

Clause 1 and Schedule 1: Offshore receipts in respect of intangible property

Summary

1. This clause and Schedule introduce a new regime which applies an income tax charge to certain receipts of non-UK resident persons where those receipts are in respect of intangible property. The charge is calculated by reference to the extent to which such receipts are referable to the sale of goods or services in the UK.

Details of the clause

2. Clause 1 introduces Schedule 1 which contains provision about offshore receipts in respect of intangible property.

Details of the Schedule

3. Paragraphs 1 to 3 amend Section 574 and 576 of ITTOIA 2005 by inserting references to new Chapter 2A, which contains the new offshore receipts regime.
4. Paragraph 3(3) inserts a new subsection 1 into Section 576 ITTOIA 2005 which provides that where income falls within Chapter 2 and Chapter 2A, that income will only be dealt with under Chapter 2.
5. Paragraph 4 inserts new Chapter 2A into ITTOIA 2005.

New Chapter 2A

Charge to tax on offshore receipts in respect of intangible property

6. New Section 608A sets out the basic conditions for a tax charge to arise under Chapter 2A.
7. Sub-section 608A(1) provides that a charge will arise under Chapter 2A when UK-derived amounts arise to a person who is not resident in the UK, or in a full treaty territory.
8. Sub-section 608A(2) provides that UK-derived amounts are subject to an income tax charge.
9. Sub-section 608A(3) contains cross-references to definitions and exemptions within Chapter 2A.

10. Sub-section 608A(4) provides that references in the Tax Acts to income from a UK source include UK-derived amounts.
11. New Section 608B provides that the tax charge applies to the total UK-derived amounts arising in the tax year.
12. New Section 608C provides that a liability under Chapter 2A arises to the person receiving or entitled to the UK-derived amounts of income.
13. New Section 608D sets out the definition of residence for the purposes of Chapter 2A.
14. Sub-section 608D(2) provides that a person is “resident” in a full treaty territory if they are liable to tax by reason of domicile, residence or place of management. However, they are not so resident if they are only liable to tax in relation to income from sources in, or capital located in that territory.
15. Sub-section 608D(3) provides that where a person is resident, either generally or for particular purposes, under the laws of a territory outside the UK, but that territory has no provision for tax residence, then that person is resident in that territory for the purposes of Chapter 2A.
16. New Section 608E sets out a definition of “full treaty territory” for the purposes of Chapter 2A.
17. Sub-sections 608E(1) to (3) provide definitions of a “full treaty territory”, a “non-discrimination provision” and “national” for the purposes of Chapter 2A.
18. New section 608F provides a definition of “UK-derived amount” and “UK sales”.
19. Sub-sections 608F(1) and (2) define a UK-derived amount as any amount in respect of the enjoyment or exercise of any rights (or rights derived from such rights) in relation to any intangible property which is directly or indirectly referable to UK sales in any tax year, by enabling, facilitating or promoting such UK sales.
20. Sub-section 608F(3) defines UK sales as services, goods or other property provided in the UK, whether to persons in the UK, or otherwise provided in the UK.
21. New section 608G sets out apportionment rules which apply where a person is entitled to amounts in relation any intangible property that enables, facilitates or promotes UK sales and is also entitled to other amounts in relation anything else. Sub-section (3) provides for an apportionment based on the proportion of UK sales to total sales, unless this approach can be shown not to be just and reasonable.
22. New Section 608H sets out a definition of intangible property for the purposes of Chapter 2A. This definition works by excluding certain categories of property, including tangible property and financial assets. It also includes a power for further excluded property to be defined by regulation.
23. New section 608I sets out the treatment of certain partnerships for the purposes of

Chapter 2A. It provides that where a partnership is regarded as a separate entity in a full treaty territory, each of the partners are treated as being resident in that territory. Residence is determined in accordance with Section 608D(2).

24. Sub-section 608I(4) confirms that the specific partnership rule in Section 848, and the other provisions of Part 9 continue to apply for the purposes of Chapter 2A.

Exemptions

25. New section 608J provides an exemption from Chapter 2A where the total UK sales of a person for a tax year do not exceed £10 million. The UK sales of connected persons are also taken into account when applying this de minimis limit.
26. New section 608K provides an exemption from Chapter 2A where all or substantially all of the activity which generates the UK-derived amount takes place in the territory in which the relevant person is resident.
27. Sub-section 608K(1) sets out the conditions that have to be met in order for the exemption to apply. They are
- That the person under consideration (the “relevant person”) is resident in the territory for the whole of a tax year
 - That all or substantially all of the “relevant activity” in relation to the “relevant intangible property” takes place, and has taken place, in that territory
 - That there is no “relevant connection” between the relevant intangible property and any related person.
 - That a claim is made under Section 608K.
28. Sub-section 608K(2) defines relevant intangible property as any intangible property that any UK-derived amount relates to.
29. Sub-section 608K(3) defines relevant activity as any activity by any person in relation to the creation, development or maintenance of the relevant intangible property, or in relation to the generation of income from rights in relation to that intangible property.
30. Subsection 608K(4) defines a relevant connection as one where any relevant intangible property has been transferred from a related person, or derived from anything transferred from a related person, or is derived from intangible property held by a related person.
31. Sub-section 608K(5) applies the definition of related as set out in Section 608T.
32. New section 608L provides an exemption from Chapter 2A where the foreign tax

suffered in relation to UK-derived amounts, the “local tax amount”, is at least 50% of the UK tax that would be due under Chapter 2A.

33. Sub-section 608L(1)(c) provides that this tax exemption cannot apply if the local tax amount is determined under designer tax provisions.
34. Sub-section 608L(2) states that the local tax provisions are set out in Section 608M.
35. Sub-section 608L(3) provides a definition of “the corresponding UK tax” as the amount which would be payable under Section 608A, disregarding any reliefs or allowances.
36. Sub-section 608L(4) defines “designer tax provisions” as those which appear in the view of the Commissioners to be designed to enable persons to exercise significant control over the amount of tax paid in relation to UK-derived amounts.
37. New section 608M provides a definition of the local tax amount for the purposes of the tax exemption in Section 608L.
38. Sub-section 608M(2) provides for a just and reasonable apportionment of tax paid between tax paid in respect of UK-derived amounts and tax paid in respect of other amounts.
39. Sub-section 608M(3) provides for the local tax amount to be reduced by an appropriate amount of any repayment of tax, or payment of tax credit, made to any person.
40. Sub-sections 608M(4), (5) and (6) provide for the apportionment of any repayment of tax or payment of tax credit on a just and reasonable basis for the purposes of calculating the local tax amount.
41. New Section 608N provides a regulatory power to amend any exemption within Chapter 2A, or to create additional exemptions.
42. Sub-section 608N(3) provides that such amendments may provide a power to make further regulations, or provide a power of discretion for the HMRC Commissioners, or an HMRC officer.
43. Sub-section 608N(4) provides that such regulations can be retrospective, unless they restrict or reduce the scope of existing exemptions, and so impose or increase taxation.
44. Sub-section 608N(5) provides that draft statutory instruments containing such regulations must be approved by a resolution of the House of Commons.

Recovery of tax from person in same control group

45. New Section 608O sets out joint and several liability rules in relation to amounts due

under Chapter 2A. This section provides for the recovery of tax due from persons within the same control group as the person on whom the charge is originally assessed.

46. Sub-section 608O(1) provides that these joint and several liability rules apply where the whole or any part of an amount of income tax assessed on a taxpayer under Chapter 2A, or any interest on that amount, is unpaid 6 months after the “relevant date”.
47. Sub-sections 608O(2) and (3) provide that a designated officer of HMRC may give a notice to a “relevant person” requiring payment of the unpaid tax and interest within 30 days. The notice must set out the amount of unpaid tax and interest, the date when it was first payable, and the rights of appeal.
48. Sub-section 608O(4) provides that a notice cannot be issued more than 3 years and 6 months after the relevant date.
49. Sub-section 608O(5) defines a relevant person as any person in the same control group as the taxpayer at any time in the tax year, and applies the definition of “control group” in Section 608S.
50. Sub-section 608O(6) defines the relevant date as
 - the date on which a determination of tax has been made under Section 28C TMA 1970 or
 - the date on which a return was delivered in cases when a taxpayer’s return under Section 8 or 8A TMA 1970 was delivered after the last day for making such a return or
 - in any other case, the date that the tax due under Chapter 2A became due and payable
51. Sub-section 608O(7) provides that a notice can be given to any relevant person anywhere in the world, irrespective of whether they are UK resident.
52. Sub-section 608O(8) provides a definition of “designated officer” for the purposes of Chapter 2A.

Meaning of ‘control group’ and ‘related person’

53. New Section 608P sets out a definition of a control group for the purpose of the notice requirement in Section 608O.
54. Sub-section 608P(1) provides that two persons are in the same control group if they are consolidated for accounting purposes, or one has a 51% investment in the other, or a third person has a 51% investment in both persons.

55. Sub-section 608P(2) and (3) provide a definition of consolidated for accounting purposes and “group accounts”.
56. Sub-section 608P(4) provides a cross-reference to the definition of a 51% investment in Section 608R.
57. New section 608Q provides a definition of related persons for the purposes of the exemption in Section 608K for business activities undertaken within the territory of residence.
58. Sub-section 608Q(1)(a) provides that two persons are “related” if they are in the same control group, or one has a 25% investment in the other, or a third person has a 25% investment in both persons.
59. Sub-section 608Q(1)(b) provides that two persons are related if within a period of 6 months before or after a particular time one directly or indirectly participates in the management, control or capital of the other, or a third person so participates in both persons.
60. Sub-section 608Q(2) applies the definitions of control group, 25% investment and direct or indirect participation as set out in Section 608P, Section 608R and Section 608S respectively.
61. New Section 608R provides a definition of “51% investment” and “25% investment” for the purposes of Section 608P and Section 608Q.
62. Sub-section 608R(1) defines a 51% investment in another person by reference the following factors
 - Voting power
 - Rights to the proceeds of the disposal of all of the equity of that person
 - Rights to a distribution of income between equity holders
 - Rights to assets in the event of a winding up.
63. Sub-section 608R(2) adjusts the 51% conditions in sub-section (1) for the purposes of defining a 25% investment.
64. Sub-sections 608R(3) and (4) apply certain conditions in Sections 464 and 465 TIOPA 2010 for the purposes of the 25% and 51% investment conditions.
65. New Section 608S provides a definition of direct and indirect participation in the management, control or capital of another person for the purposes of Section 608Q.
66. Subsection 608S(2) applies section 157 TIOPA 2010 to determine whether a person is directly participating in another person.

67. Subsection 608S(3) applies sections 159 and section 160 TIOPA 2010 to determine whether a persons is indirectly participating in another person.

General

68. New section 608T provides an anti-avoidance rule for the purposes of Chapter 2A.
69. Sub-section 608T(1) sets out the following conditions which need to be met in order for the anti-avoidance rule to apply
- A person has entered into an arrangement with a main purpose, or one of the main purposes, of obtaining a tax advantage for that person
 - The tax advantage has to be wholly or partly due to either
 - a. a charge not arising under section 608A, or
 - b. double taxation arrangements (a tax treaty) where the tax advantage is contrary to the object and purpose of the relevant tax treaty.
70. Sub-sections 608T(2) and (3) provide that a tax advantage can be counteracted by just and reasonable adjustments via an assessment, a modified assessment, amendment or disallowance of a claim, or any other mechanism, as appropriate.
71. Sub-section 608T(4) provides that a counteraction in relation to an arrangement involving a tax treaty can be made notwithstanding the general provision in relation to tax treaties in Section 6(1) TIOPA 2010.
72. Sub-section 608T(5) provides a definition of “tax advantage” for the purposes of Section 608T.
73. New Section 608U provides that where section 608A applies to a person for a tax year, Part 6 ITTOIA 2005 (exempt income) and Chapter 1 of Part 14 ITA 2007 do not apply in relation to UK-derived amounts arising to that person in that tax year.

Interpretation: general

74. New Section 608V provides definitions for the purposes of Chapter 2A, and a power to amend certain definitions within Chapter 2A.
75. Sub-section 608V(1) provides certain definitions for the purposes of Chapter 2A.
76. Sub-section 608V(2) provides that the definitions of “UK-derived amount” and “UK sales” in Section 608F may be changed by Treasury regulations.
77. Sub-section 608V(3) provides that such Treasury regulations may also make any appropriate consequential amendments to Chapter 2A.

78. Sub-section 608V(4) provides that such regulations may have retrospective effect, unless they impose or increase taxation.
79. Sub-section 608V(5) provides that draft statutory instruments containing such regulations must be approved by a resolution of the House of Commons.
80. Paragraph 5 inserts a reference to section 608N and section 608V into section 873(3) ITTOIA 2005, which deals with procedure for orders and regulations.
81. Paragraph 6 inserts references to section 608Q into Section 157, Section 159 and Section 160 of TIOPA 2010.
82. Paragraph 7 provides that the Chapter 2A rules will have effect for the tax year 2019-20 and subsequent years.
83. Paragraph 8 provides that any amendments to the Tax Acts considered appropriate as a consequence of any provision within this Schedule can be made by Treasury regulations.
84. Paragraph 9 provides that the anti-avoidance provisions in new Section 608T apply to arrangements made on or after 29 October 2018.

Background note

85. This clause and Schedule will apply a UK income tax charge to amounts receivable in a low tax jurisdiction in respect of intangible property, to the extent that those amounts are referable to the sale of goods or services in the UK.
86. This will apply to income receivable from both related and unrelated parties, and will be effective from 6 April 2019. Remaining paragraphs of the Schedule relating to payment notices and appeals against assessments will be published with the rest of Finance (No. 3) Bill.