

**Amendments to HMRC's civil information powers
Draft clause and Schedule, Finance Bill 2020-21
Response from the Low Incomes Tax Reform Group (LITRG)**

1 General comments

- 1.1 LITRG welcomes the opportunity to comment on the draft clause and Schedule for Finance Bill 2020-21 in relation to amendments to HMRC's civil information powers. LITRG responded to the consultation leading to the publication of this draft legislation.¹
- 1.2 We are pleased that the government have decided against its original proposal to dispense with the requirement to obtain taxpayer or tribunal approval for all third party notices. The introduction of the 'financial institution notice' (FIN) appears to us to be a more targeted approach.
- 1.3 This being said, we observe that the consultation put forward two options for increasing HMRC's powers in relation to third party information notices and both of these involved the removal of the taxpayer/tribunal approval safeguard. LITRG and others objected on principle to the removal of this safeguard however its removal may be achieved. We would not want the government to mistake a preference for the lesser of two 'evils' as an implicit approval. We continue to be of the opinion that this safeguard is an important protection for the taxpayer and its absence, even in the limited case of a FIN, will encourage HMRC to issue third party information notices in more cases than before.

¹ <https://www.litrg.org.uk/latest-news/submissions/180926-increasing-hmrc-s-civil-information-powers>

- 1.4 The FIN does not carry a right of appeal by the financial institution, even if they consider that the request would be unduly onerous to comply with. Currently, a third party is able to appeal an information notice on these grounds. We appreciate that an HMRC officer must be of the 'reasonable opinion' that the information would not be onerous (unduly or otherwise) to provide. However, HMRC are not best placed to make this assessment. We suggest the financial institution is given a clear right of appeal if the records are unduly onerous to obtain.
- 1.5 With regard to the extension of Schedule 36 information notices for tax debt collection purposes, we would like to re-iterate the original concerns we raised regarding low-income taxpayers facing a threat of penalties if they fail to provide information about their assets to pay a tax debt. We know that HMRC have a track record of using their powers as a deterrent effect.² We urge HMRC not to use these powers in a similar way: a threat of penalties for an individual with a tax debt they are unable to pay and who has already 'buried their head in the sand' is unlikely to be effective and may even be detrimental to HMRC's debt collection objectives as well as the taxpayer's wellbeing.
- 1.6 In the case of HMRC's powers for the direct recovery of debt, HMRC are obliged to consider whether a taxpayer is at a 'particular disadvantage' before taking action.³ It would seem appropriate to us that a similar commitment is placed upon HMRC before they apply to the Tribunal to impose these penalties, given their potential severity.
- 1.7 We have no comments on the remaining amendments.

2 About Us

- 2.1 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. Everything we do is aimed at improving the tax and benefits experience of low-income workers, pensioners, migrants, students, disabled people and carers.
- 2.2 LITRG works extensively with HM Revenue & Customs (HMRC) and other government departments, commenting on proposals and putting forward our own ideas for improving the system. Too often the tax and related welfare laws and administrative systems are not designed with the low-income user in mind and this often makes life difficult for those we try to help.

² See Section 6, *Review of the direct debt recovery intervention*
<https://www.gov.uk/government/publications/direct-recovery-of-debts-intervention-review/review-of-the-direct-debt-recovery-intervention>

³ Paragraph 5, Schedule 8, Finance (No. 2) Act 2015:
<https://www.legislation.gov.uk/ukpga/2015/33/schedule/8/paragraph/5/enacted>

- 2.3 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.

LITRG
8 September 2020