

HM Treasury and HM Revenue & Customs

Comments on Tax policy making: Response document to initial consultation, Draft tax consultation framework and Draft protocol on announcements outside scheduled fiscal events

1. Executive summary

- 1.1. We welcome the Government's aims to improve the tax policy making process and initiatives such as the Office of Tax Simplification will hopefully bear dividends down the line. Simplification must, however, be approached with caution and we note in this response how a seemingly simple tax measure can have complex repercussions, particularly when taken together with knock-on effects to welfare benefits.
- 1.2. More work is needed therefore to join up across government as tax policy cannot be developed in a vacuum and similarly non-tax policy developers must be alert to possible unforeseen or unintended tax impacts.
- 1.3. Moreover, tax policy will not be delivered successfully unless changes are communicated to the public where necessary and we feel that all too often the communications strategy is left too late. We therefore recommend that it should be built into the policy making process.
- 1.4. This response first offers some general comments on the Government's response to the initial round of consultation on tax policy making (section 2), then turns to the draft consultation framework and protocol for announcements outside scheduled fiscal events (sections 3 and 4 respectively).

2. Introduction

2.1. *About us*

2.1.1. 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.

2.1.2. 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.

2.2. *Our response*

2.2.1. In this single response, we comment on each of the three tax policy documents published on 9 December 2010 in turn:

- section 2 – our general comments on the Government's response to the initial consultation,
- section 3 – comments on the draft tax consultation framework, and
- section 4 – comments on the draft protocol on announcements outside scheduled fiscal events.

3. Response document

3.1. *General comments*

3.1.1. In general, we welcome the Government's response to the initial round of consultation on Tax policy making, launched in June 2010. LITRG contributed to that consultation by way of a meeting with the Treasury team, followed by a written response¹.

3.2. *Simplification*

3.2.1. We have also welcomed the formation of the Office of Tax Simplification (OTS) and submitted comments² in response to their interim report reviewing tax reliefs.

3.2.2. Overall, the direction of travel on tax policy making is positive, for example with advance publication of draft Finance Bill clauses for external scrutiny and comment. However, our

¹ See <http://www.litrg.org.uk/submissions/2010/tax-policy-making>

² See <http://www.litrg.org.uk/submissions/2011/ots-tax-reliefs>

initial view is that there is still more work to be done as it seems to us perverse on the one hand to establish the OTS with a view to making the tax system easier to understand and comply with, but on the other publish Finance Bill clauses for comment which introduce additional complexity such as the proposals on employer-supported childcare¹.

3.3. ***Cross-government working – joined-up policy***

3.3.1. Indeed, we feel the employer-supported childcare proposals are indicative of a lack of cross-government working in terms of policy development, as the interactions with tax credits and proposed migration of childcare support to Universal Credit do not seem to have been taken into account. We would therefore reiterate our previous concerns that tax policy must not be considered in isolation from other related policy areas.

3.3.2. Similarly, we urged in our submission of written evidence² to the Treasury Committee's Inquiry on tax policy that development of non-tax policy should also be 'tax checked' to ensure there are no unforeseen or unwelcome repercussions.

3.4. ***Evaluation of policy post implementation***

3.4.1. In terms of evaluating tax policy (para 2.72ff of the response document), we think that the review and evaluation of changes needs to take into account awareness of the change amongst relevant taxpayer groups, and therefore how successful the Government's communications strategy has been. In its review of tax reliefs, the OTS commented that one measure of a relief's effectiveness was taxpayer take-up, but in our view take-up is not always a proxy for usefulness of the relief *per se*. Take-up of a relief might be improved with an alternative communications strategy and promotion, for example.

3.4.2. We therefore comment below in terms of the draft consultation and framework and protocol that communication of tax changes must be considered at the earliest possible stages of policy development.

3.4.3. Levels of compliance with the policy will also be an essential factor in evaluating policy. For example, the evaluation should consider whether HMRC has been able to make it 'feel simple' to comply with in accordance with their published *Vision*³. Such a review would therefore need to take into account not only whether the policy has been successful in countering avoidance or perceived mischief (if that were its intention), but also what levels of taxpayer error have been seen in attempting to comply with the law. This would allow the Government to consider whether the means of implementing the policy is too complicated and if simpler alternatives could be found.

¹ See our comments on the proposals - <http://www.litrg.org.uk/submissions/2011/emp-supp-child-fb>

² See <http://www.publications.parliament.uk/pa/cm201011/cmselect/cmtreasy/memo/taxpolicy/m23.htm>

³ See <http://www.hmrc.gov.uk/about/hmrc-vision.htm>

- 3.4.4. In terms of impact and unintended consequences, as part of reviewing tax policy, the Government should take on board feedback from stakeholders, particularly where equalities impacts have been identified post implementation.

3.5. **Guidance**

- 3.5.1. We are pleased to note that 'the Government recognises that there is some valid concern about guidance' and that 'the increased involvement of external bodies in the development of new tax legislation, should help reduce the number of issues left that require clarification in guidance' (para 2.85 of the response document).
- 3.5.2. We hope in this context that the concerns we have raised recently in relation to draft legislation published with the intention of being expanded by guidance are addressed before publication of final versions for inclusion in the Finance Bill. In particular, we raised some concerns that in the recent PAYE security consultation¹, the draft regulations (to be still further expanded through guidance) appeared to be *ultra vires* by giving HMRC wider powers to require security than were envisaged in the draft primary legislation and there were far too many points left to guidance in the employer-supported childcare proposals².
- 3.5.3. Moreover, it is unacceptable that not all HMRC guidance is made available to the public, citing Freedom of Information Act exclusions. This makes it even more important for the law itself to be complete and clear, particularly in terms of taxpayer safeguards. In our response to HMRC's transparency consultation, we have called for a review of the policy in using FOIA exclusions³.

3.6. **Other points**

- 3.6.1. In terms of the Government being open to ideas for future change and development of tax policy, the introduction of the 'Online Budget ideas portal' and other such initiatives is a step in the right direction.
- 3.6.2. In order for the public to have confidence, however, that their concerns are being listened to and addressed, this must be followed through with time in the Finance Bill debates and space each year in the Bill itself being devoted to addressing issues which affect large numbers of the population such as low income, unrepresented taxpayers.

¹ When posted, all submissions can be read in full on our website, accessed via the link on our home page, www.litrg.org.uk

² See <http://www.litrg.org.uk/submissions/2011/emp-supp-child-fb>

³ See <http://www.litrg.org.uk/submissions/2011/transp-cons-litrg>

4. Draft tax consultation framework

4.1. General comments

4.1.1. We agree with the broad framework, albeit some of the timescales envisaged within it (such as a minimum of 8 weeks to comment on draft legislation) seem tight for organisations such as representative bodies which have to gather the views of members; or indeed for LITRG where we often seek to contact other non-tax-specialist organisations (for example, disability charities) in an effort to work with them either with a view to them making their own submission or contributing views to ours. We therefore hope that where minimum timescales are quoted, in fact the consultation periods allowed will usually be longer – use of the framework’s stated minimum being the exception rather than the norm.

4.1.2. We now comment on specific sections of the draft framework.

4.2. Point 3

4.2.1. We would point out here that an initial step not specified is for the Government to identify and contact potentially interested parties and make them aware of the consultation. In so doing, we feel the aim should be to reach as broad a spectrum as possible even if the matter under consultation may seem tangential to that third party’s core interests.

4.3. Point 4

4.3.1. As part of setting out the ‘broader policy context’, it would be helpful if the Government would also add to the framework that they will set out clearly any international and local taxation context (including devolved administration variations).

4.3.2. We welcome the Government’s commitment to ‘set out clearly its current assessment of the impacts of the proposed change and seek to engage with interested parties on this analysis’.

4.3.3. A short ‘Tax Information and Impact Note’ must not, however, replace a more detailed review and assessment of impacts and full Equality Impact Assessments (EQIAs) should continue to be prepared as required by law. To allow for a more informed consultation process overall, we would prefer to see draft EQIAs published alongside the earlier stages of consultation rather than left until the end when final policy design has been confirmed.

4.4. Point 7 – Guidance

4.4.1. In writing guidance material to accompany new legislation, this should include not only HMRC ‘Manuals’ but also a review of all relevant guidance to the public on the topic, including online and hard copy materials. How the changes are to be communicated should be considered when developing the policy, not left to after-thought (after all, tax policy will not be delivered if taxpayers are not aware of it or do not understand how to comply with it).

4.4.2. All too often at present there is a time-lag between policy change and updating of published material, particularly when cross-referring from HMRC to Directgov and Businesslink

websites. And often, even where hard copy material is identified as being out of date as a result of changes, those changes are often seen as an excuse for withdrawing the information without adequate consideration of its replacement or alternatives.

4.5. **Point 8 – Exceptions**

- 4.5.1. We note that ‘The Government will generally not consult on straightforward rates, allowances and threshold changes, or other minor measures; recognising, however that even in these cases some level of consultation can often be informative.’
- 4.5.2. We stress that, in the context of low-income taxpayers where interactions between tax and welfare benefits can be complex, the need for consultation about even seemingly minor tax changes is important. For example, last year LITRG highlighted a number of knock-on impacts surrounding proposals to increase the basic personal allowance for income tax¹ which illustrates how sometimes a ‘minor’ tax measure could have wider consequences to be explored in order to ensure the policy intention is achieved.
- 4.5.3. Lessons to be learned when considering this type of ‘straightforward’ change were neatly illustrated when the general 10% income tax band was removed from 6 April 2008. The consequence was a hurried, and for an estimated 1.1million low-income households not fully compensatory², adjustment to the personal allowance (and reduction in the higher rate band) part way through the 2008/09 tax year. This created costs and confusion for all concerned – HMRC, employers and individuals.
- 4.5.4. Furthermore, it created embarrassment for the then government by reversing a manifesto promise, making many people worse off who were supposed to be helped on introduction of the 10% band. LITRG contributed significantly to the Treasury Committee’s report, *Budget Measures and Low-Income Households*³, pointing out the impacts and how the effects of a tax change were compounded due to the myriad interactions with the various welfare benefits (including tax credits).

5. **Draft protocol on announcements outside scheduled fiscal events**

5.1. **General comments**

- 5.1.1. Broadly, we think the protocol is reasonable and that the Government should, where there is a significant risk of tax loss to the Exchequer, have the ability to take swift action.

¹ See <http://www.litrg.org.uk/News/2010/income-tax-changes-in-a-coalition>

² See <http://www.litrg.org.uk/News/2008/10-saga-mps-report-shows-way-forward>

³ See <http://www.publications.parliament.uk/pa/cm200708/cmselect/cmtreasy/326/326.pdf>

5.2. ***Knock-on effects – identifying and addressing unintended or unforeseen impacts***

- 5.2.1. However, if such action is taken, the Government must remain open to considering any knock-on effects of the changes and commit to allowing interested parties an opportunity to comment. For example, it is important if equality impacts are identified and notified to the Government after the fact that there is an opportunity for these to be addressed and for the legislation to be amended as necessary.

5.3. ***Communication***

- 5.3.1. Furthermore, where urgent policy announcements are made outside scheduled fiscal events, there will be an urgent need to consider how these are communicated to those taxpayers who might need to understand them in order to comply. The protocol should therefore refer to these issues, thus reflecting a commitment to smooth implementation of changes.

LITRG

23 February 2011