FB 2017 Clause 124: Errors in Taxpayers' Documents (Penalties for Users of Defeated Avoidance)

Management of taxes

01 June 2017

The CIOT's view is that the current draft legislation still goes further than the policy intention.

The CIOT submitted further comments to HMRC about the draft legislation in clause 124 of the Finance Bill published in March 2017, which will amend FA 2007 Sch 24 (penalties for errors) in cases where a person has received 'disqualified' advice in relation to certain tax avoidance 'arrangements'.

Where a person receives disqualified advice in such circumstances, clause 124 states they will not be able to rely on that advice to demonstrate they have taken reasonable care to avoid an inaccuracy penalty arising from their use of such arrangements. Additionally, the clause reverses the burden of proof so that it is to be presumed that the inaccuracy was careless unless the taxpayer satisfies HMRC (or a Tribunal on appeal) that they took reasonable care.

We raised concerns about this legislation with HMRC at the time that the draft Finance Bill clauses were published in December 2016, because we considered that it went much further than the policy intention of acting as a disincentive to entering tax avoidance and that it would have applied to many cases which we did not think were within the policy intention. Amendments were made in clause 124 which addressed some of these concerns.

However, although we fully support the government's aims to clamp down on artificial tax avoidance, we still believe that, as drafted, this measure would risk unfairly penalising taxpayers who considered that they had acted responsibly by taking advice on their tax affairs. The policy of imposing inaccuracy penalties on

taxpayers many of who have already been disadvantaged through being mis-sold ineffective tax products seems to us to be excessive.

It should be noted that this clause was one of the many that was dropped in the pre-general election legislative ‘wash-up’, but that it is expected it will be included in a post-election Finance Bill.

For our previous comments on this measure see the updates in both February and March’s Technical Newsdesk.