Tougher consequences for promoters of tax avoidance

General Features



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The CIOT, LITRG and ATT have responded to a recent consultation which proposed introducing a new criminal offence for promoters of tax avoidance schemes and expediting the disqualification of directors of companies involved in tax avoidance.

CIOT response

In its response, the CIOT reaffirmed its support for the government in taking a robust approach to those who continue to devise, promote or sell tax avoidance schemes. There should be no place for such people and their schemes in the tax services market. However, we have very serious concerns with the proposal in this consultation document to introduce a strict liability criminal offence for promoters who continue to promote tax avoidance schemes after being issued with a stop notice by HMRC.

Any new criminal offence is a serious matter and needs particularly careful scrutiny. That is all the more so where the offence is, as here, a strict liability offence – where the prosecution is not required to prove dishonest intent and guilt is established by commission of an act (in this case, continuing to promote the scheme subject to the stop notice). This is particularly important where government officials have the de facto power to decide what is and what is not a criminal act without any external scrutiny. In our view, the proposal places too high a level of reliance on HMRC's internal governance process.

Using the existing safeguards which were designed for a regime attracting civil financial penalties, rather than criminal sanctions, will not be adequate. We suggest that at the very least there should be two levels of stop notice – the existing civil one and a new criminal stop notice. The latter should require an enhanced level of authorisation within HMRC and some form of external scrutiny before it can be issued.

As currently proposed, a person commits the offence even if the courts ultimately decide that the scheme covered by the stop notice did deliver the promised tax advantage. We think that legislation that could produce this outcome would not be fit for purpose.

We also have doubts about how effective the measure will be in deterring promoters from continuing to promote their schemes, all the more so because many of them are based offshore and it is unclear how this offence will impact upon them.

LITRG's response

LITRG's response focused on HMRC's proposals to expedite the disqualification of directors, given the problem of young, inexperienced or otherwise vulnerable individuals being recruited by tax non-compliant umbrella companies as nominee or stooge directors.

We tell HMRC that people who have been recruited as directors for a fee, and who are not really the ones in charge but are just desperate for the money, could find themselves caught up in this, with the problem being that disqualification has wide ramifications that can seriously impact on their lives.

We say it is vital that HMRC recognise the issue and have strong internal governance structures in place to ensure that the stooge or nominee directors are

weeded out where it is clear that there is little or no understanding or involvement in day-to-day operations – before disqualification action is initiated. As well as responding to HMRC's consultation, LITRG issued a press release warning people on lower incomes of the potential risks when answering an advert to become a director of a company in exchange for a fee.

ATT's response

In its response, the ATT wholeheartedly agrees that there is no place in society for those involved in the creation, promotion and sale of tax avoidance schemes and fully supports the government's work to deter, disrupt and otherwise frustrate promoters of tax avoidance. However, a criminal sanction will only be a deterrent to the extent that it is enforceable in the country in which promoter organisations reside.

We also consider that, given the severity of a criminal conviction, the opportunity should be taken to review the promoters of tax avoidance schemes legislation in its entirety and strengthen the safeguards around the use of stop notices by building in independent oversight and operational transparency.

In relation to director disqualifications, we are calling for appropriate training and the dissemination of more promotional material on director's fiduciary duties.

The CIOT's response can be found at: www.tax.org.uk/ref1127

LITRG's press release (with a link to the consultation submission) can be found at: tinyurl.com/35wyrhmh

The ATT's response can be found at: www.att.org.uk/ref428

Draft legislation introducing the criminal offence and director disqualification measures was published on 18 July 2023 (see tinyurl.com/zmm6jurz) less than a month after the consultation closed on 22 June.

Margaret Curran *mcurran@ciot.org.uk*
Steven Pinhey *spinhey@att.org.uk*
Meredith McCammond *mmccammond@litrg.org.uk*