TAX PROFESSIONALS’ FORUM

FOURTH INDEPENDENT ANNUAL REPORT

DECEMBER 2015

Contents

TAX PROFESSIONALS' FORUM

FOURTH REPORT OF THE INDEPENDENT MEMBERS OF THE FORUM

1. Introduction

This Report covers the period from 1 January 2014 to 30 March 2015 (being the date of Dissolution of Parliament). All comments in this report relate to this period unless otherwise stated.

The consultation programme during this period has been constant, wide and varied. It includes two Finance Acts and an Autumn Statement.

1.1 The role of the Forum

The remit of the Tax Professionals' Forum[1] is to identify improvements to the way in which tax policy is made. This includes:

(a) the way in which policy is developed;
(b) the way in which policy and changes to policy are communicated; and
(c) the way in which policy is legislated and implemented.

The Forum was established to assist with the prioritisation of improvements and the monitoring and implementation of these improvements to ensure that they have the intended effect. The Forum also has a role in providing contemporaneous feedback on whether the Government's stated principles and the new approach to tax policy making are being followed in practice.

1.2 The Government's approach to Tax Policy Making

The new approach to policy making was set out in March 2011 "The Government's Tax Consultation Framework: Summary of Responses and Finalised Framework" ("the Framework"). The Framework requires early and continuing engagement on tax changes and the exploration of new ways of broadening public engagement with the development of the tax system. Except in the case of tax avoidance, five stages are to be followed in the development and implementation of tax policy:

(a) Setting out objectives and identifying options
(b) Determining the best option and developing a framework for implementation including detailed policy design
(c) Drafting legislation to effect the proposed change
(d) Implementing and monitoring the change
(e) Reviewing and evaluating the change

The Framework states that, where possible, the Government will:

- engage interested parties on changes to tax policy,
- minimise the occasions on which it consults only on a confidential basis,
- set out its strategy for consultation (including informal discussions) and
- set out clearly at each stage of the consultation:
    - the policy objectives,

[1] Details of the Forum and its members are set out in Appendix B.

- any relevant broader policy context,
- the scope of the consultation,
- its current assessment of the impact of the proposed change and
- which department and official is leading the consultation.

To enable legislation to be properly scrutinised, draft clauses for the Finance Bill will be published for scrutiny at least three months before the Bill is introduced to Parliament and the period for comment will be at least 8 weeks.

It was also stated:

> "The Government will generally not consult on straightforward rates, allowances and threshold changes or other minor measures. It may also not consult on revenue protection or anti-avoidance measures."

The Government has, in addition, published a Protocol on Unscheduled Announcements which deals with changes to tax law outside the framework of the Budget process including retrospective tax legislation[2] (the "**Protocol**").

1.3 The role of this Report

This report is one way in which the Forum fulfils its role in policing the extent to which the policy making aspirations set out in this section are complied with. The Report contains the views and conclusions of the Independent Members of the Tax Professionals' Forum on the way in which policy has been developed, legislation has been made over the period referred to in paragraph 1 and contains some suggestions and recommendations for change. References to the Forum in the rest of this Report are to the Independent Members of the Forum.

[2] "The Protocol on Unscheduled Announcements of Changes in Tax Law", replacing the Rees Rules, which appeared in Chapter 4 of "Tackling Tax Avoidance", published by HMT and HMRC in March 2011.

2. Progress from the Third Annual Report

In the Tax Professionals' Forum's Third Independent Annual Report, we identified six policy and procedural lessons from HM Treasury's ("HMT") policy development process over the given period. These lessons arose out of examples of both good and bad policy making on the part of HMT and several of these examples have persisted through the period covered by this fourth report. The lessons from the previous report included:

- Long periods of consultation can help to build consensus and understanding;
- Feedback is essential to building consensus and understanding;
- The policy development process needs to be flexible, both in timing and in outcome;
- Set the stage for Post Implementation Reviews and future work;
- Avoid conflicts between reform and revenue protection, and
- All stages matter and should be given sufficient time.

In order to make progress towards greater efficiency and clarity in the policy development procedure, the Government needs to acknowledge inefficiencies and to take clear and deliberate actions to improve the process. The evidence over this period covered by this report, 1 January 2014 through to 30 March 2015, indicates areas where the Government has made improvements, but also instances where further efforts are need to be made to make the tax policy development procedure effective and impactful.

2.1 Lessons from this period's "crop"

This period saw the emergence of four new lessons which are outlined in greater detail below. They reflect changes at the national level, including the interaction of the policy making process with a General Election, and at the international level, given the work on the G20 and Organization for Economic Cooperation and Development's ("OECD") Base Erosion and Profit Shifting ("BEPS") project.

The new lessons identified are examples of how the Government has both 'stepped up' to the new challenges presented both nationally and internationally, and how it has not yet learnt from past inefficiencies. This report will focus on the areas where improvements can be made, the lessons appear when correct consultation and feedback procedures are followed and when they are not.

Details of the consultations are included in Appendix C. This section brings out the key lessons from the successful and less successful consultations.

2.1.1 Lesson 1: Deliver on promises, or provide explanations when not delivered

The consultation on Direct Recovery of Debts (published on 6 May 2014) proposed a new power for HM Revenue and Customs ("HMRC") to collect a tax debt by way of a deduction from the taxpayer's bank account. In the response to that consultation, published in December 2014, the Government stated that an additional safeguard (a requirement for a face to face meeting between HMRC and the taxpayer) would be introduced. However, the requirement for a face to face meeting was not included in Schedule 8 of Finance No.2 Bill 2015, which introduces the power to enforce tax debts by deduction from taxpayers' bank accounts. It may be that such a meeting, at that particular stage in the process, may have no benefit in any event, but the Government needs to make sure that it either delivers on commitments made within consultation or explains the rationale for abandoning them.

2.1.2 Lesson 2: Do not rush through complex legislation in a pre-election Finance Bill

Finance Act 2015 included 127 sections and 21 schedules. As well as the usual range of amending legislation and rate setting, it includes important legislation on:

- Research and development expenditure (Section 27)
- Pension flexibility (Section 34)
- Disposal of UK residential property by non-residents (Section 37)
- Entrepreneurs' relief (Section 41-44)
- The annual tax on enveloped dwellings (Sections 70-73).

This in addition, of course, to the enactment of an entirely new, far reaching and complex tax, the Diverted Profits Tax ("DPT") (Sections 77-116)

By way of contrast, Finance Act 1979, enacted before the General Election in 1979, comprised merely two pages of rate allowances and changes; and the Finance Act 1992, enacted before the General Election in 1992, comprised eleven sections and only one schedule.

Even recognising the perceived political imperatives, including the introduction of additional tax avoidance legislation, and the media (and, possibly, the public) pressure on both the Coalition Government and the Labour opposition to combat certain high-profile, aggressive tax avoidance schemes undertaken by a small number of multinational companies, it is disappointing how little time was allocated to the Finance Bill 2015 debate and the depth of that debate. In particular, the time allocated to debating the introduction of an entirely new tax, the DPT, was inadequate and can be expected to lead to significant amendments being acted by the Finance Bills in 2016 and/or 2017. Some comments made during the debate by both HM Government and HM Opposition spokespersons appeared to assume this to be the case. However, this is not the desirable assumption, process or outcome which will lead to the enactment of sound, well considered legislation.

Given the predictability of the timing of future, pre-general election Finance Bills (following enactment of the Fixed Term Parliament Act 2011) agreement should be reached between HM Government and HM Opposition that the Finance Bill immediately before a general election (presumably General Election 2020 would be the next occasion) is limited to the following areas:

- Changes to tax allowances
- Changes to tax rates
- Essential anti-avoidance legislation that cannot be postponed until the post-General Election government takes office
- Limited, uncontroversial amending legislation to correct errors or lacunae which have become apparent since the previous Finance Act

2.1.3 Lesson 3: Clearly define the role of the Office of Tax Simplification ("OTS") in the consultation and policy development process

The OTS now has an official mandate with an expanded role and capacity, and, as a result, it should be formally embedded in the policy development process. A clear procedure needs to be established to both define the role of the OTS within the policy development process for the Government, and to define its role to stakeholders and industry representations. A clear guideline needs to be set to determine when consultation involves the OTS.

2.1.4 Lesson 4: Integrate international reform into the UK's consultation framework

Tax policy reform and development is not only focused at the national level but has become increasingly an international issue with significant national consequences. International tax policy developments during this period have, and will have, a significant impact on the UK as a place to do business, and these developments will continue to apply pressure on the national tax regime.

At the international level the G20/OECD BEPS project will have a significant impact on the UK's tax regime. The UK has been an active participant in the development of the project and has committed itself to implement some of the outcomes. Tax policy developments at the European Union level will also significantly impact business activities in the UK.

Whilst the UK is now consulting on its response to the BEPS actions, the Government should have consulted in advance of the finalisation of the international framework. An exception to this was the consultation in December 2014 on hybrid mismatch arrangements,[3] but there were many other matters addressed in the BEPS project on which there has been no equivalent consultation. There is a very real sense that a large part of tax policy is now being developed through intergovernmental discussions, with minimal consultation at the domestic level. The concern here is that there is a mismatch between the Government's commitment to consult on the development of tax policy where this relates to domestic tax changes and where this relates to international tax changes, as there is no equivalent consultation process regularly applying where tax policy is developed internationally, in cooperation with other governments.

It should be recognised that the OECD itself has held public consultations and has received substantial amounts of comment from interested parties on its proposals. However, that is not a substitute for consultation at the national, UK level. The form taken by the OECD consultations, and the degree to which the views of those who sent in comments were taken into account, differed significantly from the consultations held with regard to UK domestic legislation. The process of consultation at the OECD most certainly does not follow the same five-stage approach adopted for the development of UK domestic tax policy, nor does it preclude domestic consultation.

It appears that, when the UK participates in the development of rules internationally, it does so without any formalised, prior consultation with those affected by the rules, and with little (if any) ex-post, Parliamentary or public consultation. So far as international discussion of tax policy changes are concerned, UK tax officials appear to act with little formal commitment to consultation.

We appreciate that, in the development of tax rules through international cooperation, the context is different from domestic tax legislation. To an extent, UK officials are engaged in a process of negotiation and it may be difficult to approach negotiations with the knowledge that a prior public consultation had already ruled out certain options. However, that argument can be taken too far. Where a government has committed to consult with the public over the development of tax policy, and part of that policy is being developed in an intergovernmental process, we see no fundamental reason why consultation in the UK

[3] "Tackling aggressive tax planning: implementing the agreed G20-OECD approach for addressing hybrid mismatch arrangements" (December 2014).

should be excluded. If consultation improves the quality of, and buy-in to, tax policy changes, then that is equally the case where the policy is developed together with other countries.

The Forum members consider that the absence of adequate, formalised consultation in the UK over international tax changes, similar in nature to the consultation over domestic tax changes, is a significant gap in the current implementation of the Government's commitment to consult on the development of tax policy. The Forum members will continue to monitor international tax developments and raise this issue where there is inadequate consultation.

2.2 Progress on lessons from the last report

This section provides an update on the lessons that were identified in the previous report.

2.2.1 Update 1: Long periods of consultation can help build consensus and understanding

Within this period, we observed some good examples of longer consultation. The reform of the gambling regimes exemplified a thorough and complete consultation process which facilitated the development of a strong piece of legislation bringing gambling duties under a single piece of legislation with shared definitions. The modernization of the taxation of corporate debt and derivative contracts also exemplifies the benefits of long periods of consultation.

In contrast, the annual investment allowance ("AIA") changed three times within three years leading up to Finance Act 2014. While the rate has since been made more permanent, the constant rate changes created an unnecessary level of uncertainty for industry and resulted in a number of unintended consequences.

2.2.2 Update 2: The policy development process needs to be flexible, both in timing and outcome

The rigid application of procedures and processes is meant to instil both certainty and confidence for both policymakers and taxpayers. However, the policy development process must also be flexible to accommodate the importance of a particular policy or a sudden change requiring the process to be expedited. Nevertheless, even when put under time constraints, meetings between HMT, HMRC, and the private sector are key to policy development and deployment. Currently meetings are not systematically scheduled or held. Given the need for flexibility within the policy development process, meetings of this nature should be built into the process to ensure timely communication of changes and adjustments to the policy process as a whole.

There should be a process which sets out the criteria for:

- Who is invited to meetings and how the selection criteria are determined. In the event that the consultative process is to be shortened, the best cross-section of private sector experts should be consulted and their input should be given due consideration
- When and why is "confidentiality" imposed, as currently there is no obvious standard applied. The inability to discuss the subject matter of confidential meetings can cause substantial difficulty when consultations are put on hold for long periods.

In order for these criteria to be effective, there must be fair representation between large and small firms, as well as clarity as to the body which individuals are representing and to which they are accountable. If confidential discussions are taking place, they should be announced.

2.2.3 Update 3: Set the stage for Post Implementation Reviews and future work

Our previous report recommended that Post Implementation Review measures should be systematically implemented. Experience so far continues to indicate that HMRC is incredibly busy and does not allocate sufficient time to changes of existing legislation. To the extent that changes are discussed, the process takes much too long, as was experienced with the Business Investment Relief and Annual Tax on Enveloped Dwellings. Other examples include:

- Capital Gains Tax ("CGT") for non-UK residents: HMRC's representatives specifically said that amendments had been made in a hurry and that they recognised that there were flaws in the policy. However, a clear timetable and process should be established to adjust for necessary changes to the policy development process and timeline.

- Statutory Residence Test: It was agreed by HMRC that it would be easier for the Government if the representative bodies did not suggest changes piecemeal and let the new legislation 'bed in'. However, the Government then said that it did not intend to undertake a thorough review of the legislation as enacted

- Entrepreneurs' Relief: A significant amount of work was done initially, but then a number of queries were left outstanding. Subsequent changes were then introduced, taking precedence over the original problems, which were then pushed to the back of the queue.

2.2.4 Update 4: Avoid conflicts between reform and revenue protection

The introduction of DPT is a good example of reform linked to revenue protection. Details of the DPT were first made public as part of the Autumn Statement on 3 December 2014. The publication contained a "Consultation Draft" of the legislation. The tax took effect from 1 April 2015.

Although there was a somewhat cryptic reference to a possible tax on multinationals engaged in aggressive tax planning at the time of the Conservative Party Conference in September 2014, no details of the DPT were released prior to 3 December 2014. Since the tax was published with a draft of the legislation, it is clear that work on the tax had proceeded for several months. It is not clear why it was not possible to consult on the measure prior to the Autumn Statement.

The publication of the draft legislation without any prior consultation on the design of the tax, combined with the foreshortened discussion of the pre-election Finance Act, meant that there was very little time available to discuss the detail of the legislation. The publication and introduction of the DPT was clearly not consistent with the commitments that the Coalition Government had given with regard to the development of tax policy.

However, during the period covered by this report the Government did respect the consultative feedback process regarding the Direct Recovery of Debts, whereby both HMT and HMRC clearly considered suggestions submitted by both supportive and opposed stakeholders. While opposed stakeholders will inevitably not be pleased that their full comments were not implemented into the legislation, the Government made a clear commitment to considering their feedback, which resulted in a materially improved piece of legislation.

2.2.5 Update 5: All stages matter and should be given sufficient time

As the earlier lessons note, the consultation and feedback stages of the policy process are critical from the first stage through to the final stages of the policy development process, and skipping steps, particularly in the early phases of consultation, could lead to future administrative burdens and a flurry of changes increasing uncertainty for industry.

The early development and consultation stages of the policy process are key to establishing a solid foundation from which to develop the policy. While it is recognised that non-compliance with stages one and two is bound to occur, it is important to review how frequently this occurs and if there are particular areas of legislation which are more prone to non-compliance. Government should have established criteria for deciding when the early stages of the tax policy legislative development process do not have to be followed.

However, there were also examples of the first two stages of the process being rushed through or passed over, including changes to the non-domiciles (“non-dom”) rules and environmental taxation. In these situations, the critical foundations of the policy are not established. The trend of rushing past these earlier stages could have been prompted by the need to meet Exchequer Revenue targets or, in some cases, detailed political involvement, as was the case with the non-dom changes.

Side stepping crucial aspects of good policy making will likely necessitate reform of the policy in the future. Finance Act 2015 introduced four sections on Entrepreneurs’ Relief with immediate effect. S41 (Associated disposals) and s43 (Trading companies) were introduced without consultation or the minimum eight week period of scrutiny of the draft clause. S42 (Exclusion of goodwill in certain circumstances) was introduced with immediate effect for disposals, and the draft legislation was subject to technical consultation (stage three). Although this also applied to s44 (Deferred entrepreneurs’ relief), this was non-controversial.

In the above instances, questions were raised immediately and several unintended consequences were identified by stakeholders. Clarification of those intended to be captured by these sections will need to be made in order to reduce industry’s uncertainty surrounding the applicability of each of these sections. The lack of consultation also meant that the Government’s rationale was not presented. By not giving each stage of the process its fair share of consultation and review time, Government created more post-implementation work for itself.

In some instances, the policy rationale can be clearly discerned but the implementation procedures cannot, which was the case with the reform of Disguised Investment Management Fees. Consultation on the implementation procedures would have reduced the difficulty and uncertainty around the application of the legislation.

In a further example, throughout 2014 pension tax changes were consulted on, and the Taxation of Pensions Act 2014 was formally published on 19 December 2014. The flexibility provided for in the Act was welcomed, but the implications for pension schemes and annuity businesses was not expected by the industry, and the rushed implementation did not allow time for adequate consideration of the unintended consequences of the legislation.

3. SPECIFIC AREAS OF COMMENT - RETROSPECTION AND PROTOCOL ON UNSCHEDULED ANNOUNCEMENTS

As noted in Section 1, in addition to commenting on the tax policy making process, the Protocol expressly requires the Forum to review any unscheduled announcements and provide Ministers with a view on how the Protocol is being observed in practice. It also states that the Forum may recommend changes to the Protocol.

The Protocol states that:

> "2. Such changes[4] to tax law will normally only be announced other than at Budget where:
> - there would otherwise be a significant risk to the Exchequer;
> - significant new information has emerged to identify the risk or indicate its scale; and
> - changing the law immediately is expected to prevent significant losses to the Exchequer."

The Protocol also states:

> "In particular changes to tax legislation where the change takes effect from a date earlier than the date of the announcement will be wholly exceptional".

The Protocol therefore encompasses two types of change:

- changes made immediately from the date of a Parliamentary Statement, and
- changes made that apply from a date earlier than the date of announcement (retrospective legislation).

The Forum endorses the stance taken in the Protocol that:

- there have to be sound reasons for announcing a change outside the ordinary Budget timetable, and
- as a general principle, retrospective legislation is to be avoided.

3.1 Examples of legislation introduced outside the normal timetable

In the period, no provisions of the two Finance Acts were published outside the normal Finance Bill timetable.

3.2 Unscheduled announcements with immediate or retrospective effect

In the period, there was one announcement that was immediate in effect, being the changes to Taxation of Chargeable Gains 1992 clarifying an existing anti-avoidance provision. This was announced on 30 January 2014 and was included in the Finance Bill 2014, and it fell within the Protocol above.

[4] Those in unscheduled announcements announced outside a Budget and taking place before the legislation is enacted (normally from the date of announcement itself).

4. CONCLUSIONS

The strands which we would draw from the above are as follows:

1. The Protocol on Unscheduled Announcements should, in our view, be amended as described in Section 3 of this Report.
2. The lessons drawn from this report should be built into the government's consultation process, namely:
   - Lesson 1: Deliver on promises or provide explanations when not delivered
   - Lesson 2: Do not rush through complex legislation in a pre-election finance bill
   - Lesson 3: Clearly define the role of the OTS in the consultation and policy development process
   - Lesson 4: Integrate international reform into the UK's consultation framework
3. The lessons drawn from the previous report need to be further embedded into the policy making process, namely:
   - Lesson 1: Long periods of consultation can help to build consensus and understanding
   - Lesson 2: Feedback is essential to building consensus and understanding
   - Lesson 3: The policy development process needs to be flexible, both in timing and in outcome
   - Lesson 4: Set the stage for Post Implementation Reviews and future work
   - Lesson 5: Avoid conflicts between reform and revenue protection
   - Lesson 6: All stages matter and should be given sufficient time

A FORUM MEMBERS

The Forum was announced by HM Treasury on 16 July 2010. It stated that:

> The Government has committed to reforming the framework for developing tax policy and making tax law. To oversee implementation of this new approach, the Government has established a forum of tax professionals to be chaired by the Exchequer Secretary. The Forum will meet bi-annually.

The current membership (as subsequently updated) is set out below:

- Malcolm Gammie CBE QC – Research Director for the IFS Tax Law Review Committee

- Vincent Oratore CTA (Fellow) – Senior Managing Director and Co-Head of Portfolio Solutions at AIG Portfolio Solutions and Past President of the Chartered Institute of Taxation

- Chris Sanger – Global Head of Tax Policy at EY and Chairman of the Tax Policy Committee of the ICAEW's Tax Faculty

- Jane McCormick – Head of Tax for EMA region at KPMG and Senior Tax Partner for KPMG in the UK

- Richard Stratton – Partner at Travers Smith LLP and former Chairman of the Law Society's Tax Committee

- Philip Baker OBE, QC – Field Court Tax Chambers and Oxford University

- Stephen Herring – Head of Taxation, Institute of Directors

- Francesca Lagerberg – Global Leader of Tax Services at Grant Thornton International Ltd

- Andy Richens – Policy Advisory, Office of Tax Simplification

- Anita Monteith – Technical Lead & Senior Policy Advisor, Tax Faculty of the Institute of Chartered Accountants in England and Wales

- Stephen Coleclough – Past President of the Chartered Institute of Taxation

The remit and membership of the Tax Professionals' Forum is reviewed every two years. It was last reviewed in 2015 and the remit retained.

B FORUM RECOMMENDATION ON PROTOCOL ON UNSCHEDULED ANNOUNCEMENTS

The Second Report of the Forum included the following recommendation:

> "Whilst the Protocol was only published in March 2011 and is detailed on procedure, it says nothing about the circumstances in which retrospective legislation might be adopted. Aside from the reference to "wholly exceptional" circumstances, it does not identify when retroactive legislation might be appropriate. Some greater clarity would provide helpful reassurance. (Reference is made here only to retroactive legislation that imposes a charge to tax where none previously applied or a charge at a higher rate than previously applied. We use retroactive as meaning a change which affects the tax treatment of income profits or gains arising for periods earlier than the date of the legislation).
>
> Members of the Forum acknowledge that there can be occasions when a retroactive change to tax law is justified, appropriate and lawful. But they are rare. Any retroactive change must be compatible with the Human Rights Act and in this respect the jurisprudence of the European Court of Human Rights offers some guidance on the identification of such circumstances. Based on that jurisprudence, the members of the Forum would consider it appropriate that the Protocol adopt an approach under which an unscheduled announcement might envisage retroactive legislation in any of the following cases:
>
> - tax avoidance schemes have come to the attention of HMRC which are highly abusive and involve such a large budgetary risk that the Government considers it appropriate to legislate to cancel the effect of the schemes with retroactive effect (and not simply to announce the reversal of those schemes from the date of the announcement and/or challenge those schemes under existing law, including any general anti-abuse rule). The existence of disclosure rules (enabling the Government to take swift action to close down abusive schemes) and, from 2013, of a GAAR should ensure that there is little scope for retroactive action on this account.
>
> - it has become clear (usually, but not exclusively, as a result of a court decision) that a generally understood tax treatment (understood in common both by HMRC and by the profession, and not by one group only) is not as it was previously understood to be, and the impact is likely to be significant in budgetary terms or in terms of the impact on existing arrangements;
>
> - to rectify a manifest error in legislation, not merely an issue concerning construction which could be addressed by a court case, where again the impact is likely to be significant in budgetary terms or in terms of the impact on existing arrangements;
>
> AND
>
> - (in all three situations) the public interest in retroactive legislation outweighs the private interests of the taxpayers adversely affected by the retroactive change.
>
> The Forum members present for consideration that the Protocol might be amended to reflect these criteria.

C SUMMARY OUTLINES OF THE CONSULTATIONS MENTIONED IN THIS REPORT

This section sets out more background to the consultations that are referred to in the Report.

C.1 Taxation of Employment Intermediaries and Agency Workers

There has been significant consultation and review of the contract and agency worker labour sector over the past two years. Government has primarily focused on addressing the scope for tax avoidance in this area given the distinct treatments for the different categories of employment. As this part of the labour force grows, there will be increasing pressure on the government to increase the coherency and transparency of the legislation and guidance on the tax treatment of such individuals.

Given the number of consultations in this area which address different elements related to tax avoidance in a piecemeal manner, there is a clear need to ensure that Government sets a clear aim at the first stage of the process and considers how each reform interacts. With an overarching goal of increasing transparency of the tax treatment of contract workers, Government should set out a roadmap linking all of the changes happening across the labour group to a single overarching aim, thereby increasing the amount of engagement this group receives, much in the same way it does for corporation tax.

The Government has not presented a clear message as to whether it wants to maintain the different categories, if it wants to close categories, and who ultimately it wants the legislation to capture. All agency workers, from the highly paid IT contractors to the generic cleaner, are affected by these changes and, due to the many definitions and complications inherent in the system already, many agencies and individuals do not know what this means for them. The many changes, including administrative changes, have a significant impact on both agencies and contractors: agencies have to remain constantly up to date on the latest changes to the tax treatment of their contractors, while contractors are left with the uncertainty of not knowing how much tax and NICs will be taken from their income.

The lack of coherence between the consultations adds to the confusion surrounding the tax treatment of these individuals. In situations such as this, the process would benefit significantly from Government declaring the overarching aim of the group of consultations and linking the changes across the consultations through a roadmap. Frontloading the consultation and review process, with time for consideration of the aims for each consultation, as well as the wider group of related consultations, would allow Government to set a clear message for the targeted group in the first instance. This would increase transparency surrounding the consultation and review processes.

C.2 Salaried members

We commented on these provisions in the Third Annual Report.

An example of where insufficient time was allowed due to policy changes mid-way through the consultation period is the changes to partnership taxation introduced in Finance Act 2014. Changes were initially proposed in the consultation entitled "Partnerships: A review of two aspects of the tax rules" (dated 20 May 2013), one of which was the introduction of rules to tax "salaried members" of Limited Liability Partnerships ("LLPs"). At that time, the stated policy of the proposed salaried members rules was that it was "about levelling the field" by correcting a defective rule relating to LLPs.

However, there was a shift in policy between that time and the time of the publication of the draft legislation in December 2013. The salaried members legislation included in the draft Finance Bill was cast differently. The change in scope of the salaried members provisions seven months into the consultation process meant that respondents did not have the opportunity to comment on the ambit of these provisions during the initial policy-making stage of the consultation process.

Ideally if the policy of a consultation changes mid-way through the consultation process, the consultation process should be restarted.

C.3 Diverted profits tax

The Diverted Profits Tax ("DPT") was announced in the 2014 Autumn Statement on 3 December 2014 with the intention to "counter the use of aggressive tax planning to avoid paying tax in the UK". Draft legislation and guidance was released as part of the draft Finance Bill 2015 clauses on 10 December 2014.

Whilst it may be argued that the DPT is anti-avoidance legislation and as such outside of the Framework, it is an entirely new and very complex tax. We consider that it would have benefitted from work under stage one (setting out objectives and identifying options) and stage two (determining the best option and developing a framework for implementation including detailed policy design) to enable Government to give the initial draft legislation sufficient scrutiny rather than starting the process at stage three with draft legislation.

Informal consultation, focussing on technical aspects of the legislation, was held as part of the HMRC Open Day on 8 January 2015. Following this and the consultation on the draft Finance Bill, Spring Budget 2015 narrowed the notification requirements and made changes to the exclusions and revised interim guidance was published. In particular, we note that the wording in respect of the scope of the DPT charge for UK companies and the terms used to define "insufficient economic substance" were much clearer.

C.4 Employee share schemes

The Office of Tax Simplification ("OTS") was asked to undertake two reviews in this area. First, it reviewed tax-advantaged employee share schemes, publishing its final report in March 2012. It then looked at unapproved employee share schemes and published its final report in January 2013.

The changes resulting from these reviews were contained at s19, s49-52 and Schedules 8 and 9 Finance Act 2014. Consultation also continued on some of the recommendations set out in the OTS reports beyond Finance Act 2014.

Section 19 FA 2014 amends s222 ITEPA 2003. Section 222 ITEPA 2003 is particularly difficult legislation for companies making share awards. It imposes an additional tax charge where the company does not recover the PAYE on a notional payment (e.g. a share award) from the employee. The OTS had recommended removing employment related securities from the scope of the charge, but the change in legislation included at s19 Finance Act 2014 was just to extend the deadline for repaying the tax from 90 days from the payment date, to 90 days from the end of the tax year. Therefore, despite the extended deadline, there is still the possibility of a charge arising even where the tax is made good after the deadline.

Schedule 8 made fundamental changes to tax-advantaged share schemes as a result of the OTS review. This included removing the requirement for pre-approval of share incentive plans, company share options and Save As You Earn schemes. All now operate in a similar way to the self-certification mechanism that had operated for over a decade for Enterprise Management Incentives. It also introduced online registration and reporting. Inevitably, these changes were also accompanied by the introduction of a new statutory penalty regime. As these changes generally applied from 6 April 2014, with the first annual online reporting requirement coming into effect in summer 2015, the time is now right to review the implementation of the reporting changes following the first annual reporting cycle.

The OTS review of unapproved share schemes recommended changes to the taxation of internationally mobile employees, the introduction of rollover provisions for restricted securities and securities acquired for less than market value, and the extension of circumstances in which corporation tax relief is available on employee share awards. These changes are contained in Schedule 9 FA 2014. It was originally proposed that the changes to the taxation of internationally mobile employees, including corresponding changes to corporation tax relief, would apply from 1 September 2014. However, the Government listened to concerns about changing the rules part way through a tax year and the changes came into force on 5 April 2014, which was a welcome move.

Two of the changes that were recommended by the OTS in its review of unapproved share schemes were consulted on after Finance Act 2014. These concerned the introduction of a new employee shareholding vehicle and changes to the marketable security rule which would have changed the timing and calculation of tax charges. The outcome of both consultations concluded that the Government would not take forward these proposals. On the employee shareholding vehicle consultation, the main reason for abandoning the proposal appears to be that the respondents to the consultation did not consider that the imposition of additional safeguards (over and above those recommended by the OTS) that the Government was intent on including would lead to the introduction of a vehicle that would be widely adopted.

The OTS states in its report on unapproved share schemes that: “Each recommendation could be implemented separately, but they are complementary, and represent a balanced package of reforms in line with our mandate to simplify the tax system. We believe that implementation as a full package would provide the greatest benefit.” It is arguably disappointing that this “package” approach was not fully adopted.

C.5 State Aid

There were a number of measures introduced at the Report stage of Finance Act 2014 to ensure that certain reliefs continued to be compliant with the General Block Exemption Regulation (Commission Regulation (EU) NO 651/2014) on State Aid (“GBER”). The GBER exempts certain State Aid measures from prior notification to the European Commission if various conditions are met. Therefore, it is understandable that the Government will try to ensure that measures are GBER compliant to avoid inevitable delays and uncertainty that can surround obtaining prior State Aid approval for tax reliefs. In addition, there were new rules aimed at ensuring that no more than one form of State Aid is obtained on a project, namely s360L CAA 2001 (business premises renovation allowance), s1217JA CTA 2009 (tax relief for theatrical production) and s257MA (tax relief for social investments).

We acknowledge that it would be difficult to maintain a list of all State Aid that could jeopardise such tax reliefs, as the grants and reliefs could be awarded by a variety of bodies. However, there is inconsistency, both in the wording of the legislation and guidance, that does not help taxpayers identify whether a grant could jeopardise their tax relief. Consistent definitions could help here, together with guidance on the status of aid granted under GBER (e.g. is such aid notified State Aid).

C.6 Comments on BEPS and other international developments

The period from 1 January 2014 to the election in May 2015 saw an unprecedented level of activity at the intergovernmental level to develop new tax measures. Most notable were the various proposals that emanated from the G20/OECD in connection with the Base Erosion and Profit Shifting ("BEPS") Project. The UK had taken an active role in that project, and has committed to implement some of the outcomes of the project.

The development of certain aspects of tax policy through international cooperation is not new. The UK has participated in the work of the OECD since the late 1950s and, over the years, major changes have been made, for example, to the OECD Model Tax Convention and to the OECD's Transfer Pricing Guidelines (both of which impact on UK tax measures) without any significant consultation at the domestic level. Much of that took place, though, before the Government's commitment to consult on the development of tax policy. Even then, there were examples of consultation in the past on some international tax changes; an example was the consultation on the implementation of the EU direct tax directives in the early 1990s.

The scope of the developments through the BEPS Project has been much broader, however, than in the past. The Project has considered issues, such as:

- The taxation of the digital economy
- Hybrid entities and hybrid instruments
- Interest deductibility
- Tax treaty abuse
- Transfer pricing
- Country-by-country reporting, and
- Amendments to the provisions contained in tax treaties

The UK government should make clear that its commitment to consult over the development of tax policy extends also to international tax matters discussed at intergovernmental level. The point at which consultation takes place may need to vary according to international procedures being adopted, but there should be a commitment to consult at some point in the process.

Informal consultations with selected parties, stakeholder events which largely serve to inform participants about the international process, and publication of position papers (as the Government did at the time of Budget 2014), are not a substitute for formalised consultation with all parties in the development of tax policy through international cooperation.

There may be certain circumstances where it is appropriate for the UK to consult on a possible international tax development before it is discussed at the OECD or any other international forum. An example of that would be those topics that were reserved for the second stages of the BEPS Project (the "2015 deliverables") where there was more than adequate time for a domestic consultation during the earlier stages of the project. This would have included the interest cap, CFC reform and other matters reserved for 2015. There may be some situations where domestic consultation should take place while the international discussions are going ahead: a good example would have been the BEPS proposals on treaty abuse, where a domestic consultation could have taken place on the minimum standard, limitation on benefits clause and the principal purpose test after the initial draft was released in September

2014 and before the final deliverable in 2015. Other examples would have been the proposals on dispute resolution and on transfer pricing documentation (including Country–by-country reporting). A consultation was held in December 2014 on the proposals for hybrid mismatch arrangements, which raises the issue why similar consultations were not held at the same time on other aspects of the BEPS project where a final outcome was not expected till 2015. Finally, there may be circumstances where, even after there is international agreement on a particular outcome, domestic consultation should take place. (Some consultations are now taking place on certain issues, including consultations in October 2015 on the tax deductibility of corporate interest expense and on the patent box, but no formal consultations took place before decisions were taken on these changes to tax policy).

Any agreement or commitment by UK negotiators in an international forum must surely be conditional, being subject to Parliamentary scrutiny in the UK, so that any commitment is provisional subject to consultation.

C.7 General Betting Duty, Pool Betting Duty, and Remote Gambling Duty

The General Betting Duty, Pool Betting Duty, and Remote Gambling Duty came into force on 1 December 2014 after HMRC consulted on all aspects of the reform legislation, in particular, looking at legislative overlaps and differences with the Pool Betting Duty and Remote Gaming Duty. HMRC published guidance notes for the new policy as well as for the special transition rules in respect of liability before 1 December 2014.

The consolidation of betting and gaming legislation into the General Betting Duty is an example of good policy making during the period covered. HMRC effectively reformed and consolidated most of the betting and gaming legislation in order to bring it under a single piece of legislation with shared definitions which decreased uncertainty across the sector. These reforms proceeded smoothly through the policy reform process.

From stage 1 of the reform process through to stage 5, HMRC consulted, reviewed, and implemented a coherent and industry acceptable piece of legislation. This brought all but one of the gambling taxes into the same system. From a policy perspective, it could have been sensible to examine aligning the remaining gambling tax (Betting Duty) on the same basis rather than leaving one tax on a different basis.

C.8 Modernizing the taxation of corporate debt and derivative contracts

Appendix C.16 of our previous report covered stages one and two of modernising the taxation of corporate debt and derivative contracts. It noted that:

- The consultation exercise could have benefitted from some formal pre-consultation on the issues being addressed as well as the timetable for legislative change.
- Early indications were that the consultation process was working well.
- Detailed minutes of working party meetings were important to keep the wider taxpayer community informed, and a detailed summary of consultation responses was welcomed.
- The decision to defer some proposals from the 2014 Finance Bill was welcomed.

Subsequent to our previous report, the Government has continued to consult on proposed changes to the loan relationship and derivative contracts regime through the working groups. We consider that the process has, in the main, continued to work well. In particular we note that the Government has introduced measures where it was considered necessary to address particular points of concern (for example de-grouping charges and changes to bond fund anti-avoidance rules in Finance Act 2014 and repeal of the late paid interest rules in Finance Act 2015), and has deferred measures to future Finance Bills where sufficient time had not been spent to ensure that proposed changes worked in line with expectations.

In this context, we have welcomed the opportunity to comment on draft legislation.

A number of the proposed changes were deferred to the later Summer Finance Bill 2015, but we were pleased that the Government responded positively to requests to reinstate the originally proposed commencement date of 1 January 2015 for the corporate rescue provisions.

The Framework indicates that Government may choose not to consult on anti-avoidance measures. However, where such consultation did take place (for example, in respect of the so-called "regime TAARs"), we feel that the final provisions were improved as a result, even if fundamental misgivings about the necessity of the provision were not accepted. There remains a feeling, however, that some consultations are "more equal" than others. For example, almost all of the representations made on the proposed financial products hallmark for DOTAS appear to have been ignored in the most recently published draft.

C.9 Entrepreneurs' relief

Finance Act 2015 introduced significant changes to Entrepreneurs' Relief without respecting the consultation process, which resulted in increasing stakeholder uncertainty over the applicability of the sections and several unintended consequences. Three sections: s41 (Associated disposals), s42 (Exclusion of goodwill in certain circumstances), and s43 (Trading companies), were amended with no period of consultation. Additionally, s41 (Associated disposals) and s43 (Trading Companies) did not adhere to the eight week scrutiny period, and s42 (Exclusion of goodwill in certain circumstances) was introduced with immediate effect on disposals on/after 3 December 2014, with the draft legislation subject to technical consultation (stage 3).

When the Government fails to adhere to its own processes and procedures it creates a highly uncertain environment for taxpayers to operate in. Rather than introducing the word of law as final, sections, like those found in Finance Act 2015's Entrepreneurs' Relief, actually create an environment in which taxpayers are not able to rely on the longevity of the legislation they see. If the overarching goal is a more simplified system, all stages of the development process must be adhered to.

In response to the non-consultation on amendments, concerns were immediately raised about the unintended consequences which arise due to a lack of consultation and scrutiny.

S41 (Associated disposals) amended the legislation so that Entrepreneurs' Relief is no longer available where the relevant material disposal is less than a 5% interest in the relevant business. Concern has been raised that this would prevent Entrepreneurs' Relief being claimed where there is a material disposal of the whole partnership share, but because this is less than 5%, Entrepreneurs' Relief would not be claimable. It also raises the question whether the "partnership purchase arrangements" inserted at s169K(6) catch standard automatic accrual clauses, and whether this was intended. In terms of persons connected, clarification is necessary whether this includes connected by reason of being a partner in the partnership.

Finally, it is unclear what is meant by a 5% reduction in the partnership assets. Dialogue is currently taking place between the Chartered Institute of Taxation, the Institute of Chartered

Accountants in England and Wales, and HMRC – it would have been preferable for this to have taken place as part of a consultation process rather than after the legislation has been enacted.

Under the technical consultation on the draft legislation for s42 (Exclusion of goodwill in certain circumstances), a new provision for a retiring partner was introduced – however, the requirement for exemption from the section that the retiring partner be a related party is restricted to the circumstance of being a business partner of a participator in the company, and does not extend to being related to a participator with whom they have been in partnership, e.g. father and son partnership. The question is raised whether this was intended. A further possible unintended consequence is the denial of relief on a disposal within twelve months of incorporation. Previously, it would have been possible to elect under s162A to disapply s162 and claim ER on the incorporation gains, but this is no longer possible on the goodwill.

Under s43 (Trading companies), the definitions of trading company and holding company of a trading group do not take account of activities carried on by joint venture companies.

There is considerable uncertainty for joint venture commercial investment, and retroactive loss of relief for existing commercial structures. Whilst the need to block tax avoidance structures is recognised, consultation could have ensured that commercial structures, particularly those already in place, are outside the scope of the new legislation.

C.10 Disguised investment management fees

These provisions were introduced by an announcement in the Autumn Statement 2014 that the Government:

> "will introduce legislation, effective from 6 April 2015, to ensure that sums which arise to investment fund managers for their services are charged to Income Tax. It will affect sums which arise to managers who have entered into arrangements involving partnerships or other transparent vehicles, but not sums linked to performance, often described as 'carried interest', nor returns which are exclusively from investments by partners."

The draft legislation was published at the same time. While the policy was clear, there were a number of complexities involved in the implementation of the rules relating to non-residence and liability, the time income arose, the relationship between the charge and the services provided and transitional provisions. These issues could have benefited from a longer consultation, if only in relation to implementation. The rules adopted a different approach from other rules in the same area such as the mixed membership and employment related securities rules, which made their interpretation more difficult than perhaps ought to have been the case.

C.11 Private residence relief

Both Finance Act 2014 and Finance Act 2015 made amendments to the private residence relief legislation. However, both instances of reform added uncertainty and confusion to the application of the relief. The Government announced in the Autumn Statement 2013 changes to the Relief on the Disposal of Private Residence (s58 FA 2014). The final period of ownership of the main residence qualifying for relief was halved from 36 months to 18 months. This was effective on disposals from 6 April 2014, apart from those meeting the conditions in new s222E as disabled persons or long term residents in a care home, where the 36 month exemption is retained.

There was no consultation period, other than stage 3 scrutiny, of the draft clause due to the Government wanting to act swiftly to counter the known practice of “flipping” residences.

In Finance Act 2015, alongside the introduction of the non-resident charge to CGT on UK residential property, s39 and Schedule 9 make a number of changes to private residence relief. The proposals set out in the consultation document, mentioned later, set out two options for change. The response document noted that most respondents were not attracted to either. The Government response set out a new concept for restricting the relief and this was only subject to the eight week scrutiny of the draft legislation.

The concept of a non-qualifying tax year, or a non-qualifying part tax year linked to a day count test, is introduced by a new s222B TCGA 1992. S222B(2) states:

> “Except where the disposal mentioned in section 222(1) is a non-resident CGT disposal, subsection (1) [which introduces non-qualifying tax year and part tax year] does not have effect in respect of any tax year or partial tax year before the tax year 2015-16.”

In other words, the change is retrospective for non-resident CGT disposals. Of course the charge only applies from 6 April 2015, and new s223(7) states the period of ownership for private residence relief purposes does not include any period before 6 April 2015, but this is subject to subsection (7A), which disapplies this start date where the individual makes an election for the “retrospective basis of computation” to apply.

In summary, a time apportionment basis applies in computing the non-resident charge to CGT on UK residential property, unless a straight line apportionment method or retrospective method is elected for. Where the latter is applied, the new concept of non-qualifying tax years which can restrict private residence relief will apply retrospectively, and appears to run contrary to the general principle that retrospective legislation is unacceptable (see paragraph 5 of Second Independent Annual Report: 27 March 2013). In practical terms, however, this is unlikely to have any negative impact as it would only occur where the taxpayer has made an election for the retrospective basis of computation to apply, and who would only want to do so in the case of an overall capital loss when there would appear to be no need to access private residence relief. Therefore, it is worth noting that it would have been simpler to apply the new non-qualifying tax year rules from 6 April 2015 in all cases.

C.12 Marriage allowance

This policy was announced well in advance of practical implementation and should have been a good example of how consultation results in better implementation. Unfortunately, few details were published at the time of the announcement, which made it difficult to comment on the proposals.

The original change, for what was then known as a Transferable Tax Allowance for married couples and civil partners, was announced in Autumn Statement 2013. It was subsequently enacted in s11 Finance Act 2014.

Budget 2015 re-named the Transferable Tax Allowance as the Marriage Allowance, which is how it is now described in guidance on GOV.UK. One criticism we have is that this is a misleading description; it is not an extra allowance and may now be confused with the Married Couple's Allowance, which is available only to those born before April 1928.

The Marriage Allowance can only be transferred where neither the transferor nor transferee is liable to income tax above the basic rate for a tax year. From 2015/16, a spouse or civil partner can apply to transfer £1,060 of the personal allowance to their spouse or civil partner. The law requires such a claim to transfer to be made by transferor alone, but it does not specify how this must be made. Until very recently, it seemed that the only available channel for making the claim would be online through the GOV.UK website, but early in November 2015, following representations, HMRC announced that claims would also be accepted by telephone.

C.13 Enforcement by deduction from accounts

HM Treasury and HMRC considered the many representations made by the wide range of bodies and individuals on this legislation as described in the Summary of Responses published in November 2014. Whilst there was clearly strong opposition to this legislation from some perspectives, there was also strong support. HMT and HMRC took appropriate note of the authentic suggestions made during the consultative process and the legislation has been materially improved as a result.

Inevitably, those opposed to legislation of this nature have not been satisfied by the changes introduced, but others are relieved that the Government has maintained its focus upon preventing those "wilfully seeking to play the system [creating] costs which are ultimately borne by the compliant majority". It is imperative that the additional safeguards introduced following the consultation are rigorously and transparently implemented.

C.14 Pensions

Budget 2014 on 19 March 2014 announced that radical changes would be made from April 2015 to give people greater freedom over how they access their pension savings. Interim measures also applied from 27 March 2014.

The consultation document "Freedom and choice in pensions" was published on 19 March 2014, covering various aspects around implementation of the proposed pensions tax changes and guidance guarantee, with the Government response following on 21 July 2014. The draft Taxation of Pensions Bill was then released on 6 August 2014, with the Bill being formally published on 14 October 2014 – becoming the Taxation of Pensions Act 2014 on 19 December 2014.

The flexibility has been welcomed by both stakeholders and their financial advisers. There were significant implications for pension scheme and for annuity businesses for which the announcement of the pension freedoms and the speed of implementation were unexpected. This has inevitably resulted in the pensions industry having to liaise with HMRC over a range of unforeseen consequences of the changes. We consider that implementation could have been smoother, and uncertainty for pension schemes and pension providers could have been reduced with a more thorough, stage one consultation (setting out objectives and identifying options). A more thorough stage one may also have allowed further consideration to be given to consumer behaviour, particularly around issues of advice/guidance, and how Freedom and Choice tied in with wider welfare initiatives.

The pension freedoms were brought in against a backdrop of ongoing auto-enrolment implementation and other major proposed reforms such as defined ambition, automatic transfers, and a complex re-framing of pension scheme legislative definitions, with defined ambition and automatic transfers now having had to be delayed. Furthermore consultations have been launched into creating a secondary annuity market and the pensions green paper "Strengthening the incentive to save", which considers further fundamental changes to pension saving (published in July 2015 and therefore outside the scope of this report). These constant changes make it difficult for pension providers and employers to plan effectively.

We note that the pensions freedoms applying from April 2015 had only been in place for a few months prior to the pensions green paper being released, and therefore there has been limited time to consider stage four (implementing and monitoring the change) and stage five (reviewing and evaluating the change) prior to the pensions regime potentially changing fundamentally once more. Simplicity (especially as regards tax) and stability in the regulatory regime are vital, to minimise the risk of damage to confidence in pension saving.

The secondary annuity market consultation document was published on 18 March 2015 with responses due by 18 June 2015. As such, it is also outside the scope of this report. However we note that it is heartening that the implementation of the proposals was delayed from 2016 to 2017, allowing further time to ensure that the proposal is safe for consumers.

C.15 CGT: Disposal of UK resident property by non-residents

A consultation document, introducing the rationale for the non-UK-resident charge to CGT on UK residential property interests, was published on 28 March 2014 and closed on 20 June 2014, with a summary of responses published on 27 November 2014. Draft legislation was published on 10 December 2014; with some technical revisions and additions the provisions were then enacted in s37 and Schedule 7 of Finance Act 2015.

Those participating in the consultation pressed for the removal of the Annual Tax on Enveloped Dwellings (ATED) related CGT, on the basis that the new CGT charge would take its place, and that the two systems and three charges (CGT, ATED CGT and Corporation Tax) added complexity and administration burdens. Whilst these concerns were noted in the response document, the conclusion was that the two charges have different policy rationales and are subject to a different rate of tax, with the ATED related gain continuing to apply at 28%, with any remaining part of the post-April 2015 gain falling into the extended CGT charge on non-residents.

Given the resulting complexity of the reform for the taxpayer, this legislation provides the opportunity for the Government to utilize the post implementation review process and work towards achieving a more simplified piece of legislation.

C.16 DoTAS

The consultation on Strengthening Tax Avoidance Regimes (published on 31 July 2014) proposed, amongst other things, to introduce a new financial products hallmark as part of the DoTAS regime. In the response document to that consultation published in December 2014, the Government stated that it accepted that more work was needed to refine the targeting provided in conditions 3 and 4 of the draft hallmark. However, when draft legislation incorporating the draft hallmark was published on 16 July 2015, no amendments had been made to the wording of conditions 3 and 4. This was disappointing considering the hallmarks are of such importance and significance. To cast a wider net than is needed is unfortunate.

We understand the introduction by recent Governments of additional measures to combat tax abuse and aggressive tax avoidance. However, it is also important that HM Treasury and HMRC consider complementary announcements to ensure that the legislation enacted is not viewed by foreign direct investors and global entrepreneurs as milestones along a road which seeks, in the medium term, to negate legitimate tax planning by such investors. Such an outcome would inevitably frustrate the Government's overarching (and regularly affirmed) policy to ensure that the UK becomes "the most competitive tax regime in the G20".

Accordingly, we recommend that the Government accompanies most anti-avoidance legislation with appropriately worded statements confirming authentic planning arrangements which will not be challenged by HMRC under the newly enacted legislation. Such statements could be merged in due course into some form of "white list" along similar lines to the successful, long-standing investment management and collective investment schemes "white list", confirming, inter alia, which transactions will not be regarded as trading transactions for UK tax purposes.

C.17 Capital Allowances

Section 10 and Schedule 2 of the Finance Act 2014, (Temporary increase in Annual Investment Allowance ("AIA")), increased the amount of AIA to £500,000 for expenditure incurred in the period from April 2014 to 31 December 2015. From the closing date, the allowance would revert to £25,000 (subsequently proposed to revert to £200,000 in Finance Bill 2015/16, on a permanent basis).

There are two issues to consider on this measure.

First, in the Office of Tax Simplification Small Business Review, the highest source of complexity for small business was found to be that of change[5]. The AIA had already changed three times in the previous three years, and not always in the same direction, adding uncertainty to capital expenditure plans.

Secondly, the transitional arrangements set out in Schedule 2, where accounting periods straddle the point of change, are extremely complex and can give rise to an unexpected restriction on the amount of relief available. Whilst computing software calculates the correct allowance for the purpose of completing tax returns, this is of little consolation to the business when the expenditure incurred does not fully qualify for relief as may have been anticipated.

[5] http://www.gov.uk/government/publications/small-business-tax-review