CIOT questions benefit of changes to VADR and IHT DOTAS changes

Indirect Tax | Inheritance Tax and trusts

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The CIOT has responded to HMRC's consultation on strengthening the disclosure rules.

Background

HMRC published a consultation on proposals to strengthen the tax avoidance disclosure regimes for indirect taxes and inheritance tax.

In its consultation document, HMRC notes a significant decline in VAT disclosures, which may indicate a need to strengthen the rules. It suggests aligning the VAT Avoidance Disclosure Regime (VADR) with DOTAS, and in particular make promoters responsible for notifying schemes and providing a reference number to users.

Currently DOTAS applies to inheritance tax (IHT) only for arrangements intended to avoid the entry charge on transfers into the relevant property regime for trusts. HMRC's latest proposal is to abolish that specific regime and to introduce a wider disclosure mechanism applicable to all IHT arrangements that are contrived or abnormal, or which contain contrived or abnormal steps.

Evidence of VAT avoidance

We asked members whether they had any evidence of the sale of avoidance schemes and the consistent view was that there did not appear to be any inclination by their clients to enter into them. We all concluded that was the most likely reason for the reduction in the number of disclosures rather than non-compliance with VADR.

We are also not aware of any large-scale marketing of avoidance schemes. Again this would indicate that the low level of disclosures is correct. We pointed out that the effect of the judgment in *Halifax* and subsequent cases in negating all but the most straightforward VAT 'planning' should not be underestimated.

How much VAT avoidance is there?

We referred to the government's estimates of the tax gap. For VAT, avoidance is estimated at just £200m of total collections of £113bn, equivalent to just 0.2%. We therefore questioned whether a change in regime was warranted for, proportionately, a relatively small level of perceived avoidance.

The proposed changes to VADR

We foresaw practical difficulties with the proposals. Although passing the responsibility for disclosure to the promoter appears in theory to reduce the burden on users, we were not convinced that would be the case. This is because under DOTAS the scheme user has an obligation to report this by providing its reference number. In some cases the burden to report the scheme itself is passed back to the user, such as if the promoter is offshore, or if there is no promoter. Further problems arise if, as suggested, even non-taxable persons are required to disclose use of schemes since they have no normal VAT reporting obligation and may be unaware that they are using one at all.

Our conclusion on VAT

We do not believe that changes in the regime are either desirable or necessary. If the incidence of VAT avoidance increases and is not being picked up by VADR, it could be reconsidered then.

Disclosure in relation to other indirect taxes such as IPT and gaming duties

We did not receive many comments from members on IPT and gaming duties or other indirect taxes. We agreed that, if there were evidence of significant avoidance activity in relation to such taxes, it would be appropriate to extend either VADR or

DOTAS to them.

On excise duties, it was suggested to us that by far the most significant issue was evasion, not avoidance. Indeed there was little evidence of significant avoidance activity.

Inheritance tax (IHT)

The draft regulations adopt an approach to IHT which is at odds with that taken on other taxes; it is not clear why this is so.

We commented that our view was that the draft regulations presented with this consultation remained too broad in their scope, with the effect that normal and commonplace arrangements would become disclosable. The proposal to require disclosure of IHT arrangements that involve ‘contrived or abnormal’ steps is too wide, and will inevitably increase compliance costs. This would affect not only taxpayers but also HMRC because it would have many more disclosures to monitor, making it harder rather than easier to identify and evaluate new types of arrangements and determine whether they are abusive and require counteraction.

Instead we suggested that the focus should be on targeted hallmarks that look at contrived and abnormal steps in specific areas of the IHT legislation so that the intended meaning of these broad and vague terms can take more colour from their context.

Alternatively, we suggested for consideration how the proposed ‘contrived or abnormal’ criteria may be improved, and that the schedule of excepted arrangements should be extended. Expanded guidance would be a poor second to explicit legislative exclusions.

Our full submission can be found on the CIOT website.