

1 Offshore receipts in respect of intangible property

The Schedule contains provision about offshore receipts in respect of intangible property.

DRAFT

SCHEDULE

Section 1

OFFSHORE RECEIPTS IN RESPECT OF INTANGIBLE PROPERTY

- 1 ITTOIA 2005 is amended as follows.
- 2 (1) Section 574 (overview of Part 5) is amended as follows.
- (2) In subsection (1) after paragraph (a) insert –
- “(aa) Chapter 2A (offshore receipts in respect of intangible property),”.
- (3) In subsection (2) at the end insert “(but see section 608U)”.
- 3 (1) Section 576 (priority between Chapters within Part 5) is amended as follows.
- (2) The existing provision becomes subsection (2) of that section.
- (3) Before that subsection insert –
- “(1) Any income, so far as it falls within Chapter 2 (receipts from intellectual property) and Chapter 2A (offshore receipts in respect of intangible property), is dealt with under Chapter 2.”
- 4 After section 608 insert –

“CHAPTER 2A

OFFSHORE RECEIPTS IN RESPECT OF INTANGIBLE PROPERTY

*Charge to tax on offshore receipts in respect of intangible property***608A Charge to tax on UK-derived amounts**

- (1) This section applies if –
- (a) at any time in a tax year, a person is not UK resident and is not resident in a full treaty territory, and
- (b) UK-derived amounts arise to the person in the tax year.
- (2) Income tax is charged on the UK-derived amounts.
- (3) See –
- sections 608D to 608H for the meaning of expressions used in this section;
- sections 608J to 608N for exemptions from the charge under this section.
- (4) References in the Tax Acts to income from a source in the United Kingdom include UK-derived amounts.

608B Income charged under section 608A

Tax is charged under section 608A on the full amount of the UK-derived amounts arising in the tax year.

608C Person liable for tax under section 608A

The person liable for any tax charged under section 608A is the person receiving or entitled to the UK-derived amounts.

608D Meaning of residence

- (1) This section applies for the purposes of this Chapter.
- (2) A person is “resident” in a territory if, under the laws of the territory, the person is liable to tax there –
 - (a) by reason of the person’s domicile, residence or place of management, but
 - (b) not in respect only of income from sources in that territory or capital situated there.
- (3) Where –
 - (a) a person is resident in a territory outside the United Kingdom generally for the purposes of the laws of the territory or for particular purposes under those laws, and
 - (b) the laws of the territory have no provision for a person to be resident there for tax purposes,the person is “resident” in the territory.

608E Meaning of “full treaty territory”

- (1) For the purposes of this Chapter a territory is a “full treaty territory” if –
 - (a) double taxation arrangements have been made in relation to the territory, and
 - (b) the arrangements contain a non-discrimination provision.
- (2) In subsection (1) “non-discrimination provision”, in relation to double taxation arrangements, means a provision to the effect that nationals of a state which is a party to those arrangements (a “contracting state”) are not to be subject in the other contracting state to –
 - (a) any taxation, or
 - (b) any requirement connected with taxation,which is other or more burdensome than the taxation and connected requirements to which nationals of that other contracting state in the same circumstances (in particular with respect to residence) are or may be subjected.
- (3) In subsection (2) “national”, in relation to a contracting state, includes –
 - (a) an individual possessing the nationality or citizenship of the contracting state, and
 - (b) a legal person, partnership or association deriving its status as such from the laws in force in that contracting state.

608F Meaning of “UK-derived amount” and “UK sales”

- (1) For the purposes of this Chapter an amount is a “UK-derived amount” if—
 - (a) it is an amount (whether of a revenue or capital nature) in respect of the enjoyment or exercise of rights that constitute any intangible property, and
 - (b) the enjoyment or exercise of those rights (or of any rights derived, directly or indirectly, from those rights) enables, facilitates or promotes UK sales (directly or indirectly).
- (2) It does not matter whether the amount relates to UK sales in the tax year mentioned in section 608A or any other tax year.
- (3) In this Chapter “UK sales” means any services, goods or other property—
 - (a) provided in the United Kingdom, or
 - (b) provided to persons in the United Kingdom.

608G Section 608F: apportionment of amounts

- (1) This section applies where—
 - (a) a person receives or is entitled to an amount in respect of the enjoyment or exercise of rights that constitute any intangible property, and that enjoyment or exercise enables, facilitates or promotes UK sales and other sales, or
 - (b) a person receives or is entitled to an amount in respect of—
 - (i) the enjoyment or exercise of rights that constitute any intangible property, where that enjoyment or exercise enables, facilitates or promotes UK sales, and
 - (ii) anything else.
- (2) The amount is to be regarded for the purposes of this Chapter as constituting a UK-derived amount to such extent as is just and reasonable.
- (3) In a case within subsection (1)(a) it is to be presumed, unless the contrary is shown, that the proportion of the amount that is just and reasonable is—

$$\frac{X}{X + Y}$$

where X is the value of UK sales and Y is the value of other sales.

608H Meaning of “intangible property”

- (1) In this Chapter “intangible property” means any property except—
 - (a) tangible property,
 - (b) an estate, interest or right in or over land,
 - (c) a right in respect of anything within paragraph (a) or (b),
 - (d) a financial asset,
 - (e) a share or other right in relation to the profits, governance or winding up of a company, or
 - (f) any property of a prescribed description.

- (2) In this section –
“financial asset” has the meaning given by section 806 of CTA 2009;
“prescribed” means prescribed by regulations made by the Treasury.

608I Application of Chapter to certain partnerships

- (1) This section applies where, under the laws of a full treaty territory, a partnership is regarded for tax purposes as an entity separate and distinct from the partners.
- (2) If the partnership is resident in the full treaty territory at any time, each of the partners is treated for the purposes of this Chapter as resident in the territory at that time.
- (3) Section 608D(2) applies for the purposes of determining whether the partnership is resident in the territory at any time (references there to a person being read as references to the partnership).
- (4) Nothing in this section affects the application of section 848 (firm not to be regarded as entity separate and distinct from partners) or any other provision of Part 9 (partnerships) to this Chapter.

Exemptions

608J Exemption where limited UK sales

- (1) Section 608A does not apply in relation to a person for a tax year if the total value of the person’s UK sales in that tax year does not exceed £10,000,000.
- (2) Where –
(a) a person (A), or a person connected with A, receives or is entitled to an amount (whether of a revenue or capital nature), and
(b) the amount relates (wholly or in part, and directly or indirectly) to the provision of services, goods or other property constituting UK sales,
the UK sales are regarded for the purposes of subsection (1) as A’s UK sales.

608K Exemption where business undertaken within territory of residence

- (1) Section 608A does not apply in relation to a person (“the relevant person”) for a tax year if –
(a) the relevant person is resident in a territory throughout the tax year,
(b) all (or substantially all) relevant activity in relation to relevant intangible property is, and has at all times been, undertaken in that territory,
(c) there is no relevant connection between relevant intangible property and a related person, and
(d) the person makes a claim under this section.

- (2) For the purposes of this section intangible property is “relevant” if any UK-derived amount arising to the person in the tax year relates to it.
- (3) In subsection (1)(b) “relevant activity”, in relation to relevant intangible property, means anything done (by any person) –
 - (a) for the purpose of creating, developing or maintaining any of the relevant intangible property; or
 - (b) for the purpose of generating, for the relevant person, amounts (whether of a revenue or capital nature) that relate, wholly or in part and directly or indirectly, to the enjoyment or exercise of rights that constitute any of the relevant intangible property.
- (4) For the purposes of subsection (1)(c) there is a “relevant connection” between relevant intangible property and a related person if any relevant intangible property –
 - (a) has been transferred (directly or indirectly) from a person related to the relevant person,
 - (b) derives (directly or indirectly) from anything so transferred, or
 - (c) derives (directly or indirectly) from intangible property held by a person related to the relevant person.
- (5) See section 608Q for the meaning of two persons being “related”.

608L Exemption where foreign tax at least half of UK tax

- (1) Section 608A does not apply in relation to a person for a tax year if –
 - (a) the person is resident in a territory outside the United Kingdom in that year,
 - (b) the amount of tax (“the local tax amount”) which is paid in the territory in respect of UK-derived amounts arising in the tax year is at least half of the corresponding UK tax, and
 - (c) the local tax amount is not determined under designer tax provisions.
- (2) See section 608M for provisions about the local tax amount.
- (3) “The corresponding UK tax” means the amount of income tax that would be charged under this Chapter in respect of UK-derived amounts arising in the tax year, calculated on the following basis –
 - (a) section 608A applies in relation to the UK-derived amounts, and
 - (b) the person is not entitled to any relief or allowance for the tax year.
- (4) “Designer tax provisions” means provisions which appear to the Commissioners to be designed to enable persons to exercise significant control over the amount of tax which they pay in respect of UK-derived amounts.

608M Section 608L: the local tax amount

- (1) This section applies for the purposes of section 608L.
- (2) Where an amount of tax is paid in the territory in respect of –

- (a) UK-derived amounts arising in the tax year, and
 - (b) other amounts,

the amount of tax is to be apportioned between the amounts mentioned in paragraph (a) and paragraph (b) on a just and reasonable basis.
- (3) Where—
 - (a) in the territory any tax falls to be paid in respect of UK-derived amounts arising in the tax year,
 - (b) under the laws of the territory, a repayment of tax, or a payment in respect of credit for tax, is made to any person, and
 - (c) that repayment or payment is directly or indirectly in respect of the whole or part of the tax mentioned in paragraph (a),

the local tax amount is to be reduced by the amount of that repayment or payment (but this is subject to subsections (4) and (5)).
- (4) Subsection (5) applies if the repayment or payment mentioned in subsection (3)(b) is in respect of—
 - (a) the tax mentioned in subsection (3)(a), and
 - (b) other tax.
- (5) The amount of the repayment or payment is to be apportioned between the tax mentioned in subsection (3)(a) and the other tax on a just and reasonable basis, and the reduction under subsection (3) is limited to the amount apportioned to the tax mentioned in subsection (3)(a).
- (6) Any reduction under subsection (3) is to be undertaken after any apportionment under subsection (2).

608N Exemptions: further provision

- (1) The Treasury may by regulations—
 - (a) amend this Chapter for the purpose of creating additional exemptions;
 - (b) amend any exemption for the time being in force.
- (2) “Exemption” means a total or partial exemption from the charge under this Chapter.
- (3) The amendments may—
 - (a) confer a power to make subordinate legislation on the Treasury or the Commissioners;
 - (b) confer a discretion on the Commissioners or an officer of Revenue and Customs.
- (4) The regulations may make retrospective provision, except insofar as they impose or increase taxation.
- (5) A statutory instrument containing regulations under this section may not be made unless a draft of the instrument has been laid before and approved by a resolution of the House of Commons.

*Recovery of tax from person in same control group***608O Notice requiring payment from person in same control group as taxpayer**

- (1) This section applies where –
 - (a) an amount of income tax has been assessed on a person (“the taxpayer”) for a tax year by virtue of this Chapter, and
 - (b) the whole or any part of that amount, or of any interest on that amount, is unpaid at the end of the period of 6 months after the relevant date.
- (2) A designated officer may give a notice to a relevant person requiring that person, within 30 days of the giving of the notice, to pay any unpaid tax and interest.
- (3) The notice must state –
 - (a) the amount of income tax and interest that remains unpaid,
 - (b) the date when the income tax first became payable, and
 - (c) the relevant person’s right of appeal.
- (4) A notice under this section may not be given more than 3 years and 6 months after the relevant date.
- (5) In this section “relevant person” means any person who was in the same control group as the taxpayer at any time in the tax year (see section 608P for the meaning of being in the same “control group”).
- (6) In this section “the relevant date” means –
 - (a) in relation to an amount of income tax determined under section 28C of TMA 1970, the date on which the determination was issued;
 - (b) in relation to an amount of income tax under a self-assessment, where the taxpayer’s return under section 8 or 8A of TMA 1970 was delivered after the last day for delivering it in accordance with that section, the date on which the return was delivered;
 - (c) in any other case, the date the amount mentioned in subsection (1)(a) became due and payable.
- (7) A notice may be given anywhere in the world, to any relevant person (whether or not UK resident).
- (8) “Designated officer” means an officer of Revenue and Customs who has been designated by the Commissioners for the purposes of this Chapter.

*Meaning of “control group” and “related person”***608P Control groups**

- (1) Two persons are in the same control group at any time if –
 - (a) they are consolidated for accounting purposes for a period which includes that time,
 - (b) one of them has a 51% investment in the other at that time, or

- (c) a third person has a 51% investment in each of them at that time.
- (2) Two persons are consolidated for accounting purposes for a period if—
 - (a) their financial results for the period are required to be comprised in group accounts,
 - (b) their financial results for the period would be required to be comprised in group accounts but for the application of an exemption, or
 - (c) their financial results for the period are in fact comprised in group accounts.
- (3) In this section “group accounts” means accounts prepared under—
 - (a) section 399 of the Companies Act 2006, or
 - (b) any corresponding provision of the law of a territory outside the United Kingdom.
- (4) For the meaning of having a 51% investment, see section 608R.

608Q Related persons

- (1) Two persons are “related” at any time if—
 - (a) at that time—
 - (i) they are in the same control group,
 - (ii) one of them has a 25% investment in the other, or
 - (iii) a third person has a 25% investment in both of them, or
 - (b) at any time in the period of 6 months beginning or ending at that time—
 - (i) one of them directly or indirectly participates in the management, control or capital of the other, or
 - (ii) a third person directly or indirectly participates in the management, control or capital of both of them.
- (2) See—
 - section 608P for the meaning of being in the same “control group”;
 - section 608R for the meaning of having a 25% investment;
 - section 608S for the meaning of direct or indirect participation in the management, control or capital of a person.

608R Meaning of “51% investment” and “25% investment”

- (1) A person (P) has a 51% investment in another person (C) if any of the following apply—
 - (a) P possesses or is entitled to acquire more than half of the voting power in C;
 - (b) in the event of a disposal of the whole of the equity in C, P would receive more than half of the proceeds;
 - (c) in the event that the income in respect of the equity in C were distributed among the equity holders in C, P would receive more than half of the amount so distributed;
 - (d) in the event of a winding-up of C or in any other circumstances, P would receive more than half of C’s assets

which would then be available for distribution among the equity holders in C in respect of the equity in C.

- (2) A person (P) has a 25% investment in another person (C) where any paragraph of subsection (1) would apply if in that paragraph for “more than half” there were substituted “at least a quarter”.
- (3) Section 464(2) to (11) and section 465 of TIOPA 2010 apply for the purposes of subsections (1) and (2) of this section.
- (4) In the application of section 464(10) of TIOPA for the purposes of subsection (1), the reference to a “25% investment” is to be read as a “51% investment”.

608S Meaning of direct or indirect participation in management, control or capital

- (1) This section applies for the purposes of section 608Q.
- (2) A person is directly participating in the management, control or capital of another person at a particular time only if section 157 of TIOPA 2010 so provides.
- (3) A person is indirectly participating in the management, control or capital of another person at a particular time only if section 159 or 160 of TIOPA 2010 so provides.

General

608T Anti-avoidance

- (1) This section applies if a person has entered into any arrangements the main purpose, or one of the main purposes, of which is to obtain a tax advantage for the person as a result (wholly or partly) of –
 - (a) anything not being subject to the charge under section 608A, or
 - (b) any provisions of double taxation arrangements having effect in a case where the advantage is contrary to the object and purpose of the provisions.
- (2) The tax advantage is to be counteracted by the making of such adjustments as are just and reasonable.
- (3) The adjustments may be made (whether by an officer of Revenue and Customs or the person) by way of an assessment, the modification of an assessment, amendment or disallowance of a claim, or otherwise.
- (4) Where this section applies by virtue of subsection (1)(b), the counteraction has effect despite section 6(1) of TIOPA 2010.
- (5) In this section “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.

608U Interaction with other general provisions

- (1) This section applies where section 608A applies in relation to a person for a tax year (or would apply, if the following provisions of this section applied).
- (2) Part 6 (exempt income) does not apply in relation to UK-derived amounts arising to the person in the tax year.
- (3) For the purposes of calculating the person's liability to income tax for the tax year –
 - (a) Chapter 1 of Part 14 of ITA 2007 (limits on liability to income tax of non-residents) does not apply in relation to UK-derived amounts arising to the person in the tax year;
 - (b) accordingly, the person's liability is the sum of –
 - (i) the person's liability as regards UK-derived amounts (with that Chapter not applying), and
 - (ii) the person's liability as regards anything else (with that Chapter applying, to the extent it would otherwise apply).

Interpretation: general

608V Interpretation of Chapter: general

- (1) In this Chapter –
 - “arrangements” includes any agreement, understanding, scheme, transaction or series of transactions (whether or not legally enforceable);
 - “the Commissioners” means the Commissioners for Her Majesty's Revenue and Customs;
 - “control group” has the meaning given by section 608P;
 - “double taxation arrangements” means arrangements that have effect under section 2(1) of TIOPA 2010;
 - “full treaty territory” has the meaning given by section 608E;
 - “intangible property” has the meaning given by section 608H;
 - “related”: references to two persons being related are to be read in accordance with section 608Q;
 - “resident”: references to being resident in a territory are to be read in accordance with section 608D;
 - “UK-derived amount” has the meaning given by section 608F;
 - “UK sales” has the meaning given by section 608F.
- (2) The Treasury may by regulations amend section 608F so as to change the definition for the time being of “UK-derived amount” or “UK sales”.
- (3) The regulations may make such consequential amendments of this Chapter as the Treasury consider appropriate.
- (4) The regulations may make retrospective provision, except insofar as they impose or increase taxation.

- (5) A statutory instrument containing regulations under this section may not be made unless a draft of the instrument has been laid before and approved by a resolution of the House of Commons.”
- 5 In section 873(3) (procedure for orders and regulations) before paragraph (c) insert—
“(ba) section 608N or 608V (offshore receipts in respect of intangible property),”.
- 6 (1) TIOPA 2010 is amended as follows.
- (2) In section 157(1) (direct participation)—
(a) omit the “and” at the end of paragraph (d);
(b) at the end of paragraph (e) insert “, and
(f) section 608Q of ITTOIA 2005.”
- (3) In section 159(1) (indirect participation: potential direct participant)—
(a) omit the “and” at the end of paragraph (d);
(b) at the end of paragraph (e) insert “, and
(f) section 608Q of ITTOIA 2005.”
- (4) In section 160(1) (indirect participation: one of several major participants)—
(a) omit the “and” at the end of paragraph (d);
(b) at the end of paragraph (e) insert “, and
(f) section 608Q of ITTOIA 2005.”
- 7 The amendments made by this Schedule have effect for the tax year 2019-20 and subsequent tax years.
- 8 The Treasury may by regulations make such amendments of the Tax Acts as they consider appropriate in consequence of any provision made by this Schedule.
- 9 In section 608T of ITTOIA 2005 (inserted by paragraph 4 of this Schedule) the reference to arrangements is to arrangements made on or after 29 October 2018.