

## **Guidance.**

### **INTM870000 – Offshore Receipts in respect of Intangible Property (ORIP)**

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# **1 INTRODUCTION TO OFFSHORE RECEIPTS IN RESPECT OF INTANGIBLE PROPERTY (ORIP).**

## **1.1 Background**

At Budget 2017 the government announced an extension to the existing rules for withholding tax on royalties and similar payments. The measure aims to discourage multinational businesses from holding intangible property (IP) in low tax territories distinct from the territories in which the substantive economic activities that relate to its development, enhancement, management, protection and exploitation are located, such that little or no tax is paid on the income received. The measure was subject to consultation from December 2017 to February 2018 ([https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/663889/Royalties\\_Withholding\\_Tax\\_-\\_consultation.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/663889/Royalties_Withholding_Tax_-_consultation.pdf)).

Following consultation, some design changes were made to the proposed measure, which is now entitled Offshore Receipts in respect of Intangible Property (ORIP).

## **1.2 ORIP - Purpose and design**

ORIP was conceived as an extension to UK withholding tax on royalties that would apply to all payments made by resident and non-resident companies in respect of low tax IP that has been used to make UK sales. However, following consultation, the measure was amended to provide for a direct income tax charge on persons in low tax territories that hold IP and where income arises from that IP where it is used to support UK sales.

The amendments responded to the outcome of consultation and to concerns about possible double taxation and reporting and compliance burdens. The changes also improved the targeting of the measure and reduced the scope for sidestepping the tax charge.

The measure is consistent with the UK's international obligations, and thus respects the situations in which the UK has ceded taxing rights over the income of a non-resident person under a double taxation agreement (DTA).

As set out above, the rules impose a direct UK income tax charge on persons in low tax territories where income arises from IP being used to support UK sales.

## **1.3 Overview**

The new Chapter 2A, which is inserted into Part 5 of Income Tax (Trading and Other Income) Act 2005 (ITTOIA05) has effect from 6 April 2019 and applies on an income tax year basis. Chapter 2A was amended by regulations (The Income Tax (Trading and Other Income) Act 2005 (Amendments to Chapter 2A of Part 5) Regulations 2019), largely with effect from 6 April 2019, although some amendments take effect from the day after the day the regulations are made.

There is also an anti-forestalling targeted anti-avoidance rule which applies from 29 October 2018.

The provisions are discussed in more detail below, but in broad summary are as follows:

Unless an exemption applies, a person is subject to an income tax charge if they are not resident in the UK or a full treaty territory, and UK-derived amounts (see below) arise to them in the tax year.

Income tax is charged on the full quantum of the UK-derived amounts arising in the tax year at the relevant rate of income tax.

The person liable to the charge is the person receiving, or entitled to, the UK-derived amounts.

A UK-derived amount is an amount (whether capital or revenue in nature) made in respect of the enjoyment or exercise of intangible property rights where the enjoyment or exercise of those rights (or rights derived directly or indirectly from those rights) enables, facilitates or promotes UK sales.

For the purposes of this measure, "UK sales" means any services, goods or other property either provided in the UK, or to persons in the UK. This is subject to rules for resellers that have the effect of excluding the provision of services, goods or other property from UK sales when certain conditions are met. The rules for providers of online advertising are applied in such a way as to ensure consistency with the providers of other goods and services, so that such services amount to UK sales where the advertising targets persons in the UK.

In computing the tax charge, if a person receives or is entitled to amounts in respect of intangible property that enable, facilitate or promote both UK and non-UK sales, the proportion allocated to UK sales is given by the formula (UK sales/total sales), unless this does not produce a just and reasonable result.

Similarly, if a person receives or is entitled to amounts in respect of intangible property that enables, facilitates or promotes both UK sales and amounts in respect of anything else, the apportionment between these two amounts is made on a just and reasonable basis.

Intangible property is given a very wide definition for the purposes of Chapter 2A, being any property that is not:

- tangible property,
- an estate, interest or right over land,
- a right in respect of the two exclusions above,
- a financial asset (within the meaning given by s806 Corporation Tax Act 2009, CTA09),
- a share or other right in relation to the profits, governance or winding up of a company, or
- any property of a prescribed description.

There are a number of exemptions to the tax charge:

- Limited UK sales – if the person (together with any connected person) has UK sales of £10m or less in the tax year.
- Company resident in a specified territory – HMRC have a power to create a list of specified territories. Persons to which these rules apply will generally

be companies. This exemption takes out of scope those companies in specified non-full treaty territories that would otherwise be within scope. There are various conditions that must also be met for this exemption to apply.

- Business undertaken in the territory – if the person is resident in the territory and all (or substantially all) of the relevant activity in relation to the IP is, and always has been, undertaken in the territory, the person is able to make a claim to be exempt from charge. This exemption only applies if the IP has not been transferred from a related person and is not derived from IP held by a related person.
- Foreign tax at least half of UK tax – this exemption applies to remove from charge persons who pay tax on the UK-derived amounts in their territory of residence of at least half the amount they would pay under this legislation. This exemption does not apply if the tax due in the territory of residence is determined under tax provisions designed to allow any person's control over the tax payable.
- Income of opaque partnerships taxable in full treaty territory – this exemption applies to remove from charge the partners in an opaque partnership where UK-derived amounts arise to the partnership and are chargeable in the partnership's territory of residence.
- Certain bodies corporate that are transparent in a full treaty territory – this exemption applies to remove from charge corporate bodies that are incorporated in a full treaty territory, regarded as tax transparent according to the laws of that territory, and are wholly owned by persons resident in that territory.
- Exemption for double taxation on amounts within the same control group – this exemption applies to deal with circumstances where a charge arises to two companies within the same group in respect of the same income arising from intangible property.

There is a targeted anti-avoidance rule (TAAR), which applies to arrangements entered into after 28 October 2018 a main purpose of which is to prevent amounts being subject to the ORIP charge, or which is contrary to the object and purpose of a treaty. If the TAAR is in point, the counteraction is made by making an adjustment on a just and reasonable basis.

If income tax due under this legislation remains unpaid 6 months after the relevant date, a designated officer may issue a notice to a person (or persons) in the same control group, requiring payment of any unpaid tax and interest within 30 days.

## **2 CHARGE TO TAX ON ORIP**

*ITTOIA05/Ch2A/S608A, B and C*

### **2.1 Charge to tax on UK-derived amounts**

The charge to tax on UK-derived amounts applies if, at any time in the tax year, a person is not resident in the UK or a full treaty territory and UK-derived amounts arise to them. Subject to some exemptions, income tax is chargeable on the full quantum of the UK-derived amounts arising in the tax year. The person liable for the tax charge is the person receiving, or entitled to, the UK-derived amounts.

### **Example**

Company A is based in the Cayman Islands throughout the 2020/21 tax year. Company A has UK-derived amounts of £30 million arising during that tax year. No exemptions apply to Company A and so Company A will be subject to income tax on the full £30 million.

## **2.2 Apportionment of amounts**

*ITTOIA05/Ch2A/S608G*

Section 608G provides a basis for apportionment where:

- a. the person receives, or is entitled to, an amount in respect of the enjoyment or exercise of rights to any intangible property which enables, facilitates or promotes UK sales and non-UK sales;
- or,**
- b. the person receives, or is entitled to, an amount in respect of the enjoyment or exercise of rights to any intangible property which enables, facilitates or promotes UK sales and receives, or is entitled to, an amount for anything else.

The amount considered to be a UK-derived amount if a. applies will be an apportionment using the formula *UK sales/total sales*, provided this gives a just and reasonable answer. The amount considered to be a UK-derived amount if b. is in point will be calculated on a just and reasonable basis.

### **Example 1 for a.**

If a. is in point the UK-derived amount will be the total income from the respective IP multiplied by the fraction calculated using the *UK sales/total sales* formula in relation to that IP (found at S608G(3)).

Person A is subject to ORIP and holds rights relating to specific intangible property. Person A receives £10 million in respect of those rights. The enjoyment or exercise of those rights enabled worldwide sales of £100 million; £75 million relates to sales outside the UK, with £25 million relating to UK sales. Applying the formula gives the following fraction:

$$£25 \text{ million} / (£25 \text{ million} + £75 \text{ million}) = 25/100.$$

This fraction is applied to the amount received in respect of the intangible property of £10 million, resulting in a UK-derived amount of £2.5 million.

### **Example 2 for b.**

Person B has rights relating to specific intangible property. Those rights have resulted in income of £14 million, with £4 million relating to the enjoyment or exercise of those IP rights which have assisted in UK sales and £10 million being a receipt for pure services provided by Person B. On a just and reasonable basis, the UK-derived amount will be £4 million.

## 2.3 Disregard for third party sales where IP makes an insignificant contribution.

ITTOIA05/Ch2A/S608GA

Where a UK-derived amount is received by a person (Person A) within scope of the legislation and the UK sales to which the UK-derived amount relates are only UK sales by reason of the provision of goods, services or other property by an unconnected person (Person B) and not for any other reason, the legislation will not apply a charge where the contribution that the IP makes to the sale is insignificant.

In applying the rule, anything provided by a reseller is to be treated as provided by the person who provided it to the reseller. For this purpose, a "reseller" means a person to whom a thing is provided for resale.

In considering whether this disregard applies, the following non-exhaustive list of factors is relevant to whether intangible property makes an insignificant contribution to UK sales:

- Whether Person A's branding appears on Person B's product;
- Whether Person A's brand is included in any of Person B's marketing material for the product or service;
- The relevance of Person A's intangible property to the consumer purchasing Person B's product or service;
- The extent of Person A's control over the use of its Intangible Property by Person B including marketing or other contractual obligations over the use of the IP
- Whether similar products or services to those of Person B are available or not, and whether Person A's intangible property is a feature of those products or services;
- Whether the price/value when considered against the amount charged/value of the outputs is insignificant (this may be considered in either absolute terms or relative terms);  
and/or
- The extent to which there are contractual arrangements that:
  - allow Person A to obtain certain information from Person B, for example sales data; or
  - entitle the supplier (Person A) to a share of Person B's resulting revenue from the sale of the good, service or other property which utilises Person A's intangible property.

### Example 3

Group A sells software. They hold their intangible property (IP) in a Cayman Island based company. Group B is an unrelated airline based in a different territory (not the UK).

Group A's IP attracts income via its group distributor that relates to direct UK and non-UK sales. The IP income that it is entitled to from the UK sales form part of its UK-derived amount and are subject to an income tax charge under ORIP.

Group A also gets IP income from direct non-UK customers, one such customer is Group B.

Group B is based solely in a non-UK territory, it purchases anti-virus software from Group A which it uses in its online booking system. The relevant factors identified

above indicate that Group A's IP is insignificant in relation to Group B's sales (Group A's brand is not present on the booking system and the use of Group A's IP is unknown to Group B's customers etc.)

Group B has a small number of bookings from UK customers, however these bookings will not count as indirect UK sales in respect of Group A's UK-derived amount as they satisfy the insignificant contribution test.

In self-assessing any charge under Chapter 2A, taxpayers are expected to make appropriate reasonable efforts to determine whether sales made indirectly through third parties give rise to UK and non-UK sales and to quantify such sales. This would include obtaining such information through contractual or other arrangements, or where such information is not available using other reasonable data sources such as marketing, sales and other financial information, published financial reports, etc. Where sales are made directly or indirectly by related parties it is expected that such details regarding sales will be available.

### **3 EXEMPTIONS**

To ensure that the legislation is appropriately targeted there are a number of exemptions. Where an exemption applies either the person or the relevant income is outside the charge of Chapter 2A, subject to any counteraction under the targeted anti-avoidance rule where appropriate.

The legislation contains a power to amend these exemptions by regulations.

- Limited UK sales
- Resident in specified territory
- Business undertaken within territory of residence
- Foreign tax at least half of UK tax
- Opaque partnership in full treaty territory
- Certain bodies corporate that are transparent in a full treaty territory
- Double taxation on amounts within same control group

#### **3.1 Limited UK Sales**

*ITTOIA05/Ch2A/S608J*

There is an exemption from charge for persons who do not have UK sales in a tax year of more than £10,000,000.

The meaning of a person's UK sales is very widely defined, it includes the person's UK sales combined with that of any person connected to them.

UK sales includes amounts that have been received, or to which there is an entitlement, whether of a capital or revenue nature. The amount can be wholly, or in part, and directly, or indirectly, relating to the provision of services, goods or other property constituting UK sales. Note that this will include the revenue from UK sales made by connected persons (as well as those through third party resellers). The measure of the UK sales threshold is the total sales revenues of the group and is not

calculated by reference to UK-derived amounts. Connected persons follows the ITTOIA definition in Part 2 Schedule 4 (s993 Income Tax Act 2007, ITA07).

### **Example 1**

A multinational group sells software. Person A within the group meets the conditions for a charge under Chapter 2A. In a tax year, the group makes direct UK sales of software amounting to £5m of UK sales revenues. The group also sells the same software via a third party reseller to the UK market where the sales revenues are £2m. Total UK sales of £7m do not exceed the threshold of £10m in a tax year and person A is exempt from charge for that tax year.

## **3.2 Company resident in a specified territory (“listed territory”)**

*ITTOIA05/Ch2A/S608JA*

This exemption applies to companies resident in specified non-full tax treaty territories who would otherwise be liable to tax under Chapter 2A on their UK-derived amounts. The persons affected by this measure are generally companies, and to avoid the complexities of dealing with differences between rules for corporates and other persons, the exemption is restricted to companies rather than persons generally. "Company" follows the definition in s992 ITA07 and s863(2)(c) ITTOIA05.

The exemption is only available where the following conditions are met:

- The company must be resident in the specified territory as defined by s608D(2)(a) - that is by reason of domicile, residence or place of management.
- The company must be chargeable to tax in that territory in respect of UK-derived amounts arising in the tax year. Where the territory taxes on a remittance basis, the UK-derived amounts must be remitted or otherwise received and charged in the tax year for the exemption to apply.
- The company should not be involved in an arrangement the main purpose or one of the main purposes of which is to obtain a tax advantage for any person.
- If the specified territory offers "Designer Tax Provisions" as defined in s608Z, the company must not use these in respect of the UK-derived amounts.

All conditions above must be met throughout each tax year in which a charge would otherwise arise. The exemption applies automatically and does not need to be made by election.

Further regulations for this exemption from Chapter 2A may be made in the coming months to specify certain territories to which this exemption will apply. Those regulations may have retrospective effect. It is intended that territories specified in any such regulations will be those where, in broad terms, the territory's business taxation framework is consistent with the policy aims of Chapter 2A, and which are in scope of the Chapter 2A charge because they do not currently have an appropriate double tax agreement with the UK.

The Commissioners have the power to add and remove territories to this list by regulations.



## **Example 2**

Company A has UK-derived amounts arising to it and is resident in a specified territory throughout the tax year. Company A is not subject to any designer tax provisions, nor is it involved in arrangements the main purpose of which is to obtain a tax advantage for any person. The specified territory in question taxes certain income on a remittance basis, and Company A remits its UK-derived amounts in full and they are charged to tax in the tax year. Company A satisfies the requirements of the exemption.

### **3.3 Business in territory of residence**

*ITTOIA05/Ch2A/S608K*

This section provides an exemption for cases where the relevant intangible property is held in the territory where all of the related business activity that generates profits in relation to that intangible property takes place.

This exemption applies to a person who is resident in a territory throughout a tax year and where all, or substantially all, of the business activity in relation to the relevant intangible property has always been undertaken.

A claim has to be made in order for this exemption to apply. A claim can be made using the additional information box on the SA 700.

For the purposes of this exemption, the definition of residence in section 608D is amended, so that the exclusion for persons only liable to tax on a territorial or remittance basis, and the exclusion for persons subject to an express denial of relief under a double taxation agreement, do not apply. The effect of this adjustment is that the definition of residence for the purposes of Section 608K is wider than the definition of residence which generally applies for Chapter 2A.

Relevant intangible property is any intangible property that gives rise to UK-derived amounts arising to the person under consideration for that tax year.

Relevant activity can be activity carried out by any person either for the purpose of creating, developing or maintaining any intangible property, or for the purpose of generating income or capital amounts for the relevant person that relate to the enjoyment or use of rights to the relevant intangible property.

The exemption cannot apply if there is a “relevant connection” between the relevant intangible property and any person related to the relevant person.

A relevant connection exists where the relevant intangible property:

- has been transferred from a related person, or
- has been derived from anything transferred from a related person, or
- derives from any intangible property held by a related person.

A definition of related persons is provided in Section 608T (see 7.7).

These conditions are intended to cover the various ways in which intangible property, or the value of some or all of that intangible property, can be transferred between related parties.

This exemption will only apply where intangible property has not been moved between different territories and where all, or substantially all, of the business activity needed to create, develop or maintain that intangible property, or generate amounts of income or capital in relation to the enjoyment or use of the rights that constitute that intangible property, takes place in the same territory as that in which the intangible property is held.

### 3.4 Foreign tax at least half of UK tax

#### *ITTOIA05/Ch2A/S608L&M*

This exemption applies where a person suffers tax in their territory of residence in relation to the relevant intangible property income, and that local tax equates to at least 50% of the tax charge that would arise on that income under Chapter 2A.

Where the conditions of the exemption are met, no charge arises to that person under Chapter 2A for that tax year - section 608L(1) provides that section 608A does not apply to that person.

For the purposes of this exemption, the definition of residence in section 608D is amended so that the exclusion for persons only liable to tax on a territorial or remittance basis, and the exclusion for persons subject to an express denial of relief under a DTA, do not apply. The effect of this adjustment is that the definition of residence for the purposes of section 608L is wider than the definition of residence which generally applies for Chapter 2A.

The exemption operates by comparing the “local tax amount” with the “corresponding UK tax”.

Where the local tax amount paid in respect of UK-derived amounts is at least half of the corresponding UK tax that would otherwise be chargeable in respect of those same UK-derived amounts, the exemption applies.

The local tax amount is defined as tax which is paid in a person’s territory of residence in respect of UK-derived amounts arising to that person in that tax year. Further rules for calculating the local tax amount are set out in section 608M.

Local taxes which are determined under designer rate provisions are not taken into account when considering this exemption. Section 608L(4) defines “designer tax provisions” as those which allow a person to exercise significant control over the amount of tax that they pay.

The “corresponding UK tax” is defined as the amount of income tax that would be charged under Chapter 2A in respect of UK-derived amounts which arise during the tax year, on the basis that section 608A applies, and no reliefs or allowances are available to the person.

Section 608M sets out the conditions for computing the local tax amount. Where an amount of tax is paid which covers UK-derived amounts and other amounts, the tax paid is apportioned between those two categories on a just and reasonable basis.

Where any repayment of tax, or payment in respect of a credit for tax, is made to any person, and that repayment or payment is directly or indirectly in respect of any tax

paid in respect of UK-derived amounts, the local tax paid is reduced by the amount of payment or repayment.

The reduction of the local tax amount in respect of repayments or payments for credits can be apportioned, on a just and reasonable basis, between amounts of tax paid in relation to UK-derived amounts, and other amounts.

Any reduction of the local tax amount in respect of repayments or payments for credits applies after any apportionment of tax paid between amounts paid in relation to UK-derived amounts and other amounts.

### **3.5 Income of opaque partnerships taxable in a full treaty territory**

*ITTOIA05/Ch2A/S608MA*

This exemption applies where UK-derived amounts arising to certain partnerships are fully taxable at a partnership level. The exemption ensures that a Chapter 2A charge does not apply in respect of the same UK-derived amounts at the level of the partners where the partnership is chargeable in a full treaty territory on the amounts.

The exemption applies where

- For the purposes of the tax law in a full treaty territory, a partnership is regarded as a separate and distinct entity from the partners, and
- The partnership is resident in that territory throughout a tax year and
- The UK-derived amounts arising to the partnership are chargeable to tax in that territory

For the purposes of this exemption, the residence of the partnership is defined by section 608D(2), reading partnership for person. So, for the purposes of this exemption, a partnership is considered resident in a territory if it is liable to tax there by reason of domicile, residence or place of management. However, it is not considered so resident if it is only liable in relation to sources of income in, or capital situated in, that territory, or if only in relation to income or capital remitted or received in that territory.

Where the conditions of the exemption are met, so that all of the UK-derived amounts of the partnership are chargeable to tax at the level of the partnership in a full treaty territory, the exemption applies.

The exemption operates by disregarding any UK-derived amounts when considering the application of section 608A to the partners of the partnership. The effect is to ensure that no Chapter 2A charge will arise to the partners in circumstances where all of the UK-derived amounts under consideration are taxed at the level of the partnership.

Where a partnership is transparent for UK tax purposes, then it is the residence of the partner that is relevant in determining whether a person is resident in a full treaty territory and within, or outside, the scope of s608A. Therefore, this exemption should not be relevant where a person who is resident in a full treaty territory is a partner in a partnership that is transparent for UK tax purposes.

### 3.6 Certain bodies corporate that are transparent in a full treaty territory

*ITTOIA05/Ch2A/S608MB*

This exemption removes from charge a corporate body that is formed in a full treaty territory and regarded as tax transparent by the laws of that territory and where they are wholly owned by persons resident in that territory. The exemption is only available where the following conditions are met:

- The corporate body must be incorporated in a full treaty territory and tax transparent in that territory;
- The body must not be resident in a non-full treaty territory in the tax year for the exemption to apply;
- The body receives or is entitled to UK-derived amounts; and
- The body must be wholly owned by relevant members who are resident in that territory throughout the tax year.

All conditions above must be met for the transparent corporate body to be exempt from a charge that would otherwise arise.

#### **Example 3**

Company A is a US resident corporation that owns 100% of a Delaware incorporated limited liability company (LLC1), which in turn owns 100% of another Delaware incorporated limited liability company (LLC2). Both LLC1 and LLC2 are disregarded entities of company A for US federal tax purposes but are not resident in the US. LLC1 and LLC2 receive UK-derived amounts that would potentially be chargeable under Chapter 2A, subject to any treaty relief claimed under the US UK double tax arrangements or any exemption under Chapter 2A. In such circumstances, section 608MB exempts both LLC1 and LLC2 from any charge on UK-derived amounts arising to those companies.

### 3.7 Double taxation on amounts within the same control group

*ITTOIA05/Ch2A/S608MC*

This exemption deals with circumstances where a Chapter 2A charge arises to two companies within the same group in respect of the same income arising from intangible property.

It is possible that where two group entities who are not resident in full treaty territories are entitled to income in respect of the same intangible property, and where payments in relation to that intangible property flow between those two group entities, a Chapter 2A charge could arise in respect of the two amounts of income.

Section 608MC operates by identifying circumstances where such double charges arise, and then ensuring that only a single Chapter 2A charge applies.

The mechanics of this exemption are relatively straightforward. Section 608MC(1) sets out the following conditions, which must be met in order for the exemption to apply:

- Two persons (A and B) are in the same control group throughout a tax year

- Neither A nor B are involved in an arrangement with a main purpose of obtaining a tax advantage for either person, or any other person.
- There is an income tax charge under section 608A on a UK-derived amount arising to A, and A is not entitled to any relief (such as an exemption or a relief under any relevant double taxation arrangements) in respect of that UK-derived amount, and
- The UK-derived amount arising to A is a direct or indirect payment from B in respect of rights (“relevant rights”) that:
  - Constitute any of B’s intangible property; and
  - which derive, directly or indirectly, from rights that constitute any of A’s intangible property.

Section 608MC(2) provides the mechanism for eliminating the double charge that would otherwise arise, by reducing the UK-derived amount arising to B by the amount of the UK-derived amount arising to A that gives rise to an income tax charge under section 608A.

Section 608MC(3) provides for a just and reasonable apportionment in cases where a UK-derived amount is in respect of relevant rights and anything else.

The meaning of control group is provided by section 608S (see 7.6).

#### **Example 4**

Company A and company B are part of the same control group and are both resident in a non-full tax treaty territory. Company A is chargeable to tax under Chapter 2A in relation to a UK-derived amount of £10m. However, company A’s UK-derived amount of £10m is derived from a payment of £10m from company B. The payment from company B to company A is in respect of a licence of intangible property from company A to company B, which grants rights to company B which enables company B to generate a separate UK-derived amount of £12m. The application of Section 608MC ensures that whilst company A’s Chapter 2A charge remains unchanged at £10m, company B’s Chapter 2A charge is reduced from £12m to £2m, after taking into account the £10m intra-group payment for relevant rights.

Overall, there is a total Chapter 2A charge for the group of £12m, which reflects the £2m retained by company B, and the £10m received by company A.

## **4 RECOVERY OF TAX FROM RELATED PERSONS.**

### **4.1 Notice requiring payment**

*ITTOIA05/Ch2A/S6080*

#### **Collection of tax from a relevant person**

HMRC would expect the taxpayer to pay the tax due under section 608A. In the event that this does not happen, the legislation gives HMRC the power to collect tax through other means.

Any amount of tax chargeable under section 608A, and the associated interest, due from a taxpayer which remains unpaid six months after the relevant date can be collected from a relevant person.

A person is a relevant person in this context if, at any time in the tax year, they were in the same control group as the taxpayer. The definition of control group can be found in section 608S (see 7.6).

The relevant date means the date that the amount of income tax became due and payable except where the tax relates to a determination or late filed tax return. In such circumstances, the relevant date means

- In the case of a determination, the date on which the determination was issued
- In the case of a late filed tax return, the date on which the return was delivered

### **Serving a notice on the relevant person**

A notice to pay the unpaid tax and interest of the taxpayer must be served on the relevant person. The designated officer of HMRC will decide whether a notice should be served. In determining on which person(s) a notice should be served HMRC will apply a just and reasonable approach in situations where group entities have been sold to third parties.

The relevant person has thirty days from the date the notice is served to pay. Interest is payable on any tax paid late.

The notice must state:

- The amount of tax and interest that remains unpaid;
- The date when the tax first became payable; and
- The relevant person's right of appeal

The notice must be served on the relevant person before the end of the three years and 6 months period commencing after the relevant date. A notice may be issued to more than one relevant person during this period and issued to a relevant person resident outside of the UK.

Until the tax and interest is paid, enforcement action may be taken against either the taxpayer or the related person, or both. Enforcement action may include the use of international collection powers provided for in the Assistance in Collection of Taxes article of certain DTAs, Mutual Assistance in the Recovery of Debt Directive or Convention on Mutual Administrative Assistance in Tax Matters.

## **4.2 Payment notice: effects**

*ITTOIA05/Ch2A/S608P*

### **Recovery of unpaid tax and interest**

A notice issued under section 608O has the effect, for recovery purposes, as if it were a notice of assessment of an amount of tax due from the taxpayer. This means that interest on any unpaid tax runs from the original due date. Any pending appeals against the original assessment does not affect the due date of the unpaid tax and interest arising from a notice issued under section 608O.

## **Appeals**

The section 608O notice is not treated as a notice of assessment for appeal purposes. A person issued with a section 608O notice may appeal against the notice only on the grounds that they do not fall within the definition of relevant person, (see 4.1).

Only the taxpayer may appeal against the original assessment to tax charged under section 608A. The taxpayer's right of appeal is covered further in 5.3.

### **4.3 Payment notice: appeals**

*ITTOIA05/Ch2A/S608Q*

This section concerns appeals made against a notice issued under section 608O. For appeals against assessments to tax charged under section 608A, see 5.3.

#### **Grounds for appeal**

A person issued with a notice under section 608O may appeal against the notice but only on the grounds that they do not fall within the definition of relevant person (as defined in section 608O, see 4.1). Any appeal must be made within thirty days from the date on which the notice was issued.

A person who appeals against a notice may apply for the payment of tax to be postponed under section 55 TMA 1970 until the appeal is settled. See ARTG2510 for further details.

#### **Payment of tax where there is a further appeal**

Where there is a further appeal against a determination of the court or tribunal, HMRC may apply to the court or tribunal to hold on to any tax pending the outcome of the further appeal. The court or tribunal may accept the application if it considers that it is necessary for the protection of the revenue.

### **4.4 Payment notice: payment**

*ITTOIA05/Ch2A/S608R*

#### **Relevant person's right to reimbursement**

A relevant person who receives a notice under section 608O and subsequently pays any tax and/or interest may recover that sum from the taxpayer to whom the original assessment was sent.

Any reimbursement of such a payment will not be treated as a receipt nor any payment allowed as a deduction in calculating the relevant person's income, profits or losses for any tax purposes.

## **Payment of liability**

A notice may be issued to more than one relevant person so long as the necessary conditions are met (see 4.1). Once either the taxpayer or relevant person has paid any tax and/or interest, all parties liable are treated as having met their liabilities up to the amount of tax and/or interest paid.

## **5 GENERAL**

### **5.1 Anti-avoidance**

*ITTOIA05/Ch2A/S608W*

Section 608W contains a targeted anti-avoidance rule (“the TAAR”) to counteract arrangements which aim to circumvent the provisions of Chapter 2A that govern the charge to tax on offshore receipts in respect of intangible property.

Section 608W applies to arrangements entered into on or after 29 October 2018. It will apply where a person has entered into any arrangements where the main purpose, or one of the main purposes, is to obtain a tax advantage for the person.

The tax advantage has to be wholly or partly due to either:

- S608W(1)(a) - A charge not arising under section 608A, or
- S608W(1)(b) - The provisions of any double taxation arrangement having effect where the tax advantage is contrary to the object and purpose of the provisions in the relevant treaty.

S608W(1)(a) may apply to a broad range of arrangements including where there are changes in the timings of intangible property payments or transfers of IP (see examples 1, 2 & 3 below). S608W(1)(b) may apply where there are double taxation arrangements involved (and its application is discussed further in example 4). S608W(1)(a) and (1)(b) are different tests and either or both may apply.

Whether an arrangement has a main purpose of obtaining a tax advantage is a question of fact which depends on several factors, including, for example, the circumstances of the particular case and the subjective intentions of the taxpayer.

### **Counteraction**

Where s608W(1) applies, s608W(2) provides that any tax advantage can be counteracted by just and reasonable adjustments. S608W(3) sets out that such adjustments can be made via an assessment, a modified assessment, amendment or disallowance of a claim, or in any other way, as appropriate.

In cases where s608W applies, the extent of the appropriate counteraction must be considered. Any counteraction made under s608W will take into account the specific facts and circumstances in point, alongside the statutory purpose of the legislation. Although HMRC would normally expect the counteraction to be in proportion to the amount of the tax advantage, it follows that a just and reasonable counteraction under s608W may not always correspond exactly to the full amount of income tax that would have been payable but for the arrangement.



### **Example 1**

A multinational group has an IP holding company within the scope of the provisions of Chapter 2A. If the group were to accelerate payments made to the IP holding company in respect of intangible property so that such amounts were received prior to the commencement date of 6 April 2019, with a main purpose of avoiding the new tax charge under s608A, s608W will apply. The tax advantage would be counteracted on a just and reasonable basis. Depending on the circumstances of the case, one possible counteraction could be to treat the payments as being made on the date that they would have been due absent the arrangements.

### **Application of the TAAR to transfers of IP**

One of the primary aims of the Chapter 2A provisions is to discourage multinational businesses from holding intangible property in low tax territories distinct from the territories in which the substantive economic activities that relate to its development, enhancement, management, protection and exploitation are located, and where little or no tax is paid on the income received. HMRC recognises that the interpretation and application of the TAAR should take into account the policy objectives and wider statutory purpose of Chapter 2A.

In general, and subject to the facts and circumstances in any particular case, it is unlikely that HMRC will make a counteraction under s608W where:

- There has been an outright transfer of all of the transferor's rights in, and to, the relevant intangible property to the UK, a full treaty territory or to a "listed territory" (i.e. a territory specified in regulations made under s608JA); and
- The transferee undertakes substantive economic activity relevant to the IP rights in its territory of residence using real assets, controlling economically significant risks, and conducting that activity through its own personnel located in that territory.

This is on the assumption that such an outright transfer can be demonstrated to be in line with the statutory purpose described above, and that there are no contra-indications.

HMRC recognises that the activities associated with the development, enhancement, management, protection and exploitation of IP will typically be carried out by groups in more than one territory

HMRC would expect that taxpayers can demonstrate how the transfer helps to support the greater alignment of IP and underlying economic activities within the group and can provide a commercial justification for locating IP in the territory to which it has been transferred, over the other territories in which IP-related activities might be undertaken.

### **UK versus non-UK transfers**

The application of the TAAR to transfers of IP to full treaty territories will take account of the object and purpose of the relevant double tax treaties, including that treaty benefits can be denied where a main purpose for entering into transactions or arrangements is to secure a more favourable tax position which would be contrary to the object and purpose of the relevant treaty provisions.

HMRC does not however expect the application of double tax treaties to make satisfaction of the TAAR a lower hurdle for transfers of IP to full treaty territories than transfers to the UK.

It is considered that the matter of whether there is a sufficiently strong connection between the IP and the activities undertaken in the territory of the transferee is a key question in determining whether the TAAR may apply on a transfer of IP; and this overlaps with the tests used in determining whether treaty benefits are consistent with the object and purpose of a treaty.

HMRC's view is that, in considering the application of the TAAR and the wider statutory purpose in relation to a transfer of IP rights, the same principles and outcomes would normally apply for a transfer to a person resident in a full treaty territory as would normally apply to a transfer to a UK resident person.

### **Example 2**

A multinational company (the transferor) within the scope of the provisions of Chapter 2A makes an outright disposal of IP to an affiliated company (the transferee) resident in a "listed territory", the UK, or a country with which the UK has a full tax treaty. The transferor retains no rights in, or to, the transferred IP. The IP was previously separated from the underlying economic activity, but the transfer locates the IP with relevant substantive economic activity. The transferee has substantive economic activity relevant to the IP rights in its territory of residence that reflects this, using real assets and controlling economically significant risks and conducting activity through its own staff located in that territory. The income arising in respect of the IP forms part of the transferee's taxable profits. HMRC's initial expectation in such a case would be, subject to specific facts and intentions of the persons involved in any particular case, that the main purpose in transferring the IP may not have been to obtain a tax advantage (by avoiding a charge under s608A). However even if, on the facts, the company did have a main purpose of obtaining a tax advantage, HMRC would then consider the appropriate level of counteraction taking into account the specific circumstances of the case. It is possible that, in an appropriate case, it may be just and reasonable for there to be no or minimal counteraction of any tax advantage either on the transferor and/or the transferee.

Conversely, and although it would be dependent on the facts and circumstances of each case, HMRC considers the following to be a non-exhaustive list of factors that may indicate that s608W would apply on an outright disposal of IP. In such cases HMRC would likely look to counteract (on a just and reasonable basis) any tax advantage:

- A. The consideration for the sale of the IP does not reflect the amount that would have been agreed between independent parties acting at arm's length, or there are other non-arm's length arrangements such as royalty-free licences.
- B. The transferee is not resident in a full treaty territory, the UK or a "listed territory",
- C. The transferee does not have substantial economic operations in its territory of residence and in particular relevant substantive economic activity relating to the IP that has been transferred.

- D. There are arrangements surrounding the transfer of the IP that lead to economically equivalent circumstances where, by whatever means, the income deriving from the IP continues to arise in a no or low tax territory. That is to say that the transferor (or a connected person to the transferor, other than the transferee) should not receive or be entitled to amounts which derive directly or indirectly from the transferred rights, including amounts such as financing or other returns in connection with any consideration for (or other sums or assets in respect of) the transfer.
- E. The transferee is exempt from or is not charged to tax on income in its territory of residence (and in any other relevant full-treaty territory, "listed territory", or the UK in which the relevant activity is carried on) in respect of UK-derived amounts in respect of the transferred IP.
- F. There are any other arrangements involving a tax advantage within s608W.

Where there is counteraction of a transfer, it is expected that any counteracting adjustments would be made on either the transferor and/or transferee, depending on the facts and circumstances.

### **Example 3**

A multinational company (the transferor) within the scope of the provisions of Chapter 2A makes an outright disposal of IP to an affiliated company (the transferee) resident in a "listed territory", the UK, or a country with which the UK has a full tax treaty. The transferor retains no rights in, or to, the transferred IP. The transferee does not have any substantial operations in its territory of residence and in particular the relevant substantive economic activity in respect of the IP is undertaken elsewhere. If, on the facts, the company did have a main purpose of obtaining a tax advantage, HMRC's initial expectation would be, subject to the specific facts and intentions of the persons involved in the case, that there would be full counteraction of any tax advantage on either the transferor and/or transferee.

### **S608W(1)(b)**

Where s608W(1)(b) applies, the legislation will apply notwithstanding the UK's obligations under a DTA where the tax advantage obtained is not in line with the object and purpose of the relevant provisions of that DTA. Section 608W(4) provides that a counteraction can be made in relation to an arrangement involving a tax treaty notwithstanding the general provision in relation to tax treaties that they "have effect...despite anything in any enactment" by virtue of section 6 Taxation (International and other Provisions) Act 2010 (TIOPA10).

The rule in s608W(1)(b) is closely modelled on the OECD tax treaty anti-abuse rule (principal purpose test or PPT). The rule is part of the OECD model tax convention and is supported by the OECD commentary. This commentary helps to explain how the rule will operate and how it is to be interpreted. HMRC will follow the commentary in the application of s608W(1)(b) appropriately, taking into account the fact that the OECD rule covers treaty abuse of all types, whereas the rule in s608W(1)(b) is a targeted anti-avoidance provision in relation to Chapter 2A.

#### **Example 4**

A company resident in a treaty territory but which falls within the scope of the provisions of Chapter 2A (for example, because it is not a full-treaty territory or it has a territorial basis of taxation) is a party to arrangements, where a main purpose of the arrangements is to obtain a tax advantage by obtaining treaty relief under s6 TIOA10 from a charge on its UK-derived amounts, in circumstances where the relief is contrary to the purpose of the treaty. For example, this may be where, following signed changes to the treaty that are not yet effective, the company enters into arrangements to accelerate the payment of royalties that are then relieved in full, but which would have been eligible to only limited treaty relief if they had been paid on the scheduled payment date. S608W(1)(b) would apply in such circumstances. HMRC's initial expectation in such a case would be, subject to the specific facts and intentions of the persons involved in any particular case, that there would be full counteraction of any tax advantage on either the transferor and/or transferee.

## **5.2 Interaction with other provisions**

*ITTOIA05/Ch2A/S608X*

When s608A applies, or would apply, to a person for a tax year, Chapter 1 of Part 14 ITA07 will not apply to that person's UK-derived amounts arising in that tax year. Broadly, Chapter 1 of Part 14 ITA07 provides limits on the liability to income tax of non-UK residents.

A person's liability, when s608A applies, will therefore be the sum of their liability from UK- derived amounts (with Chapter 1 of Part 14 ITA07 not applying), and their liability as regards anything else (with Chapter 1 of Part 14 ITA07 applying as usual).

*ITA07/S981A*

A consequential amendment inserted into Part 15 of ITA07 is the new s981A, which has the effect of switching off the normal withholding obligation of Part 15 from payments charged to income tax under ITTOIA05/Ch2A.

## **5.3 Appeals against assessments**

*ITTOIA05/Ch2A/S608Y*

This section concerns appeals made against assessments to tax charged under section 608A. For appeals against a notice issued under section 608O, see 4.3.

### **Postponement of tax**

Only the taxpayer may appeal against an assessment charged under section 608A. The taxpayer cannot apply for a postponement of the payment of tax on any grounds. This means that the tax must be paid regardless of any pending appeals and the taxpayer will not be able to apply for a postponement of tax under section 55 TMA 1970.

If the appeal is settled and the assessment is reduced, HMRC will repay the overcharged tax along with any repayment interest due on that amount.

## **Payment of tax where there is a further appeal**

Where there is a further appeal against a determination of the court or tribunal, HMRC may apply to the court or tribunal to hold on to any tax pending the outcome of the further appeal. The court or tribunal may accept the application if it considers that it is necessary for the protection of the revenue.

## **6 PROCESS AND PROCEDURES**

### **Overview**

The normal procedures for the assessment and collection of income tax apply to any tax charged under Chapter 2A ITTOIA05. Further guidance can be found in the Self-Assessment: the Legal Framework manual.

There are some amendments to the normal procedures in respect of appeal rights, postponement of tax pending the outcome of an appeal and further appeals. Further guidance on this can be found at 5.3.

### **How to notify**

It is recommended that any notification of liability to UK income tax arising from the application of Chapter 2A ITTOIA05 should be sent to the ORIP notification mailbox [chargeability.notifyorip@hmrc.gov.uk](mailto:chargeability.notifyorip@hmrc.gov.uk).

Companies with Customer Compliance Managers (CCMs) are advised to also send a copy of the notification to their CCM.

A recommended template for notification is contained in the appendix to this guidance.

### **6.1 Appendix – Notification Template**

See page 34

### **Reporting**

Taxpayers (corporates and non-corporates) should use the form SA700 to report any tax liability under Chapter 2A ITTOIA05.

### **6.2 Treaty claims**

If taxpayers (corporates and non-corporates) are chargeable under Chapter 2A and entitled to relief under double tax arrangements then, in accordance with s6 TIOPA10, they should make a treaty claim within the appropriate time limits. The claim can be made in the additional information box on the SA700 or separately in writing.

Depending on the facts and circumstances and the terms of the double tax arrangements, it is generally expected that such relief would be under the business

profits article in the relevant double tax arrangements, although it may be the case that the royalties or other income articles would apply.

## **7 GLOSSARY OF TERMS**

### **7.1 Meaning of arising**

*ITTOIA05/Ch2A/S608B*

Tax is charged under section 608A on the full amount of the UK-derived amounts arising in the tax year. The person who is liable under section 608A is the person receiving or entitled to the UK-derived amounts. It does not matter that the amounts relate to UK sales made in that tax year or any other tax year, including sales made before 6 April 2019.

The word 'arising' has been the subject of a number of tax cases. Arising includes when it is received or made available to the recipient, such as amounts credited to bank accounts (*Parkside Leasing v Smith* 58 TC 282). However, arising has a wider meaning than this. For example, it was held in *Dunmore v McGowan* (52 TC 307) to include the swelling of a person's assets.

In view of the wide meaning given to arising, it is HMRC's view that UK-derived amounts arising to a person in a tax year should include amounts received and amounts to which the person is entitled including where amounts become receivable by the person.

The legislation does not refer to accounting principles in determining when amounts arise, and therefore the calculation of income arising may differ from amounts recognised for accounting purposes.

Where amounts are received or become receivable by a chargeable person after 5 April 2019 such amounts are chargeable regardless of whether the UK sales were made before 6 April 2019.

The same UK-derived amounts are not chargeable more than once where a person receives or becomes entitled to the amount on different dates in the same or a different tax year after 5 April 2019.

### **7.2 Meaning of residence**

*ITTOIA05/Ch2A/S608D*

For the purposes of Chapter 2A, a person is "resident" in a territory if they are liable to tax there by reason of their domicile, residence or place of management. However, they will not be treated as resident in a territory (even if under the laws of the territory they are liable to tax there by reason of their domicile, residence or place of management) if they are only liable to tax there on: income from sources in that territory; capital situated there, or, amounts remitted to (or received in) the territory (See example 1).

This section also treats a person as resident in a territory outside of the UK, if the laws of the territory, generally or for particular purposes, treats them as such and those territories have no provisions for a person being resident there for tax purposes (See example 2).

Persons ordinarily classed as resident in a full treaty territory (by virtue of the other subsections of this section) shall, for the purposes of this section, be classed as not resident in that territory if they are expressly excluded from obtaining relief by way of the double taxation agreements in place with that territory.

#### **Example 1**

A company is incorporated, managed and controlled in territory A where it is subject to tax on a territorial basis. For the purposes of this section the company is treated as not resident in territory A. Note that treaty relief may still be available to the company under the terms of its DTA with the UK on the making of a treaty claim and subject to s608W.

#### **Example 2**

A company is incorporated in the Cayman Islands and is generally subject to the laws of the Cayman Islands. The Cayman Islands have no concept of residence from a tax perspective. The company is treated as resident in the Cayman Islands.

#### **Example 3**

A company is based in Barbados and is an International Business Company. For the purpose of this section the company is treated as not resident in Barbados as whilst this is a full treaty territory, a Barbados International Business Company is an entity specifically excluded under the DTA with the UK.

### **7.3 Meaning of full treaty territory**

*ITTOIA05/Ch2A/S60E*

A “full treaty territory” is a territory with whom the UK has a full double taxation agreement that contains a relevant non-discrimination article. A relevant non-discrimination article provides that the nationals of each contracting state are not subject to unfavourable tax treatment in comparison with nationals of the other contracting state.

A “national” in relation to a contracting state includes an individual possessing nationality, or citizenship, of the contracting state as well as a legal person, partnership or association deriving its residence status from the laws of the contracting state.

Examples of some territories with which the UK has a double taxation agreement but which do not contain a relevant non-discrimination article include the UK’s double taxation agreements with the Crown Dependencies, some British Overseas Territories, and some other territories such as Hong Kong and Saudi Arabia.

A list of territories with which the UK had a full tax treaty as of October 2019 can be found below. This list may change if the UK enters into new double taxation agreements or amends existing double taxation agreements.

Albania	Lithuania
Algeria	Luxembourg
Argentina	Macedonia
Armenia	Malaysia
Australia	Malta

Austria	Mauritius
Azerbaijan	Mexico
Bahrain	Moldova
Bangladesh	Mongolia
Barbados	Montenegro
Belarus	Morocco
Belgium	Namibia
Bolivia	Netherlands
Bosnia-Herzegovina	New Zealand
Botswana	Nigeria
Bulgaria	Norway
Burma/Myanmar	Oman
Canada	Pakistan
Chile	Panama
China	Papua New Guinea
Croatia	Philippines
Cyprus	Poland
Czech Republic	Portugal
Denmark	Qatar
Egypt	Romania
Estonia	Russia
Ethiopia	Senegal
Fiji	Serbia
Finland	Singapore
France	Slovak Republic
Gambia	Slovenia
Georgia	South Africa
Germany	South Korea
Ghana	Spain
Greece	Sri Lanka
Guyana	Sudan
Hungary	Swaziland
Iceland	Sweden
India	Switzerland
Indonesia	Taiwan
Ireland	Tajikistan
Israel	Thailand
Italy	Trinidad and Tobago
Ivory Coast	Tunisia
Jamaica	Turkey
Japan	Turkmenistan
Jordan	Uganda
Kazakhstan	Ukraine
Kenya	United Arab Emirates



Kosovo	Uruguay
Kuwait	USA
Latvia	Uzbekistan
Lesotho	Venezuela
Libya	Vietnam
Liechtenstein	Zambia
	Zimbabwe

### **Example 1**

The double taxation agreement between the UK and Switzerland contains a relevant non-discrimination provision. For the purposes of this chapter, Switzerland will be classed as a full treaty territory and the charge will not apply to persons resident there.

### **7.4 Meaning of “UK-derived amount” and “UK sales”**

*ITTOIA05/Ch2A/S608F*

#### **"UK-derived amounts" S608F(1)**

The charge to tax on offshore receipts in respect of intangible property is calculated on the "UK-derived amounts" arising in the tax year. This is the intangible property (IP) income that the person receives or is entitled to receive that ultimately derives, directly or indirectly, from UK sales.

"UK-derived amounts" are:

- amounts arising in respect of the enjoyment or exercise of rights that comprise IP, and
- the enjoyment or exercise of those rights (or rights derived from those rights) enable, facilitate or promote UK sales (directly or indirectly)

UK-derived amounts will include both capital and revenue amounts where the recipient of the amount has an interest of any description in the IP, including where the amount is in respect of past or future enjoyment or exercise of IP rights, such as payments made in advance or in arrears. The inclusion of capital amounts, as well as revenue amounts, in the definition of UK-derived amounts is to ensure the robustness of the legislation.

UK-derived amounts will include amounts from the enjoyment or exercise of intangible property (or rights over intangible property). These amounts may arise in the form of an income stream or as part of the costs/sales proceeds of goods, services or other property, for example where there is an embedded royalty.

UK-derived amounts will relate to UK sales, but it does not matter whether the UK sales fall in the same tax year or a different one.

Examples of UK-derived amounts might include: royalties; payments for the use of intellectual property (or other rights over intellectual property) such as registered and unregistered trademarks; distribution and manufacturing rights; other payments for the use of "know-how"; payments made under a franchise or licensing agreement; or payments relating to goodwill.

A UK-derived amount will still arise to a chargeable person in a situation where the enjoyment or exercise of the right (directly or indirectly) in relation to indirect UK sales is held by another non-UK person if the right held by that person is derived (directly or indirectly) from the IP held by the chargeable person.

### **Example 2**

Company A holds the non-US IP for the worldwide group. Company A is based in the Cayman Islands which is a territory in scope of Chapter 2A. Company B, resident in a territory outside the scope of Chapter 2A, has a sub-licence of the IP under which it makes payments to Company A which allows it to make sales in the UK. The amounts that Company A receives from Company B are within scope of the legislation.

UK-derived amounts will also include upfront or delayed premiums for licences, as well as termination, variation, surrender, waiver and commutation payments.

UK-derived amounts are not expected to include amounts received by the chargeable person for the outright disposal of the relevant IP. In evaluating the matter of whether the amounts are in respect of an outright disposal, this will depend on the facts and circumstances of the transaction, including the substance and legal form. Where the consideration for the disposal includes amounts in respect of the enjoyment or exercise of rights that have accrued prior to the date of disposal (such as royalties payable in arrears and where the disposal occurs between royalty payment dates) then such amounts would be UK-derived amounts.

UK-derived amounts are subject to the normal transfer pricing provisions in Part 4 TIOPA10.

### **"UK Sales" S608F(3)**

UK-derived amounts are based on both direct and indirect UK sales. UK sales are sales of goods, services or other property to customers in the UK or sales provided in the UK. In determining whether a sale is provided in the UK or to UK persons the rules look through persons who acquire and resell goods or services without making any change or modification (for example distributors, procurers, retailers or resellers). Whether a sale is provided in the UK or provided to persons in the UK takes its natural meaning, although generally it is likely to be based on the location of the purchaser of the goods or services. The rules for providers of online advertising are applied in such a way so as to ensure that those providers are taxed consistently with the providers of other goods and services, so that such services will only amount to UK sales where the advertising targets persons in the UK.

### **Direct UK sales**

UK sales include the chargeable person's direct sales to customers in the UK or those that are provided in the UK. This includes business-to-consumer and business-to-business transactions.

Direct UK sales include where the chargeable person has directly licensed IP (or directly made sales where the IP is embedded in the good or service) to either related or third party customers in the UK.

### **Example 3**

There is a UK sale where a chargeable person licenses the right to a pharmaceutical patent directly to a UK business customer. UK sales would also include where the

chargeable person themselves manufactures a pharmaceutical product (exploiting a patent they own) and then sells this product (with embedded IP) to a UK customer.

### **Indirect sales**

UK sales will also include the chargeable person's indirect UK sales. This may comprise sales of a person related to the chargeable person to (related or third party) customers in the UK. The related person making the sales may be located either inside or outside the UK. It may also include sales by persons unrelated to the chargeable person, subject to section 608GA.

#### **Example 4**

A multinational group that produces software holds IP rights in a company that is within the scope of Chapter 2A and that company licences those rights to a group company resident in Ireland. The Irish company sells software to a person in the UK, downloadable from its website. This is a UK sale as the service has been provided to a customer in the UK.

#### **Example 5**

A food and drink group entity is within the scope of Chapter 2A. A UK resident individual buys some of the branded food and drink, from the group, whilst on a foreign holiday. This is not a UK sale as the goods were not provided in the UK nor to a person in the UK.

### **Resellers**

*ITTOIA05/Ch2A/S608F(4)*

In determining whether a sale is provided in the UK or to UK persons the legislation looks through persons who acquire and resell goods, services or other property without making any change or modification (for example distributors, procurers, retailers or other resellers). So the meaning of UK sales is modified where goods and services are sold to a UK related or unrelated reseller. These sales will give rise to UK sales to the extent the UK reseller's sales are UK sales. A similar look-through treatment would be adopted if the reseller was based outside the UK or where there is a chain of resellers. It does not matter whether the reseller is a related or unrelated party for this rule to be applied. This provides a symmetrical outcome where goods and services are sold to a non-UK related or unrelated reseller and then subsequently sold in the UK.

Goods, services or other property provided for resale are defined in the legislation as not being changed at all, or where they are altered, the change is purely incidental to their provision. This is likely to include items on-sold by retailers, wholesalers and procurers.

#### **Example 6**

A multinational group selling patented smart phones is within the scope of Chapter 2A. It makes sales to the UK and the rest of Europe via a master distribution centre in the UK. The distribution centre does not make any changes to the product nor adds any branded packaging. The product is in its final state. In calculating UK sales, it is only the smart phones sold to customers in the UK that are included, not those that are sold to third parties elsewhere in Europe.

### **Online Advertising Services**

Sales provided in the UK include online advertising services where they are targeted at UK persons. This will apply regardless of whether or not the purchaser of the advertising services is a UK person. In considering whether or not advertising has been targeted at the UK, the following non-exhaustive list of factors may be relevant:

- it is reflected in the relevant contracts and the pricing thereof
- the website permits sales in UK sterling or shipping to the UK
- the website is in English and accessible by UK users
- the purchaser of the advertising service having a physical presence in the UK and/or
- the website advertised has a UK domain

### **Example 7**

A multinational generates online advertising revenue and is within the scope of Chapter 2A. It provides online advertising services to businesses operating both in and outside the UK. UK sales would be recognised to the extent that the online advertising was targeted at the UK market place. Therefore if it sold advertising targeting the UK market, to an unrelated French business, this would be reflected in its UK sales to the extent the advertising targeted the UK.

## **7.5 Meaning of Intangible Property.**

*ITTOIA05/Ch2A/S608H*

### **Intangible property**

For the purposes of this chapter, "intangible property" means any property, except:

- Tangible property (or a right in respect of tangible property)
- Estates, interests or rights in or over land (or a right in respect of those things)
- Financial assets
- Shares or other rights in relation to a company
- Property of a prescribed description, meaning property prescribed by regulations made by the Treasury. No such regulations have been made.

### **Financial asset**

A "financial asset" takes its meaning from CTA09 s806 and includes things like:

- Loan relationships
- Derivative contracts
- Contracts or policies of insurance.

### **Example 1**

Goodwill, patents, trademarks, copyrights, brands, know-how, customer lists, franchises, licences, distribution and manufacturing rights, etc. are all common examples of intangible property.

The legislation does not refer to accounting principles in determining what constitutes intangible property (except insofar as the meaning of financial asset in s608H(2)), and therefore the treatment of intangible property under Chapter 2A may differ from its treatment for accounting purposes.

## 7.6 Meaning of Control Groups

ITTOIA05/Ch2A/S608S

### Control groups

To be a part of the same control group for the purposes of this chapter, two persons must, at any point in time, meet any one of three conditions:

- The two persons are consolidated for accounting purposes for a period which includes that time.
- One person has a 51% investment in the other at that time (See example 2).
- A third person has a 51% investment in both of them at that that time (See example 3).

### Consolidated for accounting purposes

Two or more persons are consolidated for accounting purposes if any one of the following applies:

- Their financial results for the period are required to be comprised in group accounts.
- Their financial results for the period would be required to be comprised in group accounts but for the application of an exemption.
- Their financial results for the period are comprised in group accounts (See example 4).

#### Example 2

Throughout the accounting period ending 31 December 2020, Company A holds 60% of shares in Company B. These shares give an equal entitlement to voting rights. Company A and Company B are part of the same control group for this accounting period.

#### Example 3

Throughout the accounting period ending 31 December 2020, Company C holds 55% of shares in Company D and Company E. These shares give an equal entitlement to voting rights. These three companies are part of the same control group for this accounting period.

#### Example 4

Company A and Company B have comprised their financial results in group accounts for accounting period ending 31 December 2020. These two companies are part of the same control group for this period.

### Meaning of group accounts

In this section group accounts means accounts prepared under

- Section 399 of the Companies Act 2006, or
- Any corresponding provision of the law of a territory outside the UK.

## 7.7 Meaning of related persons

*ITTOIA05/Ch2A/S608T*

Two persons are related at any time if:

At the time:

- They are part of the same control group (See example 5),
- One of them has a 25% investment in the other (See example 6), or
- A third person has a 25% investment in both of them,

**OR**

At any time in a 6 month period before or after the time:

- One directly or indirectly participates in the management, control or capital of the other (See example 7), or
- A third person directly or indirectly participates in the management, control or capital of both of them.

### **Example 5**

By virtue of s608S, Company A and Company B are part of the same control group throughout the accounting period ending 31 December 2020. Company A and Company B are therefore related for the entirety of that accounting period.

### **Example 6**

Throughout the accounting period ending 31 December 2020, Company C held 25% of the share capital in Company D, giving equal entitlement to voting rights. Company C and Company D are therefore related for the entirety of that accounting period.

### **Example 7**

Company E directly controls Company F. These companies are related throughout the period of control, for a 6 month period before that control began and for a 6 month period after that control ended.

## 7.8 Meaning of 51% and 25% investment

*ITTOIA05/Ch2A/S608U*

The "51% investment" test is important for the purposes of establishing a control group, as per s608S. The "25% investment" test is important for the purposes of determining related persons, as per s608T.

TIOPA10 s464(2) to (11) and s465, apply for the purposes of this section. When applying s464(10) to subsection (1) the reference to "25% investment" is read as "51% investment".

### **51% investment**

A person (P) has a 51% investment in another person (C) if any of the following apply:

- P possesses, or is entitled to acquire, more than half of the voting power in C;
- If the entirety of the equity in C were disposed of, P would receive more than half of the proceeds;
- In the event of a distribution of income in respect of equity in C, P would receive more than half of the amount distributed amongst the equity holders of C.
- In the event of a winding up of C, or in any other circumstances, P would receive more than half of C's assets available for distribution amongst C's equity holders in respect of equity in C.

## **25% investment**

The 25% investment tests are the same as the 51% investment tests, with the only difference being that "more than half" should be read as "at least a quarter".

### **Example 8**

Company A holds 60% of the issued ordinary share capital in Company B. This holding grants Company A 60% of the voting rights in Company B. It also entitles Company A to 60% of any amounts distributed to equity holders. Company A meets several of the 51% investment tests.

## **7.9 Meaning of direct or indirect participation in management, control or capital**

*ITTOIA05/Ch2A/S608V*

This section applies for the purposes of s608T.

### **Direct participation**

This is determined by s157 TIOPA10 which states that a person (P) is directly participating in the management, control or capital of another person (C) at a particular time if, at that time, C is a body corporate or a firm and is controlled by P.

### **Indirect participation**

This is determined by s159 or s160 TIOPA10. Indirect participation takes account of rights and powers that a person (P) will acquire, or will become entitled to acquire at a future date, and rights and powers exercised by another person on P's behalf, or by a person who is connected to P.

Indirect participation also includes situations in which a person (P) is, at that time, one of a number of major participants in another person's (C) enterprise. At that time, C must be a body corporate or a firm, and two persons, including P, must each hold at least 40% of the rights and powers in C.

### **Further guidance**

Further guidance can be found here:

## 7.10 Other definitions

*ITTOIA05/Ch2A/S608Z*

This section provides definitions of terms used throughout the legislation.

### **Arrangements**

Any type of agreement, understanding, scheme, and transaction. It does not matter if they are not legally enforceable.

### **The Commissioners**

Commissioners for HM Revenue & Customs.

### **Control group**

As defined in s608S (see 7.6)

### **Designer tax provisions**

Provisions that appear to the Commissioners to be designed to enable persons to have a significant degree of control over the tax liability they have arising from UK-derived amounts.

### **Double taxation arrangements**

Arrangements that have effect under section 2(1) TIOPA10.

### **Full treaty territory**

As defined in s608E (see 7.3)

### **Intangible property**

As defined in s608H (see 7.5)

### **Related**

As defined in s608T (see 7.7)

### **Resident**

As defined in s608D (see 7.2)

### **Tax**

Where used in this Chapter to refer to tax applied by territories outside the United Kingdom, this is a reference to a tax that is both charged on income, and which corresponds to income tax or corporation tax. Note that the tax may only be payable under the laws of a province or state, rather than a country, but the tax here is still held to correspond to income tax or corporation tax.

### **Tax advantage**



As defined in s608W(5)

In this Chapter tax advantage includes:

- a) relief or increased relief from tax,
- b) repayment or increased repayment of tax,
- c) avoidance or reduction of a charge to tax or an assessment to tax,
- d) avoidance of a possible assessment to tax,
- e) deferral of a payment of tax or advancement of a repayment of tax, and
- f) avoidance of an obligation to deduct or account for tax.

**UK-derived amount**

As defined in s608F (see 7.4)

**UK Sales**

As defined in s608F (see 7.4)

# Suggested notification template

## Notification of liability to UK income tax arising from the application of Chapter 2A ITTOIA05

Type of entity:       Company                       Partnership                       Trust  
                                  Individual                       Other

If other, please provide details: .....

Entity name: .....

Registered office address: .....

.....

.....

Correspondence address (if different to above): .....

.....

.....

Agent acting:                       Yes                       No

If yes, please provide details including SA agent identified code:

.....

.....

Form 64-8 submitted:                       Yes                       No

Large Business customer:                       Yes                       No

Do you have a UTR:                       Yes                       No

If yes, please provide UTR: .....

Date income chargeable to tax was received from: .....

Signed: .....

Name in full: .....

Capacity in which you are signing: .....

Date: .....