

FINANCE ACT 2012

EXPLANATORY NOTES

INTRODUCTION

Section 218 Schedule 36: Agreement between Uk and Switzerland

Details of the Schedule

Part 2: The Past

8. Paragraph 2 sets out the four UK taxes with which this Part of the Schedule is concerned. They are the same four taxes for which the liability for periods up to 31 December 2012 on funds in Switzerland is affected (and may be extinguished) by the payment of the one-off levy under Part 2 of the agreement.
9. The paragraph explains what is meant in the Schedule by the term ‘taxable amount’ in relation to each of the four taxes.
10. Paragraph 3 explains that this Part of the Schedule sets out the effect on the liability of a person to whom a certificate is given by a Swiss paying agent evidencing that the one-off levy has been applied to the funds in that person’s account. That person, who under the agreement must be the beneficial owner of the funds, is called ‘P’ and the certificate is called a ‘Part 2 certificate’. The certificate is used as the basis for determining whether and to what extent UK tax liability on untaxed monies in Switzerland is affected by the payment of the levy.
11. Paragraph 4 sets out whether a taxable amount is a ‘qualifying amount’ the tax liability on which may be affected by the production of a Part 2 certificate. A qualifying amount is a taxable amount on which P has not paid tax and for which a necessary link with the certificate can be demonstrated.
12. In a case where P is domiciled in the UK or is non-domiciled but has opted for the levy to be calculated using the capital method set out in the agreement, the necessary link is that the taxable amount – for example the amount of income or gain – can be regarded as forming part of the capital by reference to which the levy was applied. This is the amount of cleared capital calculated under Article 9(12) of the agreement and depends on the balance or value of the account at 31 December 2010 and 31 December 2012. It is given the label Cr.
13. To be a qualifying amount it is important that the taxable amount can properly be regarded as being part of Cr. In practice, with movements on accounts, this may not be clear. So paragraph 4 contains a rule that taxable amounts are attributed to assets in the way that produces the most beneficial outcome for P.
14. In a case where P is not domiciled in the UK and has opted for the levy to be calculated using the self-assessment method set out in the agreement, the necessary link is that the taxable amount is included in the omitted taxable base by reference to which the levy was calculated.
15. Further provisions about the interpretation of the conditions for a taxable amount to be a qualifying amount are in paragraph 11.

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which received Royal Assent on 17 July 2012*

16. Paragraph 5 explains that a Part 2 certificate is only eligible to give tax clearance to P in a case where none of the exclusions set out in Article 9(13) and Article 12(1) of the agreement applies. If so eligible then paragraph 6 applies. If not so eligible then paragraph 8 applies with the levy being a credit against UK liabilities.
17. Paragraph 6 explains the effect on UK liabilities where P is eligible for clearance on qualifying amounts. In the normal case P gets full tax clearance – ‘ceasing to be liable to tax’ – (in respect of the four taxes to which the agreement applies) on qualifying amounts. But in a case where funds have directly or indirectly moved from the UK to Switzerland between 6 October 2011 and 31 December 2012 and form part of Cr then the tax liability on qualifying amounts relating to those funds remains in place and instead the appropriate part of the levy is a credit against that liability. The phrase ‘the tax due taking account of that amount’ is used to indicate all the tax liabilities in respect of a qualifying amount as set out in paragraph 19. Furthermore, as explained in paragraph 9 the phrase also includes associated liabilities to interest and penalties etc.
18. Paragraphs 6(7) to 6(9) contain a cap on the total qualifying amounts that are wholly or partially relieved under this paragraph. Where the levy is calculated on Cr the cap is the value of Cr. Where the levy is calculated on the non-domiciled self assessment basis, it is the value of the omitted taxable base. The cap is necessary because there is no direct link between a qualifying amount that has been paid into an account and the capital sum by reference to which the levy is applied. If the cap applies then the qualifying amounts are relieved in the order which is most beneficial to P.
19. Paragraph 7 clarifies what is meant by P ceasing to be liable to tax on a qualifying amount in relation to each of the four taxes covered by this Part.
20. Paragraphs 7(5) to 7(7) recognise that qualifying amounts (which are, by definition, previously untaxed) should have been returned and that the failure to do so may have resulted in too little tax being paid on items that were returned. The provisions ensure that despite the qualifying amounts being cleared, the liability on other items is what it would have been had the qualifying amounts been properly taken into account. To avoid having to recalculate settled liabilities as far as possible, the qualifying amounts are treated as the top slice of income, gains etc of the relevant period. But where there is additional tax to pay there is also liability to associated interest and penalties.
21. Paragraph 8 explains the treatment of the levy, on production of a Part 2 certificate, in a case where P is not eligible for clearance because one or more of the exclusions set out in Article 9(13) or Article 12(1) apply. The tax liabilities on all qualifying amounts remain in place and instead the levy is a credit against those liabilities, including interest, penalties etc. The credit is applied first to tax in the order set out in sub-paragraph (4), but subject to that, in the way that minimises P’s overall liability.
22. Paragraph 9 provides that clearance for tax liabilities or credit against tax liabilities includes clearance for or credit against associated ancillary charges to interest, penalties etc. Where a qualifying amount is part only of a larger taxable amount subject to ancillary charges, then an appropriate apportionment of those charges is made.
23. Paragraph 10 ensures that a repayment of tax previously paid is only due in the limited circumstances where any part of the levy is treated as a payment on account under the terms of the agreement. This provision is about repayment of tax, not about repayment of the levy (with which Article 15 of the agreement is concerned).
24. Paragraph 11 explains the meaning of terms used in paragraph 4 in determining whether an amount liable to tax is a qualifying amount potentially eligible for clearance. Sub-paragraph (2) defines terms for income tax and capital gains tax, sub-paragraph (3) for inheritance tax and sub-paragraph (4) for VAT.
25. Paragraph 11(5) makes explicit that tax clearance for P does not apply to liabilities that are in substance tax liabilities of another person but which have been transferred to P by HM Revenue & Customs (HMRC) under a specific statutory authority.

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26. Paragraph 12 provides that if any part of a levy is repaid under Article 15(3) (by HMRC refunding the Swiss authorities) then to the extent that a certificate evidences initial payment of the amount repaid it is disregarded.