Hybrid and other mismatches regime: proposed changes

International Tax | Large Corporate

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The CIOT welcomed the changes to the hybrid and other mismatches regime for corporation tax announced by the government in November 2020, but sought further clarification around some of the changes announced for which draft legislation has not yet been published.

In November 2020, the government announced changes to the hybrids and other mismatches regime for corporation tax and published a Policy Paper, along with draft clauses for Finance Bill 2021 which will implement some of the changes.
In our response to the Policy Paper, the CIOT welcomed the changes, many of which were consulted on during summer 2020 (see www.tax.org.uk/ref660 for the consultation paper and the CIOT's response). Following this consultation, we welcomed the constructive approach that HMRC have taken, which is reflected in the Policy Paper and the draft Finance Bill clauses. In our view, the proposed changes will ensure that the hybrids rules better reflect the policy objectives of the regime and will provide greater certainty, so businesses can plan ahead with confidence.

We also welcomed that many of the changes are retrospective and will have effect from 1 January 2017, when the rules were introduced. However, this also means that unfortunately the amendments are being made some four years after the introduction of the legislation, which means that since the introduction of the rules, companies have had to take action based on legislation which does not now apply.

Our response said that it is important, therefore, that HMRC also introduce a simple mechanism for earlier years' computations to be amended: we are outside the normal 12 month time limit for 2017 and 2018 computations, and companies need a simple way to refile and obtain any repayments. We noted that this is particularly relevant for smaller UK companies who have suffered from issues around dual inclusion income, because they have a UK cost plus entity with a small number of

employees.

Our response also set out some further queries with regard to changes proposed to the definition of foreign tax, the interaction of the loan relationship rules with the hybrid rules and the test around ‘acting together’. The draft legislation for these changes has not yet been published and we said that we hope and assume that we will have an opportunity to comment further once we see all the draft legislation.

Our full response can be found here: www.tax.org.uk/ref755.