Finance Bill 2021/22 draft legislation: clamping down on promoters of tax avoidance

Management of taxes

04 November 2021

The CIOT commented on the draft legislation introducing a measure enabling publication by HMRC of information relating to tax avoidance schemes. This measure introduces a new power allowing HMRC to publish information about tax avoidance schemes, persons suspected to be promoters of those schemes, those connected to them, and other persons involved in making the scheme available. The purpose is to better inform taxpayers of the risks of relevant schemes, so that they can identify and steer clear of the schemes or exit them.

The CIOT agrees that it will be helpful for taxpayers to have as much information as possible about HMRC's view of the claims made by promoters and the potential risks of entering a scheme, but we have some concerns about the potential breadth of the measure. Whilst HMRC say it is targeted at the most egregious 'hard core' promoters, in fact it sets a low bar because of the definitions it is using for 'promoter', 'relevant proposal', 'relevant arrangements' and 'connected person'. Furthermore, the authorised officer merely has to 'suspect' that a proposal or arrangements fall within the measure to arrange for publication. As a result, we are concerned that this measure could be used by HMRC in the future more widely than is being proposed now.

We would therefore like to see a statement from the Financial Secretary to the Treasury that the measure is not aimed at advisers who adhere to high professional standards and provide sound advice and support to taxpayers, but is aimed at promoters who seek to exploit opportunities to profit by sidestepping the rules. Indeed, many of these promoters – perhaps a majority – are not tax advisers at all but rather operate in a small number of boutique firms focused mostly or entirely around such avoidance schemes. There should be no place for these

promoters and their schemes in the tax services market.

The draft legislation provides that HMRC must amend or withdraw information which is incorrect or misleading. However, in our view that may not go far enough to rectify any reputational damage which has been inflicted on innocent parties. The procedure should be akin to that which applies to press complaints. If HMRC have incorrectly published information then not only should they amend or withdraw it but they should also potentially be required to publish a formal retraction (and in some cases an apology).

We think that this is important. If publication is widely disseminated (as we recommend), then HMRC simply amending or withdrawing an article may not be enough (because multiple versions of the story will inevitably remain in circulation on the internet). Because of the impossibility of withdrawing a story from circulation, it will be vital that there is a formal retraction (and possibly an apology) published so that the wronged person can at least point to that. Requiring HMRC to do that, when they get things wrong, would provide more balance to this measure.

HMRC need to put very strong internal governance procedures in place when deciding whether to publish information about a promoter. We would similarly like to ensure that connected persons are only named if they are involved in the matter. The measure should not be used to publish the names, for instance, of junior employees or small minority shareholders who had no (or only incidental) connection with the tax arrangements. This should ideally be done by amending the definition of ‘connected person’ in the draft legislation, but – failing that – there should be very strong procedures to stop this happening.

We are concerned about how the information can be published so that it successfully reaches its target audience. We doubt that publication on GOV.UK will be sufficient – we already know that existing publications on GOV.UK such as HMRC’s ‘Spotlights’ and the General Anti-Abuse Rule Advisory Panel decisions do not have a wide reach – so HMRC will need to publish and share the information more widely, including using social media and the mainstream press. The information must be written in non-tax technical language so that it can be understood by the ordinary person. Targeted sharing with businesses, agencies and employers known to HMRC to be involved in disguised remuneration tax avoidance (which forms the majority of today’s tax avoidance) supply chains should also be considered, as should publicising the information through industry specific magazines, newsletters,

webinars, professional websites, etc. The CIOT looks forward to engaging with HMRC about the best way to get the information about promoters and schemes out to our members and the public at large.

LITRG did not comment on the legislation, in terms of what was there. However, in our submission, we stressed that we do not believe that the government response to the consultation or the draft legislation addresses the concerns we have previously raised as to HMRC's direction of travel. Once again, LITRG explained that whilst there are undoubtedly still people who have an appetite to use tax avoidance schemes and who make an active decision to use one, this does not appear to be the 'norm' any longer. We said we are concerned that HMRC do not appreciate this fully and consequently their strategy of narrowly focusing on promoters and changing taxpayer behaviour will fail to be effective. We reiterated our view that there is a now a very strong case for decoupling the disguised remuneration schemes from HMRC's other efforts and presumptions in tackling tax avoidance, and for HMRC to explore alternative strategies.

The CIOT's response can be found here: www.tax.org.uk/ref825.
LITRG's response can be found here: www.litrg.org.uk/ref2546.