FINANCE BILL SUMMER 2015: CLAUSE 46: INTERNATIONAL AGREEMENTS TO IMPROVE COMPLIANCE: CLIENT NOTIFICATION

ICAEW welcomes the opportunity to comment on the Finance Bill published on 15 July 2015, in response to the invitation dated 21 July 2015 to have your say.

This briefing of 16 September 2015 has been prepared on behalf of ICAEW by the Tax Faculty. Internationally recognised as a source of expertise, the Faculty is a leading authority on taxation. It is responsible for making submissions to tax authorities on behalf of ICAEW and does this with support from over 130 volunteers, many of whom are well-known names in the tax world. Appendix 1 sets out the ICAEW Tax Faculty's Ten Tenets for a Better Tax System, by which we benchmark proposals for changes to the tax system.

We should be happy to discuss any aspect of our comments and to take part in all further consultations on this area, and have already advised HM Treasury and HMRC that we should like to participate in their informal consultation with affected businesses to develop a targeted and cost effective communications strategy. We trust that this will include not only the wording of the regulations including definitions of what parties are included but also the text of the notification that will have to be sent to those who need to be notified under this clause.

Contents

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ICAEW members operate across a wide range of areas in business, practice and the public sector. They provide financial expertise and guidance based on the highest professional, technical and ethical standards. They are trained to provide clarity and apply rigour, and so help create long-term sustainable economic value.

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WHAT CLAUSE 46 IS ABOUT

1. This clause introduces a power under which tax advisers, and any other person who in the course of business gives or has given advice to another person about that person's financial or legal affairs or provides or has provided other financial or legal services to another person, will be required to notify their customers about the Common Reporting Standard, the penalties for tax evasion and the opportunities to disclose offshore evasion to HMRC.

2. It should be noted that in the clause both the classes of relevant persons on whom the obligation to notify falls and the range of customers that need to be notified are wider than those cited in the Finance Bill Explanatory Notes, which restricts the classes of persons required to notify to 'financial intermediaries and tax advisers' and implies that 'customers' is restricted only to current, not former, customers.

MAJOR POINTS

3. We acknowledge that the legislation that this clause amending is largely a power to make regulations, and that HMRC has said that it intends to engage in informal consultation. Nevertheless, we recommend that Government should ask HMRC to undertake the obligation to notify provided for in this clause because it is the only body with a comprehensive database covering all those who need to be notified.

4. We also suggest that the notification exercise should be accompanied by a major public information campaign.

5. Failing the Government issuing the notifications, we recommend that the provision should encompass only current clients owing to it being impracticable for most firms to compile a definitive list of former clients.

6. The class of entity which will be obliged to comply with the provisions in the clause is wider than those cited in the Explanatory Notes to the Bill. In order that those affected are made aware, this discrepancy should be corrected and appropriate publicity given.

7. This provision will give rise to a large amount of costs for those who have to notify. This clause and accompanying secondary legislation therefore needs both a comprehensive pre-enactment compliance cost assessment and a post-implementation review of actual costs.

COMMENTS

8. We are happy to help the Government tackle tax evasion but we are concerned about the ramifications of this clause, which we believe fails many of our Ten Tenets for a Better Tax System, summarised in Appendix 1.

9. We accept that any firm that provides advice on tax or financial or legal matters could, unbeknown to the firm, have one or more clients who have undeclared overseas income.

10. However, imposing an obligation on such advisers to draft and send notifications to all their clients and ex-clients is poorly targeted.

11. Obliging advisers to communicate with former clients is disproportionate. Whilst firms' systems may enable a mail merge or electronic equivalent of all current clients, it is unlikely that any firm can in practical terms put together a mail merge or similar that the firm is confident includes all former clients which left months or years ago. Some ex-clients will have changed address in that time as well.

12. We therefore recommend that the reference to 'any former client or customer' in ss(5), amended ss(4)(b), on page 60 of the Bill at line 33 should be removed entirely.

13. Notification will also be costly, not only in time-costs but also real costs, for example stationery and postage. Such costs will unable overtly to be recovered from clients, and will have to be borne by the senders of the notifications.

14. The obligation therefore appears completely at odds with the Government's claim that it wants to reduce unnecessary red tape and compliance burdens.

15. The wide classes of, first, entities which have to send notifications (anyone who has given tax, financial or legal advice) and, secondly, recipients (ie current and former clients) will result in people receiving multiple notifications, some from unlikely sources. For example, as the clause is worded, if someone has ever bought or sold a house then the solicitor who did the conveyance will need to write to that individual as an ex-client to whom the solicitor gave legal advice.

16. The clients who will receive notification will include low risk clients. Receiving what might be construed as an accusation of tax evasion from one's present or past tax, professional or legal adviser will in many cases undermine the practitioner / client relationship. The senders of the notifications will have to spend time handling the aftermath from clients who ask why they have been notified. This will be especially pertinent where the notification is from a professional adviser which does not handle – or has never handled – the recipient's tax affairs.

17. We also consider that there should be a proper compliance cost assessment for this provision before the clause is debated. Simply acknowledging, as in the government's policy paper published on 8 July, that 'this measure is expected to result in a one-off cost' for those who have to notify is just not good enough. This clause and the accompanying regulations need also a post-implementation compliance cost assessment.

18. The costs that we anticipate that those obliged to send notifications will incur will include deciding how best to communicate the required information to each client, drafting a communication incorporating all the required information (different clients will need different wording, and we trust that the Government's informal consultation will include working up wording suitable for adoption by all those who have to notify), and sending the communication.

19. As noted above, the approach will create worry and disruption, duplication of work, and unrecoverable costs, and clients and ex-clients who have, or have had, more than one adviser are likely to receive multiple notifications from various advisers.

20. The approach is piecemeal, as others who have never taken tax, financial or legal advice will not receive any notification.

21. We should also welcome clarification of how those who have never had tax, financial or legal advice from a professional will be covered? .

22. We believe that it is important to ensure that everyone receives the smallest possible positive number of notifications and that no one is missed out. This means that the notifications need to be issued by a body that has a comprehensive customer database.

23. HMRC should send these notifications, as they have the database (taxpayers' NINOs and addresses) to ensure that recipients do not receive multiple notifications and ensure that those who have never had professional advice receive a notification.

24. We also recommend that the notifications should be backed up by a major public information campaign.

APPENDIX 1

ICAEW TAX FACULTY'S TEN TENETS FOR A BETTER TAX SYSTEM

The tax system should be:

1. Statutory: tax legislation should be enacted by statute and subject to proper democratic scrutiny by Parliament.

2. Certain: in virtually all circumstances the application of the tax rules should be certain. It should not normally be necessary for anyone to resort to the courts in order to resolve how the rules operate in relation to his or her tax affairs.

3. Simple: the tax rules should aim to be simple, understandable and clear in their objectives.

4. Easy to collect and to calculate: a person's tax liability should be easy to calculate and straightforward and cheap to collect.

5. Properly targeted: when anti-avoidance legislation is passed, due regard should be had to maintaining the simplicity and certainty of the tax system by targeting it to close specific loopholes.

6. Constant: Changes to the underlying rules should be kept to a minimum. There should be a justifiable economic and/or social basis for any change to the tax rules and this justification should be made public and the underlying policy made clear.

7. Subject to proper consultation: other than in exceptional circumstances, the Government should allow adequate time for both the drafting of tax legislation and full consultation on it.

8. Regularly reviewed: the tax rules should be subject to a regular public review to determine their continuing relevance and whether their original justification has been realised. If a tax rule is no longer relevant, then it should be repealed.

9. Fair and reasonable: the revenue authorities have a duty to exercise their powers reasonably. There should be a right of appeal to an independent tribunal against all their decisions.

10. Competitive: tax rules and rates should be framed so as to encourage investment, capital and trade in and with the UK.

These are explained in more detail in our discussion document published in October 1999 as TAXGUIDE 4/99 (see via http://www.icaew.com/en/about-icaew/what-we-do/technical-releases/tax).