Finance (No.2) Bill 2024: CIOT briefings on property and transfers of assets abroad

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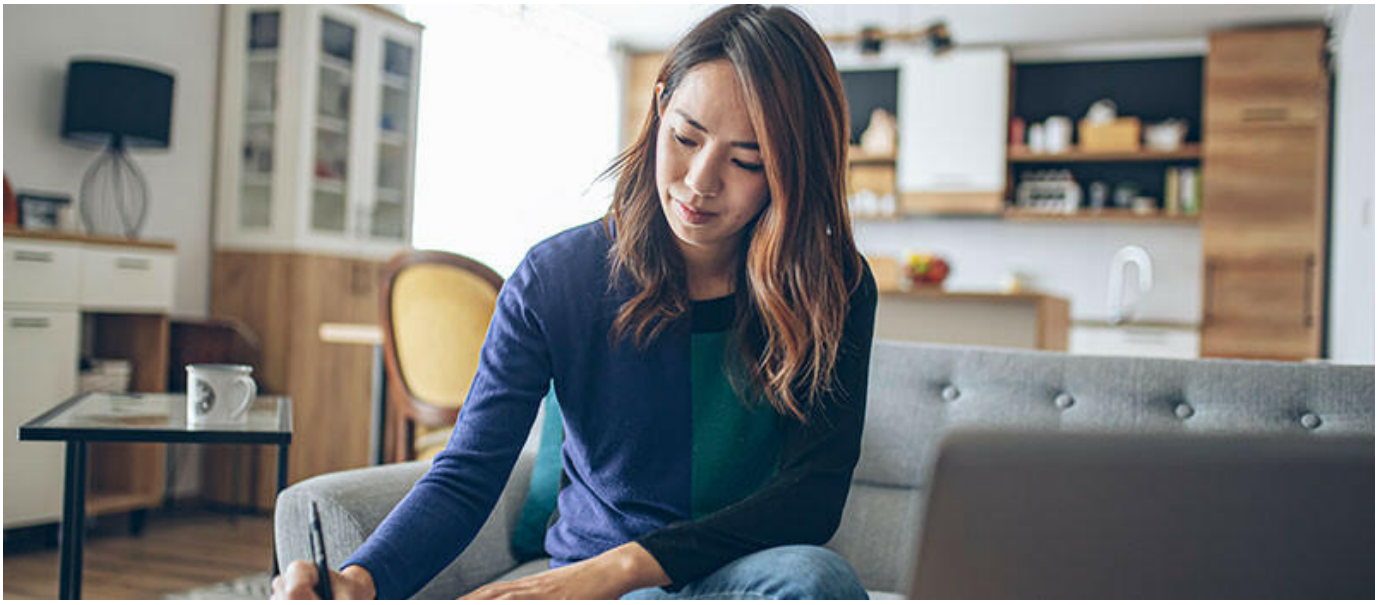

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The CIOT's briefings on Finance (No.2) Bill 2024 for parliamentarians consider the clauses relating to property taxes and the transfer of assets abroad rules in Finance (No.2) Bill 2024.

Finance (No.2) Act 2024received Royal Assent on 24 May 2024. It was one of a number of bills fast-tracked through Parliament in the last few days before it was prorogued, following the announcement of the general election. Finance (No. 2) Bill had already completed its Committee stages in the House of Commons, and this article summarises the briefings the CIOT provided for those proceedings.

Clauses 7 to 10: Stamp duty land tax

Clause 7 abolished multiple dwellings relief(MDR) following consultation and evaluation of its efficacy. We noted that evaluation of tax reliefs in this way is welcome; however, it is possible that there will be unintended consequences on funding for certain sectors such as student accommodation. Furthermore, the differential between residential and non-residential stamp duty land tax (SDLT) rates is now greater than when MDR was introduced. The withdrawal of MDR exposes this differential, creating potential anomalies. We highlighted three in our briefing:

- Investors in residential property buying five or fewer properties are likely to be paying SDLT at a higher rate than an investor buying six or more dwellings – creating a potential barrier to investment for smaller scale investment.
- As long as MDR was in place, UK resident buyers of residential property had a competitive bidding advantage over non-UK resident buyers because of the SDLT surcharge for non-UK resident purchasers of residential property. We therefore questioned whether there is now an inconsistency in the policy approach.
- Transitional provisions that 'de-link' pre-abolition transactions that enjoyed MDR from post-abolition transactions that would otherwise be linked with them may produce unfavourable and uneven outcomes. (The CIOT also provided comments on HMRC's draft guidance on the MDR transitional provisions now published at SDLTM29901 onwards.)

We are supportive of the change to SDLT first-time buyers' relief in clause 8 that corrects a defect and follows CIOT representations in 2023 with the Stamp Taxes Practitioners Group. Similarly, the SDLT changes in clauses 9 and 10 are welcome in removing some uncertainties and updating the legislation for changes in social housing legislation. However, there remain some uncertainties for pre-March 2024 transactions.

The full CIOT briefing is available here: www.tax.org.uk/ref1335

Clause 20: Collective investment schemes: co-ownership schemes

Clause 20 relates to the new Reserved Investor Fund (Contractual Scheme), including a power to make provisions via regulations. The CIOT has not responded formally to the subsequent consultation on the draft tax regulations. However, our

response to the original consultation made the overarching point that the tax treatment of the new fund should be largely equivalent, as far as possible, to comparable common offshore funds investing in UK commercial real estate.

With that context in mind, we have raised a concern with HMRC that the deemed company treatment for SDLT purposes is linked to meeting the ownership/asset requirements and therefore there is a risk of 'dry' SDLT tax charges on leaving the new fund regime. This would mean that a Reserved Investor Fund is not the equivalent of the offshore vehicles that do not have the same uncertainty.

Clause 22: Transfer of assets abroad

Clause 22 is a reaction to the Supreme Court's decision in *HMRC v Fisher* [2023] UKSC 44. In that case, the court rejected HMRC's arguments and held that the transfer of assets abroad rules only apply to transfers made by individuals, not limited companies; the changes within clause 22 extend the provisions of ITA 2007 ss 720 and 727 so that they do. The income tax charge will apply to close company shareholders ('relevant participators') who did not object to, and were aware or should have been aware of, the transfer made by the company.

Whilst generally supportive of measures which fill loopholes in anti-avoidance legislation, the CIOT is concerned as to how widely these new provisions are drafted, the impracticality and unfairness of their application and their retroactive effect. Concerns raised included:

- minority shareholders with no influence in the day-to-day running of the business being caught and apportioned an element of the tax charge (despite no mechanism being in place to do this);
- applying the motive defence to multiple shareholders; and
- applying charges under income tax to income ordinarily subject to corporation tax.

The full CIOT briefing is available here: www.tax.org.uk/ref1338.

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