Notification of uncertain tax treatment by large businesses – second consultation: CIOT response

Large Corporate

01 July 2021

The CIOT responded to the second consultation on the government's proposal for a requirement that large businesses notify HMRC about uncertain tax treatments. This was the second consultation on this proposal, following a welcome delay to the introduction of this measure until April 2022. We remain unconvinced that this measure will achieve the stated policy aims effectively or proportionately.

CIOT responded to the second consultation document on the proposal for notification of uncertain tax treatment by large businesses published on 23 March 2021 and also had a discussion with HMT and HMRC on this proposal in May 2021.

In our response, and discussion with HMT and HMRC, we noted the changes to the proposed measure for notification of uncertain tax treatment by large businesses reflected in the second consultation document and said that we appreciate that these changes mean that the measure in itself is now more objective. We welcomed, in particular, the reduced scope to corporation tax, VAT and income tax (including PAYE). However, we also said that the measure will still impose significant compliance costs on all large businesses for very uncertain benefits for the Exchequer and HMRC and that there remains room for considerable improvement.

The policy objectives of this measure are summarised in paragraph 2.14 of the second consultation document (tinyurl.com/yebc8srh), which states: '[T]his measure is intended to help reduce the legal interpretation portion of the tax gap …. The aim of the measure is to identify and clarify uncertainties earlier than they would otherwise be identified (if at all) and identify businesses that are pushing the legal boundaries'.

Our response set out the areas where the detailed proposals still lack clarity, both with regard to how they are expected to bring about the stated intended outcomes and as to their practical implementation and impacts. Overall, we do not think that the case has yet been made to demonstrate that the measure will achieve the policy aims or be effective (and efficient) at doing the job required of them from HMRC's perspective. Broadly, it seems to CIOT that this measure will be wholly inefficient. This is primarily because the compliance burden on large businesses and the additional administrative resource required by HMRC will be disproportionate to any benefit, but also because similar outcomes could be achieved within the existing tax administration framework by steps that might well be worthwhile and effective in their own right. We pointed out that most of these steps will be needed in any event if this compliance measure is to be capitalised on; and/ or is to achieve its intention of not duplicating a requirement to disclose matters already brought into discussion with HMRC and otherwise not adding to the burdens of the compliant. Thus, we are not convinced that legislation is necessary to achieve the stated policy aims.

Our response also discusses the 'triggers', which will define what uncertain tax treatments are. Our view is that these require a significant amount of further work in order to ensure that they are sufficiently clear and objective, as well as removing some elements in order to lessen the amount of overlap. There are seven triggers – (a) to (g) – suggested in the consultation document. We suggested that the triggers should be tightened up and the number of these reduced.

The proposal contains an important exception from the requirement to notify in respect of uncertainties that HMRC are already aware of. Whilst this exception is welcome, we noted that it will have to be set out very clearly in legislation in order for large businesses to be able to rely on it and achieve the policy aim of mitigating the increased compliance burden. A number of questions in relation to its potential application in practice must be resolved and clarified.

Our response also noted that in addition to the significant compliance burden on large businesses, we anticipate that significant additional resource will be required for HMRC. The Assessment of Impacts notes that 'HMRC will require some additional resources', but no detail about these resources or the cost of providing them is given. However, as noted above, it is our view that these additional resources for HMRC could be employed to address the legal interpretation area of the tax gap more effectively than this measure would, and may be a worthwhile investment in any event.

Looking forward, we welcomed the confirmation during our discussions that the government recognises that there is still a significant amount of work required in relation to several areas of this proposal in order to achieve better focus and targeting of the measure; in particular, the triggers and the proposed exception in respect of uncertainties that HMRC already knows about. We said that CIOT remains very willing to engage in further discussion to assist with this, although it is fair to say that we remain unconvinced that the main detailed features of this measure will achieve the stated policy aims effectively or proportionately.

Our full response can be read at: www.tax.org.uk/ref782.