Finance Bill 2025-26: clauses 36 to 38 – share for share exchanges

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CIOT and ATT submitted briefings to the Public Bill Committee of the House of Commons setting out concerns about the changes to the rules for share for share exchanges and other corporate reorganisations.

Clauses 36 to 38 of the Finance Bill relate to the rules that apply to share for share exchanges and other corporate reorganisations (and collective investment scheme reconstructions), where shareholders are allowed to 'swap' shares (or assets) for shares without triggering a tax charge, provided the transaction meets certain conditions. The anti-avoidance condition applying to these rules is being changed.

CIOT briefing

CIOT's briefing to the Public Bill Committee said that, while we understand the government's intentions behind the changes to the anti-avoidance condition, the

wording of the new rule is unclear. Considerable uncertainty has arisen as a result of the change, and this has been exacerbated by the timing and manner of its introduction. The change, which was announced at the Budget without any prior consultation, created uncertainty that disrupted live commercial transactions.

In our briefing, we made several proposals, including:

- amend the legislation to specifically exclude deferral of tax relief from scope;
- consider the reinstatement of the exception for shareholders with 5% or less of the shares, and/or put in place a clearance process for minority shareholders who need comfort on their tax position, but will have limited influence over, and visibility of, the overall structure of the transaction; and
- ensure that HMRC is adequately resourced to deal with the increased number of clearances expected to be submitted.

We also identified several areas where we believe the government could provide greater clarity or explain its intentions in more detail – for example, in relation to interaction with self-assessment and the form of future clearances.

Finally, we raised our concerns about inconsistencies with other areas of legislation – stamp duty, intangibles and the Enterprise Investment Scheme – which increase complexity.

Prior to submitting our briefing to the committee, CIOT met with HMRC to discuss these concerns.

ATT briefing

In its briefing on clauses 37 and 38 to the Public Bill Committee, the ATT raised concerns that the changes to the anti-avoidance rules have introduced uncertainty for companies and investors, with the potential to adversely affect genuine, non-tax-motivated transactions.

We highlighted that:

- the 60-day transitional period was insufficient and recommended that it be extended to at least 90 days;
- the removal of the 5% threshold, which previously provided an exemption from the anti-avoidance rule for small shareholdings, has created uncertainty, and is

likely to lead to increases in clearance applications and delays to transactions; and
- there is a need for guidance and greater clarity in a number of areas, including how the anti-avoidance rules will operate in practice and how ‘just and reasonable’ adjustments would be made to counteract a reduction or avoidance of tax where disapplying section 139 would usually create an immediate corporation tax charge in the transferring company.

Individual shareholders cannot apply for advance clearance in their own right. Where companies choose not to seek clearance, this could leave shareholders exposed to uncertainty with no mechanism to protect their position. We therefore recommended that any taxpayer who may be affected by the transaction is able to seek statutory clearance in their own right.

Finally, both briefings noted that the legislation took effect immediately on 26 November 2025, without prior consultation, despite being described as a minor change with limited Exchequer impact. Many of the technical and practical issues now arising could have been identified and addressed through consultation. The combination of immediate commencement and limited guidance has created significant uncertainty.

The full CIOT briefing is available here.

The full ATT briefing is available here.

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