HMRC Counter-Avoidance Activity: an update

Management of taxes

01 February 2018

HMRC provided an update at a recent meeting attended by the CIOT and other professional bodies.

New policy measures

Serial tax avoidance regime (STAR): Finance Act 2016 Sch 18

The STAR technical guidance was published on GOV.UK on 12 January 2018. Factsheets will follow.

The first set of ‘Warning Notices’ (to taxpayers who have used a tax avoidance scheme defeated since 5 April 2017) will be issued soon. The notices will be copied to agents.

Errors in taxpayers documents (failure to take reasonable care): Finance (No.2) Act 2017 s64

Guidance is now available in the compliance handbook at CH81122, CH81123 and CH81124 on the changes to inaccuracy penalties in Finance Act 2007 Sch 24 when the taxpayer has used an avoidance arrangement. Factsheets will follow.

Partial closure notices: Finance (No.2) Act 2017 Sch 15

For now, a low key ‘test and learn’ approach is being taken.

Penalties for enablers of defeated tax avoidance: Finance (No.2) Act 2017 Sch 16

HMRC's operational planning in this area is well underway focussing on 'promote and prevent' activity.

Regulations were laid on 10 December 2017 regarding declarations around legally privileged communications which came into force on 2 January 2018.

HMRC's guidance was published on 22 December 2017 (see separate article in this month's Technical Newsdesk). Factsheets will follow.

DOTAS

HMRC has extended DOTAS to IHT avoidance, avoidance of the Apprenticeship Levy and incorporated these changes into the rules that apply DOTAS to avoidance of NICs. Regulations were laid on 30 November 2017 but come into force on different dates.

- The IHT hallmark comes into force on 1 April 2018.
- The NICs rules apply from 21 December 2017, apart from the employer reporting requirement which applies for 2018/19 onwards.
- The Apprenticeship Levy changes apply from 21 December 2017.

Promoter Channel Update

Recent successes in tackling avoidance schemes were noted –

1. DOTAS non-compliance (HMRC v Root2tax [2017] UKFTT 696);
2. The first four GAAR Panel opinions which have all found that the entering into and carrying out of the referred tax arrangements was not a reasonable course of action in relation to the relevant tax provisions;
3. The Advertising Standards Authority ruling on Knight Wolffe's misleading advertising using HMRC's logo (see Spotlight 40 https://tinyurl.com/y7not2ce).

HMRC are continuing to use their data gathering powers in Finance Act 2011 Sch 23 to obtain lists of introductory fees/commissions paid by promoters. Letters have recently been sent to promoters covering the tax years 2014/15, 2015/16 and 2016/17.

HMRC are engaging with promoters and agents, and report an increasing willingness to work towards settlement. HMRC report receiving a lot of intelligence on avoidance

schemes and that agents are a good source of information. This helps them to issue ‘Spotlights’ and take other action, as appropriate, more promptly.

Disguised Remuneration (DR)

Ongoing projects:

1. Tackling DR – ‘operationalising’ the 5 April 2019 loan charge legislation;
2. Rangers planning group – focusing on the consequences of the Supreme Court’s judgement:

   (a) Follower notices;
   (b) Spotlight 41 https://tinyurl.com/y8l8ug8k;
   (c) Leveraging settlements and terms (see terms published on 7 November 2017 https://tinyurl.com/y7baqcv6).
   HMRC expressed a willingness to work with agents to reach settlement and that they are prepared to share documentation and templates for contracts. Specialist teams have been set up within HMRC to deal with this work.

Insolvency in Counter Avoidance (CA)

An overview was provided of how CA use insolvency powers to tackle avoidance. Key points:

- There is support to help taxpayers with genuine difficulties paying their liabilities, as insolvency is never an easy option.
- HMRC has resources, and determination, to identify taxpayers who simply ‘won’t pay’ including promoters who try to use insolvency to help users of avoidance schemes avoid their liabilities.
- HMRC are much more likely now to intervene before a company goes into liquidation to ensure tax is paid.
- HMRC will also work with other agencies to get directors disqualified in appropriate cases.
- No longer working with insolvency practitioners who may have used or promoted avoidance schemes, or worked with promoters on enabling schemes involving the use of insolvency. This is at the moment a CA initiative. They are looking to broaden the approach across HMRC.
- A discussion document will be published in 2018 on insolvency and phoenixism risks from taxpayers who deliberately abuse the insolvency regime to avoid or

evade their tax liabilities.