

CIOT and ATT urge caution over distribution tax reforms

OMB

Large Corporate

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The CIOT and ATT have responded to HMRC's consultation on modernising the taxation of distributions, broadly supporting the aim of simplification but raising concerns that the proposals could increase complexity and create barriers to legitimate commercial transactions.

Both bodies question whether HMRC has demonstrated a clear need for some of the more significant reforms, particularly those relating to demergers. The responses note that the current transactions in securities regime already provides HMRC with extensive powers to counteract avoidance and say that more evidence is needed before potentially introducing a whole set of new rules.

A major area of concern is the potential impact on business succession and sales of part of a business. Both organisations warn that restricting the use of capital reduction demergers could make it harder for owner-managed and family

businesses to separate activities, facilitate sales, resolve shareholder disputes and pass businesses to the next generation. They argue that the proposed relaxation of the statutory demerger rules, while welcome, may not go far enough to compensate. This could leave businesses facing more complex or costly routes to achieve the same effect.

The CIOT calls for a simpler framework based on a targeted anti-avoidance rule, rather than several detailed statutory conditions. It also questions proposals that could restrict demergers followed by commercial sales, noting that separating businesses ahead of a third-party sale is often a legitimate commercial objective.

The ATT similarly argues that the consultation risks treating avoidance-driven transactions and genuine commercial reorganisations in the same way. It highlights concerns that the proposals could discourage family succession planning, create dry tax charges in some demergers and complicate third-party acquisitions where future tax treatment depends on historic transactions undertaken by previous shareholders.

Both bodies welcome efforts to address issues arising from unlawful distributions and the interaction between company law and the loans to participators regime. They support measures designed to prevent double taxation and provide greater certainty for taxpayers, although both stress that detailed draft legislation and further consultation will be needed before changes are introduced.

On proposals affecting non-UK resident companies, the ATT raises concerns that imposing charges in the style of Corporation Tax Act 2010 s 455 on individuals receiving loans from overseas closely controlled companies could create significant compliance burdens, particularly where taxpayers have limited access to the information needed to determine whether a charge arises. The CIOT suggests that changes should be considered alongside wider reforms to offshore anti-avoidance legislation that are already under review through the offshore anti-avoidance co-creation group.

The proposed reforms to the purchase of own shares rules generated a high level of engagement among members of both professional bodies, whose opinions are reflected in the responses. While both organisations support replacing subjective tests with clearer statutory rules, they caution that new conditions such as minimum shareholding thresholds, employment requirements and restrictions on returning to

a business could undermine the usefulness of such transactions, particularly for family businesses.

The ATT additionally highlights potential implications for employee share plans, warning that some proposals could reduce the effectiveness of arrangements such as Enterprise Management Incentive (EMI) plans. It calls for further engagement with HMRC's employee shares specialists before reforms are finalised.

Commenting on the absence of any proposed changes to the second part of the purchase of own shares rules, the CIOT stresses the need for a relaxation of the 'undue hardship' requirement when using a purchase of own shares to settle an inheritance tax liability.

Both professional bodies conclude that HMRC should continue consulting with stakeholders and only publish draft legislation once they have provided clearer evidence of the need for change and the problems the reforms are intended to address.

The ATT's response can be found at: [Consultation response modernising taxation distributions and repayments](#)

The CIOT's response can be found at: www.tax.org.uk/ref1717

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