New rules on offshore receipts in respect of intangible property

From 6 April 2019, there will be a UK Income Tax charge which will apply to amounts received by a company in a low tax jurisdiction in respect of intangible property, to the extent that those amounts are referable to the sale of goods or services in the UK.

Overview

Where a large multinational group receives offshore income relating to intangible property, and the group has UK sales of at least £10m, then UK Income Tax at a rate of 20% will be charged on the offshore income. The charge will apply to the proportion of the gross income of the offshore entity which relates to UK sales. It will be collected from the offshore entity or from any related party (including any UK group company).

Who is likely to be affected by the measure?

Large multinational groups that hold intangible property (such as trademarks or patents) in low tax jurisdictions, where the income on that intangible property relates to the sale of goods or services in the UK. The measure will apply regardless of whether there is a UK subsidiary or permanent establishment.

The measure will not apply if the income is received in a country with which the UK has a full tax treaty. However, the UK does not generally have tax treaties with very low tax countries, so if intangible assets are held in a tax haven such as the British Virgin Islands, the Bahamas or the Cayman Islands the legislation is likely to apply.

Case study

For example, suppose a US group which makes handheld devices holds its product patents in the Bahamas, and sells £20m of goods to UK customers from its subsidiary in Ireland. The Irish company pays a 10% royalty to the Bahamas. There is a UK subsidiary which provides technical support to customers. There would be a UK Income Tax liability of £400k (£20m x 10% x 20%) which HM Revenue & Customs could require the UK subsidiary to pay – even though that company has nothing to do with the sales to customers.

What is the objective of this new policy?

The measure targets multinational groups that generate significant income from intangible property through UK sales, and have made arrangements such that the income is received in offshore jurisdictions where it is taxed at no or low effective rates.

By taxing the proportion of that income which relates to the sale of goods or services in the UK, this policy aims to reduce the opportunities for large multinationals to gain an unfair competitive advantage by holding their intangible property in low tax offshore jurisdictions, levelling the playing field for businesses operating in UK markets.

How will the tax owed be calculated?

This measure will apply a UK Income Tax charge at a rate of 20% to amounts received in a low tax jurisdiction in respect of intangible property, to the extent that those amounts relate to the sale of goods or services in the UK.

The Income Tax charge will be on the gross income (receivable from both related and unrelated parties) that is referable to the sale of goods or services in the UK and realised by the non-UK resident entity from the ownership, or rights over, relevant intangible property.

Will there be any exemptions?

Yes, the measure will include the following exemptions which will exclude from charge:

- Income where the tax payable by the foreign entity is at least 50% of the UK Income Tax charge that would otherwise arise under this measure
- Income arising in entities that have not acquired their intangible property from related parties and where all, or substantially all, of the trading activities have always been undertaken in the low tax jurisdiction

There will also be a £10m *de minimis* UK sales threshold.

What if the ownership of intangible property is transferred to another group entity resident in a full treaty jurisdiction?

There is a targeted anti-abuse rule which will apply if there are arrangements designed to avoid the charge (i.e. where one of the main purposes of the arrangement is to avoid a charge under this measure, or to seek the benefit of a tax treaty where the benefit is contrary to the purpose of that double taxation agreement).

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How will the tax be collected?

The Income Tax charge will be reported and collected under the existing Income Tax Self Assessment provisions. Businesses in scope will use the SA700 'Tax return for a non-resident company liable to Income Tax' to make their annual return of the tax due.

In the event of non-payment by the non-UK resident entity, any person within the same control group during the relevant tax year will be jointly and severally liable for the tax due. UK subsidiaries of multinational groups could therefore be required to pay the tax.

What should I do now?

Multinational groups should review if they are affected by this policy and, if so, consider whether any action can be undertaken to mitigate the impact on their business, taking into account the anti-avoidance provisions.

How can Blick Rothenberg help?

If you are unsure whether your group falls within the scope of this policy or you have questions about how the new measure may impact on your business, then please contact your usual Blick Rothenberg contact or one of the individuals listed in the footer of this document who will be able to assist you further.

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