ICAEW
REPRESENTATION 23/23

OVERSEAS INVESTMENT INCOME PROPOSAL

Issued 15 March 2023

ICAEW welcomes the opportunity to comment on the Overseas Investment Income Proposal which has been shared with us in confidence.

For questions on this representation please contact our Tax Faculty team at taxfac@icaew.com quoting REP 23/23.

This response of 15 March 2023 has been prepared by the ICAEW Tax Faculty. Internationally recognised as a source of expertise, the ICAEW Tax Faculty is a leading authority on taxation and is the voice of tax for ICAEW. It is responsible for making all submissions to the tax authorities on behalf of ICAEW, drawing upon the knowledge and experience of ICAEW's membership. The Tax Faculty's work is directly supported by over 130 active members, many of them well-known names in the tax world, who work across the complete spectrum of tax, both in practice and in business. ICAEW Tax Faculty's Ten Tenets for a Better Tax System, by which we benchmark the tax system and changes to it, are summarised in Appendix 1.

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KEY POINTS

1. Providing for a formal election to choose a different basis of taxation for overseas income would put already existing practice onto a statutory footing.
2. One of the biggest problems with the existing tax year basis is the need to use estimates both of income received and overseas tax suffered on that income when including income on a UK tax return received overseas on a calendar year basis. This then means that those estimates need to be adjusted subsequently, resulting in additional administration for taxpayers, agents and HMRC.
3. UK tax calculations are also made more difficult by the need to pro-rata income received from two different calendar years into a single tax year.
4. The current basis restricts HMRC's ability to enquire into overseas income reported as the information it receives through FATCA and CRS is not received at a time that is most useful for enquiries and interventions.
5. Logistical and legislative complications may arise on the transition from one basis of taxation to another. There may also be a deferral of tax to the Exchequer in the transitional year. However, these complications should not be insurmountable.
6. One particular difficulty arises from the fact that not every overseas territory uses a calendar year basis of taxation. It will therefore be difficult to design a system to benefits everybody. As such, we recommend that any alternative basis of taxation is made available by election, rather than making this mandatory.

DETAILED RESPONSE

THE PROPOSAL

7. Investment income received from overseas by individuals would be treated on a different basis to other forms of income. Basically, the amount of income received in a calendar year that ends in a tax year would be taxable in the UK in that tax year.
8. It is unclear at this stage what would constitute investment income and whether entities subject to income tax (eg trusts) would also be subject to this basis of taxation.
9. We are surprised that this topic hasn't been raised with members of HMRC's Expat forum as members have raised this suggestion a number of times particularly in regard to the reporting of US source income. We recommend that this is also considered with members of that forum.

OPPORTUNITIES

Adapting to existing practice

10. Many taxpayers already use this basis of taxation for their overseas income (often agreed with the relevant Inspector) and so this would just be putting what is already widespread practice onto a statutory footing.

Getting information in a timely fashion

11. One of the problems with using a tax year basis is the lack of time that taxpayers have to include information on their tax return after they have received it. This may result in estimates being used in order for tax returns to be filed by the statutory deadline, and in some cases, taxpayers may forget to go back and correct these.

Example:

Mr A has overseas income in 2022 and 2023. His tax return for the 2022/23 tax return is due on 31 January 2024, just one month after the end of the 2023 calendar year, which would form 93 days' worth of the income he is reporting for that tax year.

12. Similarly, HMRC will receive CRS and FATCA data in relation to this income after the deadline for completing the tax return. If instead, they were taxed on the income from the 2022 calendar year, HMRC would have longer to investigate this before the end of the enquiry window. Alternatively, it would give HMRC a better chance of pre-populating returns with information received through AEOI.
13. HMRC is also moving much of its compliance activity upstream and hence, by receiving information earlier, any one-to-many campaigns can be more accurately focussed and be less prone to false positives.

Simplicity of calculation

14. When an individual receives income from a territory that uses the calendar year for its tax year, having to extract information from two of these tax years for every UK tax year makes the calculations of UK taxable income much more complicated than if only one calendar year was included.
15. As well as apportioning the income received from each year, you also need to calculate any overseas tax suffered on the same income and apportion that as well. You can only do that once you have filed the relevant overseas tax return (or paid the relevant tax) and often this will not have been done by the time you need to file the UK return. It is for this reason mainly that many individuals are already filing on the basis being proposed.
16. Using a calendar year would also greatly simplify the calculation of foreign tax credits. For example, when preparing a 2022/23 UK tax return a taxpayer needs to have the 2023 US tax return filed in order to be sure that the foreign tax credit is correct in respect of the period 1 January to 5 April. In practice estimates are used and then amended returns are required. It is also an oddity of the UK system that there isn't a system of extensions to cater for such difficulties. When Self-assessment was introduced, extensions were requested but not taken up. It is likely that many amendments are forgotten about.

CHALLENGES

Transitional provisions

17. Whenever you go from one basis of taxation to another, a transitional year is required. Let's say that the final year of the existing basis is 2022/23. It could look something like this:

Tax year	Income charged in that year
2022/23	9 months of 2022, 3 months of 2023
2023/24	9 months of 2023
2024/25	The whole of 2024
2025/26	The whole of 2025

18. 2023/24 would essentially be a transitional year, in which the remaining profit for 2023 not already taxed in 2022/23 falls into charge. This might result in a deferral of income to the Exchequer, but it is only a short-term issue.

19. Investment income should not suffer the same issue as with trading income where businesses defer or accelerate transactions in order to ensure they fall within a particular tax year. The individual should have little control over the timing of interest and dividend entitlements (unless the individual controls the company concerned).

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Tax return changes

20. The impact on the tax return should be relatively small as the same heads of tax will fall into charge, it is just that the method of calculating some of them will change. Software will need to be updated to reflect the change, although in my experience, the calculations required to establish overseas income tax are often carried out offline sometimes because the software available isn't sophisticated enough to deal with the complexity of the issue.

Impact on existing legislation

21. There are anti-avoidance provisions which ensure that certain forms of income are taxed as interest (usually rather than as capital gains). These include the accrued income scheme and the transfers of income streams provisions. Work would need to be done to clarify in these rules in which tax year certain amounts are taxable, though this should not be insurmountable.

Not all jurisdictions use a calendar year

22. Although the calendar year is the most predominant choice for the tax year worldwide, approximately 47 of 190 countries use a different year end. Some of the most notable from the perspective of UK taxpayers include India, Jamaica, New Zealand, (31 March), Australia (30 June) and South Africa (28 February).
23. For territories with a 31 March year end, the current system works fine (assuming 5 April and 31 March are treated as the same date), hence changing things would cause a problem for individuals who have income in these countries. For those with a year end other than 31 March or 31 December, any existing calculation problems continue.
24. For this reason, we recommend that if this change is introduced, it is by election rather than a statutory requirement.

Rental Income

25. Offshore rental income is often received through a number of different vehicles. It is often impossible for UK taxpayers to get the information regarding the income on a UK tax basis. This going to be a particular problem for MTD. One solution would be to exempt such income from MTD quarterly reporting and alllow the reporting on an annual Calendar year basis.

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APPENDIX 1

ICAEW TAX FACULTY'S TEN TENETS FOR A BETTER TAX SYSTEM

The tax system should be:

1. Statutory: tax legislation should be enacted by statute and subject to proper democratic scrutiny by Parliament.
2. Certain: in virtually all circumstances the application of the tax rules should be certain. It should not normally be necessary for anyone to resort to the courts in order to resolve how the rules operate in relation to his or her tax affairs.
3. Simple: the tax rules should aim to be simple, understandable and clear in their objectives.
4. Easy to collect and to calculate: a person's tax liability should be easy to calculate and straightforward and cheap to collect.
5. Properly targeted: when anti-avoidance legislation is passed, due regard should be had to maintaining the simplicity and certainty of the tax system by targeting it to close specific loopholes.
6. Constant: Changes to the underlying rules should be kept to a minimum. There should be a justifiable economic and/or social basis for any change to the tax rules and this justification should be made public and the underlying policy made clear.
7. Subject to proper consultation: other than in exceptional circumstances, the Government should allow adequate time for both the drafting of tax legislation and full consultation on it.
8. Regularly reviewed: the tax rules should be subject to a regular public review to determine their continuing relevance and whether their original justification has been realised. If a tax rule is no longer relevant, then it should be repealed.
9. Fair and reasonable: the revenue authorities have a duty to exercise their powers reasonably. There should be a right of appeal to an independent tribunal against all their decisions.
10. Competitive: tax rules and rates should be framed so as to encourage investment, capital and trade in and with the UK.

These are explained in more detail in our discussion document published in October 1999 as TAXGUIDE 4/99 (see https://goo.gl/x6UjJ5).

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