SCHEDULES

SCHEDULE 36

AGREEMENT BETWEEN UK AND SWITZERLAND

Modifications etc. (not altering text)

C1 Sch. 36 applied (with modifications) (19.4.2013) by The Small Charitable Donations Regulations 2013 (S.I. 2013/938), regs. 1, **6**

PART 5

GENERAL PROVISIONS

Information exchange

25 No obligation of secrecy (whether imposed by statute or otherwise) prevents HMRC from disclosing information pursuant to a request made by virtue of Article 36 (reciprocity measures of the United Kingdom).

Amounts recoverable as if they were VAT

26 (1) Part 2 of this Schedule applies to amounts otherwise recoverable under paragraph 5(3) of Schedule 11 to VATA 1994 as a debt due to the Crown (amounts shown on invoices as VAT etc) in the same way as it applies to VAT.

(2) But in the application of Part 2 to such amounts—

(a) a reference to the value of a supply on which VAT is charged is a reference to the value of the supply shown in the invoice mentioned in paragraph 5(2) of that Schedule,

(b) "the taxable event" takes place when the invoice is issued,

(c) the value of the supply shown in the invoice is "untaxed" if the amount otherwise recoverable under paragraph 5(3) of that Schedule has not been recovered, and

(d) "ceasing to be liable" to tax on the value of that supply means that the amount otherwise recoverable is no longer recoverable.

[F1 Transfers to HMRC under Agreement

Textual Amendments

F1 Sch. 36 paras. 26A, 26B and cross-heading inserted (retrospective to 1.1.2013) by Finance Act 2013 (c. 29), **s. 221(1)**(2)

26A (1) Income or chargeable gains of a person are to be treated as not remitted to the United Kingdom if conditions A to D are met.

(2) Condition A is that (but for sub-paragraph (1)) the income or gains would be regarded as remitted to the United Kingdom by virtue of the bringing of money to the United Kingdom.

(3) Condition B is that the money is brought to the United Kingdom pursuant to a transfer made to HMRC in accordance with the Agreement.

(4) Condition C (which applies only if the money brought to the United Kingdom is a sum levied under Article 19(2)(b)) is that the sum was levied within the period of 45 days beginning with the day on which the amount derived from the income or gain in question was remitted as mentioned in Article 19(2)(b).

(5) Condition D is that the transfer is made in relation to a tax year in which section 809B, 809D or 809E of ITA 2007 (application of remittance basis) applies to the person.

(6) Sub-paragraph (1) does not apply in relation to money brought to the United Kingdom if or to the extent that—

(a) paragraph 18(2), or section 138(4)(a) or 140(5)(a) of TIOPA 2010, is applied in relation to it (set-off against other tax liabilities), or

(b) it is repaid or refunded by HMRC.**]**

26B (1) This paragraph applies if—

(a) but for paragraph 26A(1), income or chargeable gains would have been regarded as remitted to the United Kingdom by virtue of the bringing of money to the United Kingdom, and

(b) section 809Q of ITA 2007 (transfers from mixed funds) would have applied in determining the amount that would have been so remitted.

(2) The bringing of the money to the United Kingdom counts as an offshore transfer for the purposes of section 809R(4) of ITA 2007 (composition of mixed fund).

General interpretation

27 (1) In this Schedule—

"ancillary charge" means any interest, penalty, surcharge or other ancillary charge;

"assessment", in relation to a tax, includes a determination and also includes an amended assessment or determination (and "assess" is to be read accordingly);

"chargeable gain" means a gain that is a chargeable gain for the purposes of TCGA 1992;

"chargeable transfer" has the meaning given in section 2 of IHTA 1984;

"EUSA" means the agreement dated 26 October 2004 between the European Community and the Swiss Confederation providing for measures equivalent to those laid down in Council Directive 2003/48/EC on taxation on savings income in the form of interest payments;

"HMRC" means Her Majesty's Revenue and Customs;

"qualifying amount" is defined in paragraph 4;

"remitted to the United Kingdom" means remitted to the United Kingdom within the meaning of Chapter A1 of Part 14 of ITA 2007;

"the value transferred", in relation to a chargeable transfer, has the meaning given in section 3 of IHTA 1984;

"taxable amount" is defined in paragraph 2;

"VAT" means value added tax charged in accordance with VATA 1994.

(2) An expression used in relation to a tax has the same meaning as in enactments relating to that tax.

(3) A reference to a person being "liable" includes being liable jointly with others.

(4) A reference to the most beneficial outcome for P is a reference to the most beneficial outcome for P with respect to P's liability to tax.

(5) A reference to the tax due "taking account of" a qualifying amount is—

(a) if the amount is an amount of income or a chargeable gain, a reference to the income tax or capital gains tax due for the tax year in which the amount is required to be brought into account (calculated with that amount brought into account),

(b) if the amount is the value of property forming part of the value transferred by a chargeable transfer, a reference to the inheritance tax due on the value transferred by the chargeable transfer (calculated with that amount brought into account),

(c) if the amount is the value of a supply on which VAT is charged, a reference to the VAT payable for the prescribed accounting period in which output tax on the supply is required to be brought into account (calculated with that output tax brought into account), and

(d) if the amount is the value of a supply to which Part 2 applies by virtue of paragraph 26, a reference to the amount otherwise recoverable under paragraph 5(3) of Schedule 11 to VATA 1994 in respect of that supply.

Status:
Point in time view as at 18/11/2015.

Changes to legislation:
There are currently no known outstanding effects for the Finance Act 2012, PART 5.