‘Patient Capital’ consultation

Inheritance Tax and trusts | OMB | Personal tax

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The CIOT responded to the Treasury consultation ‘Financing growth in innovative firms’, part of the government’s Patient Capital Review, considering barriers to accessing long-term investment (patient capital) for the development of young innovative firms.

The extensive Treasury consultation ‘Financing growth in innovative firms’ considers the lack of effective supply of patient capital, current interventions and potential solutions. For the purposes of the consultation, patient capital is defined as ‘long-term investment in innovative firms led by ambitious entrepreneurs who want to build large-scale businesses’.

The CIOT responded to Question 12 (only) of the consultation: *What other steps could government take to make current tax reliefs more efficient and effective, to provide the best support in line with their policy objectives?*

The tax reliefs listed in the consultation were:

- The tax advantaged venture capital schemes (Enterprise Investment Scheme (EIS), Seed Enterprise Investment Scheme (SEIS) and the Venture Capital Trusts (VCT))
- Social Investment Tax Relief (SITR)
- Entrepreneurs’ Relief
- Investors’ Relief
- Business Property Relief (BPR)

Our response reiterated the points made in the joint CIOT, IFS and IfG report ‘*Better Budgets: making tax policy better*’ that promotes the value of post-legislative review and evaluation of tax measures. One trigger for post-legislative review could be ‘sunset’ clauses or mandatory re-authorisation. That would require Parliament to make a positive decision to continue with the reliefs providing the basis for

Parliament to return to the issue of whether the incentives are meeting their objectives, and whether there was sufficient evidence to make that assessment. In terms of the tax advantaged venture capital schemes, the CIOT drew attention to the complexity (both in terms of substantive law and the layout of the provisions) of the legislation and the resulting difficulty for businesses and advisers in establishing the qualifying conditions with certainty. The frequency with which the rules are subject to relatively minor adjustments is a further reflection of that complexity. The comparative brevity of published guidance adds further challenges to using the reliefs. We pointed to a number of unnecessary bear traps in the statutory conditions as illustrated in the recent cases of *X-Wind Power v CRC* [2017] UKUT 290, *Flix Innovations v CRC* [2016] UKUT 0301 (TCC), and *Robert Ames v HMRC* [2015] UKFTT 337. We suggested that consideration might be given to a limited form of statutory discretion exercisable by HMRC with the essential safeguard of a right of appeal to the First-tier Tribunal, to deal with such pitfalls.

The response noted reports of disappointing levels of take- up and a lack of public awareness of SITR. We suggested that more is done to raise awareness perhaps through a joint initiative between HMRC, the charity sector and the tax profession.

We noted that there would be value in a more closely articulated objective for Entrepreneurs' Relief to provide greater clarity/ certainty on the nature of entrepreneurial activity that is within its scope, particularly in in relation to the balance between trading activity and investments held as part of the business, and the rationale underpinning the definition of a qualifying personal company being at least five per cent of the ordinary share capital and voting rights. As with EIS and SEIS there are pitfalls in the qualifying conditions for Entrepreneurs Relief (see for example *HMRC v McQuillan* [2017] UKUT 344).

In respect of the relatively recent relief, Investors' Relief, we suggested that a post legislative review should take place soon after the initial qualifying holding period of three years expires in 2019.

As with Entrepreneurs' Relief, discerning Parliament's policy objectives in relation to BPR is less easy than it is with the tax advantaged venture capital schemes and the more recently introduced reliefs such as SITR and Investors' Relief. The structure of BPR has remained largely unchanged for twenty-five years. As recommended by the OTS a formal evaluation should form part of a wider review of IHT to enable the policy rationale for various provisions to be analysed, reliefs to be reviewed and,

where necessary, either repealed, simplified or increased in line with inflation, and a simpler system overall to be considered.

The consultation also asked for ideas for increasing effective retail investment through the expansion of Business Investment Relief (BIR). Our response considered some of the ideas that have been put forward in response to the earlier specific consultation on BIR. We highlight that despite the amendments in the current Finance Bill, there is a significant deterrent that remains with the current legislative code for BIR. An extraction of value of any amount from the target investment will potentially cause the loss of the entire relief. We have suggested that early and serious consideration is given to limiting the withdrawal of relief to the actual amount of any benefit received or an overriding de minimis exclusion to take out small amounts (a similar provision exists for the purposes of EIS).

The consultation notes that any new programmes arising from responses to the consultation will be made at the Autumn Budget on 22 November.

Our response is on the CIOT website.