Tackling offshore tax evasion: a requirement to notify HMRC of offshore structures

Management of taxes

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The CIOT has responded to HMRC's proposals to introduce a new obligation to notify them of certain complex offshore financial arrangements

HMRC's consultation considered the introduction of a new legal requirement that intermediaries creating or promoting certain complex offshore financial arrangements notify HMRC of their creation and provide a list of clients using them. Clients in their turn would be expected to notify HMRC of their involvement via a notification number on their self-assessment tax return or personal tax account. Those who failed to comply would incur civil sanctions. The proposed measure is intended to apply to arrangements which could easily be used for tax evasion purposes. However, as the government recognises, in many cases these arrangements are used for legitimate purposes.

In our response, we point out that the vast majority of professional tax advisers would never knowingly advise on any structure in relation to tax evasion. Professional Conduct in Relation to Taxation is completely clear on this. A member must never be knowingly involved in tax evasion. We accept that it is possible that a structure, onshore or offshore, could be used for evasion by someone determined to break the law, but it is extremely unlikely that they would be doing it with a professional alongside.

We go on to say that if a new notification system can be designed which successfully provides HMRC with information about offshore tax evasion that they would not otherwise receive and which helps their investigatory work, then this deserves consideration. But since tax evasion or fraud can take place regardless of the form in

which a taxpayer's business is, or investments are organised, the challenge will be to define what it is that HMRC really want and to ensure that the legislation/hallmarks are appropriate, so that both advisers and HMRC do not face an onerous compliance burden and HMRC are not inundated with information they neither need nor want. We also note that applying the obligation to non-UK based operators, as HMRC suggest, could be difficult; but if it is not extended to them the risk is that those will be the operators who are used by individuals determined to evade tax.

We point out that professional firms are already required by Money Laundering Regulations to disclose any cases when there is a reasonable suspicion of a crime, which includes tax evasion. Likewise, any new disclosure system should not duplicate existing reporting obligations, such as the Common Reporting Standard (CRS) and Disclosure of Tax Avoidance Schemes (DOTAS). It also seems to us that if the issue of Legal Professional Privilege, as explained in the consultation document, cannot be overcome, this presents a fundamental difficulty with the proposals.

Finally, we are concerned to ensure that the implications of notification under the requirement are not broadened. We ask that HMRC make an upfront commitment that a notification will not lead to unforeseen consequences for the adviser and their client in the future. Our recent experience with DOTAS is that a measure introduced as a notification exercise has been expanded to become a trigger or hallmark with additional consequence such as the issue of accelerated payment notices (APNs) and certain threshold conditions under the Promoter of Tax Avoidance Scheme regime (POTAS). We say that if there is any possibility that an offshore structure notification could lead to anything connected with, for example POTAS or the Banking Code, taxpayers may have difficulty in obtaining advice from reputable advisers on legitimate offshore arrangements.

The CIOT's submission can be found on the CIOT website.