deal signed with Taiwan", *Financial Times*, 10 April 2002