Enhancing HMRC’s powers: tackling tax advisers facilitating non-compliance: ATT, CIOT and LITRG responses

Management of taxes



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ATT, CIOT and LITRG have responded to HMRC’s consultation on ‘Enhancing HMRC’s powers: tackling tax advisers facilitating non-compliance’, which looked at options to enhance HMRC’s powers and sanctions to take swifter and stronger action against professional tax advisers who facilitate non-compliance in their client’s tax affairs. It proposed a complementary suite of potential measures to more effectively review and sanction professional tax advisers whose actions contribute to the tax gap or otherwise harm the tax system.

The consultation can be found on GOV.UK here: tinyurl.com/3kpz2puf

ATT Response

The fact that ‘wilfully incompetent’ and ‘dishonest’ tax advisers continue to service the tax needs and requirements of some taxpayers is causing harm to the tax system. This suggests that HMRC could still do more to tackle both these groups of tax advisers. However, there is already a significant body of law available to HMRC, and the ATT urges HMRC to fully assess and utilise these provisions before rushing to add more legislation to the statute.

Enhancing powers to enable HMRC to investigate and request information from tax advisers: The vague and potentially subjective definition of ‘reasonable suspicion’ that a tax adviser has facilitated an inaccuracy in a taxpayer’s return, coupled with concerns about the ambiguity around what constitutes ‘facilitation’, means that the ATT does not agree that HMRC should be granted easier access to information from tax advisers on these grounds.

Enhancing financial penalties for tax advisers who cause harm to the tax system: The ATT has stated that it does not have statistical data to comment on the adequacy of the current penalties. However, it considers that the current financial penalty for dishonest conduct (ranging from £5,000 to £50,000) could be seen by some unscrupulous tax advisers as being an acceptable cost of doing business and built into their financial modelling. The ATT supports the review of the penalty limits.

Broadening disclosure of HMRC’s concerns about tax advisers to professional bodies: The ATT also supports efforts that can make it easier and faster for both HMRC and the professional bodies to respond to and address sub-standard behaviour and work by tax advisers at an earlier stage. This could reduce the level of future damage being caused by some tax advisers.

Broadening the scope of publication of tax adviser details when they are the subject of an HMRC sanction: It is in the public interest for HMRC to publish more information about its activities. The ATT believes that this could help taxpayers to be better informed about their choice of tax adviser by knowing which tax advisers are subject to sanctions or have had limitations imposed on their ability to act effectively for clients. However, the procedure for making a publication needs to be robust with adequate built-in safeguards, especially given the potential reputational and commercial ramifications to the tax adviser of having their details

published.

The full ATT response can be found here: www.att.org.uk/ref483

CIOT response

The CIOT support HMRC in tackling the problems associated with poor standards of tax advice and harms to the tax system. The CIOT noted that the consultation document did not set out clearly the harms which HMRC were seeking to tackle (or not tackle) but our understanding is that these fall into two distinct categories which warrant different tailored responses:

1. aggressive deliberate harm by promoters and those submitting spurious claims to HMRC; and
2. harms caused by agents whose performance does not meet adequate standards.

The CIOT would welcome more evidence and statistics about the current harms, as well as evidence about the current use of HMRC powers and instances where they have been unable to use them.

There is nothing set out in this consultation which tackles the fact that unqualified tax advisers, those unaffiliated with a professional body, and indeed those with no previous experience can set up in the tax advice market.

In relation to the main areas covered by the consultation, our response included the following points.

Enhancing powers to enable HMRC to investigate and request information from tax advisers: The CIOT considers that before further powers are given to HMRC, there needs to be a review of all powers and penalties currently applying to tax advisers. This would reduce complexity and ensure that there is no overlap, potential duplication or inconsistency of application. Clear definitions of ‘non-compliance’, ‘facilitation’ and ‘reasonable suspicion’ are essential, as broad, uncertain definitions could inadvertently encompass cases outside the target of the consultation.

Enhanced powers should not be applied where there are differences of opinions on technical areas or genuine mistakes. Clear targeting and guidance will be critical. A

number of defences will also need to be in place, such as where the agent has a reasonable excuse. The CIOT would welcome working with HMRC in relation to how this could work in practice. Increased powers should not be accompanied by reduced safeguards.

Enhancing financial penalties for tax advisers who cause harm to the tax system: The CIOT considers that the most appropriate approach (based on those considered) is for a penalty to be calculated on the tax adviser's fees for the advice or compliance work. Care is needed and the penalty needs to be in some way proportionate and impactful to the circumstances.

Fines should apply in general at firm level, although the CIOT can see that if a firm had reasonable protection procedures in place and an individual ignored them, then action against an individual may be appropriate.

Broadening disclosure of HMRC's concerns about tax advisers to professional bodies: The CIOT supports more disclosures being made to professional bodies.

Broadening the scope of publication of tax adviser details when they are the subject of an HMRC sanction: The CIOT considers that there is a public interest in letting people know HMRC are actively enforcing agent standards and publishing the names of tax advisers involved in harm to the tax system. There do have to be safeguards, as publication can have a significant detrimental impact on the adviser's ability to continue in business, regardless of their size – particularly if the press includes information about the adviser's details.

The full CIOT response can be found here: www.tax.org.uk/ref1488

LITRG response

LITRG did not answer the specific consultation questions but took the opportunity to make a few broader points around HMRC's evolving approach to repayment agents. Although there have been past delays in addressing unscrupulous agents, it is encouraging that significant work is now underway. However, we caution against over-correction that could harm legitimate operators meeting genuine needs – such agents leaving the market could limit taxpayer options and access to rightful refunds. Where unfounded claims are made, there is a tax loss. As such, we also

stress that holding taxpayers solely responsible for these claims oversimplifies the issue and undermines trust in HMRC and the tax system. LITRG urge HMRC to review its treatment of affected taxpayers. We think there is considerable scope for HMRC to interpret law in a supportive way but at the very least, we think it should clearly outline its compliance strategy to ensure fairness and consistency.

The full LITRG response can be found here: www.litrg.org.uk/11049

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