

FB 2021-22 – Avoidance

Lecture P1295 – 11.09 minutes

Winding up provisions

Clause 84 introduces legislation enabling an officer of HMRC to present a petition to court for the winding up of a relevant body where it would be in the public interest to do so for the purposes of protecting public revenue.

A relevant body is anyone (including a partnership) that carries on a business as a promoter of tax avoidance schemes within Part 5 FA2014 or anyone connected with such a promoter.

This will apply from Royal Assent.

Publication of information

Clause 85 introduces provisions which will allow HMRC to publish information (including documents) about tax avoidance schemes which will inform taxpayers about the risks of those schemes or where it is appropriate to protect the public revenue. The details which HMRC can publish will include information identifying promoters or persons connected with promoting or implementing the schemes (unless the involvement may be protected by legal professional privilege). HMRC must notify any person who is to be identified and give them 30 days to make representations about the publication and information which is found to be incorrect or misleading will be withdrawn.

This will apply from Royal Assent.

Freezing orders

Clause 86 contains provisions which will allow HMRC to seek a court order to freeze the assets of a person where HMRC have commenced (or are about to commence) penalty proceedings relating to the Disclosure of Tax Avoidance Schemes, the Disclosure of Tax Avoidance Schemes for VAT or other Indirect Taxes, Promoters of Tax Avoidance Schemes and Enablers of Defeated Tax Avoidance regimes.

This will apply from Royal Assent and is aimed at preventing promoters from hiding assets to avoid paying penalties for breaching obligations to do with various tax avoidance schemes.

Clause 87 contains equivalent provisions for Scotland and Clause 88 contains equivalent provisions for Northern Ireland.

Clause 88 contains various provisions relating to all three of the above pieces of legislation. If penalty proceedings have not commenced already, the freezing order will not take effect unless HMRC commence penalty proceedings within 72 hours of the application for the freezing order being determined (disregarding Saturdays, Sundays, Christmas Day, Good Friday or any bank holiday).

Penalties - tax avoidance schemes involving non-resident promoters

Clause 90 introduces Schedule 12 which applies a new penalty to UK based entities which facilitate tax avoidance involving offshore promoters, which HMRC will find difficult to pursue. This also amends the legislation in Schedule 13 FA2020 which provides for joint and several liability for company directors so that it includes these penalties.

The penalties will only apply where various other penalties have already been levied and those penalties related to activities which involved non-resident promoters. A non-resident promoter is someone who carries on a business as a promoter and is resident outside the UK.

The additional penalty payable is equal to the total amount of all consideration received in connection with the facilitated arrangements, although HMRC may assess a lower amount if they believe that is just and reasonable. Consideration is defined within the legislation to cover 'fees, remuneration and any other kind of consideration however received' and there are provisions relating to how this is ascertained.

The penalties will be assessed by an authorised officer and the person can appeal. The Schedule 36 FA2008 information powers apply for the purpose of checking a person's position as regards liability for a penalty under these provisions.

These measures will apply to activities carried out from Royal Assent.

Powers to tackle electronic sales suppression

Clause 91 introduces Schedule 13 which brings in new legislation to help tackle tax evasion by use of electronic sales suppression (ESS) software by making it an offence to possess, make, supply and promote ESS software and hardware. ESS software deliberately manipulates or hides individual transactions in EPOS systems.

Penalties of up to £50,000 can be levied where someone makes, supplies or promotes the use of an ESS tool. A person would not be liable for supplying an ESS tool if they can satisfy HMRC or the tribunal that they were unaware that it was an ESS tool. Someone who promotes the use of an ESS tool can be penalised each time they promote it.

A penalty of up to £1,000 can be levied on a person

1. who is in possession of an ESS tool unless they notify HMRC within 30 days that they no longer have that tool, or
2. they have been in possession of such a tool (and been levied a previous penalty) within the last five years.

Again, there is an exemption if the person can satisfy HMRC or the tribunal that they were unaware that they had the ESS tool.

A person who continues to possess the ESS tool having been notified of the initial penalty may be liable for an ongoing daily penalty not exceeding £75, although total liability under this section cannot exceed £50,000.

HMRC have two years to notify a penalty from the date at which they have sufficient information to indicate a penalty is due and the taxpayer can appeal against any assessment raised. The Schedule 36 FA2008 information powers apply for the purpose of checking a person's position as regards liability for a penalty under these provisions.

These provisions apply from Royal Assent.