CIOT budget representations on corporate tax measures, property income for MTD and capital gains tax

Large Corporate | OMB | Personal tax

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The Chartered Institute of Taxation has submitted a number of budget representations, suggesting changes to the tax system to offer support to businesses, with regard to the proposed extension of Making Tax Digital to property income and in response to the recent review of capital gains tax by the Office of Tax Simplification.

Changes to the tax rules affecting companies

The CIOT submitted a budget representation to the government setting out some suggestions as to how the tax system can offer support to businesses as the UK emerges from the pandemic and seeks to build a strong economic recovery. We suggested several measures that we think could promote recovery and growth.

Corporate tax losses: We suggested that government should allow businesses to benefit from a three-year carry back of corporation tax losses arising during the pandemic, saying that this would give a cash flow boost to businesses with a track record of paying tax that have been affected by the impact of COVID-19, because they will be able to claim a refund of corporation tax paid in the previous three years. The additional flexibility could be focused on losses arising because of the pandemic by limiting the extended carry back to trading losses arising in accounting periods overlapping, say, the year from 1 March 2020. We also suggested that the government should relax the rules around the recently introduced 50% loss relief restrictions so that all companies get full relief for losses arising because of the pandemic.

Capital allowances: We recommended that the government sets the level of the Annual Investment Allowance (AIA) on a long-term basis and have suggested £1 million per annum. We said that this would create certainty for businesses contemplating investment projects and avoid arbitrary cliff edges around dates, sometimes announced late in the day, that have been a too common occurrence over recent years due to fluctuations in the level of the AIA. We added that it would also send the message that the government recognises the overall benefit of capital expenditure and investment by businesses. Most businesses cite certainty as more important than the precise amount of relief available: putting the AIA on a more permanent footing would boost investor and business confidence at relatively modest cost to the Exchequer.

Rules that apply on changes in ownership of businesses: We asked for clarification around what will constitute a major change in the nature or conduct of a trade carried on by a company to reflect the circumstances that have arisen because of COVID-19. We said that we envisaged that there could be a significant amount of both changes in the nature or conduct of trades and changes in ownership because of the COVID-19 pandemic, as businesses work out new ways of operating or diversify and/or merge in order to remain viable. Noting that it has often been difficult in practice to determine whether there has been a major change in the nature or conduct of a trade, we suggested that consideration should be given to providing some assistance in this area.

Re-organisations of businesses more generally: Our budget representation commented on a number of areas where the existing rules and tax reliefs for schemes of reconstruction present problems for businesses. The existing rules often cause transactions to be made unnecessarily complicated in order to ensure that the reorganisation can meet the requirements of the various tax reliefs, so that unexpected tax charges do not arise. We suggested that this period of economic difficulty is an opportune time to consider amending or updating some of these rules in order to make them easier to operate for corporate businesses and their owners. Restructuring of businesses is likely to become more prevalent as businesses struggle to regroup and reorganise in order to put themselves in the best position to recover and grow. Our specific proposals were:

- Stamp duty: to broaden the reliefs from stamp duty for reorganisations and reconstructions under FA 1986 ss 75 and 77 to more closely reflect the policy (apparent from other taxes) that such transactions should be tax neutral.

- Demergers: to consult on changes to the exempt distributions regime, specifically whether any of the restrictions can be removed, with the aim of simplifying the rules so that demergers of businesses can be done tax neutrally.
- Clearances: to amend the rules for obtaining a clearance for reorganisations to address the shortfalls in the legislation which can cause practical problems in commercial transactions.

UK to UK transfer pricing: We suggested that an opportunity arises following the UK leaving the EU for tax measures that were introduced solely to ensure the UK law complied with the then understanding of EU law to be repealed. UK to UK transfer pricing is one such measure that warrants consideration for repeal.

Our budget representation on corporate tax matters can be read here: www.tax.org.uk/ref688.

Making Tax Digital for property income

The CIOT has recommended that the government undertakes a stage one consultation in relation to the basis period for the taxation of property income generated by individuals for the purposes of Making Tax Digital (MTD). MTD for Income Tax Self-Assessment (ITSA) will become mandatory from April 2023. Self-employed businesses and landlords with annual business and/or property income above £10,000 will need to follow the rules for MTD for Income Tax from their next accounting period starting on or after 6 April 2023.

One of the complexities MTD for ITSA exacerbates is that property income is taxed on a tax year basis (6 April to 5 April), whereas trading income is taxed in relation to basis periods (this is usually the 12-month period ending with the accounting date in the tax year). This creates a mismatch in reporting obligations for taxpayers with trading businesses that do not prepare their accounts to 5 April, where the business owner also has property income. It quickly becomes apparent that, even in quite common circumstances, MTD could require individuals and businesses to submit quarterly and end of period updates with a frequency that will impose significant additional burdens on individuals and businesses compared to those under the current rules. Our budget representation included an illustration that shows that a VAT registered self-employed individual, with a buy to let property, could face up to 15 separate updates, most with a different deadline, within a 12 month period

(compared to just five under the existing regime).

Our representation appreciated that this is a complex area, but said that it is one that requires prompt attention because mandation of MTD for ITSA is only just over two years' away.

Our budget representation on MTD for property income can be read here: www.tax.org.uk/ref758

Capital gains tax

Following the recent report published by the Office of Tax Simplification (OTS) on Capital Gains Tax: Simplifying by design, the CIOT has suggested that a wider consultation be undertaken about the future role and shape of capital gains tax (CGT) in our tax system, building on past research and analysis and including as many different perspectives as possible.

We suggested that a wide consultation on CGT should explicitly consider how to achieve the most revenue with the fewest adverse economic consequences, including potential impacts on risk taking, entrepreneurship and liquidity. It would also be appropriate to consider the implications for CGT policy of our departure from the EU and whether now is the time for fundamental reform.

In short, we suggested that the CGT consultation needs to be drawn much more widely than the OTS paper, given the OTS cannot appropriately look at broader tax policy issues.

Our budget representation on capital gains tax can be read here: www.tax.org.uk/ref757.