The Tax Treaty Network of the United Kingdom

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The United Kingdom has 122 bilateral, comprehensive double taxation conventions in force. This remains the largest number of tax treaties in force of any one country around the world. The United Kingdom may no longer be the world leader in manufacturing cars, or in playing football, or even, possibly, in playing cricket – however, we are still the leading country in the world in negotiating double taxation conventions.

To a certain extent, this is a rather surprising position for the UK to be in. The reason it is surprising is that the UK did not begin negotiating bilateral double taxation conventions until the very closing days of the Second World War. Unlike other European countries, for example, which began negotiating tax treaties as early as the 1890s, in the period prior to the Second World War the position of the United Kingdom government was that the avoidance of double taxation could be achieved within the British Empire by provisions for "Dominion Tax Relief", and that with the rest of the, non-British-Empire world, there was no policy reason to seek to avoid double taxation. With the single exception of a rather special agreement with Ireland in the 1930s, the United Kingdom had no comprehensive tax treaties prior to 1945.

All that changed near the end of the Second World War with the conclusion of the UK's first tax treaty with the United States. However, having become a new convert to the concept of bilateral treaties, the UK began to negotiate with a vengeance. At the time, "negotiation" was made significantly easier by the fact that many of the treaty partners were other parts of the Empire, so that the negotiations effectively took place between the British Government of the United Kingdom and the British Government of the particular Colonial

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Territory in question. A small number of these "Colonial" double taxation arrangements are still in force – for example, with Antigua dating from 1947. Our agreements with Jersey, Guernsey and the Isle of Man, for example, still date back to the 1950s and reflect this pre-OECD pattern that was in use at the time.

The United Kingdom has been actively involved in the work of the OECD on tax treaties since that work began in the second half of the 1950s. It is fair to say that the United Kingdom is a very loyal supporter of the OECD work, and generally adopts any changes that are made to the OECD Model in our own treaty negotiations. For much of the last decade, the Chair of Working Party 1 of the OECD – which focuses on updating the OECD Model – has been a British official.

The United Kingdom has also been involved actively in the work of the United Nations, and many of the UK's treaties with developing countries reflect variations that are part of the UN Model, where those changes are requested by the other negotiating State.

The United Kingdom does not have its own model convention, unlike countries like the United States. It is understood that the UK tax treaty negotiating team maintain a "working model" which contains all the various different texts that have been agreed to by the United Kingdom for different articles of the UK's treaties. This makes it very easy for treaty negotiators who can see very quickly whether or not the UK has ever accepted a particular form of words put forward by the other negotiating party.

The large number of tax treaties concluded by the United Kingdom reflects, in part, the high involvement of British companies in international trade, and the importance given to removing barriers to trade and investment through the conclusion of tax treaties. It also reflects a very active treaty negotiating team, which is involved both in negotiating new treaties and also in the ongoing task of updating existing treaties. At the time of writing, there are two new treaties pending to go in force, both of them with countries with which the UK has never had a tax treaty before (Albania and Panama). There are also a large number of protocols amending existing treaties that are waiting to go into force.

In general, the United Kingdom follows the OECD Model, with some variants based on the UN Model where requested by the other State. However, there are a few rather particular elements of UK treaty practice that depart from these models.

The UK does not normally include a limitation on benefit article in its tax treaties, unless requested to do so by the other State (the United States, for example). However, the UK regularly includes its own anti-avoidance provision in the dividends, interest and royalties article in the form of a paragraph denying the benefits of the article if the main purpose, or one of the main purposes behind the acquisition of the shares, or the loan, for example, is to take advantage of the beneficial treatment under the treaty. Another special provision, partly an anti-avoidance provision, deals with the UK rules relating to non-domiciled individuals: persons who enjoy the benefit of the remittance basis because of their non-domiciled status generally only benefit from the reductions and exemptions of tax in the other country to the extent that the income or gains are remitted to the UK and are taxed there.

Recent UK treaties have generally contained special provisions in the dividends article dealing with distributions from Real Estate Investment Trusts ("REITs"). As these are treated as transparent for tax purposes, so that the recipient of a distribution is treated as if they had received income from land, the distributions are subject to a withholding tax, whilst normal dividends from the UK have no withholding tax. Recent treaties have also frequently made specific provision for pension funds, to ensure that these funds enjoy the benefit of reduced tax on investment income, as well as in some cases making specific provision for the deduction of contributions to pension schemes.

On the vexed issue of whether or not to follow the new article 7 of the OECD Model and the "Authorised OECD Approach", the UK is again a loyal follower of the Organisation. A few of the UK's recent treaties have adopted the new

version of Article 7, where the UK and the other treaty partner both agree with that approach. Of course, the majority of countries do not accept this new approach, and it is unlikely that many of the UK treaties are going to be changed to include this provision.

Of course, each country has certain parts of a tax treaty that reflect its own particular definitions or tax system. The descriptions of the territory of the country, or the description of the country's taxes covered, are matters put forward by each country. Equally, the provisions for relief of double taxation reflect the practice of each country. This has become more complicated in recent years in the case of the United Kingdom since the UK has moved from a country generally adopting the credit system of relief to one that provides for exemption relief in the case of foreign dividends and, more recently, the profits of foreign permanent establishments. Since not all dividends received from foreign companies enjoy the exemption, and the regime for exemption of the profits of permanent establishments is an elective regime, the article in the recent tax treaties dealing with the elimination of double taxation has become more complicated.

So far, attention has focused on the UK's network of bilateral, comprehensive double taxation conventions which deal with all forms of income. Quite aside from those comprehensive conventions, the UK also has thirteen air transport agreements, generally with those countries with which it has not yet proved possible to conclude a comprehensive treaty. For example, the UK would very much like to conclude a treaty on a comprehensive basis with Brazil, but the policy differences are too far apart. Nevertheless, there is an air transport agreement with Brazil.

On the administrative assistance side, the United Kingdom has concluded twenty-one Tax Information Exchange Agreements ("TIEAs"), mainly with offshore financial centres with which there is little prospect that the UK would wish to conclude a fully comprehensive tax treaty. In addition, the UK relatively recently joined the OECD/Council of Europe Administrative Assistance Convention which provides for administrative assistance on a multilateral basis. The only other multilateral convention of the United Kingdom is the EU Arbitration Convention, which provides for the settlement of transfer pricing disputes within Europe by reference to a binding arbitration procedure.

Mention should be made at this point of the fact that, within the European Union, certain aspects of cross-border taxation are now governed by European Directives, rather than by provisions of bilateral tax treaties. For example, the Parent-Subsidiary Directive, and the Royalties and Interest Directive deal with cross-border payments of dividends, interest and royalties between related companies. At one time it appeared that the network of bilateral treaties within Europe might gradually be replaced by European Directives. While that is theoretically still possible, in practice it has proved more difficult to get consensus within Europe and replace bilateral treaties with European legislation. More generally, of course, in enacting its domestic tax legislation and in concluding and implementing double taxation conventions, the United Kingdom has to respect the requirements of European law.

Finally, as part of this survey of the UK tax treaty network, brief mention should be made that the UK has a small number of estate duty treaties, some of them dating back to the 1950s. There are only ten of these estate duty treaties, and there seems to be little impetus to extend this network much further. Some of these earlier treaties are now, in a sense, "one-sided" in that the other country no longer imposes estate duty. This is true, for example, of the estate duty treaty with India dating from the 1950s which remains in force, and provides some benefits for Indian-domiciled individuals, even though India abolished estate duty many years ago.

As a leader in the world in tax treaties, there is very little likelihood that the United Kingdom is going to abandon its current policy of an extensive network of bilateral income tax treaties. The UK remains firmly committed to the OECD and UN work in this area, and to the use of bilateral tax treaties as the primary instrument for removing barriers to trade and investment which would be created by unrelieved double taxation.