

Draft Regulations laid before the House of Commons under paragraph 14 of Schedule 3 to the Finance Act 2019, for approval by resolution of that House.

DRAFT STATUTORY INSTRUMENTS

2019 No. 0000

INCOME TAX

**The Income Tax (Trading and Other Income) Act 2005
(Amendments to Chapter 2A of Part 5) Regulations 2019**

*Made - - - - - ***
Coming into force in accordance with regulation 1*

The Treasury make the following Regulations in exercise of the powers conferred by paragraphs 9, 10 and 11 of Schedule 3 to the Finance Act 2019⁽¹⁾.

In accordance with paragraph 14 of that Schedule, a draft of this instrument has been laid before and approved by a resolution of the House of Commons.

Citation, commencement and effect

1.—(1) These Regulations may be cited as the Income Tax (Trading and Other Income) Act 2005 (Amendments to Chapter 2A of Part 5) Regulations 2019 and come into force on the day after the day on which these Regulations are made.

(2) The amendments made by regulations 3 to 14 have effect for the tax year 2019-20⁽²⁾ and subsequent tax years; but the amendments made by regulations 3, 6, 10 and 14⁽³⁾ do not apply in relation to amounts arising on or before the day on which these Regulations are made.

Amendments to Chapter 2A of Part 5 of ITTOIA 2005

2. Chapter 2A (offshore receipts in respect of intangible property) of Part 5 of ITTOIA 2005⁽³⁾ is amended as follows.

3.—(1) Section 608D is amended as follows.

(2) In paragraph (b) of subsection (2)—

- (a) the words from “income” to the end become sub-paragraph (i) of that paragraph;
- (b) at the end of sub-paragraph (i) insert “, or”;

⁽¹⁾ 2019 c. 1.

⁽²⁾ The tax year 2019-20 has the meaning given by sections 4(4) and 989 of the Income Tax Act 2007 (c. 3).

⁽³⁾ ITTOIA 2005 has the meaning given by section 96 of the Finance Act 2019; Chapter 2A was inserted by Schedule 3 to that Act.

- (c) after sub-paragraph (i) insert—
- “(ii) such income and capital, and amounts remitted to or otherwise received in the territory.”.
- (3) After subsection (3) insert—
- “(4) Despite subsections (2) and (3), a person is treated as not resident in a full treaty territory if—
- (a) the double taxation arrangements made in relation to the territory contain provision expressly excluding persons of a particular description from relief under the arrangements, and
- (b) the person is of that description.
- (5) In subsection (4) the reference to provision of the kind mentioned there does not include provision corresponding to the provision made by paragraphs 1 to 7 of article 29 of the OECD Model Tax Convention on Income and on Capital (entitlement to benefits), published on 21 November 2017(4).”.
4. In section 608F after subsection (3) insert—
- “(4) In subsection (3) the reference to anything being provided does not include it being provided for resale.
- (5) For the purposes of subsection (4) a thing is provided “for resale” where it is provided to a person who obtains it for the purpose of providing it to another person in the following circumstances—
- (a) there is no change in the thing itself, and
- (b) if what is provided differs in any way from what was obtained, the difference is merely incidental to the provision of the thing.
- (6) For the purposes of this Chapter a service consisting of the provision of online advertising constitutes a UK sale so far as the advertising is targeted at persons in the United Kingdom.”.
5. After section 608G insert—

“Section 608F: disregard for third party sales where intangible property makes insignificant contribution

608GA.—(1) This section applies where—

- (a) a person (A) receives or is entitled to a UK-derived amount,
- (b) the services, goods or other property in question are not provided in the United Kingdom, or to persons there, by A or a person connected with A, and
- (c) the UK sales in question are enabled, facilitated or promoted to an insignificant extent by the enjoyment or exercise of the rights in question.

(2) For the purposes of this Chapter no account is to be taken of A’s receipt of, or entitlement to, the UK-derived amount.

(3) For the purposes of subsection (1)(b), anything provided by a reseller (including anything treated as so provided by virtue of this subsection) is to be treated as provided by the person who provided it to the reseller.

(4) ISBN 978-92-64-28794-5. A copy is available electronically from: <https://doi.org/10.1787/g2g972ee-en>. A hard copy is available for inspection by prior arrangement at the offices of Her Majesty’s Revenue and Customs at 100 Parliament Street, London, SW1A 2BQ.

(4) For this purpose “reseller” means a person to whom a thing is provided for resale (within the meaning of section 608F(5)).”.

6. Omit section 608I.

7. After section 608J insert—

“Exemption where company resident in specified territory

608JA.—(1) Section 608A does not apply in relation to a company for a tax year if—

- (a) the company is resident in a specified territory throughout the tax year,
- (b) UK-derived amounts arising to the company in the tax year are chargeable to tax under the laws of the territory,
- (c) where those amounts are chargeable only if remitted or otherwise received in the territory, the amounts are remitted or otherwise received there in the tax year,
- (d) the amount of tax which is paid in the territory in respect of the UK-derived amounts is not determined under designer tax provisions, and
- (e) the company is not, at any time in the tax year, involved in an arrangement the main purpose, or one of the main purposes, of which is to obtain a tax advantage for itself or any other person.

(2) For the purposes of this section—

- (a) section 608D (meaning of residence) applies as if subsections (2)(b), (4) and (5) were omitted;
- (b) “specified territory” means a territory specified in regulations made by the Commissioners.

(3) Regulations under this section may have effect from a date before the day on which they are made, except insofar as they result in a territory ceasing to be specified.”.

8. In section 608K after subsection (1) insert—

“(1A) For the purposes of this section, section 608D (meaning of residence) applies as if subsections (2)(b), (4) and (5) were omitted.”.

9.—(1) Section 608L is amended as follows.

(2) Omit subsection (4).

(3) After subsection (4) insert—

“(5) For the purposes of this section, section 608D (meaning of residence) applies as if subsections (2)(b), (4) and (5) were omitted.”.

10. After section 608M insert—

“Exemption where income of opaque partnership taxable in full treaty territory

608MA.—(1) This section applies where—

- (a) under the laws of a full treaty territory, a partnership is regarded for tax purposes as an entity separate and distinct from the partners,
- (b) the partnership is resident in the territory throughout a tax year,
- (c) UK-derived amounts arise to the partnership in the tax year, and
- (d) the UK-derived amounts are chargeable to tax under the laws of the territory.

(2) In the application of section 608A to a partner for the tax year, no account is to be taken of the UK-derived amounts.

(3) For the purposes of subsection (1)(b), the partnership is “resident” in a territory if (and only if) it is resident there by virtue of section 608D(2) (references there to be a person being read as references to the partnership).”.

11. After section 608MA (inserted by regulation 10) insert—

“Exemption for certain bodies corporate that are transparent in full treaty territory

608MB.—(1) This section applies where—

- (a) a body corporate formed under the laws of a full treaty territory (“the relevant territory”) is not regarded under those laws, for tax purposes, as an entity separate and distinct from its members,
- (b) the body is not resident, at any time in a tax year, in a territory that is not a full treaty territory,
- (c) UK-derived amounts arise to the body in the tax year, and
- (d) each relevant member is resident in the relevant territory throughout the tax year.

(2) In the application of section 608A to the body for the tax year, no account is to be taken of the UK-derived amounts.

(3) The relevant members are to be determined as follows—

- (a) each member of the body is a relevant member (subject to paragraph (b));
- (b) if a body corporate that meets the conditions in subsection (4) would otherwise be a relevant member, that body’s members are relevant members (and that body is not a relevant member);
- (c) paragraph (b) applies in relation to a body that would otherwise be a relevant member by virtue of that paragraph (as well as in relation to a body that would otherwise be a relevant member by virtue of paragraph (a)).

(4) The conditions referred to in subsection (3)(b) are—

- (a) that the body is formed under the laws of the relevant territory;
- (b) that under those laws, the body is not regarded for tax purposes as an entity separate and distinct from its members;
- (c) that the body is not resident, at any time in the tax year, in a territory that is not a full treaty territory.”.

12. After section 608MB (inserted by regulation 11) insert—

“Exemption for double taxation on amounts within same control group

608MC.—(1) This section applies where—

- (a) two persons (A and B) are in the same control group throughout a tax year,
- (b) neither A nor B is, at any time in the tax year, involved in an arrangement the main purpose, or one of the main purposes, of which is to obtain a tax advantage for A, B or any other person,
- (c) income tax is charged under section 608A on a UK-derived amount arising to A in the tax year, and A is not entitled to any relief in respect of the UK-derived amount,

(d) the UK-derived amount is a direct or indirect payment from B to A in respect of rights (“relevant rights”) that—

- (i) constitute any of B’s intangible property, and
- (ii) derive, directly or indirectly, from rights that constitute any of A’s intangible property.

(2) In the application of section 608A to B for the tax year, the amount of any UK-derived amount arising to B in the tax year in respect of B’s relevant rights is to be reduced (but not below nil) by the amount of the UK-derived amount mentioned in subsection (1)(c).

(3) For the purposes of this section where a UK-derived amount is in respect of relevant rights and anything else, the amount is to be regarded as being in respect of relevant rights to such extent as is just and reasonable.

(4) For the meaning of “control group” see section 608S.”.

13. In section 608W(5), for “section” substitute “Chapter”.

14.—(1) Section 608Z is amended as follows.

(2) Insert in the appropriate places—

““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;”;

““tax advantage” has the meaning given by section 608W(5);”.

(3) Insert in the appropriate place—

““tax”: any reference (however expressed) to tax payable or paid under the laws of a territory outside the United Kingdom is a reference to a tax which—

- (a) is charged on income, and
- (b) corresponds to income tax or corporation tax;

and for this purpose tax may correspond to income tax or corporation tax even though it is payable under the laws of a province, state or other part of a country or is levied by or on behalf of a municipality or other local body;”.

Amendment consequential on Schedule 3 to the Finance Act 2019

15. In Part 15 of ITA 2007(5) (deduction of income tax at source), in Chapter 19 (general) after section 981 insert—

“Offshore receipts in respect of intangible property: exception from duties to deduct

981A. Despite the provisions of this Part there is no duty to deduct a sum representing income tax from a payment charged to income tax under Chapter 2A of Part 5 of ITTOIA 2005 (offshore receipts in respect of intangible property).”.

(5) ITA 2007 has the meaning given by section 96 of the Finance Act 2019.

Draft Legislation: This is a draft item of legislation. This draft has since been made as a UK Statutory Instrument: The Income Tax (Trading and Other Income) Act 2005 (Amendments to Chapter 2A of Part 5) Regulations 2019 No. 1452

Date

Name
Name
Two of the Lord Commissioners of Her
Majesty's Treasury

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations amend Chapter 2A of Part 5 of the Income Tax (Trading and Other Income) Act 2005 (c. 5), concerning offshore receipts in respect of intangible property, which was inserted by section 15 of, and Schedule 3 to, the Finance Act 2019 (c. 1) (“FA 2019”).

The amendments stated in regulation 1(2) have retrospective effect for the tax year from 6 April 2019 by virtue of paragraphs 11 and 12 of Schedule 3 to the FA 2019.

Regulation 2 introduces the amendments to Chapter 2A.

Regulation 3 amends section 608D, concerning the meaning of residence, for the purposes of Chapter 2A.

Regulation 4 amends section 608F. The amendments supplement the definition of “UK sales” in respect of resales and online advertising for the purposes of Chapter 2A.

Regulation 5 inserts a new section 608GA, which provides that certain third party sales are disregarded for the purposes of Chapter 2A where the intangible property makes an insignificant contribution to the UK sales.

Regulation 6 omits section 608I, which provided the application of Chapter 2A to certain partnerships.

Regulation 7 inserts a new section 608JA, which provides an exemption from the charge in section 608A where a company is resident in a “specified territory”. A territory may be specified in regulations made by the Commissioners for Her Majesty’s Revenue and Customs and those regulations may have effect from a date before the date on which they are made.

Regulation 8 amends section 608K, concerning an exemption where business is undertaken within a territory of residence.

Regulation 9 amends section 608L, concerning an exemption where foreign tax is at least half of UK tax.

Regulation 10 inserts a new section 608MA, which provides an exemption for income of an opaque partnership that is taxable in a full treaty territory.

Regulation 11 inserts a new section 608MB, which provides an exemption for certain bodies corporate that are transparent in a full treaty territory.

Regulation 12 inserts a new section 608MC, which provides an exemption for double taxation on amounts within the same control group.

Regulation 13 amends section 608W, concerning anti-avoidance.

Regulation 14 amends section 608Z by inserting new definitions of “designer tax provisions”, “tax” and “tax advantage” for the purposes of Chapter 2A.

Regulation 15 makes a consequential amendment to Part 15 of the Income Tax Act 2007 (c. 3) by inserting a new section 981A into that Act.

A Tax Information and Impact Note covering this instrument will be published on the website at <https://www.gov.uk/government/collections/tax-information-and-impact-notes-tiins>.