Penalties for enablers of tax avoidance: HMRC guidance and FAQs

Management of taxes

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HMRC have published their final guidance on the new penalties for enablers of tax avoidance and the ATT and CIOT have produced some accompanying Frequently Asked Questions for members.

Finance (No.2) Act 2017 Schedule 16 introduced new penalties for enablers of defeated abusive tax arrangements (the 'penalties for enablers' rules) with effect from 16 November 2017.

These new penalties extend beyond those who promote tax avoidance schemes to those involved at any step in their development, design, management or implementation.

On 22 December 2017 HMRC published their final guidance on the penalties for enablers rules which can be found on GOV.UK. This followed a period of consultation on draft guidance, to which both the ATT and the CIOT responded.

The final guidance is comprehensive and stretches to 62 pages. It covers several key areas of the rules, including:

- The definition of abusive tax arrangements.
- When arrangements are deemed to be defeated.
- The calculation of penalties.
- Administrative procedures around assessing a penalty and making referrals to the GAAR panel.

The guidance also looks closely at each category of enabler defined in the legislation (designers, managers, marketers etc.) and includes examples to illustrate the types of behaviour which HMRC believe may or may not constitute enabling.

An area of particular interest for ATT and CIOT members is the interaction with Professional Conduct in Relation to Taxation (PCRT). Although the enablers legislation does not specifically exempt those who act in accordance with the requirements of PCRT from being an enabler, HMRC's guidance states that if they conduct their business in accordance with PCRT and act wholly within the spirit of the standard for tax planning, it is unlikely that such a person will come within the scope of the enablers legislation.

To assist members in considering what the penalties for enablers rules may mean in practice the ATT and CIOT have produced a document considering some Frequently Asked Questions (FAQs). These cover a variety of areas, including whether providing certain services (including tax return filing, second opinions, referrals, exit strategies) may result in a member being an enabler and what responsibilities advisers have under the new rules. The FAQs document can be found on the ATT website and the CIOT website.