VAT and value shifting consultation: CIOT response

Indirect Tax

07 May 2021

The CIOT has responded to HMRC's recent consultation, which proposes changes to the rules for apportioning the consideration (payment) between supplies with mixed liabilities in a single transaction.

You would be forgiven for thinking from the title of the consultation that it focuses solely on artificial or abusive value shifting arrangements. In fact, it will affect most businesses that sell goods or services as part of a package or 'bundle'.

In our view, HMRC have not demonstrated that there is sufficient 'value shifting' to warrant a structural change to the VAT rules. The consultation makes reference to 'some businesses' (but does not state how many), and seems to seek to identify the extent of the problem by asking the various questions of suppliers of bundles (even though the solution already seems to have been determined). Indeed, the consultation page notes that 'the broad principles of the new rules are set'. We encouraged HMRC to disclose the evidence that has led them to this conclusion, as it appears to us that the consultation is proposing a solution to a problem, the extent of which is not fully known. We also expressed disappointment that the consultation started at stage two of the consultation process, by-passing stage one and thus the opportunity to better identify the problem and alternative solutions.

We consider that HMRC already have adequate armoury to challenge value-shifting arrangements; either simply on technical merits (on which many such arrangements fail), or on 'abuse' grounds. If any additional armoury is considered necessary, this should be targeted at the mischief it intends to prevent, without creating significant collateral damage for other taxpayers.

We are concerned that the proposed rules in their current form could actually create opportunities to manipulate the amounts attributable to bundled supplies, such as

by inflating individual selling prices of zero or lower rated components. The prescriptive nature of the rules could result in a smaller proportion of the consideration being properly attributable to positive rated supplies, necessitating complex rules and anti-avoidance measures to prevent such abuse.

We also highlighted the need for exceptions from any new rule. For example (and on which we declared an interest), we consider that non-profit making bodies which apportion their subscription income in accordance with Extra Statutory Concession 3.35, as well as any other ‘bespoke’ agreements between taxpayers and HMRC, should be allowed to continue. Our full response can be found on the submissions page of the CIOT website.