CIOT Vice-President's page, April 2018

Welcomes

01 April 2018

The CIOT and beyond

Welcome to April’s Tax Adviser. I can definitely say my year as Vice-President has considerably broadened my knowledge of the CIOT.

I really ought to say ‘the CIOT and beyond’; one of the duties of the Vice-President is to attend the ATT Council. It has been a pleasure, rather than a duty, to do so. I would like to thank the ATT Officers and Council for making me welcome. What has become very clear to me over the year is that the ATT is a vibrant and focused organisation, with a well-defined mission to educate and support ‘Practical Tax People’. One of the most interesting and important, events I have attended over the last year was the ATT Foundation Papers and Trailblazer Launch in October. In providing tax education in innovative and accessible ways to a wide range of people working in tax in many different environments, the ATT is a very important gateway to the tax profession. With the Trailblazer Apprenticeship in particular, the ATT has a qualification likely to prove attractive to a wide range of employers, providing a firm foundation for growth in ATT membership, as both HMRC and the taxpaying community place ever greater emphasis on all tax professionals having reputable qualifications. I am also delighted that the CIOT will be offering a Level 7 Taxation Professional Apprenticeship. Together with the Tax Pathway route to ATT & CTA qualification, between us we have the most compelling offering in education for tax professionals.

In the Spring Statement the government announced further consultations around taxing the digital economy. This follows on from HMT’s November 2017 position paper. The UK government has reaffirmed its commitment to taxing corporate profits where value is created, and has also built on its suggestion that the digital age has led to a new type of ‘value-creation’; being value generated by user participation, where such user participation is critical to the business model of some companies. This primarily affects companies such as Facebook or Airbnb where advertising or commission revenue is largely driven by how many people participate on the internet platforms provided by these businesses. The European Commission and the OECD have also issued papers with similar thoughts. It is important to recognise that what is being considered is, at least from the tax authority perspective, an improvement to the corporate tax regime. Currently, the argument goes, some value-creation is not recognised by our tax code, and this needs to be rectified. Fundamentally, if there are profits escaping tax because the current legislation doesn’t provide a way of taxing or measuring them, the system needs to change. However, it should be noted that there are those who remain sceptical about the concept of user created value. As stated in our response to the November HMT paper, and notwithstanding further explanation of the concept in the March paper, the CIOT believes it will prove very difficult to define the value-creation processes the government suggests should be taxed and to properly determine the profit attribution rules that will apply. Moreover, we take the view that it is likely the overwhelming bulk of value creation in such businesses is represented by investment in the platforms themselves. Taxing ‘user participation’ is thus unlikely to represent a major source of tax revenue. Most importantly, these definitions and attributions need to be determined multi-laterally, to avoid multiple taxation of the same value-creation in different jurisdictions.

All parties seem to recognise the need for a multilateral long term solution. However, the political pressures to be seen to be doing something immediately appear insuperable. It now seems likely that, as an ‘interim measure’, governments, including the UK, will seek to tax profits arising from user participation by levying a tax on revenues arising in their countries as a proxy for taxing the profits. The postulated range of such levies is quite wide – from 1% to 5% or even 6%. Taking a £1 levy from £100 of revenue is equivalent to taking corporation tax at 19% from profits of £5.26. So, a 1% levy effectively assumes £100 of UK revenue results in £5.26 of ‘user participation profit’. Some internet companies may report healthy operating margin of around 50%, which would mean such a levy being consistent with around 10% of profit generation coming from user participation. However, a 5% levy would imply more than half of profits being attributable to ‘user participation’, and for companies with lower margins (say 25%) a 5% levy could attribute more than 100% of profit to user participation by my reckoning. Even without considering more deep seated objections to revenue based taxation, it is clear that the scope for controversy and dispute around such levies is substantial.

So, life will certainly continue to be busy! I trust my successor as Vice-President, Peter Rayney, will enjoy the year to come as much as I have enjoyed my first year as an officer of the CIOT.