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2 February 2016

Heather Wall
Large and Mid-Size Business Strategy
HM Revenue and Customs
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Via email: largebusinessconsultation.mailbox@hmrc.gsi.gov.uk

RE: Finance Bill 2016 – Requirement for Certain Large Businesses/Groups to Publish a U.K. Tax Strategy

Dear Ms. Wall:

HM Revenue and Customs (HMRC) released a public consultation document entitled *Improving Large Business Tax Compliance* (the Consultation) on 22 July 2015. The Consultation solicited input from interested stakeholders regarding several measures intended to improve large business tax compliance in the United Kingdom and ended on 14 October 2015. A revised proposal to require qualifying large businesses or groups to publish a tax strategy as it relates to U.K. activities (the Tax Strategy Proposal or Proposal) was issued on 9 December 2015 under Clause 65 of Finance Bill 2016. On behalf of Tax Executives Institute, Inc. (TEI), I am pleased to submit comments on the Proposal.

TEI Background

TEI is the preeminent association of in-house tax professionals worldwide. Founded in 1944, today the organization has 56 chapters in Europe, North and South America, and Asia. TEI's approximately 7,000 professionals manage the tax affairs of over 2,800 of the leading companies across all industries around the world. TEI's members are accountants, lawyers, and other corporate and business employees responsible for the tax affairs of their employers in an executive, administrative, or managerial capacity. TEI is committed to promoting fair tax policy and the efficient administration of the tax laws, at all levels of government, seeking to achieve an effective yet dynamic balance between the policy objectives of tax authorities and the business objectives of multinational enterprises.

TEI's Europe, Middle East, and Africa (EMEA) Chapter was chartered in 1999 to address the advocacy, networking and educational needs of in-house tax professionals within those geographies. Our EMEA chapter has grown to more than 250 members since its chartering and has been actively involved in various tax advocacy projects and initiatives. These include leading TEI's efforts to contribute to debates within the Organisation for Economic Co-Operation and Development (OECD) and the European Commission on such areas as the OECD's BEPS project and Model Tax Convention, transfer pricing, value added taxes, as well as the proposal for a common consolidated corporate tax base. In addition, TEI previously submitted comments to HMRC regarding the Consultation on 14 October 2015.¹

Comments on the Tax Strategy Proposal

TEI commends HMRC for the revisions to the Consultation as reflected in the Tax Strategy Proposal. Clearly HMRC took into account the many concerns of business, including TEI, with respect to the Consultation and TEI appreciates the opportunity to submit its comments. Regrettably, the Proposal, although much improved, still requires clarification on a few points, especially as it applies to U.K. subsidiaries/sub-groups of non-U.K. multinational enterprises (MNE).

In general, clarification or further guidance is needed on the application of the Proposal to the U.K. subsidiaries of overseas groups and the need for multiple filings. Where a foreign (*i.e.*, non-U.K.) group is an "MNE group" as defined in Paragraph 7 of the schedule to Clause 65, the legislation would apply to any U.K. sub-group of the MNE group.² Part 3 of the schedule as a result would then apply, requiring the publication of a sub-group tax strategy. Paragraph 26 applies Part 3 to a qualifying MNE group with one or more U.K. sub-groups.³ Paragraph 27 requires the "head of the U.K. sub-group" to ensure the sub-group publishes its strategy.⁴ Paragraph 27(2) permits any company within the group of which the sub-group is part to publish the strategy on the sub-group's behalf. Part 4 of the schedule applies to a qualifying MNE group company that is not a member of a U.K. sub-group (*i.e.*, a stand-alone U.K. subsidiary).⁵ Paragraphs 31 and 37 apply fixed penalties for non-compliance with the publication of the strategy.

¹ TEI's comments on the Consultation are available at: <http://www.tei.org/Documents/TEI-Comments-UK-Public-Consultation-Improving-Large%20Business-Tax-Compliance-FINAL-to-HMRC-14-October-2015.pdf>.

² Paragraph 10 of the Tax Strategy Proposal.

³ *Id.* at Paragraph 26(2).

⁴ *Id.* at Paragraph 27(1).

⁵ *Id.* at Paragraph 32.

TEI requests clarification of these requirements for an MNE group owning a number of U.K. subsidiaries not held through a single U.K. sub-holding company. Many groups own a number of U.K. sub-groups and also own companies not part of a U.K. sub-group, as their direct parent is a company incorporated outside the United Kingdom. A diagram of such an ownership structure is attached as an appendix to this letter.

TEI has the following comments and questions regarding the requirement of a U.K. sub-group to publish a tax strategy:

1. The definition of U.K. sub-group in paragraph 10 is overbroad. We would welcome clarification to ensure only those “relevant bodies” with a significant U.K. tax presence are brought into the scope of this definition. TEI believes it would be more appropriate to confine the definition of U.K. sub-groups to U.K. incorporated entities and their more than 50 percent owned subsidiaries, which would otherwise constitute a U.K. group except they are members of a larger group headed by a relevant body incorporated outside the United Kingdom.
2. The Proposal requires all “qualifying MNE groups” (Paragraph 7(2)) and “qualifying groups” (Paragraph 12(1)) to publish a U.K. tax strategy irrespective of the size of their U.K. operations or activities. Requiring non-U.K. groups with only very modest operations in the U.K. to publish a tax strategy in TEI’s view is not proportionate or in the public interest. We believe it would be appropriate to have a U.K. sub-group threshold in addition to the one applying to the group as a whole to remove MNE’s with only a minor U.K. footprint from this obligation.
3. Is each U.K. sub-group required to publish the strategy specifically for the sub-group under Paragraph 30, or does the strategy of the MNE group, as it relates to all of its U.K. subsidiaries meet the requirements of Paragraph 30? TEI would support having one entity publish a tax strategy for all U.K. sub-groups, and would welcome clarification to this effect. We recommend the Government amend Paragraphs 27 and 30 to make this clear.
4. Paragraph 27(2) permits a member of the U.K. sub-group to publish the strategy on behalf of the head of the U.K. sub-group. Where there is a single U.K. tax strategy applying to all U.K. sub-groups, may a single company be nominated to publish the strategy on behalf of the heads of all the U.K. sub-groups? Would this approach avoid the head of other U.K. sub-groups being subject to the penalty in Paragraph 31? We would welcome an amendment to Paragraphs 27 and 31 to confirm this view.

5. Where U.K. companies are not members of a U.K. sub-group and to which Part 4 applies, can the publishing requirements be met by another member of the MNE group, and will such an approach avoid the Paragraph 37 penalty? Paragraph 36 requires the strategy to be specific to a company, but where the company is a member of an MNE group with a common U.K. strategy, the development and publication of an entirely separate strategy for such a company seems unnecessary and burdensome. TEI would welcome amendments to Paragraphs 27, 30, 31, 36 and Part 4 to confirm a U.K. subsidiary when not a member of a U.K. sub-group, but whose ultimate parent owns one or more U.K. sub-groups, can fulfil its publication requirements through a filing of the group strategy by another U.K. resident member of the overall MNE group.

With respect to the requirement for a business's executive board to approve the tax strategy, TEI welcomes the Government's decision to place accountability for the published tax strategy with the executive board as a whole, rather than a named individual on the board. We further welcome the Government's recognition that multinational groups may have different governance structures in different parts of their overall organization. Indeed, depending on size and complexity, oversight over U.K. activities may be delegated to various committees/boards operating more or less autonomously from each other under the global MNE group executive board. Each business line/unit, for example, may have its own governance structure without a country-wide oversight committee, such as a U.K. board. There should be sufficient flexibility with respect to who is actually accountable for the tax strategy publication required under the Proposal in those scenarios. If this is the intention, and we strongly recommend such an approach, revised legislation or guidance making this flexibility clear would help business implement this compliance obligation. We also suggest the term "executive" board be replaced in the overview and guidance material to the Proposal to avoid any confusion.

With respect to the contents of the tax strategy, TEI notes Paragraph 24(1) references "U.K. group" in sub-paragraph (a), but references "group" in sub-paragraphs (b), (c), and (d). The U.K. sub-groups apply similar language in paragraph 30. The latter sub-paragraphs appear to widen the scope of the Proposal to the group, which although undefined presumably includes entities beyond the U.K. group/U.K. sub-groups. This appears to exceed the government's published policy objective of transparency of the tax strategy as applied to the United Kingdom. TEI believes it would be more consistent with the government's policy if "group" was replaced with "U.K. group" in sub-paragraphs 24(1)(b), (c), and (d).

Conclusion

TEI appreciates the opportunity to comment on the Tax Strategy Proposal. These comments were prepared under the aegis of TEI's European Direct Tax Committee. Please

contact Giles Parsons, Vice Chair of the Committee, at +44 (0)1455 826561, Parsons.Giles@cat.com, or Benjamin R. Shreck of TEI's legal staff, at +1 202 464 8353, bshreck@tei.org if you have any questions about this submission.

Sincerely yours,
TAX EXECUTIVES INSTITUTE, INC.



C. N. (Sandy) Macfarlane
International President

Appendix

Sample Diagram of MNE Group with Multiple U.K. Sub-groups and U.K. Companies Not Part of a Sub-Group

