

Clause 150 and Schedule 20 Finance Bill 2016
Civil penalties for enablers of offshore tax evasion
Response by the Chartered Institute of Taxation

1 Introduction

- 1.1 This clause introduces new civil penalties for deliberate 'enablers' of offshore tax evasion or other non-compliance, including a power to publish information about the enabler.

2 Comments on the legislation

- 2.1 We have previously raised concerns¹ that the legislation applies to failure to take reasonable care as well as to tax evasion on the part of the taxpayer. At the risk of stating the obvious, tax evasion requires fraudulent conduct, and is broadly synonymous with deliberate conduct as used in Finance Act 2007 Schedule 24. Failure to take reasonable care is not tax evasion.
- 2.2 Schedule 20 paragraph 1(1) of Finance Bill 2016 reads: 'A penalty is payable by a person who has enabled another person to carry out offshore tax evasion **or non-compliance....**'. The words in bold have been added since we commented on the draft legislation in January 2016. In our opinion the additional words 'or non-compliance' seem to compound the problems we identified in our letter.
- 2.3 It is still our view that the legislation should differentiate deliberate behaviour from 'non-compliance' (which, although it is not defined, we assume must mean failure to take reasonable care or careless behaviour). It should only be possible for the

¹ See our comments on the draft legislation <http://www.tax.org.uk/policy-technical/submissions/draft-finance-bill-2016-clause-67-civil-penalties-enablers-offshore-tax>

offence of enabling to take place when the taxpayer has acted deliberately to evade tax.

- 2.4 The definition of 'enable' in paragraph 1(2)(b) includes the term 'otherwise facilitating' which seems very vague, requiring no active involvement on the part of the enabler and is therefore potentially very wide. The term 'otherwise facilitating' needs to be clearly defined so that its meaning can be properly understood.
- 2.5 We also note that the term 'deliberate' is not used in the legislation when referring to the enabler's behaviour, despite the policy paper clearly stating that the penalty only applies where the enabler's behaviour is deliberate.
- 2.6 We will continue to see clarification from HMRC about how they are intending to apply the legislation and target the new penalty.

3 The Chartered Institute of Taxation

- 3.1 The Chartered Institute of Taxation (CIOT) is the leading professional body in the United Kingdom concerned solely with taxation. The CIOT is an educational charity, promoting education and study of the administration and practice of taxation. One of our key aims is to work for a better, more efficient, tax system for all affected by it – taxpayers, their advisers and the authorities. The CIOT's work covers all aspects of taxation, including direct and indirect taxes and duties. Through our Low Incomes Tax Reform Group (LITRG), the CIOT has a particular focus on improving the tax system, including tax credits and benefits, for the unrepresented taxpayer.

The CIOT draws on our members' experience in private practice, commerce and industry, government and academia to improve tax administration and propose and explain how tax policy objectives can most effectively be achieved. We also link to, and draw on, similar leading professional tax bodies in other countries. The CIOT's comments and recommendations on tax issues are made in line with our charitable objectives: we are politically neutral in our work.

The CIOT's 17,500 members have the practising title of 'Chartered Tax Adviser' and the designatory letters 'CTA', to represent the leading tax qualification.

The Chartered Institute of Taxation
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