Draft Finance Bill 2025-26: Promoters of marketed tax avoidance

General Features



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CIOT and ATT have commented on the draft Finance Bill legislation to tackle promoters of marketed tax avoidance with particular focus on the proposal to introduce a new strict liability criminal offence of failing to notify under the Disclosure of Tax Avoidance Scheme rules.

CIOT response

The CIOT has significant concerns about the negative impact that the breadth of this legislation could have on the tax services market, as it is drafted at the time of writing ahead of the Budget. Without refinement, the measure could result in a distortion of the market, whereby advisers will withdraw from giving certain types of advice, deeming the risk of potentially being liable to a criminal offence to be too great.

If businesses and individuals cannot continue to obtain the tax advice they need, this will in turn have damaging consequences for the UK economy and the government's growth agenda. In light of these concerns, it is critically important that our concerns – and those of other parties – about this proposal as currently drafted are urgently addressed at Ministerial level (see our letter to the Exchequer Secretary to the Treasury at tinyurl.com/tsmtwtdj).

In our view, criminalising a failure to notify under the Disclosure of Tax Avoidance Scheme regimes, rather than criminalising the creation of tax avoidance schemes which are abusive, means the incorrect behaviour is being classified as criminal behaviour. However, we recognise the government's appetite for the approach of targeting failure to notify as a tool for tackling the harmful behaviour of the promoters. We have developed some thinking on that basis to assist with improving targeting and scope, which we discuss in our response.

We suggest that the scope could be narrowed by requiring notifiable arrangements potentially subject to a criminal offence to be 'avoidance' arrangements (using wording from HMRC's Standard for Agents) so there is no risk that normal tax planning could be caught. If it is not narrowed, advisers will err on the side of caution and HMRC could receive thousands of additional protective disclosures of little value – or advisers will simply cease providing tax services in relation to some areas of tax.

We also suggest that the reasonable excuse defence could be improved by the additional defence of businesses being required to have 'reasonable procedures' in place. The legislation must also be much clearer as to which part of the adviser firm HMRC are targeting.

In summary, it is crucial that the scope of the criminal offence is narrowed, both to target the offence at the 20 to 30 promoters of marketed tax avoidance that remain in existence, whilst giving certainty to those advisers who are not the target of the offence, and who do not exhibit the behaviours of this small minority.

ATT response

In the ATT's response, we recognise that there is no place in our society for those involved in the creation, promotion and sale of tax marketed avoidance schemes that do not comply with the letter or spirit of the law. We support the government's

work in deterring, disrupting and otherwise frustrating promoters of tax avoidance.

However, whilst we support the introduction of targeted information notices, the ability to frustrate the supply of goods and services to promoters via promoter action notices and universal stop notices, we have reservation around the framing of criminal sanctions. Whilst enhanced financial penalties and a criminal sanction may serve as a deterrent for onshore promoters, we remain sceptical about their efficacy in dissuading offshore promoters from engaging in similar activities.

We have reiterated our view that imposing a criminal sanction purely on the commission of an act without consideration of the individual's intent or understanding is neither proportionate nor appropriate in the context of tax compliance. We also believe that targeting criminal liability too broadly risks capturing legitimate professional activity and could distort the tax advice market. Advisers may be deterred from offering legitimate services if they perceive an undue risk of exposure to criminal liability, even where there is no intent to promote avoidance.

The CIOT response can be found here: www.tax.org.uk/ref1549.

The ATT response can be found here: www.att.org.uk/ref494

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