Corporate capital loss restriction: draft Finance Bill

Large Corporate OMB

01 October 2019

The CIOT commented on the draft Finance Bill legislation published in July, and intended to be included in the next Finance Bill to give effect to the corporate capital loss restriction (CCLR).

The CCLR was announced at Budget 2018 and the government subsequently consulted on the detail of its delivery. In our response to that consultation, although we welcomed the opportunity to engage with the development of the detail for the delivery of the CCLR, we said that we were disappointed that this restriction was announced at Stage two of the government's Tax Policy Framework, and that no opportunity was provided to comment at Stage one: 'Setting out objectives and identifying options'.
In our response to the draft legislation, we reiterated our disappointment with the consultation process and also said again that we are not convinced that the policy rationale set out in the consultation document, and reiterated in the 'Summary of responses to the consultation and the Government's response' (summary of responses), presents a coherent argument for the introduction of this restriction.

We remain unconvinced by the rationale of combining the CCLR with the corporate income loss restriction (CILR) due to the substantial differences between the nature of income and capital profits and gains, and income losses and capital losses. In particular, we remain of the view that a separate annual allowance for capital losses under the CCLR and an allowance for income losses under the CILR would make the legislation simpler and easier for taxpayers to apply. The quantum of the £5m allowance will be less effective at mitigating the financial effects on groups now that it applies in respect of capital gains as well as income profits and we are disappointed that the government has said that it does not intend to increase it. A higher allowance would better ensure that the UK remains an attractive place to do business with a competitive tax system.

As with the CILR, it is intended that the majority of companies (99%) will be unaffected by the restriction on account of the £5m annual allowance. However, whilst this may be true in practice, as the government acknowledges it is only the case that 99% of companies will be financially unaffected. As with the CILR, the compliance obligations apply to all companies, regardless of size. Therefore, we welcomed the commitment to provide detailed guidance and asked that the compliance obligations arising as a result of this new restriction are also appropriately publicised and described in toolkits and timely updates to the corporation tax return to ensure that there is awareness of the new obligations amongst all companies.

Our full response can be seen on the CIOT website.