BEPS Action 15 – multilateral instrument

Inheritance Tax and trusts

01 August 2016

The CIOT responds to the OECD on the BEPS multilateral instrument and hopes that a draft of this unique instrument is made available as soon as possible. This will ensure that the tax treaty-related BEPS measures are developed and implemented accurately and effectively. It notes that the resulting complexity from the multilateral instrument will be challenging.

The CIOT has responded to the OECD public discussion draft on BEPS Action 15 (development of a multilateral instrument to implement the tax treaty-related BEPS measures). The CIOT has consistently supported the BEPS project.

In the context of this consultation, we recognised that the tax treaty-related BEPS measures are an important step to improving public trust in the international tax system by reducing the incidence of double non-taxation arising from the use of treaties in ways that were not envisaged when they were agreed.

We observed that it is clear that the multilateral agreement will allow the tax treaty measures developed during the OECD/G20 BEPS project to be implemented far more swiftly than through bilateral treaty renegotiations.

We commented that it is important that the multilateral instrument achieves such implementation accurately and effectively and without unintended consequences, and leads to certainty of outcomes for taxpayers. We also said that, given the unique nature of this instrument and the significance of the changes proposed, the draft text should be made available to facilitate consultation so that it can achieve implementation of the BEPS tax treaty measures accurately and effectively, even if released in stages.

We recommended there should be an agreed prospective date on which the MI has effect, with this date chosen to ensure that most countries have enough time to ratify the instrument before it – the intention being that it takes effect for most signatories on the same date.

We noted that the proposed flexibility over which specific provisions each country can choose to adopt, such that countries will not have to sign up to the MI as a whole. We understand that this will be the case even for those provisions of the MI that are part of the minimum standards. We agree with this approach to ensure that the take-up of the MI is as wide as possible.

However, we said that the resulting matrix of provisions applying between all the countries that do adopt the MI to a greater or lesser extent would be complicated. Thus it should be incumbent on the OECD, as well as fiscal authorities around the world, to ensure that a register is readily available and is maintained so that taxpayers can easily identify where the MI, and which provisions of it, effectively amend a bilateral treaty between any two particular countries.

We noted the importance of the arbitration provisions as resolving as many cases quickly will assist taxpayers and tax authorities alike, minimising backlog and aiding efficiency.

The full text of the CIOT submission can be found on the CIOT website.