UK government goes it alone on BEPS

Technical International Tax

01 April 2015

The government announced at the autumn statement that it was introducing a new tax aimed at ‘large multinational enterprises with business activities in the UK who enter into contrived arrangements to divert profits from the UK by avoiding a UK taxable presence and/or by other contrived arrangements between connected entities’. This is to be called diverted profits tax (DPT).

We have written to the government setting out our concerns about the introduction of DPT on 1 April 2015. Our view is that the introduction of DPT should be deferred until (at least) 1 April 2016, by which time the BEPS project should have recommended multi-lateral measures to deal with the situations covered by the proposed tax and a proper assessment could be made of whether any additional measures are needed. The introduction of a measure such as this undermines the UK’s competitiveness and introduces uncertainty into the UK tax code, including the impact on the UK’s double tax treaty network. We are also of the view that the legislation may be liable to challenge under EU law.

We welcomed the comments made by the Treasury at the Oxford University Centre for Business Taxation conference on 13 January 2015 when it was suggested: ‘There is no advantage in businesses putting together a lot of information which is sent to HMRC, [and] for HMRC to look at [the information] and then decide there isn’t an issue.’ In this regard we suggested that it would be helpful to narrow the notification requirements, which are broader than those for charging the tax; which seems to us to be an unhelpful position. At the time of writing we are waiting for the Finance Bill to be published to see whether there has been any movement in this area.

We are keen to reduce the enormous amount of compliance work that many companies will be faced with immediately after the legislation is enacted if the rules remain as drafted in the legislation published in December 2014. As has been recognised, this would also produce a large amount of unnecessary work for HMRC. As well as narrowing the notification provisions, it would be helpful if some gateway

conditions are incorporated into the legislation which would operate to better focus the tax on the targeted situations. We suggest the CFC gateway condition, applicable in reverse, would be suitable.

We also suggested that, as loan relationships are not included in the scope of DPT because they are already covered by extensive anti-avoidance provisions, the same logic should apply for derivative contracts.

Our full response can be found here.

Hybrids

In December 2014 the government published consultation document Tackling aggressive tax planning: implementing the agreed G20-OECD approach for addressing hybrid mismatch arrangements. The CIOT recognises that, as far as possible, the tax system should be fair to different groups of taxpayers as well as specific taxes being fair and reasonable. For this reason, the CIOT supports the broad aims of the G20/OECD base erosion and profit shifting (BEPS) project, as this is intended to eliminate any unfair advantages that multi-national enterprises (MNEs) can obtain from the current configuration of the international tax system, thereby leaving a greater burden of taxation on other taxpayers.

We also recognise that hybrid mismatch arrangements give rise to an unfair advantage for MNEs and we support global action to tackle this issue; the aim being to eliminate such mismatch arrangements (or at least render them tax neutral).

We commend the UK government for taking a leading role in implementing the OECD's BEPS outputs announced in September 2014. However, we hope that this leadership is undertaken while being mindful that any action that the UK takes does not have an adverse impact on UK competitiveness.

The key point is that international cooperation is paramount in addressing the issue of hybrids. It is noted that an international consensus has been reached on the proposals to deliver the BEPS policy objectives. However, it is also imperative that there is international cooperation on implementing the proposals. If not, all states adopt measures to ensure single taxation of hybrids, there is potential for substantial tax advantages to remain for companies resident in those states that do not legislate. This could lead to distorted tax competition. Thus there is the danger

that some states initiate partial measures, some none at all and some comprehensive measures. This would leave opportunities for companies resident in the states with no or partial measures to receive a ‘subsidy’ from the international tax system not available to those where the measures introduced are comprehensive.

Our full response can be found here.