

Key Features of the New Double Tax Agreements between the UK and Guernsey, and the UK and the Isle of Man

24th July 2018

At the start of July 2018 three new Double Tax Agreements (DTAs) were announced between the UK and the Crown Dependencies (Guernsey, Isle of Man, and Jersey). The three DTAs (from each of the islands) are identical, which was a key aim of the UK Government.

Each of the DTAs cover clauses relating to Base Erosion and Profit Shifting ('BEPS') and they comply with new international tax standards, under the OECD's Model Tax Convention.

The new DTAs will come into force once each of the territories has notified the others, in writing, of the completion of the process required under their local law.

Key Tax Related Clauses

- Full interest and royalty tax withholding reliefs will apply in a number of circumstances, including, in relation to individuals, pension schemes, banks and other lenders, companies that are 75% or more beneficially owned (directly or indirectly) by residents of the same jurisdiction, and also listed entities meeting certain requirements.

These tax reliefs are likely to significantly increase the attractiveness of Guernsey and the Isle of Man as jurisdictions from which to lend into the UK. The Double Tax Treaty Passport Scheme will be available to Crown Dependency lenders to make the process of claiming withholding tax relief administratively easier.

Additional Significant Clauses

- A residence tie breaker for individuals, which is clear and straightforward to apply.
- A residence tie breaker for companies to be determined by the mutual agreement of the two tax authorities having regard to where the company is effectively managed, incorporated and where the major decisions are made. This should make it easier to establish where the management and control is taking place and to therefore determine where the tax obligations arise.
- The inclusion of a non-discrimination clause. This will prevent the application of a range of restrictive UK measures, such as the late paid interest rules and the application of transfer pricing for Small or Medium-Sized Enterprises (SMEs). At the same time benefits such as withholding tax exemptions for qualifying private placements and the dividend exemption for SMEs will be enjoyed. This will place Guernsey and the Isle of Man on a much fairer and more equal footing with other jurisdictions.

Collection of Taxes for the UK Exchequer

Whilst the new DTAs confer a number of advantages, the Crown Dependencies will also now be required to assist in the collection of tax for the UK Exchequer.

Principal Purpose Test and Mutual Agreement Procedures

The DTAs include the 'Principal Purpose Test'. This means that the benefits under each DTA may be denied where it is determined that the purpose, or one of the main purposes, of an arrangement was to secure those benefits. This test is derived from BEPS treaty measures.

In addition, 'Mutual Agreement Procedures' will mean that where a taxpayer considers that the actions of one or both of the jurisdictions specified in the DTA gives rise to a tax outcome which is not in accordance with the DTA, the relevant tax authorities will try to resolve the matter through mutual agreement and consultation. Where agreement is not reached, the taxpayer can request that the matter is submitted to arbitration, the outcome of which will be binding on both jurisdictions.

In addition to the DTAs just announced, the commitment to substance, as defined in the 'Council of the European Union – Code of Contact Group (Tax) Report' issued on 8 June 2018 is also likely to have a positive impact for the Crown Dependencies. In relation to international business, proving the existence of substance in the form of employment, investment, and infrastructure, will be key, to establish tax certainty and acceptability.

Additional Information

If you require further information regarding the new DTAs between the UK and the Crown Dependencies, please speak to your usual Dixcart contact or to the Dixcart office in Guernsey: advice.guernsey@dixcart.com or in the Isle of Man: advice.iom@dixcart.com.

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