Budget representations by the CIOT

Indirect Tax

01 November 2017

The CIOT submitted two budget representations in advance of the Autumn 2017 Budget.

A Budget Representation is a written representation from an interest group, individual or representative body to HM Treasury with the aim of commenting on government policy and suggesting new policy ideas for inclusion in the next Budget. HM Treasury welcomes representations as part of the policy-making process.

The CIOT submitted two representations ahead of Autumn Budget 2017; a general representation on adherence to the tax consultation framework, and a specific representation on the tax treatment of intangibles.

The Tax Consultation Framework

The CIOT's representation was simple: that the government should consult fully before making changes to the tax system, observing closely the Tax Consultation Framework published in March 2011. Thorough consultation leads to better tax policy and legislation. Inadequate consultation leads to incoherent tax policy, complex legislation, and taxpayer confusion. It also causes problems for the administration of the tax system by HMRC.

The government's Tax Consultation Framework sets out five stages to the development and implementation of tax policy:

- Stage 1 – Setting out objectives and identifying options.
- Stage 2 – Determining the best option and developing a framework for implementation including detailed policy design.
- Stage 3 – Drafting legislation to effect the proposed change.
- Stage 4 – Implementing and monitoring the change.
- Stage 5 – Reviewing and evaluating the change.

When the early stages of the process are followed, policy is developed in a more coherent way, and the resulting measure is more properly focused and is more likely to translate policy intentions into statute accurately and effectively, without unintended consequences. The development of measures such as partial closure notices and penalties for enablers of defeated tax avoidance were set out to illustrate this.

Unfortunately, too many consultations begin when key decisions have already been made, shutting off potential better options to achieve the same goal. The implementation of measures such as making tax digital, deduction of income tax from savings income, implementation of the personal savings allowance, and employee shareholder status were set out to corroborate this.

The government should start consultations by setting out and obtaining views on different options, or by putting out calls for evidence to allow it to gain the widest possible understanding of an issue.

Our full submission can be found aon the CIOT website.

The taxation of intangible assets

In relation to the taxation of intangible assets, we suggested that the rules relating to the taxation of intangible assets should be simplified as these are currently very complex.

The current regime for intangible fixed assets was introduced in 2002 and gives relief for expenditure on intangible fixed assets written off over time (amortised) to profit and loss account, and taxes income and other credits arising from such intangible assets. However, the regime does not apply to pre-2002 assets so that, goodwill in respect of a business that existed before 2002 only qualifies for relief under the capital gains tax regime, including goodwill in those businesses created after 2002, whereas acquired goodwill from 2002 does qualify, resulting in a two-tier system.

The rules were further complicated by legislation in Finance (No 2) Act 2015 which denies a deduction for goodwill and related relevant assets acquired on or after July 2015, other than debits or credits arising on realisation of the asset. The result is a three-tier scheme for goodwill depending on whether it was acquired before 2002, or relates to a business that has been carried on since before that date, was acquired between 2002 and 2015 or after 2015.

We pointed out that this seems to be unnecessarily complicated.

Accordingly, we suggested that consideration be given to:

- reinstating the deduction for acquired goodwill (and goodwill-like assets). If the government believes that this relief was subject to abuse, we would suggest targeted anti-abuse measures are preferable to no relief at all;
- mandating that the tax treatment for all taxpayers should follow the treatment required by UK accounting standard FRS102 (generally currently used by smaller companies) which requires amortisation of goodwill over its useful life, subject to the existing 4% election; and
- abolishing the distinction between pre-2002 and post-2002 intangibles for all future transactions. The argument for alignment is strengthened by the complication that goodwill generated in a business after 1 April 2002 is deemed to be a pre-2002 asset as long as the business was carried on at 1 April 2002 by the company or a related party; the longer the elapse of time since this date, the more likely it is that uncertainty will arise as to whether the business was being carried out at that point, or whether the business has changed so much it must be regarded as a different business. The question of what comprises a business is also unclear and is a potential source of dispute. This change should, however, be subject to allowing taxpayers to elect to continue with the existing distinction if it is important for them to do so.

In short, this representation was echoing the recommendations made by the OTS in their recent report on the *Simplification of the corporation tax computation* in relation to goodwill and related relevant assets (paragraphs 5.59 – 5.62). We also said that we agreed with the OTS' recommendation that, if there are concerns about perceived avoidance, these should be dealt with under separate, properly targeted, anti-avoidance rules.

We included one further point in our Budget Representation, requesting that the Chancellor considers extending to intangible fixed assets within Part 8 CTA 2009 the exemption from a de-grouping charge when there is a deemed disposal of an asset held by a company upon the disposal of the company and the corporate disposal qualifies for SSE. The general rule is that if an asset is transferred from one group company to another group company, this occurs on a no gain/no loss basis for tax purposes and no charge to tax arises. However if the transferee company leaves the group within six years of the intra-group transfer, there is a deemed disposal and there is a charge to tax on any gain that arises (the de-grouping charge). In 2011 an exemption was introduced for capital assets within the charge to corporation tax on capital gains if the share disposal qualifies for SSE, but was not extended to intangible fixed assets, which were subject to similar rules and a de-grouping charge under the intangible fixed assets regime. We would like to see the two regimes aligned.

Our full submission can be found on the CIOT website.