Clause 33: Time limits for assessments involving offshore matters: IT and CGT

Summary

1. This clause increases the assessment time limits for offshore income and gains to 12 years unless a longer time limit applies. It applies to income tax and capital gains tax where a tax loss arises in respect of offshore tax.

Details of the clause

2. This clause introduces new section 36A to Taxes Management Act (TMA) 1970.
3. New subsection 36A(1) restricts the circumstances in which the 12 years assessment time limit will apply to cases involving offshore matters or offshore transfers.
4. New subsection 36A (2) introduces the new time limit and ensures that the longer time limit of 20 years will still apply where the loss of tax is due to deliberate and other specified behavior as set out in section 36(1A) TMA.
5. New subsections 36A(3) to (6) define offshore matter and offshore transfer. These definitions are consistent with other legislation including the amendments to the penalties legislation introduced by section 120 and Schedule 20 Finance Act 2015 and the Requirement to Correct legislation in Schedule 18 Finance (No 2) Act 2017.
6. New subsections 36A(7) and (8) ensure that the 12 year assessment time limit will not apply where HM Revenue and Customs (HMRC) has received information from another tax authority under automatic exchange of information. This includes information received under the Common Reporting Standard in circumstances where HMRC could reasonably have been expected to identify the lost tax and raise the assessment within the normal time limits on the basis of the information received. Under the Common Reporting Standard, HMRC will receive information about overseas accounts, insurance products and other investments, including those held through overseas structures such as companies and trusts. This includes details of the account holder or owner, including name, address, date of birth, balance of the account, and payments into the account.
7. New subsection 36A(9) provides that the 12 year assessment time limit will not apply where the assessment results from a transfer pricing adjustment. Mutual Agreement Procedures (MAP) are arrangements which allow tax authorities to discuss and seek to agree on international tax matters. MAP may be used in transfer pricing cases to avoid double taxation that would otherwise apply. Some international treaties restrict the time limit for MAP to periods shorter than 12 years so that, without this rule, taxpayers could be subject to double taxation.
8. New subsection 36A(10) provides that the definition of assets is based on that at

section 21(1) Taxation of Chargeable Gains Act 1992 but specifically includes sterling for the purposes of this section.

9. New subsection 36A(11) ensures that the specified rules in section 36 TMA apply for the purposes of section 36A. These rules concern assessments on persons in partnership (so that partners may be assessed as well as that person), and provision for certain reliefs and allowances to be given against assessments.

10. Subsections 3 & 4 of Clause 33 make consequential changes including a change to section 40 TMA 1970 (assessment on personal representatives). This ensures that the 12 year assessment time limit in offshore cases will not change the assessment time limits set out in subsections 40(1) and (2) TMA.

11. Subsection 5 of Clause 33 sets out the commencement provisions. The new section 36A will apply for years 2013-14 and 2014-15 in cases where the loss of tax is brought about by careless behaviour and for years 2015-16 onwards in other cases.

Background note

12. It can take longer to establish the facts in cases involving offshore assets and structures as it can be more difficult to access the information needed to understand the transactions. This section has been introduced to give HMRC more time to make assessments in these offshore cases.

13. This measure was announced in Autumn Statement 2017 as part of the government's strategic response to offshore tax evasion, avoidance and non-compliance.

14. A consultation on the design principles for the legislation began on 19 February 2018 and closed on 14 May 2018. A response document is published with the draft legislation on 6 July 2018.

15. If you have any questions about this change, or comments on the legislation, please contact Sarah Weston on 03000 589165 email:sarah.weston@hmrc.gsi.gov.uk)