

New Clause 8: Deduction of income tax at source: intellectual property

Summary

1. The new clause changes the rules in Part 15 of the Income Tax Act 2007 (ITA) on the deduction of income tax from payments of royalties to those whose usual place of abode is abroad. It amends sections 906 and 907 ITA in order to introduce a new definition of "intellectual property". Broadly, this aligns the deduction of tax rules relating to royalties on intellectual property with the OECD Model Tax Convention definition of a royalty.

Details of the clause

2. Subsection (1) of the clause provides that Chapter 7 of Part 15 ITA is amended.
3. Subsection (2) of the clause amends existing subsections 906(1) to (3) so that the circumstances in which there is a duty to deduct tax is more clearly stated. Existing subsection 906(4) is not amended, and as a result the existing exemption from the deduction of tax at source rules for certain works or articles is retained.
4. Subsection (3) of the clause replaces the existing section 907.
5. Subsection (1) of new section 907 replaces the current definition of "relevant intellectual property right" with a new definition of "intellectual property". This is based on the definition of a royalty set out at paragraph 2 of Article 12 of the OECD Model Tax Convention. It also retains the explicit reference to "the public lending right in respect of a book". This ensures that the existing obligation to deduct tax at source in respect of such rights is retained.
6. Subsection (2) of new section 907 ensures that the existing exemptions from the deduction of tax at source rules are retained for certain types of copyright.
7. Subsection (4) of the clause provides for the commencement of the new definition which will have effect in respect of payments made on or after 28 June 2016.
8. Subsections (5) of the clause provides that arrangements should be ignored if they are entered into with a main purpose of avoiding the amended requirement to deduct tax at source introduced under subsections (2) and (3) of the clause.
9. Subsections (6) and (7) of the clause prevent payments being accelerated to circumvent the effect of the changes made to the deduction of tax at source rules by this clause.
10. Subsection (8) of the clause provides the definition of "arrangements" for the purposes of the clause.

Background note

11. Tax rules in the Income Tax Act 2007 require the deduction of income tax from payments of certain royalties to persons whose usual place of abode is abroad if they are in respect of copyright, a right in a design, the public lending right in respect of a book and patent royalties. Other types of royalty or similar income from intellectual property are only subject to the deduction of tax rules if they are also annual payments.
12. However, under double taxation treaties between the UK and a number of other territories the person receiving a payment in respect of royalties and other similar income may be entitled to have payments made to them at the rate specified in the relevant treaty (which is often zero). A company making the payment may do so at the treaty rate if they have the reasonable belief the recipient is entitled to relief under double taxation arrangements.
13. This measure broadens the scope of the UK's domestic withholding rights over royalties in order to ensure that payments abroad are taxed in the UK unless the UK has explicitly given up those taxing rights under an international agreement.