



# Taxation (International and Other Provisions) Act 2010

## 2010 CHAPTER 8

### PART 3

#### DOUBLE TAXATION RELIEF FOR SPECIAL WITHHOLDING TAX

##### *Introductory*

#### **135 Relief under this Part: introductory**

- (1) This Part (except sections 144 and 145) applies for the purpose of giving relief from double taxation in respect of special withholding tax.
- (2) Relief under this Part—
  - (a) is given by set-off against income tax or capital gains tax, and
  - (b) so far as it cannot be given by set-off against income tax or capital gains tax, is given by repayment.

#### **136 Interpretation of Part**

- (1) Subsections (2) to (7) have effect for the purposes of this Part.
- (2) “Double taxation arrangements” means arrangements that have effect under section 2(1) (double taxation relief by agreement with territories outside the United Kingdom).
- (3) “International arrangements”, in relation to a territory, means arrangements made in relation to that territory with a view to ensuring the effective taxation of savings income—
  - (a) under the law of the United Kingdom, or
  - (b) under that law and the law of the territory.

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- (4) “The Savings Directive” means Council Directive [2003/48/EC](#) of 3 June 2003 on taxation of savings income in the form of interest payments.
- (5) “Savings income”—
- (a) in the case of special withholding tax levied under the law of a member State, has the same meaning as the expression “interest payment” has for the purposes of the Savings Directive (see Articles 6 and 15 of the Directive), and
  - (b) in the case of special withholding tax levied under the law of a territory other than a member State, has the same meaning as the corresponding expression has for the purposes of the international arrangements concerned.
- (6) “Special withholding tax” means a withholding tax (however described) levied under the law of a territory outside the United Kingdom implementing—
- (a) in the case of a member State, Article 11 of the Savings Directive (withholding tax to be levied in Belgium, Luxembourg and Austria for the period described in the Directive), or
  - (b) in the case of a territory other than a member State, any corresponding provision of international arrangements (whatever the period for which the provision is to have effect).
- (7) In the application of this Part in relation to capital gains tax, expressions used in this Part and in TCGA 1992 have the same meaning in this Part as in TCGA 1992.

*Credit etc for special withholding tax*

**137 Income tax credit etc for special withholding tax**

- (1) Subsection (5) applies if each of conditions A to C is met.
- (2) Condition A is that a person—
- (a) is liable to income tax for a tax year in respect of a payment of savings income, or
  - (b) would be liable to income tax for a tax year in respect of a payment of savings income but for any exemption or relief.
- (3) Condition B is that special withholding tax is levied in respect of the payment.
- (4) Condition C is that the person is UK resident for the tax year.
- (5) On the making of a claim, income tax (“the deemed tax”) is to be treated as having been—
- (a) paid by or on behalf of the person for the tax year, and
  - (b) deducted at source for the tax year for the purposes of the provisions listed in subsection (7).
- (6) The amount of the deemed tax is given by section 138.
- (7) The provisions mentioned in subsection (5)(b) are—
- section 7 of TMA 1970 (notice of liability to income tax and capital gains tax),
  - section 8 of TMA 1970 (personal return),
  - section 8A of TMA 1970 (trustee's return),
  - section 9 of TMA 1970 (returns to include self-assessment),

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section 59A of TMA 1970 (payments on account of income tax),  
section 59B of TMA 1970 (payments of income tax and capital gains tax), and  
section 824(3) of ICTA (repayment supplements: determination of relevant  
time).

### **138 Amount and application of the deemed tax under section 137**

- (1) For the purposes of section 137, the amount of the deemed tax is—
  - (a) the amount of the special withholding tax levied (see section 137(3)), less
  - (b) any amounts of that tax that are within subsection (2).
- (2) An amount of special withholding tax levied is within this subsection if—
  - (a) the person has obtained relief from double taxation in respect of that special withholding tax under the law of a territory outside the United Kingdom, and
  - (b) the person was resident in that territory, or was under any double taxation arrangements treated as being resident in that territory, in the tax year mentioned in section 137(2).
- (3) Subsection (4) applies if the amount of the deemed tax exceeds the amount (which may be nil) of income tax for which the person is liable for that tax year (before any set-off for the deemed tax).
- (4) So far as it would not otherwise be the case—
  - (a) the excess is to be set against any capital gains tax for which the person is liable for that tax year, and
  - (b) the person is entitled to a repayment of income tax in respect of any remaining balance of the excess.

### **139 Capital gains tax credit etc for special withholding tax**

- (1) Subsection (6) applies if each of conditions A to D is met.
- (2) Condition A is that a person makes a disposal of assets in a tax year.
- (3) Condition B is that if a chargeable gain were to accrue on the disposal—
  - (a) the gain would accrue to the person, and
  - (b) the person would be chargeable to capital gains tax in respect of the gain.
- (4) Condition C is that—
  - (a) the consideration for the disposal consists of, or includes, an amount of savings income, and
  - (b) special withholding tax is levied in respect of the whole, or any part, of the consideration.
- (5) Condition D is that the person is resident in the United Kingdom for the tax year.
- (6) On the making of a claim, capital gains tax (“the deemed tax”) is to be—
  - (a) treated as having been paid by or on behalf of the person for the tax year, and
  - (b) treated for the purposes of section 283(2) of TCGA 1992 (repayment supplements: determination of relevant time) as having been paid on the 31 January following the tax year.
- (7) The amount of the deemed tax is given by section 140.

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- (8) For the purposes of subsection (3)(b), disregard—
- (a) any deductions that are to be made from the total amount referred to in section 2(2) of TCGA 1992 (deductions for allowable losses), and
  - (b) section 3 of TCGA 1992 (annual exempt amount).

#### **140 Provisions about the deemed tax under section 139**

- (1) For the purposes of section 139, the amount of the deemed tax is—
  - (a) the amount of the special withholding tax levied (see section 139(4)(b)), less
  - (b) any amounts of that tax that are within subsection (2) or (3).
- (2) An amount of special withholding tax levied is within this subsection if—
  - (a) the person has obtained relief from double taxation in respect of that special withholding tax under the law of a territory outside the United Kingdom, and
  - (b) the person was resident in that territory, or was under any double taxation arrangements treated as being resident in that territory, in the tax year mentioned in section 139(2).
- (3) An amount of special withholding tax levied is within this subsection if by reference to that amount of that tax—
  - (a) there is that amount of deemed tax under section 137(5), or
  - (b) there would be that amount of deemed tax under section 137(5) on the making of a claim.
- (4) Subsection (5) applies if the amount of the deemed tax exceeds the amount (which may be nil) of capital gains tax for which the person is liable for that tax year (before any set-off for the deemed tax).
- (5) So far as it would not otherwise be the case—
  - (a) the excess is to be set against any income tax for which the person is liable for that tax year, and
  - (b) the person is entitled to a repayment of capital gains tax in respect of any remaining balance of the excess.
- (6) For the purposes of the provisions listed in subsection (7) in relation to the person for that tax year, references in those provisions to income tax deducted at source for that tax year include the deemed tax.
- (7) Those provisions are—
  - section 7 of TMA 1970 (notice of liability to income tax and capital gains tax),
  - section 8 of TMA 1970 (personal return),
  - section 8A of TMA 1970 (trustee's return),
  - section 9 of TMA 1970 (returns to include self-assessment), and
  - section 59B of TMA 1970 (payments of income tax and capital gains tax).

#### **141 Credit under Chapter 2 of Part 2 to be allowed first**

- (1) Any credit for foreign tax allowed under Chapter 2 of Part 2 against income tax or capital gains tax is to be allowed before effect is given to sections 137 to 140.
- (2) In this section “foreign tax” has the same meaning as in that Chapter (see section 21).

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### *Calculation of income or gain on remittance basis where special withholding tax levied*

#### **142 Conditions for purposes of section 143**

- (1) This section applies for the purposes of section 143.
- (2) Condition A is that—
  - (a) a person is liable to income tax in respect of a payment of savings income, or
  - (b) a chargeable gain accrues to a person on a disposal by the person of assets in circumstances where the consideration for the disposal consists of, or includes, an amount of savings income.
- (3) Condition B is that special withholding tax is levied in respect of—
  - (a) the payment of savings income, or
  - (b) the whole or any part of the consideration for the disposal.
- (4) Condition C is that a claim under this Part has been made in respect of the special withholding tax.
- (5) Condition D is that no credit for foreign tax in respect of the savings income or chargeable gain concerned is allowed under Chapter 2 of Part 2 (so that sections 31(2) and 32(2), which make provision similar to section 143, do not apply).

#### **143 Taking account of special withholding tax in calculating income or gains**

- (1) Subsection (2) applies if—
  - (a) each of conditions A to D of section 142 is met, and
  - (b) income tax is payable by reference to the amount of the savings income received in the United Kingdom.
- (2) For income tax purposes, the amount received is increased by the amount of special withholding tax—
  - (a) levied in respect of it, and
  - (b) in respect of which a claim under this Part has been made.
- (3) Subsection (4) applies if—
  - (a) each of conditions A to D of section 142 is met, and
  - (b) capital gains tax is payable by reference to the amount of the chargeable gain received in the United Kingdom.
- (4) For capital gains tax purposes, the amount received is increased by the amount given by—

$$S W T \times \frac{G U K}{G - S W T}$$

where—

SWT is the amount of special withholding tax—

- (a) levied in respect of the whole or the part of the consideration for the disposal, and
- (b) in respect of which a claim has been made under this Part,

GUK is the amount of the chargeable gain received in the United Kingdom, and

G is the amount of the chargeable gain accruing to the person on the disposal.

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- (5) Subsection (6) applies if—
- (a) each of conditions A to D of section 142 is met, and
  - (b) neither subsection (2) nor subsection (4) applies.
- (6) In calculating—
- (a) the amount of the income for income tax purposes, or
  - (b) the amount of any chargeable gain for capital gains tax purposes,
- no deduction is to be made for special withholding tax in respect of which a claim has been made under this Part (whether special withholding tax in respect of the same, or any other, income or in respect of the same, or any other, chargeable gains).

*Certificates to avoid levy of special withholding tax*

**144 Issue of certificate**

- (1) This section enables officers of Revenue and Customs to issue certificates to be used under the law of a territory outside the United Kingdom implementing—
- (a) in the case of a member State, Article 13(1)(b) of the Savings Directive (procedure to avoid levy of special withholding tax where beneficial owner presents to the paying agent a certificate drawn up by a competent authority in the beneficial owner's member State of residence for tax purposes), or
  - (b) in the case of a territory other than a member State, any corresponding provision of international arrangements (whatever the period for which the provision is to have effect).
- (2) If, on the written application of a person, an officer is satisfied that the applicant has provided an officer with—
- (a) the required information, and
  - (b) the documents (if any) required by an officer to verify that information,
- an officer must issue a certificate to the applicant.
- (3) In subsection (2) “the required information” means—
- (a) the applicant's name and address,
  - (b) the applicant's National Insurance number or, if the applicant does not have one, the applicant's date, town and country of birth,
  - (c) the number of the account which is to, or may, give rise to payments of savings income to or for the applicant or, if there is no such number, a statement identifying the debt, instrument or arrangement which is to, or may, give rise to payments of savings income,
  - (d) the name and address of the paying agent who is to make the payments of savings income to, or to secure the payments of savings income for, the applicant, and
  - (e) the period, not exceeding 3 years, for which the applicant would like the certificate to be valid.
- (4) A certificate under this section must be in writing and must state—
- (a) the information mentioned in subsection (3)(a) to (d), and
  - (b) the period of validity of the certificate (which must not exceed 3 years).

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- (5) A certificate under this section must be issued no later than the end of the period of 2 months beginning with the date on which the applicant provides the information and documents required by or under subsection (2).
- (6) If the requirements of—
  - (a) Article 13(2) of the Savings Directive (requirements in relation to issue of certificates for purposes of Article 13(1)(b) procedure), and
  - (b) any corresponding provision of any international arrangements,differ to any extent, subsections (3) to (5) have effect, in their application in relation to the international arrangements, with such modifications as may be required because of those arrangements.

#### **145 Refusal to issue certificate and appeal against refusal**

- (1) This section applies if, on an application for a certificate under section 144, an officer of Revenue and Customs (“the decision officer”) is not satisfied that the applicant has provided an officer with the information and documents required by or under section 144(2).
- (2) An officer must give written notice (“the refusal notice”) to the applicant of the decision officer's refusal to issue a certificate.
- (3) The refusal notice must specify the reasons for the refusal.
- (4) The applicant may by written notice (“the appeal notice”) appeal against the refusal.
- (5) The appeal notice must be given to an officer within 30 days of the date of the refusal notice.
- (6) Part 5 of TMA 1970 (appeals and other proceedings) is to apply in relation to an appeal under this section.
- (7) On an appeal that is notified to the tribunal, the tribunal may—
  - (a) confirm the refusal notice, or
  - (b) quash it and require an officer to issue a certificate.
- (8) In this section “the tribunal” means the First-tier Tribunal or, where determined by or under Tribunal Procedure Rules, the Upper Tribunal.

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