

**Errors in taxpayers' documents**  
**Consultation on draft clauses for Finance Bill 2017**  
**Response from the Low Incomes Tax Reform Group (LITRG)**

**1 Executive Summary**

- 1.1 We welcome the opportunity to comment on the draft clause for Finance Bill 2017 in relation to errors in taxpayers' documents (clause 91).
- 1.2 We are concerned that the provisions in clause 91 are drawn far too widely and that they may unintentionally catch unrepresented taxpayers, who have not engaged in the type of tax avoidance that HM Revenue & Customs (HMRC) intend to target.
- 1.3 We are strongly opposed to and do not agree with the proposal to reverse the burden of proof, meaning that HMRC will presume the taxpayer has been careless unless they can prove they have taken reasonable care. This will become particularly difficult for taxpayers to do, as the provisions also restrict the type of advice on which the taxpayer can rely to prove they took reasonable care.
- 1.4 We are hugely concerned that the provisions place an insurmountable burden on unrepresented taxpayers, who: may enter into arrangements without fully understanding that they are caught; may not appreciate the need to obtain specific advice, or indeed be able to afford advice; and may not be able to judge whether or not an adviser has the appropriate legal or tax expertise to advise on the arrangements.

**2 About Us**

- 2.1 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. 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 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.
- 2.3 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.

### **3 General comments**

- 3.1 The government consulted on strengthening tax avoidance sanctions and deterrents in August 2016. That consultation included proposals to change the way the penalty regime works for those whose tax returns are found to be inaccurate as a result of using tax avoidance arrangements, by defining what does not constitute the taking of reasonable care and placing the burden of proof on the taxpayer. The CIOT responded to that consultation and we agree with their comments in respect of the proposals on errors in taxpayers' documents.<sup>1</sup>
- 3.2 We are concerned that, as drafted, the provisions are too wide and will catch any arrangements that result in a tax advantage,<sup>2</sup> including those that might be sold to low-income, unrepresented taxpayers; or even forced on them in order for them to be able to obtain work, for example through umbrella companies or personal service companies.
- 3.3 We do not agree with the proposal to reverse the burden of proof, meaning that HMRC will presume the taxpayer has been careless unless they can prove that they have taken reasonable care. An unrepresented taxpayer may enter into arrangements, without understanding that these are caught, and may not appreciate the need to obtain specific advice, or indeed be able to afford advice. If they did not obtain appropriate advice as provided for in clause 91, they would be unwittingly removing a whole line of defence.

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<sup>1</sup> <http://www.tax.org.uk/policy-technical/submissions/strengthening-tax-avoidance-sanctions-and-deterrents-ciots-comments-0>.

<sup>2</sup> The proposed legislative definition includes arrangements where "it would be reasonable to conclude that the obtaining of a tax advantage was the main purpose, or one of the main purposes, of the arrangements." (New paragraph 3B (2) of Sch. 24 FA 2007).

- 3.4 In addition to reversing the burden of proof in relation to careless behaviour, the provisions restrict the advice on which the taxpayer can rely to prove they took reasonable care. An unrepresented taxpayer would not necessarily be able to judge whether or not an adviser has the appropriate legal or tax expertise to advise on the arrangements, nor whether the adviser has a direct interest in selling the arrangements to the taxpayer. This places the (unrepresented) taxpayer in a very difficult position, as they do not have specialist knowledge themselves, yet are being asked to determine whether the advice they receive falls within the provisions and is therefore 'disqualified'.
- 3.5 Together, the widely drawn definition of "avoidance arrangements" and the presumption of carelessness, mean that these provisions are likely to catch arrangements and taxpayers that they are not intended for. In particular, we are concerned that this will result in low-income, unrepresented taxpayers facing an insurmountable burden.

#### **4 Comments on draft legislation**

##### **4.1 *Clause 91 Errors in taxpayers' documents***

- 4.1.1 New paragraph 3A (4)-(6) of Schedule 24 of Finance Act 2007 sets out a definition of disqualified advice. This is advice that HMRC and the tribunal must not take into account when determining whether or not the taxpayer took reasonable care. We are concerned that an unrepresented taxpayer, who is approached and sold tax arrangements will be unable to identify whether or not the conditions set out in paragraph 3A (4) apply; further, they may not appreciate they are being sold tax arrangements, as such, and so may not realise that these provisions apply to them at all.
- 4.1.2 With regard to sub-paragraph (4)(c) and the reference to "appropriate expertise", we note that while it may be careless to rely on tax advice provided by an obvious non-tax specialist, for example someone with no relevant qualifications, an unrepresented taxpayer is unlikely to appreciate that technical advice from an apparent specialist<sup>3</sup> (especially if supported by Counsel's opinion), will require a second opinion. If the person selling the arrangements appears to be experienced and knowledgeable in tax matters, it may not be obvious to a taxpayer that they are not a tax expert. We would therefore question how the taxpayer should determine whether or not the adviser has "appropriate" expertise. In relation to sub-paragraph (5), we would question what "reasonable" steps are.
- 4.1.3 New paragraph 3B of Schedule 24 of Finance Act 2007 defines "avoidance arrangements". Sub-paragraph (2) ensures that this is drawn extremely widely, as it can include any arrangements that have obtaining a tax advantage as their main, or one of their main, purposes. We think it would be more appropriate to restrict the application of these

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<sup>3</sup> To the lay person, various people could appear to be specialists, including not only qualified tax advisers, accountants and lawyers, but also independent financial advisers.

provisions to arrangements that meet any of the conditions A to E set out in sub-paragraph (3).

- 4.1.4 In addition, we propose that the provisions should only apply where the obtaining of a tax advantage **by the person ("P")** was the main purpose, or one of the main purposes, of the arrangements. This would ensure that the provisions do not inadvertently catch low-income workers, who have perhaps been forced into receiving payment through an umbrella company, which then operates a tax avoidance scheme that falls within the provisions.

LITRG  
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