Promotors of tax avoidance schemes (POTAS) update

Management of taxes

01 July 2015

CIOT meet HMRC to discuss POTAS legislation

We recently met HMRC to discuss working with them on communicating messages to tax agents about how the POTAS legislation could affect them if they have clients who have taken part in an avoidance scheme in the past or who are thinking about taking part in an avoidance scheme in the future.

HMRC have already sent a letter to 248 agents who they had identified as having clients who have taken part in tax avoidance schemes. They are intending to send more letters in the next few months, but want to work with the professional bodies to ensure the messages are clear.

HMRC recognise that some agents they contact may simply represent a taxpayer who has been introduced to a tax avoidance scheme by a third party. If this is the case, they will ask that the agent contacts them so they can make a note of this for their records.

On the other hand, some agents may have acted as intermediaries by introducing their clients to marketed tax avoidance schemes. The POTAS legislation has implications for intermediaries as well as promoters and scheme users. In addition, HMRC believe that some agents may have conducted their business in such a way that under the legislation they could be categorised as a ‘promoter’.

As members will be aware, the POTAS regime was introduced in FA 2014. Since then, three sets of regulations have been enacted to support the regime and HMRC have produced guidance which can be found on GOV.UK.

We understand that the guidance continues to be reviewed and updated as necessary.

HMRC are also planning to publish information products to help advisers understand what POTAS means for scheme users and their agents and will focus on the risks and consequences of being affected by the legislation. HMRC say they are ultimately seeking behavioural change so that:

- agents will choose not to introduce high-risk schemes to their clients;
- agents will choose to pass information to HMRC about high-risk schemes and promoter behaviour; and
- there is a clear behaviour gap between the majority of agents and those who breach threshold conditions through the promotion of high-risk schemes.

Finally, HMRC have updated us on their progress in operating the regime, which has involved putting internal governance processes in place and appointing ‘authorised officers’ responsible for issuing conduct notices. HMRC have so far written to less than 10 promoters with what they call a ‘precursor’ or ‘opportunity’ letter to tell the recipient that they think that they could be high risk and to give them an opportunity to respond.

Receipt of a POTAS precursor letter does not lead automatically to the issue of a conduct notice. Instead, HMRC hope that it will invite engagement with the promoter and avoid the issue of a conduct notice in the future by encouraging the promoter to change their behaviour. HMRC also advised that so far they have issued less than five conduct notices and no monitoring notices.

We will give further updates in Technical Newsdesk on HMRC’s implementation of the POTAS regime in the months ahead.