Chartered Institute of Taxation

Excellence in Taxation

Reform of an anti-avoidance provision: Transfer of Assets Abroad – further consultation
Response by the Chartered Institute of Taxation

1. Introduction

1.1 The Chartered Institute of Taxation (CIOT) is making an interim response to part 3 of the further consultation and summary of responses published on 18 July 2013 and the draft guidance published on 2 August 2013. This interim response follows the CIOT's participation in the HMRC working group on 6 September to discuss concerns raised about the matching rules and develop options for reform.

1.2 We are supportive of HMRC's pragmatic and constructive acknowledgement that more work is needed to both improve the draft guidance and to resolve the question of how to determine relevant income under the 'matching rules' in ITA 2007 sections 733-735A.

1.3 The CIOT stands willing to continue to play its part in this process.

2. Interim response

2.1 The CIOT acknowledges the difficulties behind each of questions 2 – 8 in part 3 of the consultation document.

2.2 It seems to us that one of the key such policy issues relates to the fundamental question of why offshore structures (typically but not always involving a trust and personal company) are used in the first place. Since 1991 (and certainly since 1998) it has been rare for such structures to be created by those who are both resident and domiciled in the UK. Consequently (and HMRC appear to acknowledge this) most such structures are now established by those who are either unconnected to the UK at all or who are resident but not domiciled here ie by definition there are genuine international elements to the structure. Those elements may well involve

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beneficiaries who are neither resident nor domiciled and who have nothing to do with the UK.

In that context the condoc's assumption that paying away relevant income to non-resident beneficiaries amounts to UK tax-avoidance is misplaced. We believe that any new rules should acknowledge that such structures often have beneficiaries scattered around the world and it would be inappropriate, in the context of the beneficiary charge, to treat all relevant income as remaining on the clock so that UK beneficiaries (who may have no benefit at all from that income) face the entire tax charge on it.

Until such fundamental policy issues are examined, we think that any attempt at re-working the legislation will inevitably be piecemeal, will lead to inequity and will potentially open scope for further 'avoidance'.

2.3 As such, we consider that of the first steps in resolving those policy issues is to work together to develop the draft guidance in a manner which deals with the practical issues which HMRC and practitioners encounter in real cases. We consider that working on guidance in this way will tease out all the issues and underlying policy assumptions and provide a better framework from which, if necessary, to introduce further legislation.

We recognise, of course, that guidance is no substitute for good legislation. Certain aspects may turn out to be beyond HMRC's collection and maintenance powers or may otherwise be inadequate for taxpayers to rely on. In that event legislation should be considered to cover those aspects.

2.4 In considering changes to the legislation, it needs to be borne in mind that one of the drivers for the Aaronson recommendation of a GAAR was for a long-term improvement in the UK's tax system by a reduction in the proliferation of TAARs. We recognise that it is not possible to allow the GAAR to replace the Transfer of Assets Abroad code in its entirety. However, if the need for new legislation is identified, the GAAR may assist in obviating the need for a detailed TAAR within the wider Transfer of Assets Abroad code.

2.5 As regards question 1, we would point out that the draft guidance is in this respect at variance with the experience of practitioners as to how the legislation has been operated. It is also at variance with the reference in the Tax Bulletin (April 1999), to relevant income arising and continuing to be available to provide a benefit. Clearly it is not so available if the relevant income is an identifiable sum which has clearly been paid away.

3. Conclusion

3.1 CIOT endorses HMRC's approach to engaging in further work on the policy objectives and agrees that this should be developed by working, initially, on the guidance. We would be delighted to help with this process.

4. The Chartered Institute of Taxation

4.1 The Chartered Institute of Taxation (CIOT) is the leading professional body in the United Kingdom concerned solely with taxation. The CIOT is an educational charity, promoting education and study of the administration and practice of taxation. One of our key aims is to work for a better, more efficient, tax system for all affected by it – taxpayers, their advisers and the authorities. The CIOT's work covers all aspects of taxation, including direct and indirect taxes and duties. Through our Low Incomes Tax Reform Group (LITRG), the CIOT has a particular focus on improving the tax system, including tax credits and benefits, for the unrepresented taxpayer.

The CIOT draws on our members' experience in private practice, commerce and industry, government and academia to improve tax administration and propose and explain how tax policy objectives can most effectively be achieved. We also link to, and draw on, similar leading professional tax bodies in other countries. The CIOT's comments and recommendations on tax issues are made in line with our charitable objectives: we are politically neutral in our work.

The CIOT's 17,000 members have the practising title of 'Chartered Tax Adviser' and the designatory letters 'CTA', to represent the leading tax qualification.

The Chartered Institute of Taxation
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