Mandatory disclosure rules consultation: CIOT response

Management of taxes

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The CIOT has responded to HMRC's consultation document on mandatory disclosure rules, which are intended to implement the OECD's 'Model Mandatory Disclosure Rules for Common Reporting Standard Avoidance Arrangements and Opaque Offshore Structures' in the UK.

At Budget 2021, the government announced that it would implement the OECD's 'Model Mandatory Disclosure Rules for Common Reporting Standard Avoidance Arrangements and Opaque Offshore Structures'. A consultation document (tinyurl.com/3hhxab4b) was published in November 2021 and sought views on the design of draft regulations that, once enacted, will implement the OECD's model rules (see tinyurl.com/yckmvkkk). These regulations will replace similar EU rules (known as 'DAC6') which were implemented in the UK before the UK left the EU and which were subsequently modified at the end of the transition period in January 2021 to align more closely with the OECD model rules.

In our response to the consultation, we say that we support the aims of the mandatory disclosure rules (MDR) regime but that we do not support the long look back period that is proposed by the government for disclosure of Common Reporting Standard (CRS) avoidance arrangements. From the feedback we have received from our members, there is clearly a widespread desire to comply fully with the rules to ensure that disclosures, when required, are correct, complete and on time. However, there is also a high level of concern that the rules proposing disclosure of CRS avoidance arrangements going back to 29 October 2014 will introduce a disproportionate administrative burden on business in relation to the perceived benefits to HMRC.

There will be significant practical challenges in complying with this seven to eight year look back requirement. Businesses are not required to retain records beyond a six-year period (although some may well do). Even if records have been maintained, during such a long period, it is likely that many businesses will have undergone significant change, through group restructures, turnover of staff at all levels, and IT/systems changes.

The limitations and mitigations suggested in the consultation document are helpful but in our view are not sufficient to alleviate the burdens. Client files are likely to be kept separately for confidentiality reasons and there will be no central 'database' of information to connect across clients. It will still be necessary to review **all** files to ascertain which ones might be in scope and then to identify whether the mitigations and thresholds apply. Thus the mitigations may reduce the number of reportable arrangements but the time needed for the review work will not be significantly diminished by the mitigations proposed.

It is our view that the only way to mitigate the burdens it will cause is to bring forward the date, perhaps to 25 June 2018, which was the approach taken in the DAC6 rules when they were implemented by the UK government. Promoters will have already undertaken the exercise of looking back in order to identify CRS avoidance arrangements arising since 25 June 2018 within scope of DAC6.

We note that the impact of MDR and the look back period is also wider than just the practical difficulties. Businesses operate more than ever in a highly regulated and public arena where risk management is a priority and the financial and reputational consequences of inadvertent non-compliance with the law are severe. We also point out that the challenges the MDR rules present cannot be underestimated during a time when businesses are also dealing with a multitude of other changes to both the UK and international tax systems.

Our full response can be found at www.tax.org.uk/ref892.