Government Announce Major Crackdown on Professionals Who Assist Clients In Tax Evasion – New Criminal Sanctions Introduced

“Tax evasion is a crime like any other. If people help a burglar, they are accomplices and criminals too. Now it will be the same for those that help tax evaders” Danny Alexander, Chief Secretary to the Treasury, 19 March 2015.

On 19 March 2015, the Government announced proposed new criminal offences to tackle tax evasion, which were formally announced in the Chief Secretary to the Treasury, Danny Alexander’s “yellow budget” before the House of Commons.

As well as introducing new provisions to tighten the laws surrounding tax evasion, including making the offence one of strict liability (pleading ignorance of the law, following professional advice, etc. will no longer be a defence), the Government announced its intention to introduce a new offence aimed at professionals who aid and abet tax evaders. The offence will be created by new legislation, following a Government consultation on the new evasion regime. It is yet to be seen whether the requisite legislation will be approved by the House before the next general election in May. If not, there is no certainty that the next Government would push the legislation through parliament.

The Government have not put any “flesh on the bones” to explain what these proposed new offences will entail. There has been a growing trend for the Government to blur the line of distinction
between ‘avoidance’ and ‘evasion’ and it will be interesting to see what is defined as tax evasion for the purpose of any new offences.

The proposed offences are in line with the Government’s drive to stamp out tax evasion. Mr Alexander has previously proposed a new offence for corporate failures to prevent economic crime, which would include aiding and facilitating tax evasion. Those proposals were that those who assisted others to commit tax evasion would face the same financial penalties as the evaders themselves. Mr Alexander has been on record suggesting that:

“if their customers have to pay back hundreds of millions of pounds in tax, then those organisations should have to match that with hundreds of millions of pounds of their own money, and I think that’s a very tough disincentive to get involved in this in the first place.”

The Government has also been pushing for the codes of practice of professionals who advise on tax affairs to be strengthened in this regard.

Any professional found to have committed the proposed new offence would face serious punishments including possible prison sentences. The proposed new offences would be of a criminal, rather than a civil nature and professionals are unlikely to be covered for any penalties and/or costs incurred in defending any prosecution under their professional indemnity policies. Therefore, in addition to the risk of criminal prosecution for the individuals and corporate bodies involved, professional businesses would face significant financial and reputational risk should they be found guilty of the proposed new offences.

One only has to look at HSBC’s recent public reprimanding for allegedly assisting their customers in hiding money from UK tax authorities in off-shore bank accounts. Presumably as a consequence of this, HSBC has announced that it will be closing all Jersey bank
accounts for customers domiciled in the UK. This reaction to pressure is likely to have long term ramifications for the bank’s business.

Assuming the proposed criminal offences are passed into law, any professionals advising clients on tax mitigation strategies will need to tread carefully and satisfy themselves that the products they are recommending will not fall foul of HMRC’s new, tougher stance on tax evasion.

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