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Back Chris

RESPONSE TO THE TAX PROFESSIONALS FORUM 2018 REPORT

Please accept my thanks for compiling and sending the 2018 Tax Professionals Forum report. As usual, it is full of insight, and has prompted important work within the Treasury and HMRC.

I was particularly pleased to hear that you and the Forum felt that the standard and regularity of the Treasury and HMRC's consultation process had improved substantially over the last five years. As you know, this is something we take very seriously.

On the whole, we agree with the aims of each of the lessons which you have identified, and we will strive to meet your recommendations where we can. However, there were also some findings where we take a different view from the Forum – these are outlined in the annex at the end of this letter.

Lesson one: Ensure consultation on proposed legislation and completion of all five stages of the policy process

The government remains committed to the tax consultation framework published in 2010 and updated in 2017's 'The new Budget timetable and the tax policy-making process'. To that end, we published 29 tax consultations, calls for

evidence, or discussion papers in 2018. In addition, at Legislation Day in July 2018, we published more than 200 pages of draft legislation for the Bill introduced in November. Where possible and expedient, we complete all five stages of the policy process, often beginning with a call for evidence and moving through the other stages – we are on track to complete this commitment with such major initiatives as the consultation into tax options around the treatment of plastics, and the recently introduced Transferable Tax History for oil and gas companies.

However, it is not always possible nor necessary to complete all five stages. Sometimes, because of the risk of forestalling or blight, for example, it is necessary to bring in legislation earlier than the cycle would allow, or in other cases, the government considers that the requirements for and benefits of consultation have been fulfilled in a less formal, but equally substantive, way. Some of these cases are detailed in the annex at the end of this letter. Nonetheless, the government remains committed to the continual improvement of the consultation process, and will consider further the case for providing more clarity when it chooses to depart from the framework.

Lesson two: Address genuine concerns raised during the consultation process and avoid 'patching' bad legislation after it is passed

Both HM Treasury and HMRC take the consultation process, and the responses received, seriously. As is correct, all responses are read and considered and often these responses add substantial value to the policy on which they are commenting, as the report recognises. A good example of this is the consultation on the reforms to the Corporate Interest Restriction rules that followed the introduction of a new accounting standard for leasing, IFRS16. The government received 21 responses, which made clear that the policy options suggested by HMRC were not viable. HMRC listened to this, and, working with industry representatives and agents, proceeded with a modified version of the legislation. This led to a more equitable outcome while also minimising the administrative burden for customers affected. There are many more such cases I could cite. Indeed, this kind of revision through consultation took place during some of the consultations for the policies the report

criticises. Of course, there is always more we can do, and I am grateful to you for pointing out where the Forum does not feel criticisms have been taken on – I am aware it may be the case that government does not always communicate sufficiently well where it has made changes, or why, where those changes have not been taken on, we have chosen not to do so.

Lesson three: Do not place too much reliance on guidance in the absence of a properly thought through policy

The government agrees that HMRC guidance should complement, rather than act as a substitute for, clear tax policy. Tax legislation establishes how the law applies to all tax payers, in all circumstances. But, as outlined in a recent report by the Office for Tax Simplification, good guidance can also play a vital role in providing clarity and certainty. Guidance helps improve the accessibility of the tax system for both individuals and businesses when dealing with the day-to-day administration of their tax affairs. The government is committed to ensuring that guidance continues to meet the needs of taxpayers, their advisors and HMRC, but understands that, in areas such as those outlined in the OTS' report, there is sometimes more we can do.

Lesson four: Avoid introducing complex legislation before significant political events to ensure legislation is not rushed through without proper debate

The government is firmly committed to thorough parliamentary and extra-parliamentary scrutiny of the Finance Bill. That commitment was an important part of the motivation for the increase in consultation, particularly on draft legislation, that we have overseen in the last eight years. However, the government will always have a number of different priorities, and must move forward with the agenda on which it is elected. It is for the government to decide whether it has sufficient capacity to deliver tax policy changes, allocating its resources accordingly. Equally, it is not always possible to predict when elections or other substantial political events will occur – if we always postponed complex issues because of uncertainty or the possibility of upheaval, we would rarely progress with our agenda.

I hope the comments and responses above go some way to alleviating your concerns, and to better explaining the rationale behind the government's actions. We will, as always, strive to continuing improving our consultation process and tax policymaking, aided by your recommendations and guidance.

Thank you again for taking the time to compile this report and for sharing the findings with us.

A handwritten signature in blue ink, consisting of the word 'Mel' in a cursive script.

RT HON MEL STRIDE MP

Annex: comments on individual measures

Hybrids and other mismatches

The report uses the way the Hybrid and other Mismatches regime amendments were implemented as an example of insufficient time being given for consultation. Given that the OECD BEPS process included a detailed consultation period, and the fact that the UK carried out an initial consultation in the period Dec 2014-March 2015, we do not agree with this assessment. We also consider that as the changes arose directly from the 2015 OECD BEPS Action 2 report in relation to hybrid mismatches, and that the UK legislation closely followed those recommendations, there was sufficient clarity in relation to the scope, objectives and implementation of those rules prior to implementation.

Regarding the guidance for the Hybrids legislation, initial draft guidance was published for consultation in December 2016, and a revised draft was published on 31 March 2017, within a month of the end of the consultation period. A final version of the guidance was published on 27 November 2017. However, officials continued to engage with stakeholders throughout 2017, and that engagement both provided certainty to businesses, and enabled specific issues to be identified and addressed in Finance (No.2) Act 2017. Officials have continued to engage with stakeholders to monitor, review and evaluate the impact of the legislation.

Extending the rules on the taxation of non-residents' gains on UK land

The report also expresses concern that the government began at Stage 3 (draft legislation) in extending the rules on the taxation of non-residents' gains on UK land. I can reassure you that the government did consult on this policy prior to publication of legislation, with a consultation document published at Autumn Budget 2017 which elicited over 80 substantive responses and dozens of face-to-face meetings. In response to this process the government made a number of changes to the policy's design to address industry concerns (such as the introduction of a trading exemption and the easement of the eligibility requirements for the 25% exemption).

The government decided against a Stage 1 consultation, as it already had a clear sense of its intended policy objective and felt feedback would be more valuable from stakeholders in response to a firm government proposal. There was also a reluctance to unduly prolong the period from the date at which the measure was announced to the publication of the final rules to mitigate uncertainty for investors.

The extension of offshore time limits

In the case of the extension of offshore time limits, the government decided that the extension of offshore time limits did not merit a stage 1 consultation because there was a clear response to a relatively straightforward issue. Under current rules, there are cases where HMRC simply runs out of time to investigate and assess before the time limits run out. This is because of the additional time needed to obtain information from outside the UK. It was therefore appropriate for the government to announce the change, and then consult on the policy design and best options. As the report mentions, this stage 2 consultation included important issues, such as whether to apply the measure to corporation tax and what safeguards were appropriate for taxpayers in cases where HMRC receives information from other tax authorities.

'Cleansing' legislation in the case of changes to the taxation of non-UK domiciled individuals

The Forum's report argued that the 'cleansing' legislation introduced as part of the changes to non-UK domiciled individuals was poorly drafted, and that HMRC neglected to take on board concerns raised during this process. Following the announcement of reforms to the non-dom regime at Budget 2015 the government welcomed wide and varied representations on all aspects of the proposed changes. The legislation was finalised after a lengthy period of stakeholder consultation in which the Government accepted a number of suggestions made by external stakeholders on how to apply the cleansing process and provide a generous transitional relief for non-domiciled taxpayers.

The report also argues that concerns about this legislation were ignored at the time of consultation, and this has meant 'unnecessary uncertainty has crept in and will mean unnecessary reliance on guidance'. As a result of the extensive stakeholder engagement, we believe that the legislation as drafted provides clarity and certainty for taxpayers. However, we acknowledge that for individuals with complex offshore affairs, there is always more we can do to provide certainty and clarity when enacting changes – including through HMRC guidance.

Off-payroll working in the public sector

The report argued that the initial consultation for the reform of off-payroll working rules in the public sector was too narrow, and that some stakeholder comments were ignored. I can reassure the Forum that the Government consulted extensively on how to address non-compliance with the off-payroll working rules before introducing reform for those working in the public sector and believes that a robust process of consultation was carried out. Consultation began in July 2015 and continued through to introduction of the reform, involving extensive engagement with all relevant parties.

In response to stakeholder concerns on the need for more time to implement the reform for engagements in the private sector, as announced at Budget 2018, the Government has allowed for implementation not to take place until April 2020. We are continuing to consult on these proposals, and, in line with the Report's recommendation, are of course considering what lessons we can take from the implementation of the public sector reforms when considering the roll out to the private sector.