CIOT's Vice-President's page

Welcomes

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Pause for thought

I’m writing this article at the end of another week full of political and media stories on tax avoidance and tax evasion. Government ministers have pointed out that the coalition has introduced more than 40 measures to counter tax avoidance in the past four years; others think it’s more than 50. The legislative framework we now have is the most stringent ever seen in the UK.

There are several structural changes that potentially apply to multiple types of tax planning, such as the GAAR and accelerated payment notices.

The landmark general anti-abuse rule has been dismissed by some in the media as having little effect. Yet tax advisers could surely point out that it has already influenced what is being marketed. I no longer receive emails offering me implausible schemes! Many larger firms have set up their own internal panels that assess whether they think the GAAR could possibly apply. Most will be able to think of arrangements that were thought to be effective some years ago now, but which are now likely to be subject to the GAAR – and thus are not developed further.

The significant changes to the tax disclosure (DOTAS) rules have also had an impact – especially when coupled with the new accelerated payment notices. It seems inevitable that few will have an appetite for planning where the benefit is deferred for two or more years. Naturally this will put pressure on whether a promoter discloses a scheme in the first place, but the rules for disclosure are being made even tighter. Even before these changes, the number of schemes being disclosed had dropped significantly. HMRC statistics show that there were 59 disclosures in 2012/13, but just 28 in 2013/14 – and fewer than five in the first six months of the current year.

The high-risk promoter rules are aimed at making it very much harder for promoters so classified to offer tax schemes – and they also affect those introducing their schemes to clients.
The Bank Code of Practice on Taxation is a novel way of limiting the scope for tax planning. Nearly all banks operating in the UK have signed the code, which ‘means banks can undertake tax planning to support their business operations, but this should not be used to achieve tax results that are contrary to the intentions of Parliament’.

> **There's too much looking in the rear-view mirror rather than examining what is happening today**

The code was announced in 2009 but was adopted by all the major banks only in 2010. It was extended subsequently to cover smaller banks. The consequences for failure to adopt the code, or not to comply with it, involve publicity rather than other sanctions. The code not only applies to a bank’s own tax planning but also to the provision of finance to help others with their planning. It is not unusual today to find that banks enquire about the purpose of potential lending to ensure that there isn’t a tax planning objective.

At the same time, there have been important changes to detailed provisions in our tax law. The coalition’s new Making Tax Policy framework referenced looking at the overarching design of areas of the law, rather than simply making piecemeal changes to prevent individual arrangements working. This referenced some of the earlier work on so-called principles-based drafting. There are many examples of the new framework changes, which rule out a wide range of structures – even before considering the GAAR. For companies, the ‘group mismatch’ rules cut out the ‘double-dip’ finance structures that had flourished five years ago. The disguised remuneration legislation and the onshore and offshore intermediaries’ rules significantly tighten the PAYE rules – estimated to raise several billion pounds annually.

One of the issues about today’s public debate is that the cases covered all relate to the system some five to 10 years ago. There’s too much looking in the rear-view mirror rather than examining what is happening today. We are also on the verge of adopting major new international tax changes which will have a significant effect. In 2017, more than 50 countries will start automatic exchange of information under the

OECD-led Common Reporting Standard. Eighty-four countries and jurisdictions have signed up for this, which will surely make personal tax evasion by hiding money offshore a thing of the past. The G20/OECD will roll out major changes to international corporate tax from 2016.

Shouldn’t we let these major changes to the tax system take effect before thinking of more?