CIOT Budget representations

General Features **Management of taxes**

28 February 2020

The CIOT submitted a Budget representation on deliberate behaviour, as well as submitting a joint representation with the ATT on Making Tax Digital.

CIOT Budget representation on deliberate behaviour

There is no definition of ‘deliberate’ behaviour in Taxes Management Act (TMA) 1970 or any other similar legislation covering discovery/assessment time limits and penalties. In contrast, there is a definition of careless behaviour – an inaccuracy in a document given by a taxpayer to HMRC is ‘careless’ if the inaccuracy is due to failure by the taxpayer to take reasonable care (Finance Act (FA) 2007 Sch 24 para 3).

Deliberate behaviour, given its consequences in terms of extending the length of assessing time limits to 20 years, and the higher level of penalties compared to carelessness, logically must comprise more serious behaviour.

Recent tax cases (such as R & C Commrs v Tooth [2019] EWCA Civ 826 and Cliff v HMRC [2019] UKFTT 564) have the prospect to introduce confusion and unfairness into the tax regime by diluting the meaning of ‘deliberate’ so that it just means that a conscious decision was taken by the taxpayer – without any dishonest intent. We do not believe that is what Parliament intended when it specifically introduced different outcomes for different behaviours by taxpayers, increasing in seriousness as behaviour worsened, and this should be put beyond doubt.

We suggested that clarity is needed regarding the meaning of ‘deliberate’ behaviour in relation to tax matters; in particular, to put beyond doubt that deliberate behaviour requires that the person knew they were providing an inaccurate return or document to HMRC, or had deliberately chosen not to provide a return or document at all. Consideration of why a mistake arose needs to be undertaken based on the facts of each case and taking into account the taxpayer’s knowledge, experience

and situation (plus case law); however, given the discussions that our members indicate they are experiencing with HMRC on behaviours in practice, we consider that it is time for the legislation to encompass a definition as a starting point for such discussions.

We also suggested that the government should consider updating all relevant legislation to make it clear that, when deciding whether an error or failure which leads to a loss of tax is 'deliberate' for the purposes of TMA 1970 or equivalent legislation for other taxes, all relevant matters provided at the time the return is filed will be considered, including, for example, any wording in the 'additional information' box on a self-assessment tax return (or the equivalent for other taxes, e.g. corporation tax).

The representation can be found here: www.tax.org.uk/ref635.

Joint CIOT and ATT Budget representation on Making Tax Digital (MTD)

Readers will be aware that, during December and January, we undertook a comprehensive survey of MTD for VAT, and the future roll out of MTD. The survey results were discussed in last month's Technical Newsdesk, and we indicated that they would be used to prepare a Budget representation (as well as being shared with HMRC, which we have done).

The government promotes MTD as part of its plans to 'make it easier for individuals and businesses to get their tax right and keep on top of their affairs', while also claiming MTD will reduce the tax gap by minimising avoidable errors. The results of our survey indicate that MTD is so far neither reducing error, nor delivering benefits to businesses; yet it is costing businesses significantly more than HMRC estimated.

Whilst we enclosed the results of the survey and provided some narrative around the key findings, the Budget representation was quite straightforward. We urged the government to carry out a thorough review and evaluation of the roll-out of MTD for VAT (in accordance with stage 5 of the government's own tax consultation framework) and undertake further consultation around MTD, before making any commitments to the extension of MTD to other taxes or businesses.

The representation can be found on the CIOT website here: www.tax.org.uk/ref634 and on the ATT website here: www.att.org.uk/ref351.

Richard Wild
rwild@ciot.org.uk