Double taxation treaties stakeholder review 2020/21: CIOT input

International Tax

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The CIOT have taken part in HMRC's stakeholder consultation seeking input into their annual review of the priorities for the UK's network of double taxation agreements for the coming year. The CIOT have responded to HMRC's request for input into their review of the priorities for the UK's network of double taxation agreements (DTAs) for the coming year. We submitted written comments in December 2020 and attended a virtual meeting with HMRC in January 2021.

We welcomed the confirmation from HMRC that, after the end of the transition period on 31 December 2020 and the UK leaving the EU, HMRC will prioritise renegotiation of European DTAs to try and replicate the benefits of the Interest and Royalty and Parent and Subsidiary Directives. HMRC confirmed that they would initially focus on the treaties with Germany and Italy during 2021. Our letter also noted that UK companies will also lose the benefit of the Merger Directive and would, therefore, benefit from a new addition to Article 13 of the OECD Model for treaties with EU/EEA members that would extend the Merger Directive bilaterally.

Our letter to HMRC also reiterated points that we have made in previous years' responses to the DTA review around how the mutual agreement procedure provisions in the UK's treaty network are being managed and how they can be improved.

We encouraged the government to step up the UK's policy for seeking to negotiate mandatory binding arbitration provisions in its treaty network, to reflect the UK's support of such provisions in the discussions around Action 14 of the G20/OECD BEPS project and the changes to the DTA landscape as a result of the OECD Multilateral Instrument.
We also commented on the ongoing work of the Inclusive Framework in Addressing the Tax Challenges of the Digitalisation of the Economy. As noted in the Technical

Newsdesk article above, it is clear that changes to international tax law along the lines of Pillar One and Pillar Two will require enhanced dispute prevention and resolution mechanisms, and our strong view is that these should include mandatory, multilateral, binding arbitration. HMRC confirmed that the UK government's position in ongoing negotiations around these solutions is that Pillar One (at least) should include arbitration mechanisms. We understand that the UK government remains in favour of arbitration generally, not least because in the long run it is less resource intensive for tax authorities than a lack of it, because arbitration shortens disputes.

On a more practical level, we noted that HMRC's process for treaty clearance is still quite archaic, requiring a form to be printed, sent to an overseas tax authority and certified before being sent back to HMRC. Even if the Passport Scheme applies, the online form has to be printed and sent to an overseas authority (although in that case it may be possible to get the certificate of residence first). A similar issue arises the other way, with getting certificates of residence from HMRC.

We asked whether HMRC has considered moving these procedures to an online process. We recognised that there would be a cost to implementing a new online system, but working towards this would fit in with the overall aim of the government to modernise the tax system. We suggested that taxpayers would welcome an online system, which could be developed initially with a few key jurisdictions (including the US).

Our letter to HMRC can be read in full here: www.tax.org.uk/ref742.