CIOT Autumn Budget 2024 representation: incorporation relief within TCGA 1992 s 162; update on ESC D32 representation

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The CIOT submitted a representation to HM Treasury prior to the Autumn Budget 2024 outlining our concerns around some of the definitions within TCGA 1992 s 162. Separately, the CIOT had previously called for clarification on aspects of ESC D32.

The CIOT used HM Treasury's call for 2024 Budget representations to outline our concerns on some of the definitions contained within TCGA 1992 s 162.

The first concern surrounds the definition of 'the whole assets of the business' contained within s 162. The legislation requires that all such assets, except cash, be transferred to the limited company in order for the automatic rollover relief to be effective. However, many business owners might wish to retain debtors as well as

cash (which is akin to cash for the owner); however, doing so under the current wording would render incorporation relief unavailable.

In addition, the necessity of transferring all assets to the company as a matter of principle is also questionable. Often, a business owner will want to retain some assets in their own personal name, such as property freeholds – often subsequently granting their company a lease. However, under the current rules this would mean that s 162 is not available unless the freehold is also transferred to the company, incurring additional conveyancers' costs and stamp duty land tax charges. There would appear to be no obvious policy reason for insisting that all assets are transferred to the company.

A potential resolution to this issue, suggested by CIOT, would be not only to define (within the legislation or HMRC guidance) 'whole assets' as being 'chargeable assets', but to also apply the legislative criteria solely to those chargeable assets which are actually transferred.

The second (related) concern is whether it is the transfer of the legal and beneficial titles of assets which makes an effective transfer for s 162, or just beneficial ownership. The tax rules, more generally, are concerned only with beneficial ownership and many incorporations have been executed based on that understanding. There would appear to be no obvious reason why the legal ownership should have to be transferred to the company when tax law is only concerned with beneficial ownership. However, despite this, there are some misgivings as to whether HMRC regard 'whole assets' as including the legal title of assets and whether they might disallow relief if that remains with the individual. Clarification on this point is therefore sought from HMRC.

The full CIOT submission is available here: www.tax.org.uk/ref1368

ESC D32

Following the CIOT's earlier separate submission about uncertainties in relation to the application of ESC D32, the minutes of the April 2024 meeting of HMRC's stakeholder forum, the Capital Taxes Liaison Group, indicate that HMRC will update their guidance to add clarity.

The full CIOT submission on ESC D32 and the update is here: www.tax.org.uk/ref1269.

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