

Ref: CT

10 January 2022

Jon Sherman
HMRC

Via email: jon.sherman@hmrc.gov.uk

Dear Jon

Clause 28 Finance Bill: Diverted profits tax: closure notices

We refer to clause 28 of the current Finance Bill that makes changes to the rules relating to the interaction between diverted profits tax (DPT) and corporation tax closure notices.

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.

We note that the policy paper published alongside this clause says that the measure is intended to ‘... ensure that the interaction between Diverted Profits Tax review periods and what happens when a Corporation Tax enquiry is closed functions as intended.’

Given the generally consultative approach of the announcements on Tax Administration and Maintenance Day, and earlier consultations around transfer pricing documentation and other matters relevant to large businesses (such as notification of uncertain tax treatment), it is a shame that this measure was included in the Finance Bill without a consultation on it and the policy intent.

This change is being made, we understand, following the recent First-tier Tribunal decision in *Vitol Aviation UK Ltd and others v HMRC* [2021] UKFTT in which the tribunal granted the applicants application for closure notices in respect of corporation tax enquiries, notwithstanding that review periods for DPT notices were ongoing in respect of the same accounting periods. Following the changes that are to be made by clause 28, HMRC would have been correct in not issuing the closure notices.

We understand that there is sense in enquiries into corporation tax and DPT (where it is relevant) running concurrently, as the conclusion into an enquiry into DPT can be, and often is, an amendment to corporation tax liabilities. However, we note that the changes being made by clause 28 are due to a victory by a taxpayer, who believed HMRC was unduly delaying the conclusion of a transfer pricing enquiry.

We would be interested to hear if HMRC was contacted by taxpayers who believed the decision gave rise to uncertainty and required an urgent response. It is not immediately obvious to us that consulting on any changes required by the *Vitol* decision before legislating for them would have materially prejudiced revenue collection or the proper operation of DPT enquiries.

We would not want these changes to impact on the length of time taken by HMRC to conclude transfer pricing enquiries. It would be disappointing if this change to the administrative provisions around these two taxes resulted in longer transfer pricing enquiries overall. We would have welcomed an opportunity to discuss this, and any other potential implications of this measure with you before it was introduced.

Yours sincerely

David Murray
Chair, International Taxes Committee

Cc Richard Steele, HMRC

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.