Reform of transfer pricing, permanent establishments and diverted profits tax

Large Corporate | International Tax



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CIOT responded to a consultation on ‘Reform of UK law in relation to transfer pricing, permanent establishments and diverted profits tax’, broadly welcoming the proposals to align UK rules around the taxation of the profits of multinational corporations with those agreed internationally.

The government said in April 2023 that it would consult on updating the UK’s legislation on transfer pricing, permanent establishments and diverted profits tax. A consultation was published in June 2023. The aim of the proposals is to ensure that the UK’s tax rules in these areas are consistent with the ‘underlying policy intention, international standards and the UK’s bilateral treaties’. Representatives of the CIOT attended the consultation meetings held by HMRC at the end of June/early July and we also responded in writing.

Our written response welcomed the overarching theme of the proposed changes, which is to align the UK's domestic legislation with equivalent international OECD standards to ensure consistency of application. We said that differences from the agreed international guidelines complicate compliance for taxpayers and reduce the benefit of having reached a global consensus as to what the rules should be. Updated rules in the UK could provide greater certainty, assist in the settlement of mutual agreement procedures (MAP) and enhance the attractiveness of the UK. However, we also said that the areas under consideration are complicated and care will be required to ensure the objectives are met.

Broadly, we welcomed the proposed changes to the transfer pricing rules. We suggested that consideration is given to how the rules could be written so as to not inevitably include joint ventures, and automatically treat these as connected when developing the tests of connectedness. We strongly supported a change to the UK rules to align with international standards and to allow the consideration of implicit support and guarantees in determining the amount and terms of debt available at arm's length.

Our response said that we are undecided about the proposals to align the UK domestic definition of permanent establishment (PE) with Article 5 in the 2017 OECD Model. Although we agree that doing so would be a simplification for both taxpayers and tax administrators, and we support the principle of alignment with the OECD Model, the concerns expressed by businesses about the potential impact of the changes to Article 5 (that the changes would cause less certainty and potentially lead to a proliferation of PEs) remain valid. We said that insufficient time has passed to conclude that the changes to Article 5 are not giving rise to the problems foreseen.

We agreed that a closer alignment of a diverted profits charge assessment to the corporation tax enquiry framework would be a welcome simplification and that bringing diverted profits tax into corporation tax would be beneficial. In particular, it would bring diverted profits tax within the scope of double tax treaties, including access to MAP for resolving disputes.

Our full response can be read at: www.tax.org.uk/ref1160

Sacha Dalton *sdalton@ciot.org.uk*