Offshore receipts in respect of intangible property: draft regulations and guidance

International Tax | Large Corporate

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The CIOT has commented on draft regulations and guidance published by HMRC in relation to the rules taxing Offshore Receipts in respect of Intangible Property.

The CIOT has commented on the draft regulations (and explanatory note) which will make amendments to the rules taxing Offshore Receipts in respect of Intangible Property (ORIP) now contained in a new Chapter 2A of ITTOIA 2005, having been introduced by Finance Act 2019, together with the draft guidance setting out HMRC's interpretation of the new ORIP rules and how these will be applied in practice, which were both published on 24 May 2019.

In our view, the ORIP rules amended as envisaged by the draft regulations would continue to fall some way short of achieving CIOT's objectives for a tax system which translates policy intentions into law accurately and effectively, without unintended consequences and which provides clarity and certainty, so taxpayers can understand how much tax they should be paying and why.

The CIOT recognises that this measure is intended to counter base erosion and profit shifting (BEPS) by multinational groups and this is an aim that the CIOT supports. We have consistently supported the overall aims of the G20/OECD BEPS Project, as BEPS undermines trust in the tax system as a whole. However, although the policy intention is that the ORIP rules should be narrow in scope, it is likely that a significant number of groups will have to consider the legislation and undertake work to ensure that they are not within charge, and/or be left with considerable uncertainty where the law remains unclear. This is not a satisfactory position.

We said in our comments that taxpayers will face considerable difficulties when applying the ORIP rules in practice. In our view, not only do these rules impose an unacceptable compliance burden on taxpayers, in that they may not be in a position to be able to self-assess under the rules with any degree of confidence or certainty; but the rules will also operate unfairly as between taxpayers.

We urged the government to consider further changes to the legislation through the regulations and, failing that, consider what additional assistance can be given to taxpayers through the guidance to address some of these concerns.

Other areas of concern discussed in our response include:

- the anti-avoidance provision;
- the uncertainty around the meaning of ‘UK derived amount’ and treatment of capital sums;
- practicalities around re-sales and third party sales; and
- the exemption where company resident in specified territory.

Our full response can be read on the CIOT website.