Personal tax offshore anti-avoidance legislation: CIOT response

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In the October 2024 Budget, HMRC published a call for evidence concerning offshore anti-avoidance legislation, in particular the settlements and the transfer of assets abroad rules. The CIOT has responded to this.

The CIOT responded to the call for evidence on offshore anti-avoidance legislation by suggesting that an entirely fresh anti-avoidance code be drawn up. The settlements legislation (contained within ITTOIA 2005 ss 619-648) and the transfer of assets abroad rules (ITA 2007 ss 714-751) date from the 1930s and are out of date for a modern and mobile global economy. Besides these rules, there are regulations relating to offshore income gains (OIGs), as well as provisions within TCGA 1992 for offshore close companies (s 3) and offshore trusts (ss 86 and 87).

This patchwork of rules has caused a great deal of confusion and uncertainty over the years. Rather than further amendments or additions adding to the confusion, the overhaul of the tax rules for non-doms signals the ideal moment for a similar

overhaul of the offshore anti-avoidance rules.

Whilst this was a stage 1 consultation, seeking options and clarifying objectives rather than examining defined proposals, the CIOT's response was a proactive one and included a proposed illustrative and all-encompassing code which could be used as a model to replace the existing legislation.

In this code, we suggested that overseas entities would be categorised into: nomineeship, trusts and limited companies. Deciding the category of an entity could be determined by common law and based on particular attributes; however, we said that the inclusion of statutory guidelines to assist with this should form part of wider deliberations. A single set of rules would be put into place to determine income and capital gains as they arise within trusts and companies, along with another set of rules concerning benefits received from trusts. A single motive defence would be available for companies only, given the genuine commercial purposes for which most exist.

We also suggested that the new code included an optional clearance procedure for all taxpayers, who could opt to pay the reasonable time costs incurred by HMRC in providing the clearance. In our view, many taxpayers would be prepared to incur this expense to obtain a degree of certainty in good time. We recognised that HMRC would require additional, focused resources to provide this. Terminology should also be such that common definitions are used wherever possible and modernised, with 'offshore' being replaced with 'international' for example. Overall, the whole focus of the new code should be on proportionate and effective tax collection rather than merely penalising 'anti-avoidance'.

The CIOT's response to the consultation, including a proposed draft code, can be found here: www.tax.org.uk/ref1409

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