

Explanatory Note

Clause X: Deduction of income tax at source: tax avoidance

Summary

1. This clause amends the rules in Part 15 of the Income Tax Act (ITA) 2007 on the deduction of income tax from payments of royalties by inserting new section 917A. It introduces anti-avoidance rules to prevent the abuse of double taxation arrangements to avoid the duty to deduct income tax from royalty payments made to connected persons.

Details of the clause

2. Subsection (1) of the clause inserts new section 917A into Chapter 8 of Part 15 of ITA. Section 917A denies the benefit of double taxation arrangements where payments of royalties are made under tax avoidance arrangements.
3. Subsection (1) of new section 917A provides that the section applies where a person makes a payment of a royalty to a connected person under DTA tax avoidance arrangements. "DTA tax avoidance arrangements" are defined in subsection (4) of new section 917A.
4. Subsection (2) of new section 917A sets out the consequences of meeting these conditions. In such cases the person making the payment must deduct income tax from it regardless of any double taxation arrangements.
5. Subsection (3) of new section 917A prevents any income tax deducted by virtue of this section being set off against a company's tax liability under sections 967 or 968 of the Corporation Tax Act 2010.
6. Subsection (4) of new section 917A defines terms used in the section. In particular, the definition of "intellectual property royalty payment" sets out the payments to which the section applies.
7. Subsection (5) of new section 917A explains that for the purposes of the section, persons are connected if the participation condition is met as between them.
8. Subsection (6) of new section 917A applies section 148 of the Taxation (International and Other Provisions) Act 2010 to determine whether the participation condition is met.
9. Subsection (2) of the clause provides the commencement provisions.

Background note

10. Tax rules in the Income Tax Act 2007 require the deduction of income tax from certain payments of royalties. The person making the payment is required to withhold an amount equivalent to income tax at the basic rate. This is commonly referred to as withholding tax. However, under double taxation treaties between the UK and a number of other territories the person receiving a payment of royalties may be able to reclaim any tax deducted and have future payments made to them gross, that is, without any withholding by the person making the payment.
11. This measure addresses arrangements that seek to avoid the duty to deduct income tax at source from a payment of royalties through the abuse of double taxation treaties, where the payment is made to a person connected with the payer.