

United Kingdom to Repeal Domestic Provisions Relating to Interest and Royalties Directive

During the 2021 Budget the British government announced the repeal of domestic legislation that permitted gross payments of annual interest and royalties to connected companies within the European Union (EU). With effect as from 1 June 2021, such payments will be subject to withholding tax (WHT), save where a relevant double tax treaty applies.

The rules being repealed are those that replicated the effect of the EU Interest and Royalties Directive. The Directive ceased to apply in the United Kingdom upon the expiry of the Brexit transition period (31 December 2020).

Payments of annual interest

The British government also announced the revocation of all related "exemption notices". These are notices that were issued to qualifying companies entitling them to pay interest (to connected companies within the EU) without deduction of tax. The revocation applies even where the exemption notice has an expiry date beyond 1 June 2021.

Where the recipient of the interest had previously applied for exemption, and an exemption notice was granted to the payer of the interest, the recipient may apply to HMRC for treaty relief, if applicable.

Payments of royalties

Also repealed is the domestic law provision under which companies may pay royalties gross, where the recipient is a qualifying connected company within the EU. Under the repealed provision, payment may be made gross if the paying company has a reasonable belief that the payment is exempt.

Notwithstanding the above, relief is still available if the payment qualifies under a double tax treaty (DTT). The payer may make the payment at the treaty rate if they reasonably believe that the beneficial owner is entitled to relief under the DTT. In this case, there is no need for advance HMRC clearance.

Please feel free to contact us if this affects your business.