Offshore receipts in respect of intangible property: Clause 15

International Tax | Large Corporate

01 January 2019

Tackling Base Erosion and Profit Shifting is an important objective for government, and one supported by CIOT. However the legislation introducing new rules to tax income from intangible property held in low-tax jurisdictions is disproportionate, flawed and too broadly drawn. CIOT is engaging with HMT/HMRC in relation to the significant work that is required to ensure that this legislation reflects the stated policy aims.

In Budget 2018 the Chancellor announced a revised proposal to tax income from intangible property held in low-tax jurisdictions to the extent that it is referable to UK sales. This measure – to tax offshore receipts in respect of intangible property – replaced the previous proposal of a Royalties Withholding Tax.

The legislation to give effect to these new rules is included in clause 15 and Schedule 3 of the Finance Bill.

This measure is intended to counter base erosion and profit shifting (BEPS) and this is an aim that the CIOT supports as BEPS undermines trust in the tax system as a whole. However, the CIOT has been critical of these measures, both in meetings with HMRC and HMT and also in a briefing submitted to MPs to assist them in their debate on this measure – which was one considered by the Committee of the Whole House.

One of the key objectives of the CIOT is to work for a tax system which translates policy intentions into law accurately and effectively, without unintended consequences. The tax system should also aim to provide clarity and certainty, so taxpayers can understand how much tax they should be paying and why. It is also important to balance compliance burdens and bureaucracy against the tax raised for the Exchequer.

In our view these proposals fall some way short of achieving these objectives. The legislation published in the Finance Bill is disproportionate, flawed and too broadly drawn. We would have preferred to see the legislation withdrawn from the Finance Bill for further consultation, but that did not happen.

Instead, the legislation in the Finance Bill contains a power for the Treasury to amend these new rules, which will be a new ITTOIA 2005 Chapter 2A, in any way and at any time before 31 December 2019.

HMT and HMRC recognise that the legislation as currently drafted goes beyond the stated policy aims. Specifically, when the CIOT met with HMT and HMRC to discuss these proposals earlier this month, it was recognised by HMRC and HMT that the result for taxpayers applying the legislation will not necessarily provide the same outcome as the examples in the Summary of Responses suggest (the Summary of Responses was published on 29 October 2018 alongside the Budget and can be viewed on GOV.UK). In effect, we have said that there is too much of a 'gap' between the draft legislation in the Finance Bill and the scope of the policy as set out in the Summary of Responses. The policy intent needs to be more clearly defined and then correctly reflected in the legislation.

Further details of our concerns are set out in our briefing which can be viewed on the CIOT website.

We are continuing our engagement with HMRC and HMT and are exploring with them, as a priority, how the anti-avoidance provision should be amended to ensure it achieves the government's intention that this measure should encourage a change of behaviour by multinational companies to the effect that they pay a higher amount of tax on receipts from their intangible property and unwind the objectionable structures. In our view, in the form in the Finance Bill, the anti-avoidance provisions potentially discourage the behaviour the government wants to take place.