CIOT input to European Commission work on tackling the role of enablers

General Features

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An update on CIOT input in relation to the European Commission call for evidence in tackling the role of enablers.

The European Commission launched a public consultation in the summer on the policy options being considered to ‘improve the regulatory framework for tax intermediaries’. Their aim is to tackle the role of ‘enablers’ that facilitate tax evasion and tax planning in the European Union.

The commission set out their view that tax evasion and aggressive tax planning continue to be a significant problem and the options currently being considered are:

- Option 1: requirement for all enablers to carry out dedicated due diligence procedures;
- Option 2: prohibition to facilitate tax evasion and aggressive tax planning combined with due diligence procedures and a requirement for enablers to register in the EU; and
- Option 3: code of conduct for all enablers.

Whilst the UK is no longer a member state, any legislation brought in looks likely to impact tax advisers providing advice to European entities or individuals.

CIOT is a member of CFE Tax Advisers Europe (CFE) and provided input on the response they submitted to the commission (tinyurl.com/pm7dvy8t). In particular, the CFE:

- recommends further analysis of the nature and extent of the problem which the commission are seeking to address before the introduction of any new legislation. The commission’s view appears to be based on data before changes

arising as a result of the base erosion and profit shifting project and the European Union mandatory disclosure regime (DAC 6);
- expresses the view that any European Union proposals should not have a disproportionate impact on reputable tax advisers, for example through additional due diligence requirements; and
- draws attention to the CFE work on Professional Judgment in Tax Planning.

Given that the commission's published evidence referenced the regulatory position in the UK, the CIOT also worked with ICAEW on a further joint response to the commission (www.tax.org.uk/ref977) to provide some further feedback on UK experiences. This joint response:

- calls for the commission to build a robust evidence base to establish the true extent of the problems and in particular makes the suggestion that member states should be encouraged to develop and publish detailed information on tax gaps in a consistent format;
- draws the attention of the commission to the work undertaken in the UK on developing tax planning principles as set out in Professional Conduct in Relation to Taxation (PCRT) (www.tax.org.uk/professional-conduct-in-relation-to-taxation-pcrt). The commission were encouraged to review PCRT alongside the CFE work on Professional Judgment in Tax Planning;
- refers to UK legislation which seeks to prevent aggressive tax planning, including the promoters of tax avoidance legislation and the penalty regime for enablers of defeated tax avoidance; and
- echoes the response given by the CFE that additional burdens placed on advisers should be reasonable and proportionate and that any legislation should be targeted directly at those who engage in unprofessional behaviour.

We now await the response from the commission and will keep members updated.

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