Finance Bill (No.2) Bill: Company distributions

OMB Personal tax

01 May 2016

A summary of the changes being introduced

HMRC has published its response to the consultation on company distributions. The document had sought views on various aspects of the distribution rules, as well as on draft legislation on changes to the Transaction in Securities rules and the introduction of a new Targeted Anti-Avoidance Rule (TAAR) for distributions made in a winding-up. For more details, refer to the item on page 42 of March's Technical Newsdesk, which summarised the CIOT's comments on the proposals (which were in clauses 16, 17 and 18 of the draft Finance Bill published in December 2015). The full text of the CIOT's response can be found on the CIOT website.

As a result of the consultation some changes have been made to the legislation. These are contained in clauses 33 to 35 of the Finance (No.2) Bill 2016 published in March. The legislation comes into effect from 6 April 2016.

The legislation on distributions in a winding-up (clause 35) has been amended so that:

- it will not apply to minority shareholders (those who do not have at least a 5% interest in the company);
- 'arrangements' is defined as 'any agreement, understanding, scheme, transaction or series of transactions, whether or not legally enforceable';
- distributions will not be treated as income to the extent that they represent the capital gains base cost; and
- the exemption for distributions of irredeemable shares will be widened to ensure that the TAAR does not apply to standard liquidation demergers.

It is disappointing that the government has decided not to introduce a clearance procedure for the TAAR, requested by us and other respondents. The government does not believe one is appropriate because ‘clearance procedures are not generally provided for this type of anti-avoidance rule’. However, HMRC has said that it will publish guidance on the new rules using examples to demonstrate the type of transactions to which the Revenue considers the new TAAR should and should not apply. This should help to provide some clarity for taxpayers and advisers.