

Review of Personal Tax

Work stream 3 – scope for estimating the quantum of profits retained within “0% companies” and owned by Jersey resident individual (natural person) shareholders

Introduction

1. In order to produce an estimate of the quantum of profits retained within 0% companies ultimately owned by Jersey resident individual shareholders (“**Relevant Companies**”) two pieces of information are required:
 - The amount, or a reasonable estimate of the amount, of profits accruing in “Relevant Companies” for each year of assessment; and
 - The amount, or a reasonable estimate of the amount, of distributions made by “Relevant Companies” from the profits identified above where the recipient is subject to Jersey personal income tax¹

Information piece one: amount of profits accruing in “Relevant Companies”

2. 2008 is the last year of assessment for which the Taxes Office systematically collected accounts and tax computations from all Jersey resident companies.
3. In subsequent years of assessment the Taxes Office has continued to systematically collect accounts and tax computations from all Jersey resident companies with a positive tax liability in their own name (i.e. companies subject to a positive rate of tax either on all of their profits – i.e. utility companies and financial services companies – or on a particular stream of their profits – e.g. property Jersey rental companies).
4. In subsequent years of assessment the Taxes Office has not systematically collected accounts and tax computations from “Relevant Companies” (with the exception of those “Relevant Companies” which are subject to a positive rate of tax on a stream of their profits). This is because these companies could not have a positive tax liability in their own name; being subject to tax at 0% on all of their profits.
5. In subsequent years of assessment the Taxes Office has received, either voluntarily provided or in response to specific requests made by the Taxes Office, accounts and tax computations from a number of “Relevant Companies”. The Taxes Office has utilised these documents to check the declarations made on the individual shareholder’s personal tax return.
6. Where the Taxes Office has received documents in this way (i.e. as outlined in paragraph 5), the amount of profits accruing in the company has not been captured within the Taxes Office’s IT systems. The documents received are only available on the relevant paper files.
7. Therefore 2008 is the last year of assessment for which the Taxes Office holds complete² and retrievable data regarding the amount of profits accruing in “Relevant Companies”.

¹ E.g. a distribution to an intermediate holding company would need to be excluded.

² As at that time.

8. In light of the period of time that has elapsed since 2008, the value of this data in estimating the amount of profits accruing in “Relevant Companies” in recent years is very limited; particularly because:
 - 2008 predated the impact of the financial crisis, which had an impact on both corporate profits and investment returns;
 - Due to the transition of companies to a current year basis of assessment, the assessable profits of many companies for the 2008 year of assessment were calculated by reference to an average of the profits accruing in the financial periods ending in 2007 and 2008; and
 - This data takes no account of what has happened to the population of “Relevant Companies” in the intervening period (e.g. new “Relevant Companies” established; existing “Relevant Companies” liquidated)
9. It is therefore not considered appropriate to use the 2008 year of assessment profits data for the “Relevant Companies” in existence at that time to estimate the amount of profits accruing in “Relevant Companies” in much later years of assessment.
10. From the 2009 year of assessment to the 2011 year of assessment Jersey applied a set of rules known as the deemed distribution/full attribution rules. Under these rules some or all of the profits of “Relevant Companies” could be deemed to arise on the Jersey resident individual shareholder(s) (“a deemed distribution”).
11. As the deemed distribution was *prima facie* based on the amount of profits accruing in the “Relevant Company” there is the potential that the amount deemed on the Jersey resident individual shareholder(s) could be utilised to estimate the amount of profits accruing in the “Relevant Company”.
12. However the rules for calculating the amount deemed to arise on a Jersey resident individual shareholder were complicated, including:
 - Different rules were applied in the context of trading companies, where a maximum of 60% of the profits could be deemed to arise on the Jersey resident individual shareholder(s), to investment companies, where the maximum was 100% of the profits;
 - The amount deemed to arise could be altered by any cash dividends paid within a certain specified period;
 - In the final year of the rules more than 12 months of profits could be included in the deeming calculation³; and
 - Where there was more than one ultimate individual beneficial shareholder, the profits would be apportioned amongst those shareholders⁴

³ Broadly depending on what accounting reference date within the year the company had adopted.

⁴ Non-resident individual shareholders were not subject to Jersey tax under the deemed distribution/full attribution rules.

13. Therefore in the majority of cases it is unlikely that the deemed distribution shown in the personal tax return of a Jersey resident individual shareholder would be *equal* to the profits accruing in the underlying “Relevant Company”.
14. Furthermore when processing the personal tax returns of those taxpayers with deemed distributions and/or cash dividends from Jersey resident companies, the name of the company was not captured within the Taxes Office’s IT system⁵.
15. Therefore to attempt to produce some analysis of the profits accruing in “Relevant Companies” from the deemed distributions shown in the personal tax return of a Jersey resident individual shareholders would require a significant manual process, requiring the retrieval and analysis of the paper files for all such shareholders.
16. In light of the fact that the deemed distributions shown in the personal tax returns of Jersey resident individual shareholders are likely to be an unreliable estimate of the profits accruing in the underlying “Relevant Companies” and the period of time that has elapsed since 2011; undertaking such an exercise does not represent a good use of limited Taxes Office resources.
17. In summary, the Taxes Office does not hold complete data on the amount of profits accruing in “Relevant Companies” since the 2008 year of assessment. In light of the period of time that has elapsed, it is considered that the 2008 data is too out of date to be used in this context. The profits data the Taxes Office does hold on “Relevant Companies” for subsequent years of assessment is incomplete and is not held in a format that is easily retrievable or analysable. The deemed distribution data held by the Taxes Office is an unreliable estimate for profits accruing in “Relevant companies”, is increasingly out of date and is not held in a format that is easily retrievable or analysable.
18. Therefore the first piece of information required to estimate the quantum of profits retained within “Relevant Companies” is not available and, as such, an estimate cannot be completed at this time.

Next steps

19. The Taxes Office amended the corporate income tax return for the 2015 year of assessment (and all subsequent years of assessment) such that “Relevant Companies” are required to declare their taxable profits⁶.
20. Since the 2014 year of assessment companies have been obliged to file their corporate income tax return online, making data retrieval more straightforward.
21. Corporate income tax returns for the 2015 year of assessment were due on or before 31 December 2016.
22. Therefore complete⁷, current and accurate data regarding the amount of profits accruing in “Relevant Companies” should have been verified and then produced in a format that could be subject to further analysis by the end of Q1 2017.

⁵ The name of the company paying distributions to Jersey resident individual shareholders has been captured from the 2013 year of assessment onwards.

⁶ Even though these profits are subject to tax at 0% on the company.

⁷ Subject to “Relevant Companies” complying with their filing obligations.

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23. It is therefore proposed that all activities, with the exception of the retrieval and analysis of data relating to the distributions made by “Relevant Companies” to Jersey resident individual shareholders (i.e. information piece two), are paused until such time as this data becomes available.