



Budget Representations 2018:
The need for tax simplification and strategic thinking

21 September 2018

About ICAS

1. The following representations have been prepared by the ICAS Tax Board. The Board, with its five technical committees, is responsible for putting forward the views of the ICAS tax community, which consists of Chartered Accountants and ICAS Tax Professionals working across the UK and beyond, and it does this with the active input and support of over 60 committee members. The Institute of Chartered Accountants of Scotland ('ICAS') is the world's oldest professional body of accountants and we represent over 21,000 members working across the UK and internationally. Our members work in all fields, predominantly across the private and not for profit sectors.
2. ICAS has a public interest remit, a duty to act not solely for its members but for the wider good. From a public interest perspective, our role is to work in a positive and constructive manner to advise policy makers on legislation and to raise issues of importance to our members, individual taxpayers and business alike.
3. The Tax Board's objectives are to:
 - act in the public interest
 - provide constructive input to the tax authorities, and
 - represent ICAS members, affiliates and students' interests.

We see flaws in the UK tax system arising from complexity and a lack of coherent strategy in key areas. Our published [tax policy positions](#), and our Budget representations below are aimed at addressing these issues.

4. These representations have also been submitted in a letter to the Financial Secretary to the Treasury.

Simplification

5. ICAS believes tax simplification is essential to have an efficient and effective tax system and that it should be driven by three principles: relevance, certainty and ease of use.
6. We call upon the Government to issue a comprehensive statement setting out its policy on simplification and tax law, the reasoning behind its policy, the perceived importance of simplification, the methods/resources it would use to apply its policy, including the role it sees the Office of Tax Simplification playing, and a cost/benefit forecast.

Corporate Tax Strategy

7. ICAS welcomes the government's renewed commitment (in its December 2017 policy paper "[The new Budget timetable and the tax policy making process](#)") to the principles set out in the 2010 "Tax policy making: a new approach". These were designed to increase predictability, stability and simplicity in the UK tax system and to address concerns that tax policy making was often too piecemeal and reactive.
8. As the policy paper notes, in 2010 the government published a 'Corporate tax roadmap' setting out the government's long term approach to the corporate tax regime. This was widely welcomed and for several years there was clarity and consistency around the direction of corporate tax policy.
9. Unfortunately, this has not been maintained. The 'Business tax roadmap' published in 2016 failed to set out any long term strategy for corporate tax. Instead large, economically significant, companies have been subject to constant, often unpredictable, changes to the tax regime over the last few years. Whilst the corporation tax rate has been reduced, this is not the only factor which influences large business decisions about investment in the UK and rate reductions seem to have been achieved only at the expense of simplification, certainty and stability.
10. Large companies are now facing the uncertainty and administrative burdens arising from Brexit. We believe that if the government wishes to make the UK attractive for start-ups,

international investment and business in general, it needs to set out a clear strategy for corporate tax, with a renewed emphasis on predictability and stability.

11. The corporation tax rate is currently set to fall to 17% by 2020, but if financial pressures mean that any lost revenue will have to be clawed back through further complex measures applied to large corporates (along similar lines to the corporate loss restrictions, for example) we question whether this is a sensible approach.
12. It would also be helpful to clarify the position on Making Tax Digital for corporation tax, particularly for large corporates, which already pay their tax quarterly and are subject to numerous other compliance requirements. If MTD is to be extended to CT, proper consultation (to produce a sensible reporting regime) and a reasonable implementation timetable will be essential.

Capital Taxes: APR, BPR and Entrepreneurs' Relief

13. There is an unfortunate absence of any strategic direction for capital taxes and their interaction with taxes on income, which should be rectified by the development and publication of a comprehensive strategy, particularly around the major business reliefs.
14. There have been numerous changes to entrepreneurs' relief in recent years and increasing speculation that there will be changes to APR and BPR. This is causing uncertainty to those running businesses. Any changes to reliefs risk adding more complexity and increasing the possibility of poor compliance – as with the current proposals around dilution of entrepreneurs' relief.
15. A simple approach should be adopted wherever possible. In the case of entrepreneurs' relief, it would be far simpler to remove the 5% requirement for shareholdings to address the problem identified in the recent consultation (and other problems which have arisen) than to adopt the proposals set out. We recognise that this might also require a simple way of addressing the additional cost involved – perhaps looking at the rate or the lifetime maximum, for example.
16. We do not consider that any of the major business reliefs should be considered in isolation because of the interaction with other areas of the tax system and the risk of unintended consequences. We therefore support the OTS call, in its recent Business Lifecycle Report, for “a detailed review of the tax system as it operates on key events in the business lifecycle, to help the UK economy to maximise its opportunities and to make the system clear and simple for companies to understand and use.” This review should include consideration of the two significant IHT reliefs – BPR and APR – and their interaction with other reliefs, particularly entrepreneurs' relief.

CGT and income tax rates

17. One consistent driver of complexity (and anti-avoidance measures) in tax legislation is the difference in rates between CGT and income tax. The latest example of this can be seen in the TAAR introduced to allow certain distributions in a liquidation to be treated as income rather than capital.
18. We agree that it is necessary to tackle some of the abuses outlined in the consultation prior to introduction of the new rules, such as phoenixism. However, no clearance regime has been provided and the guidance from HMRC is inadequate. Therefore, the TAAR is causing considerable practical problems for advisers and clients, in cases where no avoidance is intended – for example, where someone genuinely wishes to retire from their business but subsequently decides to undertake some similar part-time work in a similar field. This could have the unintended consequence of impeding commercial transactions.
19. The underlying problem, which is not being addressed by this (or other anti-avoidance legislation) is of course the rate differential – in this case 10% CGT with entrepreneurs' relief if the distribution is capital, compared to 40% or 45% income tax if it is an income distribution. The comprehensive strategy called for above, could usefully address this issue.

Taxation of the Digital Economy

20. ICAS believes that taxation of the digital economy should be addressed through multilateral reform. We recognise that there is public dissatisfaction with the current position and a need to tackle the stresses imposed on the international tax framework by digitalisation, but it is difficult to see how this can be achieved on anything other than an international basis, without risking damage to the UK economy.
21. Our preference would be that the UK should avoid taking further unilateral actions, along the lines of the Diverted Profits Tax (DPT) - and should instead push for an agreed multilateral approach within a reasonable timeframe. Further unilateral actions by the UK, particularly if other jurisdictions take similar steps, are likely to lead to double taxation and to distort competition. This would not enhance the UK's attractiveness to business and would be likely to inhibit rather than support growth in the tech sector – contrary to the government's expressed wish for the UK to be the location of choice for tech innovation and investment. A global economy requires global solutions.
22. If an interim 'solution' is to be introduced this should be done in a way which minimises disruption to businesses and damage to the UK economy. It should also include a sunset clause to reinforce its temporary status and facilitate its removal once international measures are agreed. Both HMRC and businesses are currently under considerable pressure, related to Brexit and the mandatory introduction of MTD for VAT, so any interim measure should only be introduced after the end of any Brexit transitional period and at a time when the final outcome of Brexit (and the work required to deal with it) is much clearer.

Taking consultations seriously

23. ICAS strongly supports the consultation process set out in the 2011 "Tax Consultation Framework" – also restated in the December 2017 policy paper referred to above. This includes a commitment to five stages of policy development and implementation of tax policy. When the processes set out in the Tax Consultation Framework are followed, and adequate time is allowed for consultation, our experience suggests that open and transparent dialogue between government, HMRC, professional bodies and stakeholders is facilitated, and the final legislation is more likely to be workable.
24. Our members devote their time and expertise to responding to consultations because they wish to contribute to the public good. They are willing to share their insights into the many complex issues and decisions involved in the design and implementation of fiscal measures and to raise operational practicalities. They want to help identify the best options for implementing government policies and practical solutions to problems.
25. However, we have some concerns that successful policy development and implementation is being threatened by some recent trends. Increasingly policy development has been initiated by consultations at Stage 2 or Stage 3. In some cases, there might be a good reason for this – for example, Stage 3 was appropriate for the VAT and Vouchers consultation (about the implementation of an EU Directive). However, we do not believe that Stage 3 was appropriate for the Royalties Withholding Tax Consultation, nor that Stage 2 was appropriate for the consultations on Extending Offshore Time Limits and the Capital Gains Tax Payment Window.
26. Omitting Stages 1 and 2 deprives the government of valuable input in clarifying the desired objectives, identifying the options for implementing them and developing a framework for implementation. There needs to be clarity in tax policy; and policy needs to be converted effectively into legislation.
27. Regularly starting the consultation process at Stage 2 or 3, without good reason, causes a variety of problems: lack of clarity around the objectives is likely to produce poorly targeted, flawed legislation with unintended consequences; the likely impacts of the policy will not be properly considered, leading to additional administrative burdens for little overall benefit; and failing to identify the best option will give rise to unnecessary complexity and compliance issues. Where several consultations are issued in the same area, it is important that there should be clear, overarching policy objectives behind them.

– which does not appear to be the case with, for example, the consultations recently issued on employment status and IR35.

28. Stakeholders will also be less likely to give up their time to contribute if they believe decisions have already been taken and practical issues raised will not be addressed. There is increasingly a sense that there is more and more consultation, but less and less heed taken of the responses – for example, the consultation response document relating to the consultation on the CGT payment window has dismissed most of the feedback.

Building devolution into tax policy and facilitating open discussion

29. It appears from recent government announcements that tax increases will be introduced to pay for increased funding for the NHS. These need to be implemented in a way which takes account of the devolution settlements - and in close liaison with the devolved governments.
30. UK budget measures, such as the proposed increase in NHS funding, could have varying consequences for Scottish funding – depending on how they are implemented. If income tax is increased this will be levied in the ‘rest of the UK’ because Scotland sets its own rates and bands; whereas if, say, national insurance is increased this would be across the UK and then reflected in the Barnett Formula. We believe it is vital that there is close liaison between the relevant governments to implement any potential tax increases smoothly and having considered potential consequences – it would be in no one’s interests to have surprises emerging.
31. More generally, there needs to be a stronger awareness of policies that are devolved: for instance, it makes little sense to have a UK wide funding policy for, say, child care or apprenticeship training, when the spending side has been devolved. The decentralisation of taxes also requires stronger coordination across the UK, particularly if further powers are to flow back from the EU following Brexit.
32. Going forward we suggest that the UK government considers facilitating open discussion about tax increases to support increased funding for public services, particularly where increases are planned to the rates of the taxes which raise significant revenue. Last year, the Scottish Government issued [a paper](#) prior to the Scottish budget containing a number of options for exercising its income tax powers, followed by a series of round table discussions – it was a most constructive and helpful exercise. The options were laid out and discussed and this helped inform the decision making in the budget.

Agent Access to HMRC forms and systems

33. We welcome the plans HMRC have recently announced as part of their ‘Agent Review’ strategy, for ensuring that proper agent access is included in all new HMRC systems from the start – rather than being treated as an afterthought.
34. Existing HMRC forms and systems which do not currently have proper agent access also need to be updated so that they do. It is very important for the successful operation of the tax system that agents can see and do everything their clients can see and do.
35. However, implementation of the strategy is dependent on obtaining funding. We would like assurance from government that this will be forthcoming. If funding will not be made available, we believe that the rollout of further new HMRC systems should be delayed until proper agent access can be guaranteed. The extremely poor implementation of the Trusts Registration Service and the ongoing problems with this must not be repeated.