

PARLIAMENTARY DEBATES

HOUSE OF COMMONS
OFFICIAL REPORT

First Delegated Legislation Committee

DRAFT INCOME TAX (TRADING AND
OTHER INCOME) ACT 2005 (AMENDMENTS TO
CHAPTER 2A OF PART 5) REGULATIONS 2019

Thursday 31 October 2019

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The Committee consisted of the following Members:

Chair: GRAHAM STRINGER

Coyle, Neil (<i>Bermondsey and Old Southwark</i>) (Lab)	† Reynolds, Jonathan (<i>Stalybridge and Hyde</i>) (Lab/Co-op)
† Efford, Clive (<i>Eltham</i>) (Lab)	† Rowley, Lee (<i>North East Derbyshire</i>) (Con)
† Freer, Mike (<i>Lord Commissioner of Her Majesty's Treasury</i>)	† Smith, Jeff (<i>Manchester, Withington</i>) (Lab)
Grant, Bill (<i>Ayr, Carrick and Cumnock</i>) (Con)	† Swayne, Sir Desmond (<i>New Forest West</i>) (Con)
Hoey, Kate (<i>Vauxhall</i>) (Lab)	† Tomlinson, Michael (<i>Mid Dorset and North Poole</i>) (Con)
† Hollinrake, Kevin (<i>Thirsk and Malton</i>) (Con)	Walker, Thelma (<i>Colne Valley</i>) (Lab)
† Huq, Dr Rupa (<i>Ealing Central and Acton</i>) (Lab)	Mike Winter, <i>Committee Clerk</i>
† Lewer, Andrew (<i>Northampton South</i>) (Con)	
Malhotra, Seema (<i>Feltham and Heston</i>) (Lab/Co-op)	
† Norman, Jesse (<i>Financial Secretary to the Treasury</i>)	
† Parish, Neil (<i>Tiverton and Honiton</i>) (Con)	† attended the Committee

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Thursday 31 October 2019

[GRAHAM STRINGER *in the Chair*]

Draft Income Tax (Trading and Other Income) Act 2005 (Amendments to Chapter 2A of Part 5) Regulations 2019

11.30 am

The Financial Secretary to the Treasury (Jesse Norman): I beg to move,

That the Committee has considered the draft Income Tax (Trading and Other Income) Act 2005 (Amendments to Chapter 2A of Part 5) Regulations 2019.

It is a great pleasure to serve under your chairmanship, Mr Stringer.

The regulations make technical amendments to the rules governing offshore receipts in respect of intangible property—the hyper-sexy acronym is ORIP—that were introduced in the Finance Act 2019. The ORIP rules tackle large multinationals that have entered into arrangements to receive income from their intangible property—copyrights, patents and other intellectual property—in offshore territories where that income is either untaxed or taxed at low effective rates. The rules tax the proportion of that income that relates to the sale of goods or services in the UK.

ORIP reduces the opportunities for large multinationals to gain an unfair competitive and tax advantage by using contrived offshore intellectual property structures to reduce their tax burden, thereby levelling the playing field for businesses operating in UK markets. The rules as enacted include a regulation-making power to allow for amendments to improve targeting and minimise unintended consequences, and this statutory instrument is the result.

Following recent consultation, the statutory instrument makes technical changes to the detailed provisions that are necessary for the regime to work as intended. Overall, ORIP is still expected to yield £1.1 billion over the scorecard, and these changes do not affect the costings. Where they are relieving, most of the amendments are treated as having retrospective effect from 6 April 2019, when the ORIP rules commenced. A few of the amendments, where they are charging, will have effect prospectively from the day after the regulations are made.

Let me briefly say a few words about each amendment. First, ORIP is targeted at territories with which the UK does not have a full double tax agreement, or DTA. That is intended to ensure the UK remains compliant with its international obligations. The regulations make two changes to the scope of the legislation. First, they extend the ORIP charge to businesses that are resident in a territory that has a full DTA with the UK but where resident businesses do not qualify for relief under it. That may be because the business is of a type explicitly excluded from the agreement or because the income paid to the business is not covered by the double

tax agreement. The effect of that is to bring as many low-tax territories within scope as possible while remaining consistent with the UK's international obligations. The change is prospective and will take effect from the day after the regulations are made.

Secondly, the regulations introduce an exemption for companies resident in specified territories with which the UK does not have a full DTA. That exemption, which is subject to anti-avoidance conditions, will be used to ensure that ORIP does not apply to high-tax jurisdictions that do not have a full DTA with the UK.

Kevin Hollinrake (Thirsk and Malton) (Con): I realise that these matters are very complex and we need to narrow down the opportunities for multinationals to shift their profits around, on which this Government have done much work. However, Google makes a 22% profit margin internationally and turns over around £10 billion in the UK, which means, with a corporation tax rate of 19%, that it should pay around £420 million a year in tax in the UK, yet it pays only around £70 million. Does the Minister agree that we cannot rest in our pursuit of increased measures until it pays the appropriate amount of UK tax?

Jesse Norman: I am grateful to my hon. Friend for his intervention, which reflects his characteristically acute understanding of financial and tax issues. Of course, the question in many of these cases—I will not take one in particular—is whether companies have paid the appropriate level of corporation tax in the jurisdictions where corporate tax is chargeable. There is then the separate question whether they pay a fair level of tax in the jurisdictions where they do business. He will understand that the latter is very much in the Government's mind. That is part of the purpose of our new digital services tax, which we hope to introduce in the next Finance Bill and for which legislation has already been published.

Neil Parish (Tiverton and Honiton) (Con): This is probably completely out of order, in terms of considering the draft regulations, but I paid my Amazon bill the other day. Amazon is registered in Luxembourg and, obviously, pays much less tax; yet it does a hell of a lot of business here. I am sure that the draft regulations do not deal with that, but are we thinking about dealing with it in some way in the future?

Jesse Norman: I am not, as a Minister, privy to individual taxpayer relationships with HMRC, but I am certainly given to understand that it is looking very closely at the general question of whether platforms, and international corporations of other kinds, are paying appropriate levels of tax, as the hon. Gentleman would expect.

As I said, the draft regulations introduce an exemption for companies resident in specified territories. That exemption, which is subject to anti-avoidance conditions, will be used to ensure that ORIP does not apply to high-tax jurisdictions that do not have a full DTA with the UK. The regulations include a power to add and remove specified territories by making further secondary legislation. HMRC will consider exercising that power only where non-low-tax territories are identified that do not pose a risk to the statutory purpose of the legislation.

There are three changes to the definition of UK sales, which are designed to make the rules more proportionate and to improve their targeting. First, in determining UK sales, the legislation will look through distributors and re-sellers—that is to say, those who simply sell on goods and services unchanged. That will ensure that ORIP does not discourage businesses from using the UK as a location from which to sell to foreign markets. Secondly, there is clarification that a UK sale will arise in relation to online advertising where the advertising is targeted at UK persons. Thirdly, in circumstances where the intangible property makes an insignificant contribution to UK sales made by third parties, those sales are disregarded.

The draft regulations introduce a targeted amendment that will exempt from charge certain tax-transparent entities whose profits are subject to tax in a non-low-tax territory. Without that exemption, those entities would be subject to an ORIP charge because they do not meet the technical criteria of being a tax resident in a non-low-tax territory, even though the relevant profits will be subject to tax there.

There are three changes designed to minimise double taxation. The first concerns intangible property held by a partnership, and prevents a tax charge on the partners where the partnership is appropriately taxed. The second prevents multiple ORIP charges where a multinational group has more than one entity in a low-tax territory, and the same intellectual property-derived income is paid from one to the other. Thirdly, the draft regulations clarify that where there is a charge under the measure there is no duty to withhold income tax at source on the same income.

The final change provides clarification on the meaning of tax outside the UK, as meaning tax payable or paid that is comparable to UK income tax or corporation tax. These technical changes are being introduced to ensure that today's important measure, which prevents large multinationals from gaining unfair tax and competition advantages, works as intended. I hope that colleagues will join me in supporting the draft regulations, which I commend to the Committee.

11.38 am

Jonathan Reynolds (Stalybridge and Hyde) (Lab/Co-op): As ever, it is a pleasure to see you in the Chair, Mr Stringer. I thank the Minister for his explanation of the instrument, and wish all Members good fortune in the forthcoming general election. It is something of a highlight for me to be allowed to scrutinise a statutory instrument that does not relate to Brexit; however, this is reasonably familiar ground, as we addressed in Committee a number of clauses in the 2018 Finance Bill that related to intangible fixed assets and intangible property.

We know that intangible assets have been used unscrupulously in the past by multinationals that have sought to exploit the provisions to minimise their tax bill. Any loopholes of that kind urgently need closing. I am sure that we are all familiar with some high-profile examples of profit shifting, where profits from intangible property are moved internally within corporations to lower-tax jurisdictions, despite having limited, or no, connection with the location. Members have suggested companies that have had those allegations levelled against them.

The Opposition are clearly supportive of any manoeuvres that seek to improve our tax transparency and close down the exploitation of the existing rules. However, as we said in Committee on the Finance Bill, our worry is whether the measures go far enough. That is why we tabled an amendment at the time, for a full review of the impact of the measure, and for it to be assessed in the light of our exit from the European Union.

The Opposition believe that there is a significant concern about the Government's approach. I understand—and the Minister has confirmed—that the measure does not apply to any country with which we have a full tax treaty. So we are tightening our laws, but not in relation to any country with which we have a full tax treaty. However, the UK has one of the largest networks of double taxation agreements in the world. The list extends to jurisdictions including the British Virgin Islands and the Cayman Islands, which begs the question how effective the measure will be. The Minister seemed to suggest that there was a degree of nuance and that it was not entirely a binary decision, but if he could provide clarity about what jurisdictions are being tackled, that would be useful to us all.

Equally, we need to look at the bigger picture when it comes to tax collection. Closing tax loopholes with one hand while taking resources away from HMRC with the other is likely to prove ineffective. I could speak at length about the Opposition's view on the subject, and ask for the Government's plans, but I am mindful of the brevity of the parliamentary Session and that Parliament will soon be dissolved.

Last Sunday my right hon. Friend the shadow Chancellor backed a unitary approach to taxing multinationals, whereby multinationals would be taxed more comprehensively on the basis of where economic activity occurs and where value is created. That is a practical approach, which would go further than what is proposed today. I recognise that many Conservative colleagues are also interested in that area. The hon. Member for Thirsk and Malton referred to such an approach, and the Minister mentioned the digital services tax. I think that everyone in Parliament will be particularly interested in how that will fare in the light of a potential US trade deal.

There must be zero tolerance of tax avoidance. We shall continue to advocate that and make it a priority when we return in the next Parliament, whatever the result of the forthcoming general election.

11.42 am

Jesse Norman: I am grateful to the hon. Member for Stalybridge and Hyde and thank him for his support for the SI, and for his warm wishes to all colleagues across the Committee in the forthcoming general election. He raised some important points, which are worth touching on.

The hon. Gentleman asked about an impact review. As he will be aware, the measure has not completed its first year, having been introduced in the last Finance Bill, so we are not in a position to carry out a full impact review. Of course, the proper taxation impact note was supplied with the legislation at the time, and an updated one has been supplied for this SI, and is available in the Library.

[*Jesse Norman*]

The hon. Gentleman also asked for some reassurance about countries with which we have double taxation agreements but which may be low-tax countries. I can reassure him about that. A couple of examples that are particularly salient are the Cayman Islands and Bermuda.

As to the shadow Chancellor's unitary approach, of course, whatever the outcome of the election may be, politicians across the House are welcome to submit their ideas for improving the taxation of multinationals. Considerable amounts of expert work have been done

on that topic within HMRC, but if the shadow Chancellor or any other Member has evidence or ideas that can feed into that process we should be glad to hear them.

I thank the hon. Member for Stalybridge and Hyde for his support for the digital services tax. He will understand that its purpose is a temporary one, and that it is designed to pre-empt and anticipate, but ultimately to be replaced by, a more comprehensive international OECD agreement.

Question put and agreed to.

11.44 am

Committee rose.

