FB 2017 Clause 128 & Schedule 29: Requirement to correct certain offshore tax non-compliance

Management of taxes

01 June 2017

The ‘failure to correct’ penalty and the reasonable excuse defence restriction

The CIOT also submitted further comments to HMRC about the draft legislation in clause 128 and Schedule 29 of the Finance Bill published in March 2017 which would introduce a ‘Requirement to Correct’ (RTC) obligation to compel those taxpayers with offshore interests who have yet to put their UK tax affairs in order to do so by September 2018, ahead of the widespread adoption of the Common Reporting Standard (CRS).

Failure to carry out the necessary corrections, which could go back many years, by 30 September 2018 will render the taxpayer liable to a new failure to correct (FTC) penalty which starts at 200% of the offshore potential lost revenue (PLR), and which may not be reduced (for disclosure etc) below 100% of the offshore PLR. Additionally, the FTC penalty does not take into account the seriousness of the cause of the original error/ omission, thus treating technical errors/ cases where reasonable care was taken when a return was submitted in the same way as those where a person deliberately omitted income or gains. Therefore this is a very significant new penalty, reflecting HMRC’s tougher approach to offshore non-compliance.

Similar to our concerns about clause 124, we have significant concerns about the restrictions that are being proposed to the availability of the defence of ‘reasonable excuse’ to a taxpayer who becomes liable to a FTC penalty. Schedule 29 paragraph 22(2) states that ‘reliance on advice is to be taken automatically not to be a reasonable excuse if it is disqualified under sub-paragraph 3’.

Many taxpayers with offshore interests will need to seek advice as soon as possible, and indeed the legislation is encouraging them to seek advice in order to assess whether they need to put their affairs in order by 30 September 2018, but the question is how these taxpayers are expected to know whether the advice they have taken might be 'disqualified' and what steps they should reasonably be taking to find out whether it might be 'disqualified' or not.

In view of the huge size of FTC penalty that could be levied on a taxpayer, combined with the fact that it could affect undeclared amounts over several tax years, restricting the availability of a 'reasonable excuse' defence in this way is troubling. We remain in detailed technical correspondence with HMRC about the meaning of the changes in certain situations.

We strongly support the government's aim to clamp down on offshore tax evasion and non-compliance. However, we believe that this measure risks unfairly penalising taxpayers who consider that they are acting responsibly by taking advice on their tax affairs.

Our submission can be found on the CIOT website.

It should be noted that this clause and schedule 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.