House of Lords inquiry on draft Finance Bill measures

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Representatives from CIOT and ATT gave evidence to a House of Lords committee in October on the measures to tackle promoters of tax avoidance, additional HMRC data requirements and research and development tax reliefs.

Representatives from the CIOT and ATT gave evidence to the House of Lords Finance Bill Sub-Committee's inquiry into the draft Finance Bill 2023-24 (see tinyurl.com/yadcnb97). The Finance Bill Sub-Committee is appointed annually by the Economic Affairs Committee to consider the draft Finance Bill from a tax administration, clarification and simplification point of view. This year, the Sub-Committee has decided to focus on the proposed new criminal offence for promoters of tax avoidance, the disqualification of directors of promoter companies, additional HMRC data requirements and the reforms to research and development (R&D) tax relief in the draft Bill.

The inquiry will produce a report containing conclusions and recommendations. Based on previous inquiries, we anticipate that this report will be published in December or January.

In the oral evidence sessions, the discussions covered how effective the new criminal offence is likely to be, which will largely depend on how realistic promoters believe the prospect of a criminal conviction is. There may be a higher deterrent effect on promoters based in the UK than those overseas.

The CIOT and ATT reiterated that we strongly support the raising of standards in the tax advice market and driving out those people who continue to promote tax avoidance schemes. But we said that the proposed criminal offence needs to be introduced in a way that has due process with adequate safeguards and appropriate governance, and that in our view it currently fails this test. We provided more detail about this to the committee in our written evidence, including a suggestion for how the safeguards could be improved. The ATT also outlined that measures such as these should be looked at in the context of the wider issue of raising standards, including regulation of the tax advice market.

Regarding the power to seek disqualification of directors of promoter companies, we added that this may not be effective in deterring the promotion of tax avoidance if the real controlling minds behind the company hide behind so-called ‘stooge’ directors, who are often recruited on social media and based outside the UK. Like the criminal offence, its effectiveness will also depend on directors’ awareness of the measure, the role they are playing and the risks of disqualification, which in turn will depend on how much HMRC publicise the new rules.

The Lords asked how onerous the proposed employee hours worked data collection measure is likely to be for employers and how accurate the data provided will be. We said that it is currently unclear what HMRC will use the data for and whether they will share it with other government departments, and if so whether the legal powers are in place for doing so. There is a question mark about whether the requirement to provide the data and the associated costs to business of doing so are proportionate to the expected benefits.

Regarding R&D tax relief, the ATT and CIOT both reiterated that April 2024 is too soon to launch the proposed new merged above the line credit scheme, expressing concern that consultation to date has been rushed and that there remain a number

of outstanding questions. We also highlighted the problems caused by uncertainty about the future direction of the relief.

The ATT also discussed potential problems with the proposed additional relief for R&D intensive SMEs, and the CIOT outlined their ongoing concerns about HMRC's volume approach to compliance.

A recording of the evidence session is available at: tinyurl.com/yxbut5h7. The CIOT and ATT also provided written evidence to the sub-committee, which can be found at: www.tax.org.uk/ref1224 and www.att.org.uk/ref445.

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