GUIDANCE ON
TAX ON FOREIGN INCOME

Every reasonable effort has been made to ensure that the information provided in this Guide is reasonably comprehensive, accurate and up to date as at the date stated in the Guide. However, the information provided is necessarily general and should not be relied on as specific legal or professional advice. If you have any specific queries, contact our advisers or a suitably qualified lawyer or professional. If you think you may have noticed any error or omission, please let us know.

CONTENTS

1: PLEASE NOTE

1(a) tax legislation (in all countries) is liable to change on a regular basis, and companies sometimes amend what they require when paying authors in a different jurisdiction so you are strongly advised to check on a case by case basis. This is intended as general guidance and to give you a better idea of what is likely to be needed and why.

1(b) If your contract is with a UK publisher who has licensed rights to a foreign publisher, it is your UK publisher which is responsible for avoiding double taxation, and it should simply send you your share of foreign monies in the usual way.

This advice is for when you as an author/your agent are dealing directly with a foreign publisher.

2: TAX ON FOREIGN INCOME

2(a) What is double-tax?

When receiving payments from abroad, relief from double taxation (finding that tax is deducted in both the originating country and the UK) is usually provided through a Double-Taxation Agreement (DTA). The UK has DTAs with more than 100 countries, a list of which can be found at www.gov.uk/tax-foreign-income (go to the link and search for 'tax treaties').

DTAs provide that, once certain formalities have been fulfilled, tax is either paid in one country only (i.e. the author's country of residence) or, if tax is paid in both countries, that credit is given against the recipient's tax bill for the amount which has been deducted overseas (known as 'tax credit relief').

Precise arrangements differ from country to country. In some (e.g. the USA) royalties will be paid gross once the necessary formalities have been completed. In others (e.g. Spain and Italy) a reduced amount of tax may still be withheld. It is important to ensure that any sums received from overseas, and any tax withheld, is included in your annual tax return with all supporting documentation being retained for possible inspection.

2(b): What if there is no Double-Taxation Agreement in place?

If there is no DTA in place, UK residents are given so-called 'unilateral relief' against overseas taxation which operates in much the same way as tax credit relief under a DTA by setting off against UK tax the sums withheld overseas. Unilateral relief will not however be allowed where relief could be claimed under a DTA, so it is very important to check whether a DTA is in place and, if so, to complete the formalities.

2(c): What formalities are required?

These vary from country to country but usually involve the completion of a certificate to confirm that the recipient is a UK resident, is subject to UK tax, and has no permanent establishment in the source country. You will usually also be required to have the form certified by HMRC. (Many members have reported to us that getting the form certified can take an extremely long time. This is doubly frustrating for authors because many foreign publishers will not release payments until they have received the required paperwork.)

2(d): One-off payments from abroad

If you are expecting only modest and/or a one-off payment from abroad, e.g. for a speaking engagement (rather than an anticipated robust royalty stream over a number of years), you will want to weigh up the cost and hassle of completing the relevant tax forms (especially with payments from the USA if you do not have an ITIN but the payer insists on it - see point 3(b)(ii)). Remember also that if the payer defaults, pursuing outstanding payment from a foreign country may well be unrealistic if it's indeed even possible. In some cases you might want to consider e.g. the host organisation paying for high-grade travel, accommodation and expenses in lieu of a small fee.

As an aside: we are told that the best way to avoid incurring bank charges (which can eat up a large part of a small payment) is for the payment to be made via PayPal.

3: US DOUBLE-TAX FORMALITIES

3(a): Form W-8BEN

If you are to receive income from the US gross (i.e. without deduction of US income tax - currently at 30%) you will need to complete form W-8BEN. In addition, it seems that many US publishers will not release monies at all until they have received the completed form. If you operate as a limited company, you need form W-8BEN-E and tick 'corporation'. If you are not the author but their heir (you are acting as their 'estate'), you again need form W8-BEN-E. If you are acting in an agent capacity, you need form W-81MY. These forms, together with detailed instructions, can be downloaded from the IRS website, www.irs.gov, or can be obtained from the SoA. They are largely self-explanatory. We understand that if you are applying from the UK you do not need to put any answer to Q10 on form W-8BEN. And take seriously the requirement that you complete the forms 'in wet ink'.

3(b)(i): US-required tax ID number - an 'ITIN'

In order to complete form W-8BEN, you need to supply a US-acceptable tax ID number.

The IRS guidance seems to suggest that for all US double-tax applications, British authors can simply use their UTR (Unique Tax payer Reference number). However, the guidance is not clear on this point and it seems that the majority (other than Amazon – see next paragraph) still insist that 'acceptable ID' must be a US-issued ITIN.

We understand that if you are publishing direct with Amazon, Amazon will accept your UK UTR as acceptable ID. The Amazon site gives detailed guidance on the paperwork it needs.

3(b)(ii): is it worth obtaining an ITIN?

Be aware that if an ITIN has not been actively used within the previous three years, it will lapse.

If you do not already have an ITIN, and especially if the total payments to you are likely to be modest, the magnitude and cost of the formalities may affect whether or not you feel that a US-originated commission is worth accepting. See also point 2(d) above.

3(b)(iii): obtaining an ITIN

Obtaining an ITIN is not fun. You need to complete IRS form W-7, giving your full name, postal address, date of birth, and country of birth. In box 6B you should enter your foreign (non-US) tax ID number - in most cases this will be your UTR (Unique Taxpayer Reference number). This form, and instructions, can be downloaded from the IRS website, www.irs.gov.

You also need to supply a certified copy of your passport. This certified copy has to be produced and seal-stamped by the relevant issuing agency. Notarised copies are not acceptable. You also need to supply a letter on the publisher's letterhead stating that the ITIN is needed for payment purposes.

Form W-7, the certified copy of your passport and the publisher's statement can then be posted to the 'Internal Revenue Service, ITIN Operation, PO Box 149342. Austin, TX 78741-9342'. However, we understand that the IRS will automatically reject an application if it thinks that even just one box has not been completed properly (without giving suggestions as to how any corrections might be dealt with). The safer method is to go via an 'acceptance agent'. Acceptance agents are authorised to submit ITIN applications direct to the IRS.

The IRS has a list of UK-based acceptance agencies (see www.irs.gov/Individuals/Acceptance-Agents-United-Kingdom) which, as they are on the IRS list, will presumably have gone through its vetting procedure so we assume it should be safe to use them. But the fee charged can be high. The phone numbers are given on the IRS website and we would advise that you phone obtain some fee quotes for this work. Members are understandably likely to be very wary of sending their passport to the US, but accountants HW Fisher recommend an American acceptance agency: Ross & Moncure Inc (726 North Washington Street, Alexandria, VA 22314, USA, www.rossmoncure.com) as helpful and reasonably priced. We would appreciate any recommendations from members who have had good experiences with UK acceptance agents.

4: ADDITIONAL GUIDANCE

The following additional guidance is given by Tim Walford-Fitzgerald of H W Fisher & Company, Chartered Accountants specialising in advising authors on tax and financial matters.

As mentioned above, DTAs enable you to claim overseas tax suffered as a deduction from the UK tax liability on the same profits. This limits the overall tax liability to the higher of the two countries' rates, minimising the burden. However, in order to get relief against tax there are some conditions that need to be met:

The first is that the deduction has to be equivalent to income tax. Other countries may impose all sorts of levies and surcharges which feel like tax in the way they hit your pocket, but aren't allowed as tax credits. These can usually still be deducted from profits as expenses though, giving some relief. Obtaining certificates of tax deducted is vital as evidence not only of the amounts paid but also the nature of the deductions. If you use a company or partnership, always ensure that the certificates are issued in the correct name.

The other condition is that all reasonable steps have to be taken to minimise the overseas tax suffered. This includes making a claim under any DTA the UK has with the other country. The ease of making such claims depends on which other country you are asking to reduce their tax take. The US W-8BEN is one of the easier forms, although American words do not necessarily retain their English meaning.

Treaty claim forms are often available online and Certificates of UK Residence can be requested easily through HMRC's website: https://online.hmrc.gov.uk/shortforms/form/PTCertOfRes

It is almost always easier to deal with exemptions and reduced rates of tax in advance of any payment being made. Refunds of excessive deductions will be slow and difficult to obtain; often taking more time and trouble than the amounts justify.

The final thing to remember is that the tax credit is only against the profits earned in that other country. If the overseas tax exceeds the UK tax on the same profits, then the excess is lost. It cannot be repaid or used against your UK liability on UK income or that from any further country.

Tim Walford-Fitzgerald

Agented authors can, of course, expect help from their agents, and the Society's staff will be happy to assist with members' queries.

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