

Changes to legislation: There are currently no known outstanding effects for the Finance Act 2012, SCHEDULE 36. (See end of Document for details)

SCHEDULES

SCHEDULE 36

Section 218

AGREEMENT BETWEEN UK AND SWITZERLAND

Annotations:

Modifications etc. (not altering text)

- C1** Sch. 36 applied (with modifications) (19.4.2013) by [The Small Charitable Donations Regulations 2013 \(S.I. 2013/938\)](#), regs. 1, 6

PART 1

INTRODUCTION

The Agreement and the Joint Declaration

- 1 In this Schedule—
- (a) “the Agreement” means the agreement signed on 6 October 2011 between the United Kingdom and the Swiss Confederation on co-operation in the area of taxation, as amended by a protocol signed by them on 20 March 2012 and by a mutual agreement signed by them on 18 April 2012 implementing article XVIII of that protocol,
 - (b) “the Joint Declaration” means the joint declaration (concerning a tax finality payment) forming an integral part of that protocol,
 - (c) “the start date” is the date on which the Agreement enters into force in accordance with its terms (see Article 44), and
 - (d) references to a numbered Article are to the Article of that number in the Agreement.

PART 2

THE PAST

Taxes affected

- 2 (1) The taxes affected by this Part are—
- (a) income tax,
 - (b) capital gains tax,
 - (c) inheritance tax, and
 - (d) VAT.
- (2) Accordingly, this Part affects—

Changes to legislation: There are currently no known outstanding effects for the Finance Act 2012, SCHEDULE 36. (See end of Document for details)

- (a) amounts of income on which income tax is charged,
 - (b) chargeable gains,
 - (c) the value of property forming part of the value transferred by a chargeable transfer, and
 - (d) the value of supplies on which VAT is charged.
- (3) An amount falling within one (or more) of those descriptions is referred to as a “taxable amount” and, in relation to such an amount, “tax” means whichever of the taxes mentioned in sub-paragraph (1) is (or are) charged on it.

Application of this Part

- 3 (1) This Part applies if—
- (a) a one-off payment is levied in accordance with Part 2 of the Agreement,
 - (b) a certificate is issued under Article 9(4) to a person (“P”) in respect of that payment, and
 - (c) the certificate is approved by P or considered approved by virtue of that Article.
- (2) The certificate is referred to in this Part as “the Part 2 certificate”.

Qualifying amounts

- 4 (1) The Part 2 certificate applies to taxable amounts in respect of which the conditions in sub-paragraph (2) are met.
- (2) The conditions are—
- (a) P is liable to tax on the amount,
 - (b) the amount is untaxed,
 - (c) the taxable event took place before the start date, and
 - (d) the necessary link with the certificate can be demonstrated.
- (3) The necessary link is—
- (a) in a case falling within Article 9(3) (non-UK domiciled individuals opting for self-assessment method), that the amount is included in the omitted taxable base by reference to which the one-off payment was calculated, and
 - (b) in any other case, that the amount forms part of or is represented by the assets comprised in the relevant capital by reference to which the one-off payment was calculated (referred to in the Agreement as C_r).
- (4) For the purposes of sub-paragraph (3)(b), amounts are assumed to be attributed to assets in the way that produces the most beneficial outcome for P.
- (5) Paragraph 11 makes further provision about the interpretation of sub-paragraph (2).
- (6) Amounts to which the Part 2 certificate applies in accordance with this paragraph are referred to in this Part as “qualifying amounts”.

Eligibility for clearance

- 5 (1) The effect of the Part 2 certificate depends on whether P is eligible for clearance.
- (2) P is “eligible for clearance” if—

Changes to legislation: There are currently no known outstanding effects for the Finance Act 2012, SCHEDULE 36. (See end of Document for details)

- (a) none of the circumstances listed in Article 9(13)(a) to (e) apply (tax investigations etc), and
 - (b) Article 12(1) does not apply (wrongful behaviour in relation to non-UK domiciled status).
- (3) Otherwise, P is “not eligible for clearance”.

Effect if P eligible for clearance

- 6
- (1) This paragraph sets out the effect of the Part 2 certificate if P is eligible for clearance.
 - (2) P ceases to be liable to tax on qualifying amounts.
 - (3) Sub-paragraph (2) does not apply to a qualifying amount if—
 - (a) the amount was held in the United Kingdom,
 - (b) at some point during the period beginning with 6 October 2011 and ending immediately before the start date, it ceased to be held in the United Kingdom, and
 - (c) after that point (but before the start date) it began to be held in Switzerland.
 - (4) Instead, such part of the one-off payment as is attributable (on a just and reasonable basis) to the qualifying amount is to be treated as if it were a credit allowable against the tax due from P taking account of that amount.
 - (5) The meaning of tax due “taking account of” an amount is explained in Part 5 of this Schedule.
 - (6) The form in which a qualifying amount was held in the United Kingdom is irrelevant (so references in sub-paragraph (3) to the amount include an asset representing the amount).
 - (7) The total qualifying amounts to which sub-paragraphs (2) and (4) can apply as a result of the Part 2 certificate is limited to X.
 - (8) If the total exceeds X, the particular qualifying amounts to which those sub-paragraphs apply are assumed to be those that would produce the most beneficial outcome for P.
 - (9) X is—
 - (a) in a case falling within Article 9(3), the value of the omitted taxable base by reference to which the one-off payment was calculated, and
 - (b) in any other case, the value shown in the Part 2 certificate as the value of the relevant capital (C_T).

Ceasing to be liable to tax

- 7
- (1) The result of “ceasing to be liable” to tax on a qualifying amount depends on the tax (or taxes) in respect of which the amount is untaxed.
 - (2) For income tax or capital gains tax, the result is that the amount is no longer liable to be brought into account in assessing the income tax or capital gains tax due from P for the tax year in which the amount would otherwise be liable to be brought into account.

Changes to legislation: There are currently no known outstanding effects for the Finance Act 2012, SCHEDULE 36. (See end of Document for details)

- (3) For inheritance tax, the result is that any inheritance tax due from P in respect of the chargeable transfer and attributable to the property whose value is included in the amount is no longer due from P.
- (4) For VAT, the result is that P is no longer required to account for output tax on the amount in determining the VAT payable by P for the prescribed accounting period in which P would otherwise be required to account for output tax on the amount.
- (5) But—
 - (a) ceasing to be liable to tax on a qualifying amount does not affect P's liability to tax on any other amount, and
 - (b) P's liability to tax on any other amount remains what it would have been, had the qualifying amount been brought into account in calculating that liability.
- (6) Accordingly, if the qualifying amount were ever to be brought into account and it were found that the tax assessed on any other amount should have been higher as a result, P would remain liable for the extra tax due on that other amount and for any associated ancillary charge.
- (7) For the purposes of sub-paragraphs (5) and (6), the qualifying amount is assumed to form the top slice of the total sum on which P is liable to tax.

Effect if P not eligible for clearance

- 8 (1) This paragraph sets out the effect of the Part 2 certificate if P is not eligible for clearance.
- (2) The one-off payment is to be treated as if it were a credit allowable against the tax due from P taking account of qualifying amounts.
- (3) The one-off payment is to be applied for the purposes of sub-paragraph (2)—
 - (a) in the order specified in sub-paragraph (4), and
 - (b) subject to that, in the way that produces the most beneficial outcome for P.
- (4) The order is—
 - (a) first, for VAT,
 - (b) then, for income tax,
 - (c) then, for capital gains tax, and
 - (d) finally, for inheritance tax.

Interest, penalties etc

- 9 (1) Where, by virtue of this Part, P ceases to be liable to tax on a qualifying amount, P also ceases to be liable to any ancillary charge directly connected with that amount.
- (2) Where, by virtue of this Part, all or part of a one-off payment is treated as if it were a credit allowable against the tax due from P taking account of a qualifying amount, the credit may also be used to offset any ancillary charge directly connected with that amount.
- (3) Sub-paragraph (4) applies in the case of a qualifying amount that is part only of—
 - (a) an amount of income on which income tax is charged,
 - (b) a chargeable gain,

Changes to legislation: There are currently no known outstanding effects for the Finance Act 2012, SCHEDULE 36. (See end of Document for details)

- (c) the value of property forming part of the value transferred by a chargeable transfer, or
 - (d) the value of a supply on which VAT is charged.
- (4) The amount of any ancillary charge directly connected with that qualifying amount is determined by apportioning the ancillary charge directly connected with the income, gain or value on a just and reasonable basis.

Repayments

- 10 Nothing in this Part entitles any person to a repayment or refund of tax, save for any repayment or refund to which P may be entitled by virtue of paragraph 6(4) or 8(2) if the credit allowable under that paragraph exceeds the total amount of tax against which the credit is allowable.

Paragraph 4: supplementary provision

- 11 (1) This paragraph explains how paragraph 4(2) is to be read for each description of taxable amount.
- (2) For income and chargeable gains—
- (a) the reference to P being “liable to tax” includes a case where P would be so liable if the income or gain were to be remitted to the United Kingdom,
 - (b) “the taxable event” takes place when the income arises or the gain accrues (whether or not, in a remittance basis case, it is remitted to the United Kingdom), and
 - (c) the income or gain is “untaxed” if it has not been brought into account in an assessment to income tax or, as the case may be, capital gains tax for the tax year in which it is required to be brought into account.
- (3) For the value of property forming part of the value transferred by a chargeable transfer—
- (a) “the taxable event” takes place when the chargeable transfer is made (or, in the case of a potentially exempt transfer, when death occurs), and
 - (b) the value of the property is “untaxed” if it has not been brought into account in determining the value transferred by the chargeable transfer.
- (4) For the value of supplies on which VAT is charged—
- (a) “the taxable event” takes place when P makes the supply, and
 - (b) the value of the supply is “untaxed” if output tax on the supply has not been accounted for in determining the VAT payable by P for the prescribed accounting period in which P is required to account for output tax on the supply.
- (5) Paragraph 4(2)(a) is not satisfied in a case where P is liable to tax only because the liability has been transferred to P as a result of action taken by HMRC (for example, as a result of a notice given under section 77A of VATA 1994 or a direction given under regulation 81 of the Income Tax (PAYE) Regulations 2003 (S.I. 2003/2682)).

Refund of one-off payment

- 12 If a one-off payment is refunded by HMRC in accordance with Article 15(3), this Part ceases to apply with respect to that payment.

Changes to legislation: There are currently no known outstanding effects for the Finance Act 2012, SCHEDULE 36. (See end of Document for details)

PART 3

THE FUTURE: INCOME TAX AND CAPITAL GAINS TAX

Taxes affected

- 13 The taxes affected by this Part are—
- (a) income tax, and
 - (b) capital gains tax.

Application of this Part

- 14 (1) This Part applies if—
- (a) a sum is levied under Article 19 on an amount of income or a gain of a person, and
 - (b) a certificate is issued to the person under Article 30(1) in respect of the levying of that sum (or sums that include that sum).
- (2) This Part also applies if—
- (a) a retention is made under EUSA from an amount of income or a gain of a person,
 - (b) a tax finality payment, as contemplated by the Joint Declaration, is made on the same income or gain, and
 - (c) a certificate is issued to the person under the Joint Declaration in respect of the making of that payment (or payments that include that payment).
- (3) In this Part—
- (a) the person is referred to as “P”,
 - (b) the certificate is referred to as “the relevant certificate”,
 - (c) the amount of income, or the gain, is referred to as “the cleared amount”,
 - (d) the account or deposit (within the meaning of the Agreement) to which the certificate relates (or to which certificates relate that include the certificate) is referred to as “the underlying account”, and
 - (e) the sum levied under Article 19 on the cleared amount or, as the case may be, the tax finality payment made on it is referred to as “the transferred sum”.

Effect of relevant certificate

- 15 (1) The effect of the relevant certificate depends on whether P makes an election under paragraph 16 in respect of the underlying account for the applicable year.
- (2) “The applicable year” is the tax year for which P is liable to income tax or, as the case may be, capital gains tax on the cleared amount.
- (3) If P makes an election, the transferred sum is to be treated as if it were a credit allowable against the income tax or, as the case may be, capital gains tax due from P for the applicable year.
- (4) If P does not make an election, P ceases to be liable to income tax or, as the case may be, capital gains tax on the cleared amount.
- (5) Sub-paragraph (4) is to be read in accordance with paragraph 7.

Changes to legislation: There are currently no known outstanding effects for the Finance Act 2012, SCHEDULE 36. (See end of Document for details)

- (6) Where P ceases to be liable to tax on the cleared amount, P also ceases to be liable to any ancillary charge directly connected with that amount.

Election

- 16 (1) P may make an election under this paragraph in respect of the underlying account for a tax year if all the affected amounts are included in full in a return (or amended return) made by P under Part 2 of TMA 1970 for that tax year.
- (2) In relation to a tax year, an amount is an “affected amount” if—
- (a) a certificate is issued to P under Article 30(1) or the Joint Declaration in respect of the levying of a sum, or the making of a tax finality payment, on that amount,
 - (b) the account or deposit to which the certificate relates is the underlying account, and
 - (c) the amount is required to be brought into account in assessing the income tax or capital gains tax due from P for that tax year.
- (3) An election under this paragraph must be made in the return or amended return in which the affected amounts are included.
- (4) An election may only be made under this paragraph if it is accompanied by all the relevant certificates relating to the underlying account.
- (5) For the purposes of paragraph 15, P is treated as making an election under this paragraph in respect of the underlying account for a tax year if a claim is made under Part 3 of TIOPA 2010 (double taxation relief for special withholding tax) in relation to any of the affected amounts.
- (6) Section 143 of TIOPA 2010 (taking account of special withholding tax in calculating income or gains) applies with any necessary modifications in relation to a tax finality payment as it applies in relation to special withholding tax.

Other credits to be allowed first

- 17 Other than a credit allowed under Part 3 of TIOPA 2010, any credit for foreign tax allowed under that Act against the income tax or, as the case may be, capital gains tax due from P for the applicable year is to be allowed before effect is given to paragraph 15(3).

Repayments

- 18 (1) Sub-paragraph (2) applies if the amount of a credit allowable under paragraph 15(3) exceeds the amount of income tax or, as the case may be, capital gains tax due from P for the applicable year (before set-off).
- (2) The excess is to be set against any amount of the other tax (income tax or capital gains tax) due from P for that year.
- (3) Nothing in this Part entitles any person to a repayment or refund of tax, save for any repayment to which P may be entitled as a result of paragraph 15(3) if, in relation to a credit allowable under that paragraph, there is any remaining balance after applying —
- (a) sub-paragraph (2), and

Changes to legislation: There are currently no known outstanding effects for the Finance Act 2012, SCHEDULE 36. (See end of Document for details)

- (b) section 138(4)(a) or 140(5)(a) of TIOPA 2010, if applicable to the cleared amount.

Relationship with special withholding tax rules

- 19 The Joint Declaration does not count for the purposes of section 136(6)(b) of TIOPA 2010 (definition of “special withholding tax”) as a corresponding provision of international arrangements.

PART 4

THE FUTURE: INHERITANCE TAX

Taxes affected

- 20 This Part affects inheritance tax.

Application of this Part

- 21 (1) This Part applies if—
- (a) an amount is withheld under Article 32(2) in respect of relevant assets of a deceased person (“P”), and
 - (b) a certificate is issued under Article 32(6) in respect of the withholding of that amount.
- (2) The certificate is referred to in this Part as “the Article 32 certificate”.
- (3) The relevant assets in relation to which the Article 32 certificate is issued are referred to as “the cleared assets”.
- (4) Any reference in this Part to “the chargeable transfer” is to the transfer made (under section 4 of IHTA 1984) on P's death.

Effect of Article 32 certificate

- 22 (1) The cleared assets are to be treated as if they were excluded property in determining the value of P's estate immediately before P's death.
- (2) As a result, any ancillary charge directly connected with those assets is also extinguished.
- (3) But—
- (a) treating the cleared assets as if they were excluded property does not affect any liability to inheritance tax on the rest of P's estate, and
 - (b) that liability remains what it would have been, had the cleared assets not been treated as excluded property.
- (4) Accordingly, if the cleared assets were ever to be included in an account or further account under section 216 or 217 of IHTA 1984 in respect of the chargeable transfer and it were found that the inheritance tax charged on the value of the property in P's estate other than the cleared assets should have been higher, the extra tax charged on the value of that other property remains due, together with any associated ancillary charge.

Changes to legislation: There are currently no known outstanding effects for the Finance Act 2012, SCHEDULE 36. (See end of Document for details)

- (5) For the purposes of sub-paragraphs (3) and (4), the value of the cleared assets is assumed to form the highest part of the value transferred by the chargeable transfer.

Election in respect of Article 32 certificates

- 23 (1) This paragraph applies if the cleared assets for each of the Article 32 certificates issued in respect of P's death are included in full in an account or further account delivered in respect of P's death under section 216 or 217 of IHTA 1984 within the time permitted for delivering such an account or further account.
- (2) The person who delivers the account or further account may elect to disapply paragraph 22.
- (3) An election under this paragraph must be made in writing at the same time as the account or further account in which all the cleared assets are included, and signed by each person delivering the account or further account.
- (4) An election may only be made under this paragraph if it is accompanied by each of the Article 32 certificates.
- (5) If an election is made under this paragraph—
- (a) paragraph 22 does not apply to the cleared assets for any of the Article 32 certificates issued in respect of P's death, and
 - (b) the amounts withheld under Article 32(2) are instead to be treated as if they were credits allowable against the inheritance tax due on the value transferred by the chargeable transfer (calculated with the value of all those cleared assets brought into account).

Repayments

- 24 Nothing in this Part entitles any person to a repayment or refund of tax, save for any repayment to which a person may be entitled as a result of paragraph 23 if the credit allowable under that paragraph exceeds the inheritance tax due from the person on the value transferred by the chargeable transfer.

PART 5

GENERAL PROVISIONS

Information exchange

- 25 No obligation of secrecy (whether imposed by statute or otherwise) prevents HMRC from disclosing information pursuant to a request made by virtue of Article 36 (reciprocity measures of the United Kingdom).

Amounts recoverable as if they were VAT

- 26 (1) Part 2 of this Schedule applies to amounts otherwise recoverable under paragraph 5(3) of Schedule 11 to VATA 1994 as a debt due to the Crown (amounts shown on invoices as VAT etc) in the same way as it applies to VAT.
- (2) But in the application of Part 2 to such amounts—

Changes to legislation: There are currently no known outstanding effects for the Finance Act 2012, SCHEDULE 36. (See end of Document for details)

- (a) a reference to the value of a supply on which VAT is charged is a reference to the value of the supply shown in the invoice mentioned in paragraph 5(2) of that Schedule,
- (b) “the taxable event” takes place when the invoice is issued,
- (c) the value of the supply shown in the invoice is “untaxed” if the amount otherwise recoverable under paragraph 5(3) of that Schedule has not been recovered, and
- (d) “ceasing to be liable” to tax on the value of that supply means that the amount otherwise recoverable is no longer recoverable.

[^{F1}Transfers to HMRC under Agreement

Annotations:

Amendments (Textual)

- F1** Sch. 36 paras. 26A, 26B and cross-heading inserted (retrospective to 1.1.2013) by [Finance Act 2013 \(c. 29\)](#), [s. 221\(1\)\(2\)](#)

- 26A (1) Income or chargeable gains of a person are to be treated as not remitted to the United Kingdom if conditions A to D are met.
- (2) Condition A is that (but for sub-paragraph (1)) the income or gains would be regarded as remitted to the United Kingdom by virtue of the bringing of money to the United Kingdom.
 - (3) Condition B is that the money is brought to the United Kingdom pursuant to a transfer made to HMRC in accordance with the Agreement.
 - (4) Condition C (which applies only if the money brought to the United Kingdom is a sum levied under Article 19(2)(b)) is that the sum was levied within the period of 45 days beginning with the day on which the amount derived from the income or gain in question was remitted as mentioned in Article 19(2)(b).
 - (5) Condition D is that the transfer is made in relation to a tax year in which section 809B, 809D or 809E of ITA 2007 (application of remittance basis) applies to the person.
 - (6) Sub-paragraph (1) does not apply in relation to money brought to the United Kingdom if or to the extent that—
 - (a) paragraph 18(2), or section 138(4)(a) or 140(5)(a) of TIOPA 2010, is applied in relation to it (set-off against other tax liabilities), or
 - (b) it is repaid or refunded by HMRC.]
- 26B (1) This paragraph applies if—
- (a) but for paragraph 26A(1), income or chargeable gains would have been regarded as remitted to the United Kingdom by virtue of the bringing of money to the United Kingdom, and
 - (b) section 809Q of ITA 2007 (transfers from mixed funds) would have applied in determining the amount that would have been so remitted.
- (2) The bringing of the money to the United Kingdom counts as an offshore transfer for the purposes of section 809R(4) of ITA 2007 (composition of mixed fund).

Changes to legislation: There are currently no known outstanding effects for the Finance Act 2012, SCHEDULE 36. (See end of Document for details)

General interpretation

27 (1) In this Schedule—

“ancillary charge” means any interest, penalty, surcharge or other ancillary charge;

“assessment”, in relation to a tax, includes a determination and also includes an amended assessment or determination (and “assess” is to be read accordingly);

“chargeable gain” means a gain that is a chargeable gain for the purposes of TCGA 1992;

“chargeable transfer” has the meaning given in section 2 of IHTA 1984;

“EUSA” means the agreement dated 26 October 2004 between the European Community and the Swiss Confederation providing for measures equivalent to those laid down in Council Directive 2003/48/EC on taxation on savings income in the form of interest payments;

“HMRC” means Her Majesty's Revenue and Customs;

“qualifying amount” is defined in paragraph 4;

“remitted to the United Kingdom” means remitted to the United Kingdom within the meaning of Chapter A1 of Part 14 of ITA 2007;

“the value transferred”, in relation to a chargeable transfer, has the meaning given in section 3 of IHTA 1984;

“taxable amount” is defined in paragraph 2;

“VAT” means value added tax charged in accordance with VATA 1994.

- (2) An expression used in relation to a tax has the same meaning as in enactments relating to that tax.
- (3) A reference to a person being “liable” includes being liable jointly with others.
- (4) A reference to the most beneficial outcome for P is a reference to the most beneficial outcome for P with respect to P's liability to tax.
- (5) A reference to the tax due “taking account of” a qualifying amount is—
 - (a) if the amount is an amount of income or a chargeable gain, a reference to the income tax or capital gains tax due for the tax year in which the amount is required to be brought into account (calculated with that amount brought into account),
 - (b) if the amount is the value of property forming part of the value transferred by a chargeable transfer, a reference to the inheritance tax due on the value transferred by the chargeable transfer (calculated with that amount brought into account),
 - (c) if the amount is the value of a supply on which VAT is charged, a reference to the VAT payable for the prescribed accounting period in which output tax on the supply is required to be brought into account (calculated with that output tax brought into account), and
 - (d) if the amount is the value of a supply to which Part 2 applies by virtue of paragraph 26, a reference to the amount otherwise recoverable under paragraph 5(3) of Schedule 11 to VATA 1994 in respect of that supply.

Changes to legislation:

There are currently no known outstanding effects for the Finance Act 2012, SCHEDULE 36.