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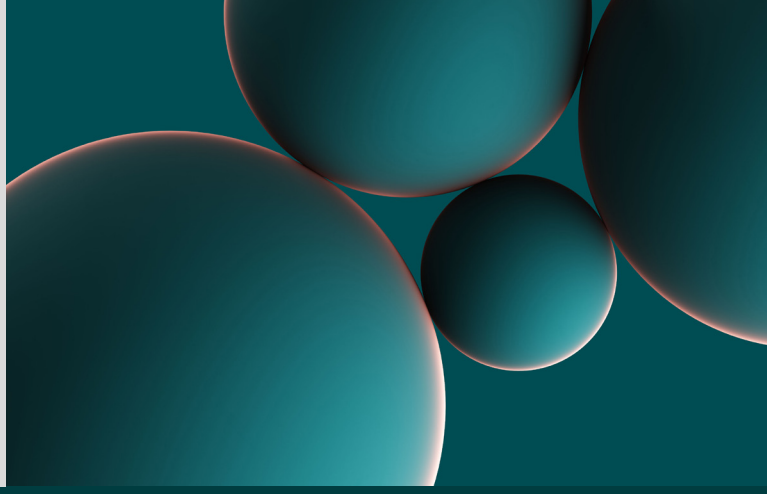

February 2025

Personal Tax: Offshore Anti-Avoidance legislation

Question 1: What could be done to simplify this legislation?

We would firstly note that we think taxpayers having certainty regarding how the rules work is more important than simplicity. It is recognised that taxpayers with more complicated tax affairs will have to deal with more complicated tax rules. In addition, we consider that the rules do generally work well from an anti-avoidance perspective and have stood test of time. Any changes should continue to be aimed at catching those seeking to avoid tax, and not those making decisions for commercial, or other non-tax reasons.

One key way in which to simplify the rules would be to have more alignment between the income tax and capital gains tax anti-avoidance rules (please see our answers to question 2). We would also welcome clearer tests, more akin to the corporation tax CFC rules which provide more certainty. For example, concepts such as 'associated operations' in the TOAA rules are poorly defined and lead to uncertainty.

With regards to reporting under the anti-avoidance regimes, the current system is significantly floored. There is currently a requirement to report income which is subject to the TOAA motive defence; however, often where the motive defence applies, it is very difficult to quantify the income (for example, because the person abroad is a trading company which reports its income under the corporate rules for another jurisdiction, rather than the income tax rules of the UK). Moreover, the reporting requires completion of "white space notes" which means it is not clear how much or how little information should be provided. Clearer reporting should be covered as part of the review.

Question 2: What could be done to remove inconsistencies and align this legislation?

We would be in favour of a single set of anti-avoidance rules which applies to income and capital gains, including those arising to trusts and companies. This would include the alignment of the following:

- **The tests regarding when trusts are settlor interested and therefore the settlor may be taxed on income and capital gains:** We consider that it is appropriate to tax the settlor where they or their spouse has an interest in a trust (or minor children receive distributions/benefits); however, where the settlor and their spouse is excluded and the trust is for other family members we do not think that this is appropriate.
- **The motive defence tests:** As motive defence applies to TOAA income of a trust, it should also apply to capital gains of a trust.
- **Reliefs against duplication of charges:** The TOAA rules provide more effectively for relief against the duplication of tax charges than s3 distribution relief does currently.
- **Deductions for company/trust expenses:** We consider that where deductions would be available for corporate tax purposes, these should be available when calculating income/gains subject to tax under the anti-avoidance rules.
- **Use of losses:** It is possible to carry forward income tax losses in establishing the relevant income of companies under TOAA. However, it is not possible to carry forward capital losses under s3. To ensure fairness, we consider that it should be possible to carry forward capital losses under s3.

The treatment of offshore income gains would hopefully be simplified by aligning the two sets of rules under which they are taxed.

Question 3: What are your views on how the motive defence tests are applied and what areas of these tests could be improved?

Where possible, the motive defence tests should be objective rather than subjective. As mentioned in our answer to question 1, we consider that a series of tests, similar to those in the CFC rules, could help identify entities which have clearly been set up for non-UK tax reasons. In particular, this could include trusts/companies set up in jurisdictions where they are already subject to tax (eg the US and Australia). This will help prevent double taxation in respect of such entities, as well as providing more certainty for taxpayers/HMRC.

As noted in our answer to question 2, we consider that the income tax and capital gains tax motive defences should be aligned.

It would be preferable for there to be the option of obtaining an advance ruling from HMRC on motive defence. Whilst we appreciate that this may not be possible in all cases, and each ruling would need limited in terms of what reliance can be placed on it, it would provide certainty for taxpayers in more straightforward cases.

Question 4: Do you have any suggestions on how the government should approach personal tax offshore anti-avoidance legislation in these areas going forward?

As mentioned in our answer to question 1, certainty should be the primary focus instead of simplicity.

In addition, the rules should consider taxes in overseas jurisdictions. The current rules appear to assume there is no overseas taxation, and this results in unfairness where there is overseas taxation. This could involve removing entities from the scope of the rules where they pay tax in another jurisdiction (ie as part of an objective motive defence), and/or providing for sufficient overseas tax credits where appropriate.

Depending on how the rules are changed, we think the grandfathering of older structures should be introduced.

Question 5: Are there any other personal tax offshore anti-avoidance provisions the government should consider as part of the consultation?

There is a lot of crossover between the DIMF and TOAA rules, and so the interaction of these should be considered as part of the review.

The rules should ensure that offshore bonds and offshore funds (and anything else with its own taxing regime) are clearly excluded from the anti-avoidance rules so as to put Willoughby on a statutory footing. This may require the rules around PPBs, etc to be reviewed to ensure they are adequate.

Schedule 4B extends significantly beyond the types of scheme it was designed to catch. In reviewing/aligning the income tax/capital gains rules, we would hope that the need for the legislation would be removed.