

Partial closure notices
Finance Bill 2017-19, Clause 63 & Schedule 15
Briefing from the Low Incomes Tax Reform Group (LITRG)

1 Partial closure notices

- 1.1 Clause 63 of Finance (No. 2) Bill 2017 introduces Schedule 15, which enables enquiries into the tax returns of individuals, trustees, partnerships or companies as well as non-resident capital gains tax returns to be closed in part, while enabling the remainder of the enquiry to continue and remain open.
- 1.2 While the amendments to the legislation affect non-residents' capital gains tax returns and company tax returns, our comments relate solely to individual tax returns, and in particular the effect such changes might have on low-income and vulnerable taxpayers.
- 1.3 We acknowledge that the measure is intended to allow tax to become payable before the end of the enquiry where some matters have been finalised and it is clear there is a substantial tax liability arising. We also understand that the measure is aimed at complex cases involving avoidance. Nevertheless, we are hugely concerned that the safeguards included in the legislation are inadequate for unrepresented taxpayers. This could allow HM Revenue & Customs (HMRC) to 'cherry pick' aspects of an enquiry to be closed while leaving other items open, possibly those that might arise in a reduction of tax due. Once aspects of the case 'favourable' to HMRC had been closed in this way, there may be a disincentive for them to conclude the balance of the enquiry. We note that it is possible for the taxpayer to apply to close the whole enquiry using existing provisions if they consider that HMRC are not dealing with the outstanding matters. In addition, they can appeal against a partial closure notice or an assessment contained therein. It is important that taxpayers are made aware of these rights.

- 1.4 We are pleased that our recommendation¹ to allow a taxpayer, as well as HMRC, to seek a partial closure notice has been included in the legislation. Unfortunately, this will not aid taxpayers if they are not aware of the facility or do not understand its effect. It is crucial that for enquiries affected by this change the taxpayers concerned are contacted with advice showing them their new position. This may be challenging as the legislation is due to take effect for all enquiries in progress at the date of Royal Assent and all new enquiries raised thereafter. We would therefore like to see a commitment that HMRC will consult early with stakeholders such as ourselves on their proposed taxpayer communications.
- 1.5 We are very disappointed that a 'de minimis' level for tax outstanding has not been set, below which no partial closure notice may be issued. This does mean that a partial closure notice might be issued where the tax at stake is relatively small – to the potential detriment of vulnerable taxpayers. By having no safeguard of this sort, there is a danger that issuing partial closure notices might become the 'norm', which was not the original intention.
- 1.6 It appears that the use of partial closure notices may introduce a further level of uncertainty for tax credits claimants, as discussed at 2.2 below. If suitable 'de minimis' levels were set, this might remove this uncertainty in all but the most serious cases.
- 1.7 Specifically in relation to payments and repayments of tax following the amendment to a tax return during an enquiry by the taxpayer, while we understand that the taxpayer will become liable to pay any tax that becomes payable as a result of a partial closure notice, any repayment due to the taxpayer as a result of such a partial closure notice is not to be issued until after a final closure notice is issued. This is demonstrably not even-handed.
- 1.8 We strongly recommend that the use of such partial closure notices is monitored to ensure they are being used appropriately.

2 Comments on draft legislation

2.1 *Partial closure notices*

- 2.1.1 Schedule 15 of the Bill introduces changes to the Taxes Management Act 1970 (TMA 1970), the Taxation of Chargeable Gains Act 1992, Schedule 18 to the Finance Act 1998, the Tax Credits Act 2002, Schedule 36 to the Finance Act 2008 and the Taxation (International and Other Provisions) Act 2010.
- 2.1.2 The amendment to paragraph 2 of Schedule 3ZA of TMA 1970 (the date by which payment is to be made after amendment or correction of self-assessment) means that where the taxpayer has amended their tax return during the enquiry, tax is due 30 days after the

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<http://www.litr.org.uk/sites/default/files/150310%20LITRG%20response%20Tax%20Enquiries%20Closure%20Rules%20FINAL.pdf>; see page 3 at 5.4

relevant partial or final closure notice is given, but that any repayment is not due until a final closure notice is given. This appears to be unfair to the taxpayer.

2.2 Tax Credits claimants

2.2.1 As noted at 1.6 above, the consequential amendments to tax credits legislation seem to introduce the option for HMRC to make an extra decision about the individual's tax credit award as a result of the new partial closure notice in addition to making a decision as a result of the full closure notice. Given the importance of providing a degree of certainty and finality for tax credit claimants once a conclusive decision has been made, it will be important to restrict the use of partial closure notices where a tax credit award is also potentially at risk so that any adjustments to that award are kept to a minimum until the full position is clear and overpayments are not raised as a consequence of a partial closure notice which are later repaid once the full closure notice is issued.

2.2.2 In considering the tax credits impacts, it should not be forgotten that a tax credits claim might be in joint names with another person, if the taxpayer under enquiry is part of a couple. It would seem unacceptable for a tax credits overpayment to be created on the issue of a partial closure notice which creates uncertainty and potential financial worries for not only the taxpayer under enquiry but also their partner with whom the taxpayer claims tax credits jointly.

2.2.3 We would therefore urge that HMRC commit to consulting with stakeholders such as ourselves on the processes they intend to operate in relation to partial closure notices in cases where the taxpayer is also a tax credits claimant. We would urge that their operational guidance be made clear to consider the full impacts on the taxpayer and any joint claimant prior to adjusting a tax credit award before the enquiry reaches its full conclusion.

2.2.4 Paragraph 26 confirms taxpayers do have a right of appeal against such closure notices, but without proper communication taxpayers may not understand that they can appeal before the whole enquiry is complete.

3 About Us

3.1 The 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.

3.2 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.

- 3.3 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
19 October 2017