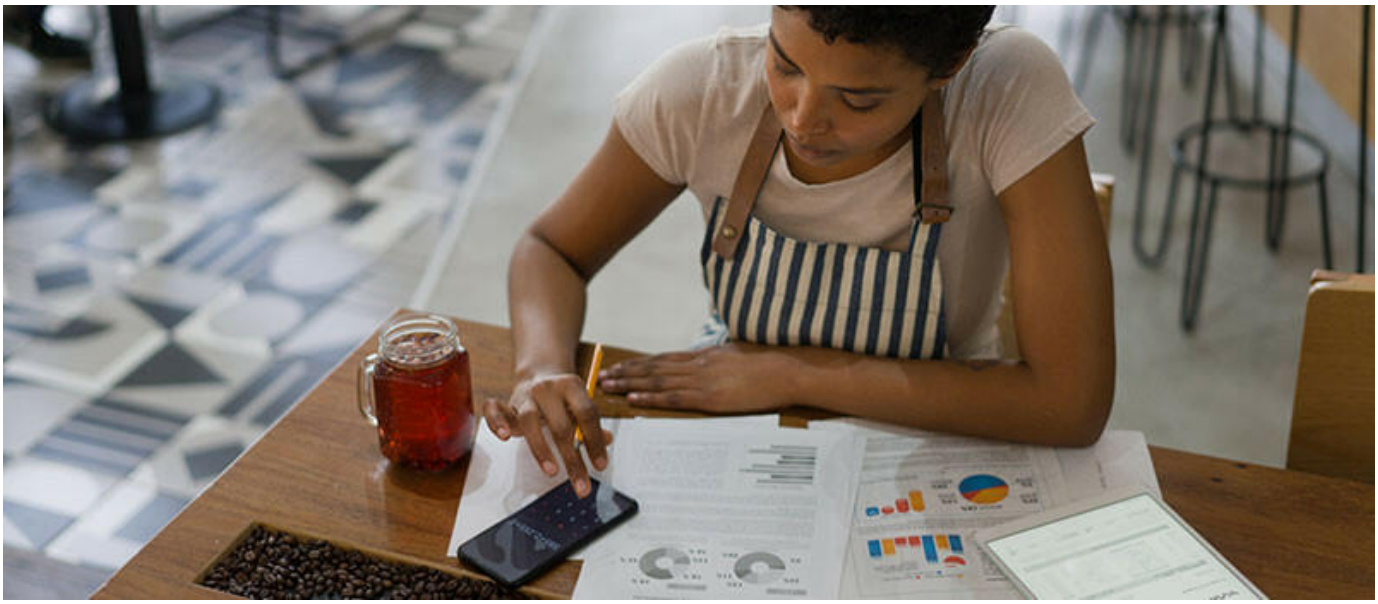
CIOT Spring Budget 2023 Representations

OMB | Management of taxes | Employment Tax



20 February 2023

The CIOT has made several representations to HM Treasury ahead of the Spring Budget on Wednesday 15 March 2023.

Company purchase of own shares: multiple completion contracts

In early 2022, HMRC clarified their position on the purchase of own shares legislation at Corporation Tax Act (CTA) 2010 s 1033 in circumstances where the transaction is effected through a multiple completion contract, and whether the seller remains connected with the company immediately after the purchase; in particular, their view that the word 'possesses' in CTA 2010 s 1062(2) refers to legal, as opposed to beneficial, ownership. HMRC provided the CIOT with a note to explain their interpretation of the meaning of the word 'possesses', which we published on our website on 21 February 2022 (see www.tax.org.uk/purchase_own_shares). However, as is acknowledged by HMRC in their note, we understand that clearances have been given for many years on the basis that the test was of beneficial, rather than

legal, ownership.

There has been further debate with HMRC around their interpretation of this provision, with several advisers contending that the correct interpretation is that the test should be beneficial ownership of the shares. In addition, there seems to be no particular policy reason for the test to be one of legal rather than beneficial ownership. Therefore, we have suggested that the legislation should be amended to put the matter beyond doubt. We have also suggested that it should be made clear that the test is beneficial ownership.

We explore three possible solutions in our representation, which can be read in full on our website (see below).

Capital gains tax: relief for gifts of business assets

Our representation concerned the legislation for holdover relief for gifts of business assets in Taxation of Capital Gains Tax Act (TCGA) 1992 s 165. On the transfer of shares in a trading company, a specific consequence can arise for companies which have both trading and non-trading activities and assets, because there is a restriction to the amount of s 165 gift relief available when the gift is of shares in a company which owns non-business assets, as provided for by TCGA 1992 Sch 7 para 7. We provided some examples to illustrate how the restriction can operate when a company owns non-business chargeable assets and assets which are not chargeable assets, such as intangible fixed assets like goodwill.

There seems to be no policy reason why the legislation operates in this way. As s 165 predates the intangible fixed assets regime, it seems clear that this was not the intended result as it disadvantages owners of newer businesses. We suggest that a legislative amendment to para 7 of Sch 7 is explored to rectify the problem.

We also note that in some cases it may be possible to put in place arrangements to mitigate the restriction to the relief that might otherwise arise. However, such arrangements are likely to be costly and complex. Ultimately, the issue is the application and drafting of the business asset gift relief legislation.

Repayment interest on overpaid tax

We are concerned that unless something is done to bridge the gap between repayment interest and late payment interest, the government will struggle to

achieve its objectives of building a trusted, modern tax administration system that is seen as fair and even-handed. We note that the issue of low repayment interest rates for delayed repayments is particularly acute while HMRC are struggling to deal in a timely fashion with many types of tax repayment, and we illustrated the significant differentials that can arise. We have therefore recommended that the government consults on the rate and approach to repayment interest on overpaid tax.

Simplification of the employment taxes and pensions tax systems

Our representation included 34 suggestions for the upcoming Budget in respect of simplification of employment taxes and the pensions tax regime. Our suggestions fell into three categories:

1. cost of living;

2. employment taxes simplification; and

3. pensions tax regime simplification.

We recommend reviewing fixed allowances and flat rate deductions contained in the Income Tax (Earnings and Pensions) Act 2003, and related legislation and guidance, with a view to uprating these figures in line with inflation and current market rates. We include specific examples of amounts that we believe need to be increased.

We also suggest a number of simplifications and easements to the benefits-in-kind and taxable expenses regime aimed at reducing administrative burdens for employers, employees and HMRC. In particular, we recommend removing the distinction between employer provided/employer paid and employer reimbursed expenses, as the tax consequences should not depend on whether the employer directly incurs the cost or reimburses an expense the employee has incurred. We also recommend a number of measures aimed at enabling employers to better support employees.

In addition, we make some recommendations aimed at reducing administrative burdens on employers and HMRC. For example, removing the tax charge when equipment is retained by an employee on leaving the employment, as often the equipment is of little or no use to the employer, or at least taking into account the cost to the employer of recovering the item when valuing the benefit-in-kind under

the transfer of assets provisions. Further recommendations are made for using artificial intelligence to automatically approve applications to HMRC where certain criteria are met.

Lastly, we make some recommendations for removing complexity in the pensions tax regime.

The CIOT's Budget Representations can be read at:
www.tax.org.uk/2023_budget_reps