Clause 154 Finance Bill 2016
Offences relating to offshore income, assets and liabilities
Response by the Chartered Institute of Taxation

1 Introduction

1.1 Clause 154 introduces a new criminal offence which does not require the need to prove intent for failing to declare offshore income and gains.

1.2 The offence will apply for the purposes of income tax and capital gains tax, where a person has failed properly to declare offshore income or gains in accordance with Taxes Management Act 1970 sections 7 and 8 leading to a loss of tax over a threshold amount and will be on a per tax year basis. The provisions will come into force following a commencement order.

2 Comments on the legislation

2.1 The Chartered Institute of Taxation (CIOT) strongly supports HMRC's efforts to tackle tax evasion. However, we take this opportunity to reiterate our overall objection to the introduction of a strict liability offence for offshore tax evasion. We continue to believe, as a matter of principle, that it should be necessary to show 'mens rea' – that a taxpayer had criminal intent – before they can be convicted of a serious criminal offence such as tax evasion.

2.2 Changes have been made to the legislation following consultation[1] with stakeholders, including ourselves, and these go some way to reassure us that the Government are

[1] Tackling offshore tax evasion: A new criminal offence for offshore evaders – Summary of Response https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/483366/A_new_criminal_offence_for_offshore_evaders_-_summary_of_responses__M7010_.pdf

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serious about fulfilling their promise that the new offence will only be used in the most serious of cases.

2.3 These changes include:

- that there will be a threshold of not less than £25,000 of tax lost per tax year (increased from £5,000): and
- that the offence will only relate to income and gains that are not reported under the Common Reporting Standard (CRS), so the the offence is targeted at those jurisdictions where HMRC has most difficulty in detecting offshore evasion.

This increase in the proposed threshold and the limit in the scope of the new offence to jurisdictions which do not exchange information with HMRC are both in line with what the CIOT called for in our previous representations to the Government.

2.4 However, whilst the threshold of not less than £25,000 is contained in primary legislation (new s.106F (2) TMA 1970), the application of the offence only to non-CRS jurisdictions is to be contained, not in primary legislation but in regulations which have not yet been published. The draft legislation is wide on the definition of 'offshore income, assets or activities' (new s.106F (4)), which can be from a source in, situated in or carried on in 'a territory outside the United Kingdom'. Our concern is that HMRC could easily step back from the promise to relate the offence only to non-CRS jurisdictions, if they so wished.

2.5 In the current political climate (ie following the leak of the 'Panama papers') there will no doubt be increased pressure on HMRC to take more prosecutions in cases of offshore tax evasion. Therefore, this raises the possibility that all non-CRS data linked to offshore tax evasion will automatically be processed as a criminal offence.

2.6 Another aspect that we continue to be concerned about is how the offence will interact with the Contract Disclosure Facility (CDF) which requires the taxpayer to admit fraud. The offence could also discourage taxpayers from coming forward voluntarily to make a disclosure for fear that they may face prosecution.

2.7 New S.106B concerns failure to notify chargeability to income tax by 5 October after the end of the year of assessment in accordance with s.7 TMA 1970. It would seem to catch a person who has £25,000 of tax due from relevant offshore sources, and who fully intends to disclose everything but HMRC have not issued a tax return and the person does not realise there is a 5 October notification deadline. If the person files the return by 31 January and pays all the tax on time, the penalty for failure to notify is reduced to £0, but, unless they can prove that they have a reasonable excuse for failing to give the required notice, they seem to have committed a criminal offence all the same. One would hope that HMRC would not seek to have people charged in this situation, but it seems very strange for it to be an offence in principle at all.

2.8 We therefore continue to seek clarification from HMRC about how they intend to operate and target the new offence. Our view is that the offence should only apply to deliberate behaviour and not target taxpayers who make full voluntary unprompted disclosures.

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
20 June 2016