



Finance Act 2004

2004 CHAPTER 12

PART 3

INCOME TAX, CORPORATION TAX AND CAPITAL GAINS TAX

CHAPTER 7

SAVINGS INCOME: DOUBLE TAXATION ARISING FROM WITHHOLDING TAX

Introductory

107 Introductory

- (1) This Chapter has effect for the purpose of giving relief from double taxation in respect of special withholding tax.
- (2) Such relief is given—
 - (a) by set-off against income tax or capital gains tax;
 - (b) to the extent that it cannot be so set off, by repayment.
- (3) “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 Council Directive 2003/48/ EC of 3rd June 2003 on taxation of savings income in the form of interest payments (“the Savings 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).
- (4) “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 under—
 - (a) the law of the United Kingdom, or

Status: This is the original version (as it was originally enacted).

- (b) that law and the law of that territory.
- (5) For the purposes of Part 18 of the Taxes Act 1988 (double taxation relief)—
- (a) relief from double taxation in respect of special withholding tax is not to be available under Chapters 1 and 2 of that Part; and
 - (b) special withholding tax is not to be regarded as foreign tax for the purposes of Chapter 2 of that Part.
- (6) Sections 113 and 114 also make provision for implementing—
- (a) Article 13(2) of the Savings Directive (provision of certificate to avoid levy of special withholding tax), and
 - (b) any corresponding provision of international arrangements.
- (7) In this Chapter—
- “double taxation arrangements” means arrangements having effect by virtue of section 788 of the Taxes Act 1988 (double taxation relief by agreement with other territories);
 - “international arrangements” has the meaning given by subsection (4);
 - “the Savings Directive” has the meaning given by subsection (3)(a);
 - “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;
 - “special withholding tax” has the meaning given by subsection (3).
- (8) In the application of this Chapter in relation to capital gains tax, expressions used in this Chapter and in the Taxation of Chargeable Gains Act 1992 (c. 12) have the same meaning in this Chapter as in that Act.

Credit etc for special withholding tax

108 Income tax credit etc for special withholding tax

- (1) This section applies where—
- (a) a person is chargeable to income tax for a year of assessment in respect of a payment of savings income or would be so chargeable but for any exemption or relief which has effect in respect of that payment,
 - (b) special withholding tax is levied in respect of the payment, and
 - (c) the person is resident in the United Kingdom for that year of assessment.
- (2) On the making of a claim, income tax (“the deemed tax”) of an amount equal to the amount of the special withholding tax levied is to be treated as having been—
- (a) paid by or on behalf of the person for that year of assessment, and
 - (b) deducted at source for that year of assessment for the purposes of the provisions in subsection (3).

- (3) The provisions are—
- section 7 of the Taxes Management Act 1970 (c. 9) (notice of liability to income tax and capital gains tax);
 - section 8 of that Act (personal return);
 - section 8A of that Act (trustee’s return);
 - section 9 of that Act (returns to include self-assessment);
 - section 59A of that Act (payments on account of income tax);
 - section 59B of that Act (payments of income tax and capital gains tax);
 - section 824(3) of the Taxes Act 1988 (repayment supplements: determination of relevant time).
- (4) Where the amount of the deemed tax exceeds the amount (which may be nil) of income tax for which the person is liable for the year of assessment (before any set-off for the deemed tax), then, to the extent that it would not otherwise be the case,—
- (a) the excess is to be set against any capital gains tax for which he is liable for the year of assessment, and
 - (b) he is entitled to a repayment of income tax in respect of any remaining balance of that excess.
- (5) But subsection (2) does not apply in relation to an amount of special withholding tax levied 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 treated as being so resident under any double taxation arrangements, in the year of assessment in question.

109 Capital gains tax credit etc for special withholding tax

- (1) This section applies where—
- (a) a person makes a disposal of assets in a year of assessment,
 - (b) on the assumption that a chargeable gain were to accrue on the disposal,—
 - (i) it would accrue to the person, and
 - (ii) he would be chargeable to capital gains tax in respect of it,
 - (c) the consideration for the disposal consists of or includes an amount of savings income,
 - (d) special withholding tax is levied in respect of the whole or any part of the consideration for the disposal, and
 - (e) the person is resident in the United Kingdom for that year of assessment.
- (2) For the purposes of subsection (1)(b)(ii), there are to be disregarded—
- (a) any deductions that fall to be made from the total amount referred to in section 2(2) of the Taxation of Chargeable Gains Act 1992 (c. 12) (deductions for allowable losses),
 - (b) section 3 of that Act (annual exempt amount), and
 - (c) section 77(1) of that Act (settlor with interest in settlement: trustees not to be chargeable in certain circumstances).
- (3) On the making of a claim, capital gains tax (“the deemed tax”) of an amount equal to the amount of the special withholding tax levied is to be treated as having been paid—
- (a) by or on behalf of the person for that year of assessment, and

Status: This is the original version (as it was originally enacted).

- (b) for the purposes of section 283(2) of the Taxation of Chargeable Gains Act 1992 (repayment supplements: determination of relevant time), on 31st January next following that year of assessment.
- (4) For the purposes of the application of the following provisions in relation to the person for that year of assessment, references in those provisions to income tax deducted at source for that year of assessment are to be taken to include the amount of the deemed tax—
- section 7 of the Taxes Management Act 1970 (c. 9) (notice of liability to income tax and capital gains tax);
 - section 8 of that Act (personal return);
 - section 8A of that Act (trustee’s return);
 - section 9 of that Act (returns to include self-assessment);
 - section 59B of that Act (payments of income tax and capital gains tax).
- (5) Where the amount of the deemed tax exceeds the amount (which may be nil) of capital gains tax for which the person is liable for the year of assessment (before any set-off for the deemed tax), then, to the extent that it would not otherwise be the case,—
- (a) the excess is to be set against any income tax for which he is liable for the year of assessment, and
 - (b) he is entitled to a repayment of capital gains tax in respect of any remaining balance of that excess.
- (6) But subsection (3) does not apply in relation to an amount of special withholding tax levied 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) he was resident in that territory, or was treated as being so resident under any double taxation arrangements, in the year of assessment in question.
- (7) To the extent that section 108 of this Act applies in relation to an amount of special withholding tax levied (or would so apply on the making of a claim), this section does not apply in relation to that amount.

110 Credit under Part 18 of Taxes Act 1988 to be allowed first

- (1) Any credit for foreign tax that falls to be allowed under Chapters 1 and 2 of Part 18 of the Taxes Act 1988 (double taxation relief) against income tax or capital gains tax is to be so allowed before effect is given to section 108 or 109.
- (2) In this section “foreign tax” has the same meaning as in Chapter 2 of Part 18 of the Taxes Act 1988 (see section 792(1) of that Act).

Computation of income etc

111 Computation of income etc subject to special withholding tax only

- (1) This section applies where—
 - (a) a person is chargeable to income tax in respect of a payment of savings income, or

- (b) a chargeable gain accrues to a person on a disposal by him of assets in circumstances where the consideration for the disposal consists of or includes an amount of savings income,
and the conditions in subsections (2) and (3) are satisfied.
- (2) The first condition is that special withholding tax is levied in respect of—
- the payment of savings income, or
 - the whole or any part of the consideration for the disposal.
- (3) The second condition is that no credit for foreign tax in respect of the savings income or the chargeable gain in question falls to be allowed under Chapters 1 and 2 of Part 18 of the Taxes Act 1988 (double taxation relief) (so that section 795(1) and (2) of that Act, which make similar provision to subsections (4) to (6) of this section, do not apply).
- (4) If income tax is payable by reference to the amount of the savings income received in the United Kingdom, the amount received is to be treated for the purposes of income tax as increased by the amount of special withholding tax levied in respect of it.
- (5) If capital gains tax is payable by reference to the amount of the chargeable gain received in the United Kingdom, the amount received is to be treated for the purposes of capital gains tax as increased by an amount equal to—

$$\text{SWT} \times \frac{\text{GUK}}{\text{G} - \text{SWT}}$$

where—

SWT is the amount of special withholding tax levied in respect of the whole or the part of the consideration for the disposal,

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.

- (6) If neither subsection (4) nor subsection (5) applies, then, in computing—
- the amount of the income or gain in question for the purposes of income tax, or
 - the amount of any chargeable gain for the purposes of capital gains tax,
- no deduction is to be made for special withholding tax (whether in respect of the same or any other income or gain or, as the case may be, chargeable gains).
- (7) In this section references to special withholding tax are to special withholding tax in respect of which a claim has been made under this Chapter.

112 Computation of income etc subject to foreign tax and special withholding tax

- (1) Section 795 of the Taxes Act 1988 (double taxation relief: computation of income subject to foreign tax) is amended as follows.
- (2) In subsection (1) (remittance basis: grossing up) after “increased by” insert “— (a)” and at the end insert—
- “, and
- the amount of any special withholding tax levied in respect of the income.”.

Status: This is the original version (as it was originally enacted).

(3) In subsection (2)(a) (other cases: no deduction for foreign tax) after “foreign tax” insert “or special withholding tax”.

(4) After subsection (4) insert—

“(5) In this section—

- (a) “special withholding tax” has the same meaning as in Chapter 7 of Part 3 of the Finance Act 2004 (see section 107(3) of that Act); and
- (b) references to special withholding tax are to special withholding tax in respect of which a claim has been made under that Chapter.”.

(5) Section 277 of the Taxation of Chargeable Gains Act 1992 (c. 12) (which applies Chapters 1 and 2 of Part 18 of the Taxes Act 1988 in relation to capital gains tax) is amended as follows.

(6) After subsection (1) insert—

“(1A) Subsection (1B) below applies where—

- (a) a chargeable gain accrues to a person on a disposal by him of assets in circumstances where 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 for the disposal.

(1B) In section 795 of the Taxes Act, as applied by this section, for the reference in subsection (1)(b) to the amount of any special withholding tax levied in respect of the income, there shall be substituted a reference to an amount equal to—

$$\text{SWT} \times \frac{\text{GUK}}{\text{G} - \text{SWT}}$$

where—

SWT is the amount of special withholding tax levied in respect of the whole or the part of the consideration for the disposal,

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.

(1C) In subsections (1A) and (1B) above “savings income” and “special withholding tax” have the same meaning as in Chapter 7 of Part 3 of the Finance Act 2004 (see section 107 of that Act); and references to special withholding tax are to special withholding tax in respect of which a claim has been made under that Chapter.”.

Certificates to avoid levy of special withholding tax

113 Issue of certificate

(1) This section has effect for enabling the Inland Revenue 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 his paying agent certificate drawn up by competent authority of his 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, the Inland Revenue are satisfied that the applicant has provided them with—
- (a) the required information, and
 - (b) such documents as they may require to verify that information,
- the Inland Revenue must issue a certificate to the applicant.
- (3) “The required information” means—
- (a) the applicant’s name and address,
 - (b) his National Insurance number or, if he does not have one, his 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 such payments,
 - (d) the name and address of the paying agent who is to make such payments of savings income to, or to secure such payments of savings income for, the applicant, and
 - (e) the period, not exceeding three 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 three years).
- (5) A certificate under this section must be issued no later than the end of the period of two months beginning with the date on which the applicant provides the information and documents required by or under subsection (2).
- (6) In this section and section 114 “the Inland Revenue” means any officer of the Commissioners of Inland Revenue.
- (7) Where 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) shall have effect, in their application in relation to the international arrangements concerned, with such modifications as may be required by virtue of those arrangements.

114 Refusal to issue certificate and appeal against refusal

- (1) This section applies if, on an application for a certificate under section 113, the Inland Revenue are not satisfied that the applicant has provided them with the information and documents required by or under subsection (2) of that section.

Status: This is the original version (as it was originally enacted).

- (2) The Inland Revenue must give written notice (“the refusal notice”) to the applicant of their 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 to the Special Commissioners against the refusal.
- (5) The appeal notice must be given to the Inland Revenue within 30 days of the date of the refusal notice.
- (6) Part 5 of the Taxes Management Act 1970 (c. 9) (appeals and other proceedings) shall apply in relation to an appeal under this section.
- (7) On the appeal, the Special Commissioners may—
 - (a) confirm the refusal notice, or
 - (b) quash it and require the Inland Revenue to issue a certificate.

SupplementaryM

115 Supplementary

- (1) In section 792 of the Taxes Act 1988 (double taxation relief: interpretation of the credit code) in subsection (1), in the definition of “foreign tax”, at the end insert “(other than special withholding tax within the meaning of Chapter 7 of Part 3 of the Finance Act 2004)”.
- (2) In section 811 of the Taxes Act 1988 (deduction for foreign tax where no credit allowable) in subsection (2), at the end insert “and to section 111 of the Finance Act 2004 (computation of income subject to special withholding tax)”.
- (3) In section 278 of the Taxation of Chargeable Gains Act 1992 (c. 12) (allowance for foreign tax) in subsection (1), after “section 277” insert “and to section 111 of the Finance Act 2004 (computation of chargeable gains subject to special withholding tax)”.
- (4) Section 10 of the Exchequer and Audit Departments Act 1866 (c. 39) (gross revenues to be paid to Exchequer) is to be construed as allowing the Commissioners of Inland Revenue to deduct payments for or in respect of amounts repaid in accordance with this Chapter before causing the gross revenues of their department to be paid to the account mentioned in that section.