

SCHEDULES

SCHEDULE 36

AGREEMENT BETWEEN UK AND SWITZERLAND

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—
- (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—

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- (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—
- (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.

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- (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_r).

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.
 - (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.

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- (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,
 - (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

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- (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.