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& Customs

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Dear David,

Clause 28 Finance Bill: Diverted profits tax: closure notices

Thank you for your letter of 10 January 2022 regarding the changes made to the diverted profits tax (DPT) legislation by Clause 28 of the Finance Bill.

Your letter expressed disappointment that no public consultation was undertaken in respect of Clause 28. The government recognises the importance of consultation, where possible and appropriate, on changes to the tax system. However, in the case of Clause 28 it was necessary to act quickly to ensure the effective operation of the DPT regime and protect the Exchequer following the decision of the tribunal in *Vitol Aviation UK Ltd and others v HMRC [2021]*. So consultation was unfortunately not possible in this case.

Clause 28 is not intended to prolong DPT investigations or transfer pricing (TP) enquiries, but instead to ensure that taxable diverted profits are charged to DPT. The mechanics of the DPT legislation mean that once corporation tax closure notices have been issued in respect of the parallel TP enquiry, the taxable diverted profits are considered to have been brought into the charge to CT and the DPT is repaid, without there being any final resolution of the CT position. Clause 28 prevents this outcome and ensures that the DPT remains effective in countering contrived tax driven arrangements to divert profits from the UK.

We recognise that the length of some TP enquiries and DPT investigations is a concern for all involved. Where it is appropriate to do so, and by mutual agreement with the taxpayer under s101(13)(b) Finance Act 2015, HMRC will close a DPT review period early so as to not unnecessarily prolong a DPT investigation. In this situation HMRC will issue CT closure notices in respect of a parallel CT enquiry once the DPT review period has ended.

Andrew Page is the BAI Deputy Director with responsibility for transfer pricing and DPT. He and colleagues in his team will be happy to discuss these matters with you in more detail, and the operation of TP or DPT more generally, if that would be helpful.

Yours sincerely

Jon Sherman, Director, Business, Assets and International