Draft FB 2017 Cl 21: Corporate interest restriction

International Tax | Large Corporate

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In addition to raising concerns around some aspects of the detail of the proposed new rules, the CIOT tackled the implementation of the new rules for a corporate interest restriction, saying that the legislation has been rushed through without sufficient time for full consideration.

Revised draft legislation for implementing the proposed new rules on corporate interest restriction, which are intended to form part of the Finance Bill 2017, was published on 26 January 2017. This amended the original draft legislation published on 5 December 2016 and reflected both changes to Government policy and changes made as a result of comments received by HMRC.

In its comments on the draft legislation, the CIOT welcomed the changes which addressed some of the forex issues associated with the first draft and the extension of the period for which excess interest capacity can be carried forward.

However, the CIOT also told the government of its serious concerns about the timetable that has been operated for the introduction of this legislation, which has been rushed through without sufficient time for full consideration of the draft legislation. We requested a Ministerial commitment to a detailed review shortly after implementation to enable further changes to be made to the legislation to better target the measure, remove any unintended consequences and to reduce the compliance burden.

In addition to our general concerns around tax policy making, we also noted our concerns that the legislation introduces restrictions that extend its effect beyond the stated policy aim and which place unnecessary burdens on taxpayers. The main areas of concern are:

- ***Modified debt cap***: the CIOT recognises that rules are needed to address volatility in earnings and accordingly the draft legislation provides for the carry forward of excess interest and spare capacity. However, the ability for domestic groups to use these provisions is severely restricted due to the modified debt cap.
- ***Group-EBITDA***: We welcome the intention to better align the group accounting profits with the calculation of taxable profits by allowing adjustments in the calculation of the group-EBITDA. However, we suggested that the rules should also exclude the book to tax difference that can arise from interest rate SWAP termination costs.
- ***Abbreviated return***: We welcome the ability for groups to be able to submit abbreviated returns. However, this comes at a cost of not being able to carry forward capacity if an abbreviated return is submitted. We suggested that, as facts can change, a group that has made abbreviated returns should be able to go back and make full returns if it later determines that it would be beneficial to access spare carried forward capacity.
- ***Financial services***: The proposed rules have a significant impact on the financial services sector that is considered disproportionate to the risk. We therefore encouraged the Government to rethink its approach in this area.

CIOT's full response can be found on the CIOT website.