

Clause X: Countering effect of avoidance arrangements

Summary

1. This clause introduces amendments to the double taxation relief targeted anti-avoidance rule (DTR TAAR) contained in Part 2 TIOPA 2010. The amendments make two changes to that legislation. The first change removes the requirement for HM Revenue and Customs to give a counteraction notice in order to apply the DTR TAAR and will have effect for returns with a filing date on or after 1 April 2018. The second change will extend the scope of one of the categories of prescribed schemes to which the TAAR applies to include tax payable by any connected persons. The second change will have effect for payments of foreign tax made on or after 22 November 2017.

Details of the clause

2. Subsection 1 introduces the amendments to Part 2 TIOPA 2010. All references below are to Part 2 TIOPA 2010 unless otherwise stated.
3. Subsection 2 introduces the first amendment, which amends section 81 by removing the requirement for HM Revenue and Customs to give a counteraction notice. This subsection sets out how counteraction adjustments may be made instead.
4. Subsection 3 introduces the second amendment, which extends section 87 (which covers one of the categories of prescribed schemes) so that the amount of UK tax payable for the purposes of section 87 includes the amount of UK tax payable by a person and any person connected to that person.
5. Subsection 4 removes superfluous sections regarding counteraction notices.
6. Subsection 5 amends section 371SR in Part 9A TIOPA 2010 to remove references to counteraction notices for the amendment in subsection 2 above (counteraction adjustments).
7. Subsection 6 provides that the amendment in subsection 2 (counteraction adjustments) applies where the filing date for the relevant tax return is after 31 March 2018.
8. Subsection 7 provides that the amendment in subsection 3 (UK tax payable) applies where the foreign tax giving rise to credit relief is paid on or after 22 November 2017.

Background note

9. The DTR TAAR is a wide ranging anti-avoidance rule, which applies if there is a scheme or arrangement where the main purpose or one of the main purposes is to obtain allowance by way of credit for foreign tax and the scheme is a prescribed scheme. A prescribed scheme is one that meets one or more of the descriptions set out in sections 84 to 88 TIOPA 2010.
10. Where it applies, the existing legislation in section 81 and 90 TIOPA 2010 requires HMRC to issue a counteraction notice requiring the taxpayer to make such adjustments as are necessary to counteract the effect of the scheme or arrangement.
11. This clause will remove the requirement for HMRC to issue a counteraction notice and instead require the taxpayer to consider whether the DTR TAAR applies as part of the taxpayer's self-assessment. This aligns the DTR TAAR with more recent TAARs that do not include requirements for counteraction notices.
12. The existing legislation in section 87 TIOPA 2010 sets out one of the prescribed schemes to which the DTR TAAR can apply. It applies in situations where a scheme or arrangement has the effect of reducing the amount of UK tax payable by a person.
13. The clause slightly extends section 87 TIOPA 2010 to apply to situations where a scheme or arrangement has the effect of reducing the total amount of UK tax payable by a person and any person connected with that person.
14. This measure will modernise the DTR TAAR and will also promote fairness in the tax system by deterring taxpayers from entering into abusive DTR schemes or arrangements.