

TAXATION (INTERNATIONAL AND OTHER PROVISIONS) ACT 2010

EXPLANATORY NOTES

COMMENTARY ON SECTIONS

Part 3: Double taxation relief for special withholding tax

Overview

287. This Part allows DTR for special withholding tax. It is based on sections 107 to 111, 113 and 114 of FA 2004. It has the following structure.

- Sections 135 and 136 are introductory.
- Sections 137 to 141 concern credit etc for special withholding tax.
- Sections 142 and 143 are rules for calculating the income or gain on the remittance basis in cases in which special withholding tax is withheld.
- Sections 144 and 145 concern certificates to avoid the levy of special withholding tax.

Section 135: Relief under this Part: introductory

288. This section introduces this Part and explains how relief under this Part is to be given. It is based on section 107 of FA 2004.

289. *Subsection (1)* refers to sections 144 and 145. Section 144 concerns the issue of certificates by officers of Revenue and Customs to avoid a levy of special withholding tax in a non-UK territory. Section 145 concerns (i) officers' refusal to issue such certificates and (ii) appeals against such refusal.

Section 136: Interpretation of Part

290. This interpretative section is based on section 107 of FA 2004.

Section 137: Income tax credit etc for special withholding tax

291. This section deems an income tax credit to be given for special withholding tax. It is based on section 108 of FA 2004.

Section 138: Amount and application of the deemed tax under section 137

292. This section quantifies the deemed tax under section 137 and specifies how it is to be treated. It is based on section 108 of FA 2004.

Section 139: Capital gains tax credit etc for special withholding tax

293. This section deems a capital gains tax credit to be given for special withholding tax. It is based on section 109 of FA 2004 and paragraph 5 of Schedule 2 to FA 2008.

Section 140: Provisions about the deemed tax under section 139

294. This section quantifies the deemed tax under section 139 and specifies how it is to be treated. It is based on section 109 of FA 2004.

Section 141: Credit under Chapter 2 of Part 2 to be allowed first

295. This section is a priority rule. It is based on section 110 of FA 2004.

Section 142: Conditions for purposes of section 143

296. This section is the first of two sections about special withholding tax and income and chargeable gains charged on the remittance basis. It is based on section 111 of FA 2004.

Section 143: Taking account of special withholding tax in calculating income or gains

297. This section quantifies the deemed income tax credit or, as the case may be, deemed capital gains tax credit for special withholding tax on income or chargeable gains charged on the remittance basis. It is based on section 111 of FA 2004.

Section 144: Issue of certificate

298. This section enables officers of Revenue and Customs to issue certificates to enable income to be paid without the levy (under the law of a non-UK territory) of special withholding tax. It is based on section 113 of FA 2004.

Section 145: Refusal to issue certificate and appeal against refusal

299. This section supplements section 144. It is based on sections 113(6) and 114 of FA 2004.
300. Paragraph 422 of Schedule 1 to the Transfer of Tribunal Functions and Revenue and Customs Appeals Order 2009 (SI 2009/56) substituted “the tribunal” for “the Special Commissioners” in section 114 of FA 2004, but did not expressly define “the tribunal” in that context. *Subsection (8)* gives “the tribunal” its usual meaning in the taxing Acts. See, for example, section 47C of TMA, the definition of “tribunal” in TMA inserted by paragraph 27 of that Schedule.