



The Law Society

Tax policy making: Draft protocol on announcements outside scheduled fiscal events

Comments of the Tax Law Committee of the Law Society of England and Wales

Introduction

1. The Law Society is the representative body for over 140,000 solicitors in England and Wales. It negotiates on behalf of the profession and lobbies regulators, the Government and others.
2. This response has been prepared on behalf of the Law Society by the members of the Tax Law Committee. The Committee is made up of senior and specialist tax lawyers from across the country.

General comments

1. We welcome the publication of the draft Protocol ("the Protocol") to govern the circumstances in which the Government will announce tax changes which have immediate effect outside the normal Budget process.
2. We support the Government's commitment to publish draft clauses on the day of announcement and note that, in the exceptional cases when these are unavailable, a detailed technical note will be published instead. We welcome the commitment to publish the written Ministerial statement and draft clauses or technical note on the HMRC website as soon as practicable after the announcement to Parliament and hope that the Government will also embrace other forms of relatively low-cost communication for example, e-mails of the announcement to appropriate representative bodies and press releases to news outlets, as well as Twitter and RSS feeds.
3. The Protocol should also contain some commitment for such legislation to be as narrowly targeted as possible in order to address the particular issue which it seeks to address, given the increased risk of collateral damage that accompanies hastily introduced legislation which by definition will not have been subject to the usual rigours of the consultation process.
4. We understand that there may be occasions when the Government needs to announce anti-avoidance legislation which takes effect very quickly, but we urge consideration for taxpayers who are legally or commercially bound to enter into transactions on the day of announcement which may now be taxed differently. We propose that announcements of changes of law taking effect on the day of the announcement itself

be restricted to the most egregious avoidance schemes. We consider that there should be a general presumption of a period of grace before implementation. For announcements countering avoidance schemes this grace period need be as little as one day, but would assist in ensuring taxpayers only enter into transactions when they at least have an opportunity to take advice on the tax consequences of their actions.

Specific comments

5. We do not think that the preamble to the Protocol need recite the history of its development. We consider that the wording in paragraph 3 of the preamble is sufficient introduction.
6. As a quasi-legislative document, the drafting of the Protocol needs to be much more precise. We consider that the phrases “tax system”, “scheduled fiscal event”, “significant risk to the Exchequer”, “significant new information” and “significant losses to the Exchequer” all require further clarification. For example, Budget Day is clearly a significant fiscal event, but it is not clear which elements of the Parliamentary process leading to the enactment of a Finance Bill or other legislation will be covered. It is also unclear whether the protocol is intended to cover only financial loss to the Exchequer, or whether the risks are to be more widely judged, for example, where the integrity of the UK’s tax rules are at stake? Is “tax system” intended to cover primary and secondary legislation only or is it also to include Codes of Practice, guidance and technical notes? Are changes in the administration of the UK’s direct and indirect taxes covered? What about double tax treaties and agreements with foreign governments?
7. We consider that guidance on what “significant” is to mean in practice would be best achieved by way of illustrative examples. The Protocol should then be drafted to make it clear that it is intended to be read in conjunction with these illustrative examples and construed accordingly.
8. We note that, as currently drafted, the Protocol is to apply only where changing the law immediately would “prevent” significant losses to the Exchequer. Given that, these losses are only likely to be predictions or estimates, we are unclear how the requirement of prevention is to be satisfied.

Contact details:

If you have any questions concerning these representations or would like to discuss anything contained in them, please contact the Chair of the Tax Law Committee Tel: 020 7849 2512 Email: ashley.greenbank@macfarlanes.com).

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