New strict liability criminal offence for offshore evaders

Management of taxes

01 February 2016

Draft legislation reflects some of CIOT's concerns

Draft legislation introducing a strict liability offence for offshore tax evasion reflects some of the concerns that CIOT raised in its responses to the 2014 and 2015 HMRC consultations.

HMRC published a response to its second consultation document on 9 December 2015, together with draft clause 70 for inclusion in Finance Bill 2016.

The CIOT has maintained that it supports HMRC’s efforts to tackle tax evasion and agrees that the government should be putting resources into combating and investigating it.

However, we remain opposed in principle to the creation of a strict liability offence for offshore tax evasion which will require no proof that the taxpayer deliberately intended to break the law. If the government is determined to introduce the offence, in our opinion it should be targeted at only the most serious evaders.

Threshold: the statutory minimum threshold of tax evaded has been increased to £25,000 from £5,000, as we suggested it should be. We did not think that £5,000 was high enough. HMRC says this means the offence could apply only to the top 5% of evaders who are now pursued through civil penalties. The legislation includes a provision to allow the threshold to be increased in future years.

Exclusions for particular jurisdictions: The government is to exclude from the offence income and gains reportable under the common reporting standard (CRS), in line with what we suggested in the 2014 consultation. HMRC says this will help to target the offence at areas where they face the biggest challenges in tackling evasion, and

therefore where a stronger deterrent is needed. In our view, it was likely that the offence would be considered proportionate for EU law purposes only if it applied to jurisdictions, and income and gains, where HMRC has no right to obtain information (or only very limited, non-automatic rights).

HMRC explain how and when they intend to use the offence as follows:

> ‘The government would like to make clear that it does not have any intention of using this offence to prosecute those who make every effort to ensure that their tax affairs are in order. The use of this offence will follow HMRC’s criminal investigations policy. This means that in the majority of cases HMRC will pursue the lost tax through civil means. This offence, like other offences, will be reserved for cases where HMRC needs to send a strong deterrent message or where the conduct involved is such that only a criminal sanction is appropriate. In these cases the Crown Prosecution Service, the Crown Office and Procurator Fiscal Service and the Public Prosecution Service will consider whether this or one of the existing criminal sanctions available is the most appropriate tool to use.’

The offence will not come into effect before April 2017 at the earliest, so no offence could be committed until after 31 January 2020 (the end of the period for correcting a 2017–18 self-assessment tax return). Guidance will be produced closer to when the offence is introduced.