

Foreign profits: admin burdens meeting 14 September 2007

External attendees

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Points mentioned/views expressed

Controlled companies(CC) – admin burden

- more work, and do systems need to change – chasing scarce resources
- need to keep records for auditors, and need to track info
- one UK private company has holding in Hong Kong company, which has 200 subsidiaries, and then has to track info of that (and currently all 200 qualify under various exemptions)
- contrast with current system, when only do calculation when dividends come up
- one UK plc currently does not need to track income/tax, because of exemptions annually. In future, would have to track all income on annual basis. Vastly increased admin burden
- will be clear increase in compliance costs, because no escape routes, and have to record details even though no tax involved
- any active trading company will have passive income from time to time, and is unclear when this would be disregarded
- would need to analyse the P&L account of every subsidiary
- exemptions key, so don't do unnecessary work
- there are reasons for leaving cash abroad, eg for reinvestment, or because easier to leave cash than to return it, or because of exchange controls
- in global groups, Treasury function not necessarily in UK
- they don't necessarily obtain the info already for any other reason, if not within subpart F, nor SEC, and if don't need to pay dividends back
- would like motive test, and excluded countries/others to reduce
- motive test could be on income basis, not country basis
- suggested Government focuses on Exchequer risk
- reframe motive test with a genuine economic activity test
- transfer pricing covers lots of this – if not good enough, tighten it
- will put supply chain somewhere for commercial reasons
- could have trouble with other countries
- requiring all to comply, because some are abusing, and creates huge work for compliant taxpayers
- re UK/UK, bringing UK into the net does not help EU compliance

- UK/UK viewed as awful because of number of UK companies. Groups will have to take a view on what falls in passive buckets
- also have to do corresponding adjustments
- suggestion of consolidated UK return to avoid UK/UK, by doing separate tax calculations for all UK companies, and adding together
- if real economic substance, then OK. But Government concern that it would be abused
- the CC regime will be as expensive/litigious as transfer pricing
- one group would prefer the status quo, with DTR calculations, because of admin burden, and because would have to do things across the board, for the worldwide group, with no exemptions
- UK/UK transfer pricing is onerous, if done properly
- would like to see assumptions on cost for next stage
- can be difficult to obtain info at 10% - at 25%, have more rights under UK Companies Act, but not at 10%
- re small shareholdings, difficult to obtain info re income
- how know who other shareholders are
- if a minority stake, how will know if UK controlled, and if so, how will know what income is
- how know if any exemptions apply to it
- practical difficulties here
- would like no UK/UK; have motive test or exemptions to enable clearances – otherwise will track income and underlying tax – and make a demonstrable nexus with UK
- need a clearer policy statement of what trying to tax
- UK GAAP not enough; IAS would help; local GAAP

Controlled companies – capital gains

- is sale of Irish store passive income, and is this outside UK taxing rights – should not need to use an exemption
- what records would business have to keep
- will old assets be grandfathered
- how do they deal with foreign tax on this
- how do in practice – lots of issues, and could be very complicated
- want fairness, even if sometimes admin burdens

Interest

- worldwide cap – need a rebuttable presumption test to show why being done (re acquisitions/disposals)

Dividends

- participation level 10% - ties with CC, but can people obtain info

- boundary issue – transition from CC to non CC, ie dividends paid when CC, when previously outside CC
- transitional rules – apart from ADP dividends, assume all old profits are good profits
- EUFT – to be considered
- if impossible for minority shareholders to obtain info, let people opt into credit, as long as can use EUFT – but then two systems, not one
- what dividends excluded from exemption – could lead to need to track

Small business

- exemption for small business would be simpler, and avoid boundary issues – could have anti-avoidance provision
- allow an opt in to exemption and full CC
- revisit small business when CC clearer

Treasury Consents

- does Government need this info, but if so, start at S765A and 6 month period to provide info
- keep general consents approach
- need transitionals when importing companies into group, because takes time to comply