

13 April 2023

His Majesty's Revenue and Customs

Via email: cgtbudget@hmrc.gov.uk

Dear Sirs

Spring Finance Bill 2023 – new sections 138ZA to 138ZC TCGA 1992

We are writing to give some feedback on the proposed changes to the rules for share-for-share exchanges involving non-UK close companies, as contained within the Spring Finance Bill 2023.

The Chartered Institute of Taxation (CIOT) is the leading professional body in the UK for advisers dealing with all aspects of taxation. We are a charity and our primary purpose is to promote education in taxation with a key aim of achieving a more efficient and less complex tax system for all. We draw on the experience of our 19,000 members, and extensive volunteer network, in providing our response.

Our first issue with the draft legislation is that we do not see why it should just apply to individuals? Why not, for instance, to trustees? Is there not an obvious, and potentially straightforward, avoidance opportunity here by having shares held by trustees just before the share-for-share exchange; likewise, would partnerships (or more likely LLPs) therefore also escape these provisions if they were holding shares which were subsequently exchanged? We would therefore suggest that individuals should not be singled out as owners of shares subject to this reform – trustees and LLPs should be included within the definition to ensure that artificial intermediaries are not put in place prior to any exchange.

Second, with respect to ownership, why does 138ZA(1)(d) refer to the person to whom the shares are issued? We would wish to avoid creating the same issues here as currently exist for share buybacks (where HMRC say that the legislation deliberately distinguishes between legal and beneficial ownership). It is well recognised throughout tax law that the beneficial owner is the real owner for tax purposes, so this legislation should also apply, or not, by reference to beneficial ownership. The person to whom the shares are issued (eg a corporate nominee) may not be the beneficial owner.

Third, there is an issue here as regards those who are non-resident at the time of the share-for-share exchange, but who might later become UK resident before the ultimate disposal of their shares. If, while they were non-resident, there was a share-for-share exchange, how are they supposed to know that they need to make an election (and how, practically, are they supposed to make it even if they do know?) Some thought needs to be given as to how this would work in practice, and also how it would interact with the five-year temporary non-residence rules. There could be an amendment to the legislation which makes clear that s.138ZA and ZB apply equally to non-resident owners; though it might be simpler just to disapply the new sections altogether for those who are non-resident at the point of the share-for-share exchange on the basis that there is no downside to such a person electing out of s135/s136 treatment while outside the scope of UK CGT (but consideration would then need to be given to the interaction with the 5 year temporary non-residence rule if the new shares are ultimately disposed of while resident in the UK). Also, and in relation to our first point about trustees: if this were to apply to offshore trustees who don't themselves have a UK CGT liability, but might have a s.87 pool which is based upon the fiction that they are a person resident in the UK by virtue of the beneficiaries – how are they supposed to make an election under s.138ZC?

We would be grateful if you were to acknowledge receipt of this letter, and provide your thoughts on the points we have raised.

Yours faithfully

Danny Clifford
Chair, Private Client (UK) Committee

The Chartered Institute of Taxation

The CIOT is an educational charity, promoting education and study of the administration and practice of taxation. One of our key aims is to work for a better, more efficient, tax system for all affected by it – taxpayers, their advisers and the authorities. Our comments and recommendations on tax issues are made solely in order to achieve this aim; we are a non-party-political organisation.

Our stated objectives for the tax system include:

- A legislative process that translates policy intentions into statute accurately and effectively, without unintended consequences.
- Greater simplicity and clarity, so people can understand how much tax they should be paying and why.
- Greater certainty, so businesses and individuals can plan ahead with confidence.
- A fair balance between the powers of tax collectors and the rights of taxpayers (both represented and unrepresented).
- Responsive and competent tax administration, with a minimum of bureaucracy.

The CIOT's work covers all aspects of taxation, including direct and indirect taxes and duties. Through our Low Incomes Tax Reform Group (LITRG), the CIOT has a particular focus on improving the tax system, including tax credits and benefits, for the unrepresented taxpayer.

The CIOT draws on our members' experience in private practice, commerce and industry, government and academia to improve tax administration and propose and explain how tax policy objectives can most effectively be achieved. We also link to, and draw on, similar leading professional tax bodies in other countries.

Our members have the practising title of 'Chartered Tax Adviser' and the designatory letters 'CTA', to represent the leading tax qualification.