Improving large business tax compliance – proposals announced at the summer Budget to go ahead

Large Corporate

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Proposals announced at the summer Budget are to go ahead

At summer Budget 2015 the government announced measures to improve large business tax compliance and published a consultation document on 22 July 2015. The CIOT responded.

We commented that, although we welcomed moves by large businesses to provide greater transparency for their tax affairs, which is an important step to improve public trust in the domestic and international corporate tax system, we did not support legislation in that area at present. In our view, the measures proposed by the government in the summer would be too restrictive and result in a levelling out around disclosures.

Increased investor scrutiny, requirements from indices such as the Dow Jones Sustainability Index and FTSE4Good index and public opinion generally is already doing a good job in encouraging companies to increase disclosure. We said that, where ‘the market’ is already performing well, the case for legislation is less clear. Further, there are, as noted in the consultation document, various international initiatives coming out of the OECD/G20 BEPS project, such as country-by-country reporting to tax authorities which the UK is committed to. We therefore take the view that the proposed legislation will discourage companies from undertaking work on other disclosures that may be more relevant. For example, some UK-based companies may make little UK profit due to having most operations overseas, and their tax policy in developing countries may be of more interest to investors and the public at large.

Despite our views, it was not unexpected that the Autumn Statement included an announcement that the government would proceed with the measures. Therefore, we will wait to see the detail of the legislation (not available at the time of writing), and hope that the government has heeded some of our principal objections to the proposals in the document.

In particular, we commented that imposing disclosure requirements on overseas companies would be unhelpful. Rather, it would send the message that the UK is becoming a more difficult and burdensome place to do business. The Autumn Statement announcement simply says that ‘large businesses [will have to] publish their tax strategies as they relate to or affect UK taxation’. Thus at the time of writing it was unclear how the new rules would apply to multinationals whose headquarters are outside the UK.

The consultation document proposed that the new rules should apply to companies within the senior accounting officer (SAO) rules. We noted that, although this offered a consistency in the threshold for which the proposals will apply with the SAO requirement, which may be superficially attractive, we understand that there are about 500 businesses within the SAO requirements that do not fall into the large business directorate – and so do not have a customer relationship manager (CRM). Therefore, in our view, any threshold for these new rules should be set at a higher level – such as companies included in the FTSE 100 and FTSE 250 indices and the small number of unquoted UK-parented groups of similar size.

Another area of concern was the idea of ‘cooperative compliance’ – a concept that is repeated in the Autumn Statement. The consultation document was focused on what the taxpayer has to do, but little was offered about HMRC’s role in working alongside taxpayers to help achieve what is seen as necessary. For example, paragraph 1.3 noted the important role of the CRM. We said that, although the professional capabilities of HMRC staff are accepted and admired, in reality many CRMs struggle to understand their taxpayers’ businesses and the commercial and economic environments in which they operate. Most large businesses would welcome an acknowledgement from HMRC that further effort is required here. We did not suggest that the CRM community is at fault; we simply asked HMRC to recognise that, where a business has had a new CRM on average every 12 months, who may or may not be familiar with the taxpayer’s sector, it is not easy for each one to fully appreciate the particular features of that sector.

One proposal in the consultation document was that companies commit to comply with a voluntary ‘code of practice on taxation for large business’ that sets out the behaviours that HMRC expects. The focus in the code was on companies providing information and being more open and helpful with HMRC. We commented that, increasingly, the issue with collaborative compliance for large businesses in practice is that HMRC is unable to reciprocate. Many CRMs are not empowered to make case-by-case decisions, and the legislation fails to accommodate adequate clearance processes, particularly if it is difficult to identify a significant degree of uncertainty. Some CRMs might be prepared to confirm to a taxpayer that ‘you have got the position right’, but others may feel they have to stick to the letter of the HMRC guidance process. This lack of reciprocation needs attention if the collaborative compliance agenda is to advance further.

It is not clear from the Autumn Statement announcement whether the code will be included in the new legislation. It may or may not be part of the new ‘framework for cooperative compliance’. Our view of the code is that its aims, as set out in the consultation document, were appropriate and, as acknowledged in paragraph 3.15, already expected of taxpayers. However, we pointed out that HMRC will be already be aware of whether a taxpayer complies with these behaviours a result of the business risk review process and CRM programmes. It is not clear to us, therefore, what will be achieved by a formal commitment by a business that already complies.

We noted the reference to the Banking Code of Conduct in the consultation document, and the stated different intentions that the newly proposed code it should be voluntary. However, we also noted that the ‘naming and shaming’ features were added after the introduction of the Banking Code of Conduct code (Strengthening the Code of Practice on Taxation for Banks in 2013), although this code is also nominally voluntary. We commented that this policy creep damages the relationship between HMRC and taxpayers. Our understanding from our members is that business is reluctant to trust that HMRC will not take the same approach with the proposed code in due course. These fears are not allayed by questions in the consultation document on whether compliance (or not) with the code should be published. Our response was clear that businesses should not be required to publish whether they are or are not a signatory to the code, whether as part of their tax strategy or otherwise. We said that, to be required to do so, would be contrary to the stated policy that the code is voluntary; indeed, how is this different from naming and shaming?

We concluded that, if HMRC has any intention to introduce any sanctions for businesses that do not sign up to the code, it should make this clear from the outset. It is not helpful to taxpayer trust if HMRC initially says one thing and subsequently by other actions and consequences the effect becomes another. To the extent that the code is to be included in the proposals now to be legislated, we hope that these concerns have been noted and are reflected.

On the proposals for a special measures regime, we said it is difficult to see how the introduction of such a regime would be especially effective – although we did acknowledge the safeguards included in the proposals. We assume these will also appear in the legislation implementing these proposals.