HMRC - INTM162090 - Meaning Of Subject To Tax

Some Double Taxation Agreements (DTAs) provide that a resident of the UK will be entitled to relief from the foreign tax on certain types of income (such as dividends, interest and royalties) only if the income is subject to tax in the UK. This may be instead of or in addition to the beneficial ownership test referred to at INTM162080.

It should be noted that the term subject to tax is different from being ‘liable to tax’. ‘Liable to tax’ means that the customer only needs to be within the general scope of tax in the UK, as discussed at INTM162040. On the other hand, ‘subject to tax’ means that the relevant income has to be actually taxable and the customer cannot be exempt from tax on that income.

Examples of where the income is regarded as ‘subject to tax’ but on which no or little tax is actually paid may include the following:

The customer does not pay any UK tax because their income is covered by personal allowances and reliefs.

The foreign income arises in a penultimate year and no penultimate year adjustment is made, so the income falls out of assessment in the UK.

The income is wholly covered by capital allowances so that no UK tax is payable.

The customer is entitled to a deduction under ITEPA03/S341 or S376.

The remittance basis applies: the person is subject to tax only on the sums remitted.

A person is not regarded as subject to tax in the UK if the income in question is exempted from UK tax by an extra-statutory concession or is statutorily exempt from tax, for example the income is that of a charity (CTA10/S478 onwards).

Where a company requests a Certificate of Residence (CoR) to support a claim for benefits under an article for dividends which includes a subject to tax test, the Officer will need to check whether the company has made an election under CTA09/931R(2) in respect of that dividend. As discussed at INTM162020, that is because UK companies are no longer subject to tax on most overseas dividends unless they make an election under S931R(2). If no such election has been made and the dividend is exempt, a CoR cannot be issued in these circumstances.

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