KPMG

Finance (No. 2) Bill 2016

Improving Large Business Tax Compliance

There are positive changes in relation to the rules on publishing tax strategies including the dropping of requirements: for an individual to be accountable; for comments on whether the business has a target ETR; and for publication of factual information to evidence practical application of the strategy. However, the scope of the legislation has been extended to include UK PEs of overseas groups and certain subsidiaries of overseas parent companies. Businesses in special measures that engage in failed tax avoidance schemes are likely to incur penalties for failing to take reasonable care.

Summary of legislation

Publication of a tax strategy

The measure will introduce a legislative requirement for all large businesses to publish on the internet an annual tax strategy, in so far as it relates to UK taxation.

The strategy will cover four areas:

- The approach of the UK group to risk management and governance arrangements in relation to UK taxation;
- The attitude of the group towards tax planning (so far as it affects UK taxation);
- The level of risk in relation to UK taxation that the group is prepared to accept; and
- The approach of the group towards its dealings with HMRC.

Non-publication of an identifiable tax strategy or an incomplete tax strategy based on the four areas outlined above could lead to an initial £7,500 penalty subject to the usual HMRC appeals process. A further £7,500 penalty then arises if the failure is not rectified after six months and then monthly if it continues.

In a change to the draft clauses published in December, the scope of the legislation has been extended to include UK permanent establishments (PEs) of overseas groups and certain subsidiaries of overseas parent companies that were not previously caught.

Special measures regime – sanctions for persistently uncooperative large businesses

The Government is legislating to provide that large businesses with an ongoing history of aggressive tax planning and/or refusing to engage with HMRC may be subject to special measures.

A business in this position will be advised via a 'warning notice' that they may be at risk of being put into special measures. A 12 month improvement period will then allow HMRC and the business to work together to resolve issues. At the end of the period, the behaviour will either have improved and so the business will not enter special measures, or it will be notified via a 'special measures notice' of entry into special measures. A special measures notice may be withdrawn by HMRC at any time by giving of a further notice or it expires 27 months after the date of original notice.

Businesses who enter special measures risk sanctions if they demonstrate further instances of the behaviours that led to their inclusion. Legislated sanctions are:

- Errors in documents (i.e. tax returns) relating to tax avoidance schemes entirely or partly attributable to a 'speculative' interpretation of legislation will be treated as a failure to take reasonable care; and

- Potentially being named as being in special measures.

Businesses enter special measures for a default period of two years. Two years from entry into special measures HMRC will conduct an 'exit review' to decide whether the behaviours have improved and the business should exit special measures, or whether an extension of special measures is required. If HMRC considers an extension is required a 'confirmation notice' will be issued which can be withdrawn at any time or expires after a further period of 27 months. It is at this point that HMRC will consider naming the business as being in special measures.

Timing

The measures will have effect for accounting periods commencing on or after the date of Royal Assent to Finance (No.2) Bill 2016.

Our view

Tax strategy transparency

In response to representations the Government has taken positive steps in amending the original proposals so that:

- A named individual at the Executive Board level will not have to be accountable for a business's published tax strategy;
- There will not be any requirement that the published strategy comments upon whether the business has a target UK effective tax rate (ETR), and what this is; and
- There will be no requirement that businesses publish factual information to evidence the practical application of the business's published tax strategy.

However, the structure of the proposed legislation has created anomalies in the extent to which it will apply to different organisations and initial analysis will be required in this respect. We are awaiting detailed guidance from HMRC that will hopefully clarify the position.

Special measures regime – sanctions for persistently uncooperative large businesses

Whilst the special measures regime is tightly drawn to target only those businesses who are the most persistent in exhibiting uncooperative behaviours, we note that no new governance procedures or safeguards are to be put in place.

As the new legislation defines a 'speculative' interpretation of legislation as that which it is likely a court or tribunal would disagree with, penalties for engaging in failed tax avoidance schemes will become automatic for businesses in special measures.

Chris Davidson
Director

T: +44 (0)20 7694 5752
E: chris.davidson@kpmg.co.uk

Kevin Elliott
Director

T: +44 (0)20 7311 2487
E: kevin.elliott@kpmg.co.uk

Peter Honeywell
Director

T: +44 (0)113 2313764
E: peter.honeywell@kpmg.co.uk