

Foreign profits: insurance meeting 4 September 2007

External attendees

Roger Adams (Aviva)
Mike Chadwick (Friends Provident)
Bill Sandiford (Zurich)
Rob Clayton (Royal Sun Alliance)
Kieran Devlin (Prudential)
Kim Harmer (L&G)
Juliet Phillips (Lloyds)
Lindsay J'afari Pak (Axa)
Chris Brabyn (ABI)
Mervyn Skeet (xl group)

Points mentioned/views expressed

Controlled Companies (CC) rules

- need clarity re passive/active income
- if HMRC view that regulatory and working capital is passive, approach would be uncommercial – ie what is passive income for insurance companies
- under insurance companies, have lots of funds, eg belong to OEIC, but economically to policyholders. If tax these, UK groups will consider their position
- insurance company could have bond fund – they could invest anywhere. General interest is part of insurance trade. Part of business is to hold assets to back policyholders
- wanted all assets underlying insurance business to be removed from CC – but on discussion, accepted some amount might not be active
- they need a motive test – there is no type of income or level of income that should be inherently caught. HMT invited help in designing motive test
- billions of surplus orphan assets – very difficult to get them out
- a group with very large number of subsidiaries – going through income of each is impossible
- if have a subsidiary which builds up capital, no need for that to be sent back to UK, and could just buy one – ie buy a thickly capitalised subsidiary. But using moneybox is offensive. HMT invited input to solve, ie how to distinguish – suggestion that could ask 'where is the cashbox'?
- have tax rate test first, so don't need to go further – but high tax kick out won't work, because would go to the lowest EU rate
- big win, if could exclude UK – high tax kick out could achieve this? – UK/UK a huge admin burden

- regulatory restrictions on activity mean can't undertake all activities in single entity, so end up with odd group. And single entity could have passive income, which if part of larger company, it would not be
- whether test is satisfied depends on time, because of changing position, eg position at 99 v 03. How decide whether overcapitalised?
- don't penalise for building up reserves, when may want it for future acquisitions
- reinsurance – one group would like to reinsure some of their mortality, but could move from 10% rate to (if CC applies) 28%
- they could bounce in and out of regime, so impractical – wouldn't know where to start
- HMT asked if there was a shortcut way of spotting a cashbox for insurance, ie thick cap
- reserves may not be built up for tax reasons, but simply too costly to bring back
- in regulated industry, don't want to take money out and in of offshore company, so have more than regulated capital
- Netherlands companies have such independence of foreign holding company that UK can't tell them what to do
- don't want uncertainty
- run CC down to 1%
- concern if expand 'control' to include 'entitled to but not controlled'
- taxing rules currently all over the place – could be taxing under offshore funds, and CFC (investment partnerships with funds under them)
- US subpart F imposes huge admin burden
- income approach will increase admin burden, because existing exceptions go, and will require more staff
- CC work both undoable and unauditible
- concentrate on certain countries where have problems
- there can be particular problems with the insurance industry, because of structures – CC could be particularly burdensome for them
- costs fall on life company shareholders – dividend exemption benefits a different group
- put non-life companies, OEICs, AUTs, in separate box for tax treatment, ie ring fence collectives, and do something separately for them

Interest

- Any payment of interest could create a tax advantage for para 13 purposes
- Debt cap measure would not cause problems for UK-headed insurers, but might for some foreign-headed UK insurers