Strengthening sanctions for tax avoidance – serial avoiders and GAAR penalty

Technical | Management of taxes

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It was announced at Budget 2015 that, after the consultation 'Strengthening sanctions for tax avoidance' which closed on 12 March 2015, new measures will be introduced in a future Finance Bill to tackle people who persistently enter into tax avoidance schemes that fail (serial avoiders). In addition, specific penalties will be brought in for cases in which the General Anti-Abuse Rule (GAAR) applies.

We understand that the legislation on serial avoiders will include a special reporting requirement and a surcharge on such taxpayers whose latest tax return is inaccurate as a result of a further failed avoidance scheme. The government will also look to restrict access to reliefs for serial avoiders, and intends to develop further measures so that those who continue to use schemes that fail would be named.

In response to HMRC's consultation document *Strengthening sanctions for tax avoidance*, the CIOT said that it is not convinced that further legislation is justified or necessary at the moment, either in relation to serial users of tax avoidance schemes or the GAAR.

Although we have concerns about the scope of some of the legislative changes recently introduced, we agree that the government and HMRC should be tackling abusive tax avoidance. However, we would want to reserve judgment on whether it is necessary to introduce further legislation until we have seen convincing evidence that the legislation introduced in FA 2014 on promoters of tax avoidance schemes, accelerated payment notices and follower notices is not working as intended. In addition, changes to the disclosure of tax avoidance scheme (DOTAS) rules, to tighten up the reporting of schemes, are still being introduced, and we think that

they should be given time to take effect before further legislation is enacted.

In our view, it is also too early to introduce a specific GAAR penalty. The GAAR has been in place for only 18 months and so far there have been no actual cases and no actual opinions issued by the GAAR advisory panel. We see as premature the introduction of a further set of measures to deter taxpayers from entering into abusive arrangements.

Broadly, we feel that current legislation is more than adequate to achieve the government's objectives, and that those objectives would be better achieved by prompt, accurate and proportionate action by HMRC to apply current law.

It is therefore disappointing that, as indicated by the announcements at Budget 2015, the government has decided to press ahead with the proposals in the consultation document.

HMRC's consultation document can be viewed on the CIOT website.

The CIOT's response can be viewed on the CIOT website.