Hybrids and other mismatch rules

International Tax **Large Corporate**

29 October 2020

At Spring Budget 2020, the government published a consultation document which examined the impact of the double deduction rules and the acting together rules within the hybrid and other mismatches regime. The CIOT submitted comments on the various aspects of the rules considered in the consultation document.

The hybrid and other mismatches legislation, found in Taxation (International and Other Provisions) Act 2010 (TIOPA 2010) Part 6A, came into effect on 1 January 2017, giving effect to the recommendations of Action 2 of the G20/OECD Base Erosion and Profit Shifting project on neutralising hybrid and branch mismatches. The rules are intended to discourage taxpayers from using hybrid structures to generate mismatch outcomes, which mean that either income escapes tax altogether or an expense can be deducted more than once in different tax jurisdictions. The consultation addressed a number of technical issues which resulted in disproportionate or unintended outcomes from the application of the rules.

With regard to first point considered – the double deduction rules in TIOPA 2010 Part 6A Chapters 9 and 10 – we said that the CIOT would support the broader change proposed in the consultation document, enabling inclusion/no deduction income to be treated in the same way as dual inclusion income for the purposes of the double deduction mismatch rules. On balance, we thought that this would be the simplest and best approach to address the concerns and would be consistent with the policy objectives of both the UK anti-hybrid rules and the OECD principles (that is, to ensure that deductions do not exceed corresponding income subject to tax). This approach would also avoid the artificiality of requiring groups to change commercial arrangements in order to meet the requirements of the anti-hybrid rules.

The second issue addressed was in relation to the ‘acting together’ test in TIOPA 2010 s 259ND(7). Our response said that we would support an amendment to the

rules which addresses the main concern that this test generates difficulty for third party lenders, such as funds investing in debt instruments in private equity and venture capital backed companies. Our response also gave some detail of a suggested change to the rules that would provide clarity to borrowers (and lenders) when analysing these rules.

Finally, the consultation document considered the application of the hybrid rules to non-profit organisations.
We agreed that a broader exclusion for counteractions applying to such organisations would be beneficial and suggested that all non-profit organisations are included within the exemption.

Our full response can be read at: www.tax.org.uk/ref660.