ICAS response to the HMRC Informal Consultation on Financial Institution and Tax Adviser Notification Requirements

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About ICAS

The Institute of Chartered Accountants of Scotland (“ICAS”) is the oldest professional body of accountants. We represent around 20,000 members who advise and lead businesses. Around half our members are based in Scotland, the other half work in the rest of the UK and in almost 100 countries around the world. Nearly two thirds of our members work in business, whilst a third work in accountancy practices. ICAS members play leading roles in around 80% of FTSE 100 companies. ICAS is also a public interest body.

Comments

ICAS welcomes the opportunity to comment on the implementation of the Financial Institution and Tax Adviser Notification Requirements. ICAS believes that HMRC should make the notifications rather than advisers. Only HMRC has comprehensive information about those who need to be notified and can therefore ensure that all of them receive a notification and also that they only receive one notification each. If this approach is not adopted then we have the following further comments.

1. The definition of tax adviser in Clause 46 of the Finance Bill 2015 is taken from FA 2014 s272(5) which reads:
   "tax adviser means a person appointed to give advice about the tax affairs of another person (whether appointed directly by that person or by another tax adviser of that person)."

   Coupled with the definition of client (see below) this means that many clients could receive multiple notifications, particularly as some of them will also have other advisers covered by the notification requirement (solicitors, financial advisers etc). This could cause distress to some clients. Conversely taxpayers who have never used a tax adviser may receive none at all unless they have one of the other advisers covered by the requirement to notify.

   The definition of tax adviser is very broad and will include many advisers who are unlikely to regard themselves as affected by the requirement because they see their role largely as compliance. How does HMRC intend to inform all tax advisers of their obligations?

2. The definition of ‘client’ in Clause 46 states that client includes ‘any client or customer and any former client or customer’. The inclusion of former clients will impose a disproportionate burden on advisers. Advisers may also no longer have current addresses/email addresses of former clients and some former clients may have died. As noted above it will also lead to clients receiving multiple notifications. ICAS believes that any notification requirement should be restricted to current clients. Consideration should also be given to the position of new clients taken on after the commencement of the notification requirement.

3. ICAS is concerned that requiring tax advisers to notify their clients will have a serious adverse impact on client/adviser relationships. Many clients receiving the notifications will not have anything to disclose and will be upset and/or angry at the apparent implication from their adviser or former adviser that they have been taking part in tax evasion.

4. There will be considerable costs, both financial and in terms of time, in complying with the requirement. In addition to the cost of issuing the notifications considerable time will also be taken up dealing with concerned clients, most of whom will not have anything to disclose. The timing of the notification programme should allow advisers to avoid having to make the bulk of their notifications during peak season.
5. As noted above the Finance Bill clause leaves open the possibility that all current and former clients should be notified. However notification could be restricted to ‘specified clients’ and HMRC has requested comments on issues including ‘which customers should be contacted’. This raises the possibility that advisers might be asked to select which customers to notify. ICAS regards this as unworkable.

It is of course possible that tax advisers have clients who have not declared their overseas income but in the majority of cases this will be without the knowledge of their advisers. Under the rules on Professional Conduct in Relation to Taxation advisers who are members of professional bodies would be unable to continue to act if a client refused to disclose taxable income which the adviser knew existed. If advisers have suspicions about a client then they may be obliged to report these under the Money Laundering Regulations. It is therefore hard to see any sensible basis on which advisers could select which of their clients to notify. Clients concealing offshore income from HMRC will also be concealing it from their advisers. Clients who are unaware that something needs to be disclosed will also not have told their advisers or may have advisers who mistakenly also do not realise that disclosure is required. Different advisers might also adopt different approaches to selection leading to inconsistency.

6. As above ICAS believes that HMRC should issue the notifications. However if this approach is not adopted HMRC will need to provide a standard statement which advisers can send to clients. This will ensure that all advisers affected (including those who are not tax advisers) give exactly the same information. The communication should be designed to minimise the adverse impact on client/adviser relationships. It should also appear on the Gov.UK website and HMRC should undertake a publicity campaign. Further consultation will be required on the details of the communication.