Offshore tax evasion – consultation on Requirement to Correct

Management of taxes | Personal tax

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HMRC poses questions about the creation of a new supplanting offence in preparation for its receipt of information under the common reporting standard by 2018.

HMRC's consultation document Tackling Offshore Tax Evasion: a requirement to correct, published on 24 August, runs to 30 pages and includes 18 questions. It is described as 'taking place during stages 1 and 2' of tax policy development so it sets out objectives and identifies options. It is also designed to assist determination of the best option and develop a framework for implementation, including detailed policy design. The legislation is envisaged to be in Finance Act 2017.

In her foreword, the Financial Secretary to the Treasury refers ten times to evasion. Jane Ellison's final remark is: 'HMRC is closing in on tax evaders, so they should come forward now or face tougher civil and criminal sanctions.' This, coupled with the consultation's title, may suggest that it is only evaders who need to note its contents. You cannot, however, tell a book by its cover or a consultation by its title.

The central theme of the condoc is the need for taxpayers to ensure that their offshore tax affairs are fully in order by the end of September 2018 in advance of HMRC beginning to match the massive store of data that the department will receive under the common reporting standard (CRS). Failure to respond to the somewhat amorphous 'requirement to correct' (RTC) within the timeframe will mean that 'where there are outstanding UK tax liabilities or obligations on or before April 2017 that relate to offshore interests' that subsequently come to light, the penalty consequences will be the tougher ones proposed in the consultation rather than the ongoing range of provisions related to offshore matters.

The breadth of application of the proposals is revealed in statements like:

> '…the government recognises that there are still taxpayers who have not put their offshore affairs in order. This includes those who have evaded tax offshore, those who have not taken care to get their tax right and some who may not realise they have not paid the correct tax on their offshore income or gains'. (s 2.8)

and:

> 'This initiative provides a final opportunity for taxpayers to put their affairs in order before they are subject to significantly tougher penalties.' (s 2.9)

Among the questions members may wish to ponder are:

- What definition should be used for 'relevant offshore interests'?
- What taxes should be in scope of the RTC?
- Is the new worldwide disclosure facility the appropriate mechanism for any corrective action or would a different one be better?
- Should the standard assessing periods be extended (as proposed) to give HMRC time to match automatic exchange of information data with taxpayers in cases where they have chosen not to comply with the RTC?
- How could a taxpayer who was complying with the RTC (or their adviser) determine appropriate penalties in their particular situation?
- Would it be practical for HMRC to require any disclosure to include information about any third party that had enabled or facilitated the non-compliance?
- What, if any, justification would there be for an extension to HMRC's information or discovery powers in connection with RTC disclosures or the use of CRS data?
- What are the implications of completely displacing the historic offence with the new failure to correct (FTC) offence – including under FTC:
    - the absence of any consideration of the causal behaviour;
    - the absence of any categorisation of penalty by territory;
    - the possibility, nevertheless, of securing a reduction in the penalty by reference to the extent of disclosure and co-operation after HMRC's identification of the FTC?

Overall, this consultation challenges readers to consider what legislative changes, including powers and safeguards, might be needed to enable HMRC to cope with the volume of information which will become available under CRS without any increase

in the department’s resources. If the proposals applied only to evasion, the consultation might just be fascinating; since their application is significantly wider, it is also formidable.

Both CIOT and ATT are intending to submit responses to the consultation. The closing date for submissions is 19 October. Email any comments for possible inclusion in that response to technical@ciot.org.uk or atttechnical@att.org.uk as appropriate no later than Monday 10 October.

The consultation document can be found on GOV.UK.