Will alignment of VAT disclosure with DOTAS be effective?

Indirect Tax

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HMRC is proposing to change the VAT Disclosure Rules (VATDR) to align with the Disclosure of Tax Avoidance Schemes (DOTAS).

Background

HMRC has published a consultation called Strengthening the Tax Avoidance Disclosure Regimes for Indirect Taxes and Inheritance Tax. Part of the rationale appears to be that disclosures have dropped significantly since the VATDR legislation was introduced in 2004.

The measures

Two main changes are proposed.

- To impose the duty to disclose on promoters of avoidance schemes rather than the position now, under which the duty falls on the users of schemes.
- To extend the scheme to cover other indirect taxes, in particular IPT and gaming duties, to which the current arrangements do not apply and where there appears to be evidence of the promotion of schemes.

Previous views we have expressed

We responded to the original consultation before the 2004 legislation and another one in 2014. We have pointed out that VAT is governed by EU law and therefore some arrangements that might be seen as objectionable for direct tax – for example, gaining a cash flow advantage – have been specifically sanctioned in EU case law,

namely *Weald Leasing* Case C-103/09.

Further, we noted in the 2014 consultation that, since the *Halifax* case, members have pointed out that there has been little appetite for packaged and highly artificial schemes, so it is not surprising that the number of disclosures has reduced.

It should also be noted that, in the latest estimate of the VAT gap by HMRC, the loss due to avoidance is given as £200m, which tends to support the view that there simply is not the level of avoidance needed to justify any significant changes.

Extending the scheme

As noted, the consultation document suggests that there is significant avoidance of IPT and gaming duties, which generate revenues of £3bn and £2bn respectively. These are very specialised taxes and we would like the views of people who either are responsible for such taxes in their organisations or who advise on them. We would in particular like to find out if possible the extent to which promoters are marketing avoidance schemes.

Contact

Send your replies to indirecttax@ciot.org.uk.

You can find the consultation on GOV.UK.

Previous consultations

Our previous responses to this subject may be found on the CIOT website: 2004 and 2014.