Tackling promoters of tax avoidance

Management of taxes

29 October 2020

The CIOT and ATT have both commented on draft legislation and HMRC's recent consultation on measures which seek to strengthen existing anti-avoidance regimes to tackle promoters and enablers who continue to market and enable tax avoidance schemes.

CIOT says that the government is right to be taking a robust approach to those who continue to promote or sell tax avoidance schemes and to try to address the challenges HMRC face in dealing with uncooperative and unscrupulous promoters. There should be no place for these people and their schemes in the tax services market.

The CIOT welcomes the fact that the consultation document highlights that the extensions being proposed to HMRC's powers are not aimed at advisers adhering to high professional standards, and is pleased to see it recognised that the promoters of tax avoidance schemes in the market now are rarely members of professional bodies. Indeed, many – perhaps a majority – are not tax advisers or tax agents at all. The possible interventions necessary to address this issue need to apply whether or not the promoters in question are giving, or purporting to give, tax advice.

Ideally, the CIOT favours HMRC targeting their resources on the activities of the small number of promoters still active in the market, rather than introducing new rules which might place additional compliance obligations on tax advisers and tax agents. Where, as in this instance, changes are being proposed to existing anti-avoidance regimes, the focus of the CIOT response has been on identifying whether the new measures might inadvertently impact upon tax advisers who do adhere to high professional standards and who are explicitly not the intended target of these proposals.

The CIOT suggests:

- that the angles that should also be explored in tackling the problem include dealing with the issue of generic tax counsels' opinions supporting packaged tax avoidance schemes;
- ensuring that regulatory or similar interventions bite on the provision into the UK of services from abroad;
- ensuring that the professional bodies enforce the provisions of Professional Conduct in Relation to Taxation (PCRT);
- effectively extending the requirements of PCRT to those parts of the market not subject to it; and
- focusing further on misleading advertising by promoters.

The CIOT also makes some specific comments about the details of some of the proposed changes to the Disclosure of Tax Avoidance Schemes, Promoters of Tax Avoidance Schemes and Penalties for Enablers of Defeated Tax Avoidance rules.

The ATT response observes that ensuring solutions to the issues raised in the consultation might require consideration of the introduction of some form of mandatory oversight of all who are involved in any way in any aspect of the tax advice market. It also observes that a public register of 'good' advisers might be more effective than the consultation's proposals for increased naming of the 'bad'. The response questions the proposal to introduce a provision which depends solely upon HMRC suspecting something; and asks whether there might be a role for an independent body, such as the GAAR panel.

The ATT response opposes on principle the suggestion that one section of the amending legislation might be introduced with retrospective effect from November 2017.

CIOT's full submission is here: www.tax.org.uk/ref697. ATT's full response is here: www.att.org.uk/ref364.