FB 2015 – international agreements to improve compliance: client notification obligations

Management of taxes

01 November 2015

CIOT comments on clause 46 of the Finance Bill

The CIOT has made representations to the Finance Bill Committee and to HMRC on clause 46 of Finance Bill 2015. This would enable the Treasury by regulation to impose client notification obligations on tax advisers and other persons who, in the course of their business, advise another person about their financial or legal affairs or provide other financial or legal services. ‘Client’ can include both current and former clients and customers.

The explanatory notes to the Finance Bill read: ‘Financial intermediaries and tax advisers will be required to notify their customers about matters specified in regulations, which are likely to include the Common Reporting Standard, the penalties for evasion and the opportunities to disclose previous evasion to HMRC. This will encourage individuals to make sure that they pay the right amount of tax on money held abroad.’

The CIOT can see why HMRC might want to explore different ways to convey messages to taxpayers effectively. However, we do not support these proposals. In principle, we think it is wrong for HMRC to be involved in communications between tax advisers and their clients. It could affect the bond of trust that is a fundamental part of the adviser-client relationship. The idea of targeting clients for an HMRC message on offshore evasion, for example, runs counter to this bond of trust and the public purse is not better protected as a result.

There is a big question mark over which clients are to receive the communication – all of them or just some of them? If it is all of them, it becomes a broad-brush

approach – although we think this is the least bad option. If it is just some of them then, whatever an adviser may say and intend, there is the risk that clients will feel they are viewed with particular suspicion.

The CIOT believes it is HMRC's preference for a notification on offshore evasion to be sent only to clients whom the adviser knows have an offshore account/asset/investment, or to whom the adviser has advised on offshore interests, even if they believe the client to be fully complying with their tax obligations. In the CIOT's opinion, using tax advisers to pass on this message is not an effective way to reach HMRC's intended target – people who are evading their taxes – because they are unlikely to engage openly with an adviser, less so one who is in a regulated sector or a member of a professional body. Thus the message would, in most cases, simply be sent to compliant taxpayers with offshore interests.

For many firms it will be very time-consuming to identify which clients should receive the communication. Sending the notification to every client would help smooth the process and help with clients who might otherwise feel insulted to have been selected to receive such a letter. A notification to all clients might flush out cases that the adviser is unaware of, although even this could present identification difficulties. Firms may act for clients on 'one-off' pieces of work; they may act for them on non-tax related matters, especially the case in a firm that provides a range of services including tax.

The CIOT strongly believes that the requirements should apply to current clients only, not to past ones where the professional relationship has ended. We suggest that HMRC should work with professional firms to see what is workable, as each firm will no doubt have different ways of identifying current clients.

HMRC need to be very clear on what criteria and processes advisers must use if discretion is to be exercised, particularly since penalties may be imposed for non-compliance.

HMRC say their preferred approach would be for the notification to be 'HMRC branded', with the adviser sending it out and explaining that they were legally required to do so. We agree with this. It would be less likely to adversely affect the client-adviser relationship. And it would be very time-consuming for each adviser to draft a 'bespoke' communication.

Clause 46 itself says nothing about the timing of the notifications, but we understand from HMRC that they are proposing that they be sent between the date that the UK is required to implement the EU Directive on Administrative Cooperation (DAC) through domestic legislation (31 December 2015) and the first streams of data under exchange of information agreements coming through (Crown Dependencies – 30 September 2016). However, until the regulations are laid and we know the precise details of how the obligation will work, advisers will not be able to put a system in place to send the notifications.

We understand that it is intended to be a one-off notification exercise, but we are concerned that this might set a precedent and tax advisers will be required to send out other HMRC communications in the future, especially if this particular exercise is deemed by the department to be a success.

The full text of the CIOT's briefing can be found at parliament.uk.