



HMRC Consultation: 'Working with tax agents: dishonest conduct'
Response from the Low Incomes Tax Reform Group

1. Executive summary

1.1. This response makes just two points on the draft legislation:

1.1.1. Firstly, that it would be helpful to specify that charitable organisations are excluded from the scope of the legislation.

1.1.2. Secondly, that the 'file access notice' provisions should be qualified to state that HMRC's belief that another person holds relevant documents must be 'reasonable'.

1.2. We would be happy to discuss these points further.

In addition, we remain interested in HMRC's work on 'High Volume Agents' and would like to contribute to this where possible.

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. **General comments**

- 2.2.1. LITRG welcomes the opportunity to respond to this consultation and HMRC's efforts to engage with representatives and make amendments to the proposals since the last consultation on 'deliberate wrongdoing'.
- 2.2.2. Our previous concerns were that the draft legislation was far too broad and could have caught situations such as well-meaning friends or family seeking to help others, and volunteer advisers in the tax or general advice charities (or other *pro bono* capacity).
- 2.2.3. A more proportionate and targeted power was therefore recommended to rule out the risk of volunteers being deterred from helping low-income taxpayers by the presence of sweeping, untargeted penalty provisions on the statute book.

3. **The current draft**

3.1. **Definition of 'tax agent'**

- 3.1.1. Our main interest in the current draft is in the definition of a 'tax agent'. If this definition is drafted so as to exclude those within our area of concern, as outlined above, then the remainder of the schedule is of limited interest to us. But it is of course of interest to our wider CIOT colleagues and we are supportive of the points of detail they make in their response – in particular, their overarching point as to whether additional legislation is in fact needed.
- 3.1.2. The new definition of a tax agent focuses on those who act 'in the course of business'. We agree that this is a significant improvement on the earlier draft legislation, and now should not encompass the well-meant, but perhaps wrong or misleading advice from a neighbour, friend or similar.
- 3.1.3. We remain slightly concerned, however, that advice from the charity sector could still be caught depending on what exactly is meant by the term 'business'.
- 3.1.4. We would prefer the legislation to be explicit in excluding advice given via charities. This could be done by inserting under *General interpretation*, para 38:

'In this Schedule -

....

"in the course of business" excludes any charity, charitable company or charitable trust as defined in Schedule 6, Finance Act 2010'

3.2. **File access notice**

- 3.2.1. One further drafting point which is of relevance to the charity sector is the 'file access

notice' (para 8 of the draft schedule).

- 3.2.2. Although perhaps unlikely, it is not impossible that an agent who HMRC have determined to have engaged in dishonest conduct has acted as a volunteer for a charitable organisation. That organisation could therefore hold files which HMRC determine to be relevant for the purposes of issuing such a notice.
- 3.2.3. We are therefore concerned that the proposed power is not limited to '**reasonable** belief', as it is drafted. We recommend insertion of the word 'reasonably' in the draft para 8, as shown below:

File access notice

8 (1) Subject to paragraph 7, an officer of Revenue and Customs may by notice in writing require any person mentioned in sub-paragraph (2) to provide relevant documents.

(2) The persons are

(a) the tax agent, and

(b) any other person the officer **reasonably** believes may hold relevant documents.

(3) "Relevant documents" is defined in paragraph 9.

(4) A notice under this paragraph is referred to as a "file access notice".

(5) The person to whom a file access notice is given is referred to as the "document-holder".

4. 'High Volume Agents'

- 4.1.1. In the response to the previous consultation on dishonest agents, HMRC disclosed their efforts to engage with high volume agents (HVAs) who submit numerous claims that are either wrong or unsubstantiated, and noted that respondents emphasised that there should be safeguards for innocent taxpayers caught up in the process.
- 4.1.2. According to research LITRG has undertaken, both in the past and on an ongoing basis, the vast majority of innocent taxpayers caught in this way are from vulnerable and low-income groups such as migrants, pensioners, students and agency workers. We therefore remain interested to hear about HMRC's work in this area and are keen to assist if we can.

LITRG

16 September 2011