Finance Bill 2021/22 draft legislation: powers to tackle electronic sales suppression

Management of taxes

04 November 2021

We strongly support HMRC's efforts to deal with tax evasion like electronic sales suppression. However, it is not clear when HMRC will use the new power instead of existing criminal offences, such as the corporate criminal offence of failing to prevent the facilitation of tax evasion and the offence of making, adapting or supplying any article knowing it is designed to be used in fraud. HMRC should explain in their guidance in what circumstances they intend using this new power instead of these other offences.

We are concerned that the UK's tax code is becoming overloaded with the introduction of more legislation, particularly where it is not altogether clear why existing provisions are inadequate to deal with the problem identified. Our comments on the draft legislation for this new power around electronic sales suppression (ESS) recommended that a formal review of this new legislation should take place in about two to three years' time to measure its effectiveness.

The original call for evidence on this measure took place in late 2018 at Stage 1 of the consultation process and did not consider the proposed approach set out in the draft legislation, including the penalties that would apply. The policy paper published by HMRC on 20 July 2021 stated that, 'the government decided that there would not be merit in publishing a policy consultation document on ESS. ESS is not a controversial topic and the proposed measures are neither introducing a new tax nor increasing the level of an existing tax.' However, this approach has meant that there has been no formal consultation on the introduction of these new penalties. In our view, all new measures would benefit from full consultation in line with the Tax Consultation Framework.

We also query whether some of the penalties are set at an appropriate level to encourage compliance.

The CIOT’s response can be found here: www.tax.org.uk/ref826.