HMRC - INTM162070 - What HMRC Will Check - Whether There Are Any Obvious Reasons Why The Customer Might Not Be Entitled To Treaty Benefits

Once the Officer has completed their initial checks at INTM162030 and is satisfied that the customer is a resident of the UK for the purpose of the Double Taxation Agreement (DTA) in question (see INTM162040), they should then consider whether, to the best of their knowledge, the customer fulfils the criteria of the particular article under which they wish to make a claim.

Whilst HMRC will not certify that a person fulfils the criteria of a particular income article, the Officer will still be expected to consider whether there are any obvious reasons for believing that the customer might not be entitled to benefits under the DTA.

As such, the Officer will need to check the criteria of the particular income article under which the customer intends to claim relief.

In relation to claims to relief from foreign tax on dividends, interest and royalties, the main criteria which an Officer will need to consider are whether the customer is the beneficial owner of (see INTM162080) and/or is subject to tax (see INTM162090) on the income in question.

The Officer will need to check the particular income article of the DTA to see what conditions need to be fulfilled. Copies or descriptions of each DTA can be found in theTax treaties in force (HMRC website) site or in the country specific pages at DT2140 (HMRC website) (external users can find the guidance at http://www.hmrc.gov.uk/taxtreaties/in-force/index.htm and http://www.hmrc.gov.uk/manuals/dtmanual/DT2140.htm).

The Officer should use the information provided with the initial request (see INTM162020 and, in particular, the answers in response to questions 4(a) and (b), and any other information available to them (for example, the accounts, tax return and electronic records) to decide whether there are any obvious reasons for believing that the customer may not be entitled to benefits.

Officers will need to take a risk assessment approach when dealing with a request for a Certificate of Residence (‘CoR’). For example, where a Customer Compliance Manager has discussed the question of CoRs with the customer and is satisfied that they have sufficient internal governance and controls to ensure requests for CoRs are only made when they fulfil all the criteria for relief, the Officer may be able to provide the CoR without a detailed review.

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As stated at INTM162010, customers should note that if HMRC does provide them with a CoR, the CoR will not guarantee that they will be able to claim benefits under the relevant DTA. The CoR will not confirm whether HMRC believe all of the relevant conditions have been fulfilled as that will be a matter for the other state to determine.

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