Lookthrough Taxation and Sole Enterprise with Protected Assets

Management of taxes

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The OTS has recently consulted on two ideas that were developed during their recent small company taxation review

Lookthrough

The CIOT and ATT have both responded to the Office of Tax Simplification's (OTS) paper which is considering a Lookthrough taxation model for small companies.

The CIOT's view is that while there is an intellectual appeal in trying to even out the taxation treatments of different business structures, in practical terms it will be very challenging to devise a satisfactory model. We do not believe that the way to address the differential is to introduce a completely new taxing mechanism, such as Lookthrough taxation. We think it would be too complicated. It will not, in our view, provide a simpler tax system for those taxpayers who will be affected. In addition, we imagine that it will be extremely unlikely that businesses would opt to use it, as in many (if not the majority of cases) it will probably increase their tax liabilities.

We are therefore unclear whether the policy objective of the measure is merely simplification as a key effect of Lookthrough taxation, particularly if it were to be made mandatory, seems to be to generate an increase in the tax yield from small business. We also believe that the recent changes to dividend taxation should be given time to bed in and take effect, before further changes are made to the way in which the proprietors of small companies are taxed.

With both Brexit and Making Tax Digital (MTD) on the horizon, it seems to us that now is a completely inappropriate time to be putting more costs and burdens onto the small business sector.

If the idea of a Lookthrough approach is progressed, then we are strongly of the view that a formal consultation process should be conducted by HMRC and HM Treasury in line with the usual consultation principles.

ATT's response emphasised the negative impact on company growth if Lookthrough was mandatory as it would mean that retained profits needed to fuel growth would be exposed to higher rates of income tax (and possibly national insurance). We asked how legislative provision could be made to exempt from compulsory Lookthrough the likes of a young James Dyson or Lord Sugar. ATT's response also drew attention to the complexities that Lookthrough would create in relation to matters such as company pension contributions, universal credit, student loans, qualifying loan interest paid by shareholders, the transition out of Lookthrough once any criteria for it were no longer met, the treatment on an eventual winding up, the implications for non-resident shareholders, amortisation of pre 8 July 2015 purchased goodwill and eligibility for EiS/SEIS.

SEPA

In its response to the separate OTS discussion paper on *Sole Enterprise with Protected Assets* (SEPA), ATT questioned the need to create a completely new type of business structure (with all the accompanying uncertainty which that would involve). ATT proposed that a simpler and more effective way to provide a measure of limited liability to sole proprietors would be to adapt the (now familiar) LLP provisions so as to permit (whatever terminology was adopted) what amounted to a single member LLP.

The CIOT's response to the Lookthrough paper can be found on the CIOT website and the ATT response to that paper can be found on the ATT website.

The ATT response to the SEPA paper can also be found on the ATT website.