House of Lords call for evidence on use of secondary legislation

General Features

01 March 2017

The CIOT responded to the House of Lords call for evidence on the delegation of powers as part of the legislative process, particularly in the context of Brexit.

Secondary legislation – the delegation of powers

The CIOT has always maintained that tax laws should be enshrined in primary legislation as far as possible, but we accept that this is not always feasible. We consider it appropriate to review the use of secondary legislation, particularly in regard to its frequent application in the field of taxation. We consider taxation is something that should be controlled actively by Parliament, and we said that the delegation of powers reduces the control and supervision of Parliament. In regard to taxation, we believe that statutory instruments should be used only to deal with technical matters or the finer detail of matters decided by Parliament.

This restriction is made more important as a result of the fact that the Commons is not currently granted power to amend statutory instruments.

The importance of consultation

We have always believed that the consultation process is an important part of the development of effective legislation.

There needs to be sufficient time for HMRC (or any other department) to receive, consider and act on responses. Often secondary legislation does not receive the proper level of external challenge and scrutiny before implementation, leading to a risk of unintended consequences and burdens for both HMRC, taxpayers and their advisers.

Brexit

We noted that Brexit will pose significant challenges for all. We believe that there should be extensive consultation from the earliest opportunity in order to best manage these challenges and optimise the outcome.

We recognise that the complexity of Brexit is likely to lead to a significant amount of delegated legislation and it will, therefore, be even more important to recognise the limitations to effective scrutiny that can arise as a result of using statutory instruments. We suggest that consideration is given to giving Parliament more powers of scrutiny over, and the ability to amend, secondary legislation.

Our full submission can be found on the CIOT website.