THE CHARTERED INSTITUTE OF TAXATION

LOW INCOMES TAX REFORM GROUP

Comments on HM Revenue & Customs consultation
Modernising Powers Deterrents and Safeguards: Tackling Offshore Evasion

1. Introduction

1.1. *About us*

1.1.1. The Low Incomes Tax Reform Group (LITRG) is an initiative of the Chartered Institute of Taxation (CIOT) to give a voice to the unrepresented. Since 1998 LITRG has been working to improve the policy and processes of the tax, tax credits and associated welfare systems for the benefit of those on low incomes.

1.1.2. The CIOT is a charity and the leading professional body in the United Kingdom concerned solely with taxation. The CIOT's primary purpose is to promote education and study of the administration and practice of taxation. One of the key aims is to achieve a better, more efficient, tax system for all affected by it – taxpayers, advisers and the authorities.

1.2. *Our response to this consultation*

1.2.1. We support the comments already made by our CIOT colleagues in their submission dated 3 March 2010.

1.2.2. Following on from that, we wish to further emphasise the potential impact of the proposals specifically on low-income and unrepresented taxpayers. Whilst we have no interest in protecting those who seek to evade taxes, we do not believe the consultation proposals will achieve that end, instead treating taxpayers who might make innocent mistakes with 'offshore' aspects of their tax affairs in the same class as wilful evaders.

1.3. For HMRC to do so is wholly unacceptable, contradictory to the principles now established in 'Your Charter' and also, we believe, in breach of certain fundamental rights and freedoms in the European Convention on Human Rights.

2. Detailed comments

2.1. *Evasion vs non-compliance*

2.1.1. Reading the introduction we were struck by the way the text veered between 'evasion' and 'non-compliance', using the two terms interchangeably. On reaching

para 3.1, the reason why became clear:

> 'HMRC believes that, given
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> • the serious and proven risk to tax revenues;
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> • the inherent complexity and cost in obtaining information from overseas;
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> • the increased public concern about international tax evasion; and
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> • the generous terms offered by the disclosure opportunities;
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> it is fair to consider any continuing offshore non-compliance as akin to tax evasion.'

2.1.2. In summary, this consultation appears to be proposing a form of legislative alchemy that will turn the base metal of non-compliance (with its wide range of behaviours, including careless but not deliberate error, and genuine mistake) into the gold of fraudulent tax evasion, punishable as such.

2.1.3. Of course it is not unreasonable to suggest that people who deliberately evade tax by using offshore accounts, thinking that by doing so they have a better chance of escaping detection, should be appropriately dealt with (consultation document paras 4.9 and 4.10). But to impute motives of tax evasion to anyone who mistakenly fails to declare an offshore account (for example because they think, reasonably but wrongly, that it is not liable to UK tax) is contrary to natural justice.

2.1.4. It is also probably contrary to Article 6 of the European Convention on Human Rights. In our view a charge of tax evasion is criminal in nature, whether or not in practice HMRC prosecute the alleged offender. This brings into play the right to a fair trial in Article 6(1) and the minimum rights in Article 6(3). It also invokes article 6(2) – the presumption of innocence until proven guilty according to law. It follows that anyone charged with non-deliberate non-compliance in relation to an offshore account cannot simply be treated as a tax evader without going through due process. To do otherwise would be a clear breach of Article 6(2).

2.1.5. We see low income people from all around the world; students; pensioners; migrant workers; all of whom have one thing in common, they do not have a clue as to the requirements of the UK tax system in respect of anything they have left behind in their homeland. It is not surprising, because HMRC do not tell them. There is no routine communication for such people. We have grave concerns that such people coming from places with completely different tax systems and for the first time in their lives having "offshore income or assets" will be tarred with the brush of the avoider/evader.

2.1.6. We also see people actively recruited to serve in HM Armed Forces in the UK and Afghanistan from countries that have no double taxation agreements with the UK.

Non-tax motives for holding offshore accounts

2.1.7. Also, in other parts of the consultation document, it is acknowledged that people do not necessarily hold offshore accounts for tax reasons. Para 4.7 says that the problem of evasion rests with a minority and para 4.6 acknowledges that some offshore investment is for 'wholly legitimate' reasons of 'overseas business or personal interests or family ties', or investors might just find the terms of a product

attractive. Yet any mistake in relation to any such 'legitimate' investment is to be treated as tantamount to evasion. Why?

2.1.8. HMRC say (para 3.1) that offshore compliance activity is more costly and complex to deal with. But that bears no relevance to the degree of culpability or guilt borne by the person responsible for non-compliance. It does not answer the question why an act of non-compliance in relation to an offshore account should be treated as evasion when the same act in relation to an onshore account would be classed as careless, or even genuine error. How can HMRC acknowledge that cases involving offshore matters are likely to be more complex than those situated wholly onshore, and yet ignore the fact that a person is for that very reason more likely to make a genuine mistake?

2.1.9. It should also not be forgotten that this consultation comes at a time of significant financial instability. For instance, there have been articles in the press encouraging people to think about investing in other currencies, even taking out non-Sterling mortgages – various suggestions to 'beat' the uncertainties of Sterling's future worth on the back of government borrowing. The point is that people investing offshore often do so for non-tax motives. Therefore, anyone seeking to protect their interests by investing offshore should not be treated as aiming to deliberately evade tax, even if they do make a mistake as to the tax consequences of their choice. From past experience, we have seen that it is not only sophisticated and wealthier investors who might be sold the idea of investing overseas. We see no reason for HMRC not to consider the circumstances surrounding the investment in the same way as any other non-compliance.

2.2. ***Awareness***

2.2.1. HMRC also say that the publicity given to the various offshore disclosure opportunities, particularly Liechtenstein, should by now have inculcated a sufficient level of awareness to justify ratcheting up the penalties for offshore non-compliance as distinct from onshore. But realistically what do the majority of unrepresented taxpayers, who probably never visit HMRC's website except perhaps once a year to do their return, know of Liechtenstein?

2.2.2. The consultation document (para 1.16) talks about awareness being at record levels, but where is the evidence for this statement? Have HMRC tested/surveyed awareness and to what past survey are they comparing it? Are they confident that awareness is at an equal level across all sectors of society, or is it concentrated amongst the wealthier sectors? And what about new migrants coming into the country – they will not in any case have benefited from this 'awareness-raising' over recent years; and nor will those who are already in the UK but have a limited grasp of English.

2.2.3. In discussing levels of awareness, para 3.4 of the consultation document seems to confine itself to people 'exploring offshore financial centres'. But there are also people coming to the UK with existing accounts abroad, in their home countries, of whom these proposals seem to take no account.

2.2.4. HMRC plan to 'maintain' existing level of awareness with the help of banks. How are the UK banks proposing to maintain awareness of the tax consequences of investment in accounts in financial institutions overseas? And we believe that HMRC will have to do a lot more than they do at present to reach the majority of the population whom these proposals will affect.

2.3. ***Notification requirement***

2.3.1. As our CIOT colleagues noted in their response, we think the current proposals are unwieldy and burdensome. But if a notification requirement for offshore accounts in a jurisdiction with no information exchange agreement were to be brought in, we feel that any penalty regime should be confined to non-notification of sources of income and gains that are taxable in the UK. It is wholly disproportionate to propose fixed penalties, let alone daily penalties, for failure to notify overseas investments which are not taxable here. If the reason for the requirement is to stem loss of tax, it should only apply in circumstances where tax is likely to be lost to the UK Exchequer. Comparisons with Schedule 55 of FA 2009 are inapt, because those provisions are there to deter non-disclosure of sources of income which **are** subject to UK tax.

Remittance basis users

2.3.2. Remittance basis users are to be exempt from the notification requirement, seeming to leave some low-income migrants with an unpalatable choice – either to comply with a cumbersome notification requirement if their home country in which they continue to hold funds is in a B or C-type jurisdiction, or to instead opt for the remittance basis, then filing tax returns and potentially lose allowances and so forth in accordance with the Finance Act 2008 non-dom provisions.

2.3.3. In summary, we suggest the proposals will create an administrative burden for all concerned – taxpayers, their advisers (including third sector advisers) and HMRC alike. This is clearly disappointing for us and a retrograde step, given the hard work we put into achieving certain exemptions for low-income non-doms (now found in Sections 51 and 52, and Schedule 27 of Finance Act 2009) with the aim of keeping many of those potentially affected by Finance Act 2008 out of an apparently non-productive paperchase.

LITRG
8 March 2010