Helping taxpayers get offshore tax right
Response from the Low Incomes Tax Reform Group (LITRG)

1 Executive Summary

1.1 We welcome the opportunity to respond to this discussion document on how HMRC can help taxpayers get their offshore tax right, as part of HMRC's strategy to prevent non-compliance before it arises.[1] In this response, we provide insight into how HMRC might achieve this objective in relation to unrepresented taxpayers who either do not declare their offshore income at all (often because they do not realise it is taxable in the UK) or otherwise make a mistake in doing so. It can be useful to make a distinction between taxpayers who have offshore income because they were born overseas or have spent time living overseas, versus UK nationals who have made an offshore investment. Our response focuses on those in the first category.

1.2 We think the use of prompts could be useful in helping these taxpayers comply with their offshore tax obligations, though care will need to be taken in the language used, and the taxpayer should be directed to clear guidance or professional support in case they require further clarification.

1.3 We are not convinced that the additional administrative burden of requiring these taxpayers to provide additional information on their Self Assessment tax returns will be worthwhile. HMRC will not be able to reconcile offshore data with tax return data in every case, but

[1] Throughout this response, we use the term 'offshore tax' in the same way as the discussion document, but as we note at 4.14 we would prefer that HMRC use a different term. References to 'offshore income' should also be taken to include gains arising on the disposal of overseas assets unless the context indicates otherwise.

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existing reporting requirements should be sufficient to allow HMRC to risk assess where offshore income is not being reported accurately. However, where offshore data is inaccurate, there should be a clear and easy way for the taxpayer to challenge it.

1.4 We feel that the Self Assessment return itself, and the accompanying notes, could be improved from the point of view of non-domiciled taxpayers for whom the remittance basis applies, or potentially applies, automatically where their unremitted foreign income and gains are less than £2,000 in a year. HMRC should also provide the facility for the SA109 *Residence, remittance basis etc* pages to be filed using their online portal.

1.5 HMRC need to provide more practical assistance and guidance for those trying to determine whether UK tax is due on their offshore income.

1.6 Rather than putting all taxpayers with offshore income into Self Assessment, we think there is scope for some taxpayers with offshore income in more straightforward scenarios to have the tax collected via PAYE or Simple Assessment. This would assist with compliance and reduce the administrative burden on both the taxpayer and HMRC.

1.7 HMRC can do more to make hard-to-reach groups aware of their obligations – for example, by improving terminology and leveraging third-party organisations. However, despite the most effective public communications campaigns by HMRC, not all taxpayers will be aware of and understand these obligations. For these taxpayers, we encourage HMRC to apply the correct legal tests in assessing whether ignorance of the law is a reasonable excuse, taking account of the obscurity of the law and the circumstances of the taxpayer.

1.8 Finally, we encourage HMRC to share offshore data with the Voluntary Sector Taxes Resolution Service (VSTRS) team so that the tax charities can better assist taxpayers with offshore income who cannot afford paid advice.

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 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.

2.3 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 We are specialists in tax and related welfare benefits for people on low incomes. We provide free information about the UK tax system to the public via our websites, which attract around 5.5 million visitors per year. This includes guidance aimed at migrants to the UK who may be likely to have offshore income while they are resident here.

3.2 In our experience, it is often assumed that taxpayers who have offshore investments are wealthy individuals who are trying to avoid or even evade UK tax. But there is no distinction in policy between these taxpayers and low-income migrants who have offshore income. Asset-rich but cash-poor migrants into the UK from Eastern and Central European countries, for example, could have rental income from land and property which had been passed to them or their families. Realistically, such migrants will probably never visit an accountant or GOV.UK to try and understand the UK tax rules, as intuitively one expects a tax liability to occur in the country in which the property is situated.

3.3 For those that do have an inkling that they might need to do something in the UK about their offshore income, there are many reasons why they may still get it wrong. Whilst migrant workers may vary in age, profession (though many are in low-income sectors such as construction, agricultural labour, and cleaning services), educational achievement and standard of English, many have in common that they do not understand the requirements of the UK tax system in respect of anything they have left behind in their home country. This is not surprising, because HMRC do not tell them (at least, not in an accessible way). Indeed, we are sometimes contacted by members of the public who need help, often where they have been unable to find answers to their questions on GOV.UK.

3.4 We share one example from our inbox below:

'I share 50% with my sister a property in Italy and 2018 and 2019 we had a rental income in Euros. What I would like to know is: do I need to pay tax in the UK if we already pay tax in Italy and how much? Considering I'm resident in UK since 2007 but I'm still domiciliate [sic] *in Italy and registered on Italian consulate like Italian abroad. Also I heard maybe I'm in title for the "remittance basis" which I think is if the income is under £2,000 I don't need to declare in UK? Sorry for the confusion but I had different information and I didn't know how to gel them together.'*

3.5 We particularly welcome HMRC's shift of focus to preventing, rather than penalising, offshore tax non-compliance which is not deliberate. This makes a refreshing change from recent initiatives such as the Requirement to Correct[1] – under which extremely harsh

[1] Schedule 18, Finance (No. 2) Act 2017

penalties can apply regardless of whether the non-disclosure was deliberate – and the recent extension of offshore time limits,[1] which was specifically targeted at those who have made a non-deliberate error. Both measures impact vulnerable and unrepresented taxpayers, especially because of HMRC's resistance to accepting ignorance of the law as a reasonable excuse.

3.6 Most, if not all, of the taxpayers who present to us having made an error (or an omission) in reporting their offshore income have not done so deliberately. The most common scenario is where taxpayers have not reported their offshore income because they did not realise it was taxable in the UK. This is especially the case where the income is already being reported and taxed overseas, either at source or on an overseas tax return. It is not intuitive to think that the income might also be taxable in the UK by virtue of the individual's UK residence status, as conceptually that would lead to double taxation, which would feel wrong (and with good justification) in the mind of an unrepresented lay taxpayer. Effectively, the taxpayer uses a *reductio ad absurdum* to justify not reporting the income to HMRC. It is not that they have not considered how the income may be taxable, it is that they are led (quite logically) to the wrong conclusion.

3.7 These taxpayers often only become aware of the true position once they receive a 'nudge' letter from HMRC, following data received under mutual information exchange agreements. This often leads to a disclosure under the Worldwide Disclosure Facility, with taxpayers somewhat twistedly being invited to self-assess penalties of at least 150% of the unpaid tax, which may amount to thousands of pounds, simply because they had been misguided in their understanding. HMRC steadfastly refuse to accept their circumstances as a reasonable excuse, even if the taxpayer is confident enough to argue it.[2] Given the adage that the ignorant are ignorant of their ignorance, this is viewed by many as gut-wrenchingly unfair.

3.8 Others may be aware that offshore income is taxable on UK residents, but get lost in a maze while trying to report the income correctly to HMRC. The fact they end up making a mistake is not desirable for either the taxpayer or HMRC, but one can easily be sympathetic to how it has arisen. Good guidance is essential to prevent this from happening as far as possible. But given the complexity of the law, it should also be viewed as somewhat of an inevitability. It is in the interests of more trustworthy and collaborative relationship between taxpayer and state for HMRC to truly understand how and why this happens, and to respond

[1] s 36A, Taxes Management Act (TMA) 1970 (as amended by s 80, Finance Act 2019)

[2] As part of Commitment 16 of HMRC's Powers and Safeguards Evaluation, we recognise that HMRC are re-writing the material in their Compliance Handbook on reasonable excuse so that compliance officers apply the correct legal tests in this scenario, in accordance with [81] et seq in *Perrin v HMRC* [2018] UKUT 156 (TCC). These include taking account of how well-known the legal requirement is, and 'whether it was objectively reasonable for the particular taxpayer, in the circumstances of the case, to have been ignorant of the requirement in question, and for how long'.

appropriately, rather than to hide behind the legal principle of the taxpayer being responsible for their own tax affairs.

3.9 For example, taxpayers must grapple with rules around domicile, remittance basis, double tax treaties and foreign tax credits even in otherwise relatively straightforward scenarios.[1] Some might consider themselves non-UK domiciled but are not aware of the rules around deemed UK domicile and cease to be eligible for a treatment which they may have relied on for 15 years; others might not report their unremitted rental profits on the basis that they are less than £2,000 for the year, but they do not realise that once they recalculate their profits under UK tax rules the threshold is exceeded and thus the income is brought within scope of UK tax unless a remittance basis claim is made.[2]

3.10 UK-domiciled taxpayers may genuinely believe that income paid into a non-UK bank account is not taxable in the UK. More commonly, others may believe that income from a non-UK source is simply not in scope of UK tax. For example, a UK national who has worked in the Netherlands for a few years may get a Dutch pension which is taxed at source in the Netherlands. They may have a mistaken belief that because tax is withheld in the Netherlands, the pension is taxable in the Netherlands. How would they know that the UK/Netherlands Double Taxation Convention gives sole taxing rights to the UK, such that no Dutch tax is payable and it needs to be refunded? What is prompting them to check? Indeed, we understand that sometimes HMRC staff can get confused as to the technicalities in such cases. For example, we have heard of HMRC recommending that such taxpayers report the income in the UK tax return, but then take a foreign tax credit – this is technically incorrect.

3.11 These taxpayers need as much support as possible – and those who try to make sense of it all with the full intention of being compliant, but trip up along the way, need a helping hand rather than punishment.

3.12 For example, even if a taxpayer suspects that they might need to report their offshore income to HMRC, they face an unreasonably complicated task to find out the answer. The 'Check if you need to send a Self Assessment tax return' tool on GOV.UK unhelpfully distils the question down to whether tax is payable on 'income from outside the UK'.[3] But there is no link to guidance to help the taxpayer answer that question.

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[1] We explore these in the context of migrant workers receiving offshore rental income in the following news article: https://www.litrg.org.uk/latest-news/news/191011-migrant-workers-uk-are-you-receiving-rental-income-property-your-home

[2] This is just one example of where principles or concepts which apply in a taxpayer's home country are mistakenly 'transferred' and assumed to also apply in the UK. Language may also play a part where mistranslations or 'false friends' lead to mistakes – for example, the word 'domicile' may mean something entirely different in a taxpayer's home country and may be more akin to the UK concept of 'residence'.

[3] https://www.gov.uk/check-if-you-need-tax-return

3.13 We consider there is huge scope for HMRC to provide more practical assistance to unrepresented taxpayers with offshore income to help them answer this. For example, an indicative tool could be developed for simpler cases into which a taxpayer can input their residence and domicile status, types of income, country of source, currency, whether remitted to the UK and amount of foreign tax deducted. The tool could automatically convert foreign currency into GBP based on HMRC's exchange rates and even be programmed to take account of positions under double tax treaties and foreign tax credit claims. It could also incorporate an analysis of an individual's residence position under the Statutory Residence Test, and their domicile position under the flowcharts in HMRC's RDR1 manual.

3.14 However, we appreciate that this would involve some considerable work to develop, and we suggest the idea with caution given such interactive tools can sometimes actually be unhelpful where they give a misleading or incorrect result, or the taxpayer misinterprets a question. We would also like to emphasise that interactive tools should only ever supplement written guidance and not replace it, and we would encourage the 'code' behind the tool to be open source to allow the widest possible scrutiny for accuracy by stakeholders.

3.15 It should also be recognised that in many cases the taxation of offshore income can be so complex that professional assistance is often required. For these cases, it then becomes a question of how the government can assist taxpayers in finding that assistance – a theme which we explore separately as part of the government's work on regulating the tax advice market.[1]

3.16 There are two further problems with the existing GOV.UK tool. First, it exposes taxpayers to late filing penalties in the case where no UK tax is due on offshore income but a notice to file a tax return has already been issued under s 8 TMA 1970. In this case the taxpayer is presented with a bold statement 'You do not need to send a Self Assessment tax return'. It is only further down the page that it states 'If HMRC has told you to send a return'. If this is read at all (it may be missed, especially on a mobile screen), under this heading it only says 'You *can* [our emphasis] ask to stop sending returns if HM Revenue and Customs (HMRC) has told you to send one and you do not think you need to.' It mentions nothing about the legal duty to file a return unless a notice is withdrawn. We have seen taxpayers issued with distressing late filing penalties after following the advice offered by this tool.

3.17 Second, there is a mismatch between an individual's obligation to notify their liability to tax under s 7 TMA 1970 and HMRC's own Self Assessment criteria. For a taxpayer with offshore income but no UK tax to pay on it (for example, small amounts of foreign bank interest

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[1] https://www.litrg.org.uk/latest-news/submissions/200826-raising-standards-tax-advice-market-call-evidence

within the personal savings allowance), it appears that HMRC will refuse to withdraw a s 8 notice.[1] This is a wholly unnecessary administrative burden for both the taxpayer and HMRC.

3.18 We would also question why tax on offshore income, especially regular income such as annuities paid to migrants or UK nationals who may have worked overseas, cannot be collected via adjustments to PAYE coding notices and/or Simple Assessment. It should be possible to handle variations in exchange rates by using HMRC's published figures. We think this might improve offshore tax compliance by making the whole process simpler for both HMRC and the taxpayer, as well as minimising the possibility of error in completing a Self Assessment tax return. The fact that this is not possible leads to all sorts of difficulties.[2]

3.19 One final issue concerns whether or not a taxpayer is expected by HMRC to make a formal claim for relief under a double tax treaty or unilateral foreign tax credit relief in a tax return (or otherwise) – if, after doing so, no UK tax is due. The law certainly requires them to,[3] so presumably in the absence of such a claim neither relief applies and UK tax would be due. But in the context of whether an individual has an obligation under s 7 TMA 1970 to notify liability, the position as to whether one looks at the position before or after the relief is less clear.[4]

3.20 For example, section 7(7) of that Act excludes a taxpayer from the obligation to notify liability if the only source of income which might otherwise trigger that requirement is one from which all income for that year 'could not be liable to tax under a self-assessment made under section 9 of this Act in respect of that year'. This is a hypothetical test, and surely were a self-assessment to be made (and it is a *self*-assessment, rather than a direct assessment by HMRC), relief would be claimed. Practically speaking, if there is no tax which would ultimately be due, then moreover it does not make sense for that individual to be brought within scope of the Self Assessment regime. In any case, clearer guidance would be welcome.

3.21 It is pleasing that the discussion document shows signs of sympathy to taxpayers who make non-deliberate mistakes in relation to their offshore income. We agree that *intelligent* use of data from mutual information exchange agreements is one part of the solution. In our responses to the individual questions below we highlight how this can be used to best effect. However, HMRC should be wary of issuing letters and prompts in cases of 'false positives' – that is, where no UK tax is due after considering reliefs and allowances – and give

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[1] SAM100050 refers to an exclusion if your only foreign income is dividends within the dividend allowance, but not if your only foreign income is bank interest within the personal savings allowance.

[2] We explore these at https://www.litrg.org.uk/tax-guides/migrants/national-insurance-migrants/what-uk-tax-do-i-pay-my-overseas-pension.

[3] s 6(6) and s 19, Taxation (International and Other Provisions) Act 2010

[4] This point was alluded to in [30] and [31] of *Newton v HMRC* [2017] UKFTT 874 (TC), though it is not possible to draw any conclusion.

consideration to how they can reduce the likelihood of taxpayers *over-declaring* their offshore tax. We also discuss other strategies which may be employed to achieve the goal of minimising non-deliberate offshore tax non-compliance as far as possible.

4 **Q1. How do you think HMRC could best use offshore data to promote offshore compliance and help taxpayers get offshore tax right first time?**

Q2. How do you think HMRC could best use offshore data to stop errors from happening?

Q3. Should additional safeguards apply to ensure taxpayers' rights are protected if HMRC use offshore data in new ways as set out in paragraph 2.9?

4.1 We welcome the use of offshore data to help taxpayers report their offshore income and gains correctly. We agree this could be useful to help prompt taxpayers in time for them to meet their legal obligations in relation to notification of liability[1] and in completing a Self Assessment tax return.[2] Targeted prompts, which we discuss later from 4.24, are likely to have a positive impact in preventing taxpayers from neglecting to report their offshore income because they do not realise the income is taxable in the UK.

4.2 There is a question around how to deal with the difficulties highlighted in paragraph 2.11 of the discussion document, namely that the offshore data is for a non-coterminous tax year and that it cannot be easily reconciled to aggregate figures reported on a tax return. The fact that the data received will be detailed in a foreign currency will also make it more challenging to match to GBP amounts reported on the tax return.

4.3 It will not be practical or even possible for HMRC to reconcile offshore data with tax return data in every case, primarily for these reasons. The point around non-coterminous tax years may be a further argument for the alignment of the UK tax year with the calendar year, which is something that could be considered as part of the tax administration framework review.[3] Now, however, it would appear to be possible for HMRC to risk-assess cases sufficiently and easily once they have two UK tax years' worth of data – for example, when comparing 2020 calendar year data against 2019/20 and 2020/21 reported figures. It would be useful if HMRC could provide examples of the kind of data received from overseas jurisdictions with stakeholders, so that we can discuss in more detail how these challenges might be overcome.

4.4 For the avoidance of doubt, we do not think that HMRC should use offshore data to pre-populate tax returns or make assessments, because the complexities involved make it

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[1] s 7 TMA 1970

[2] s 8 TMA 1970

[3] https://www.gov.uk/government/consultations/call-for-evidence-the-tax-administration-framework-supporting-a-21st-century-tax-system

impossible to accurately calculate the tax. In addition, there is a wider question about the accuracy of the offshore data itself.[1] If HMRC use inaccurate data to make assertions about the taxpayer's liability, then the taxpayer needs a smooth way of challenging that without simply being told to address the overseas source. If it is necessary to obtain clarification on the overseas data, we think that HMRC should handle that rather than the taxpayer.

4.5 **Q4. Do you think making the changes to the data and information collected through the foreign pages, as set out in paragraph 2.14 would be helpful?**

Q5. What other areas are there where it would assist tax agents if it were made mandatory for their clients to provide HMRC (and hence the agent) with details that are not currently required in a self-assessment tax return?

4.6 We are not convinced of the benefits of requiring taxpayers to provide more information on their Self Assessment tax returns than they do currently. This is likely to create an additional administrative burden for both HMRC and the taxpayer, as well as additional opportunity for error and thus penalties. There are also additional data security concerns if taxpayers are required to provide bank account details on the return. The SA106 *Foreign* pages of the return already require the taxpayer to breakdown the information by source country and we believe this should be sufficient for HMRC. Furthermore, we do not believe such an approach would help taxpayers who either omit the offshore income entirely in the mistaken belief that it is not taxable, nor assist those who might appreciate that the income is taxable in the UK but might make a mistake in calculating the tax (for example, by misapplying a treaty provision or miscalculating foreign tax credit relief).

4.7 There is, however, scope for improvement in the Self Assessment tax return for non-domiciled individuals who have less than £2,000 of unremitted foreign income and gains for the year. This is a particularly important provision for unrepresented migrants with small amounts of income overseas. For such taxpayers, the remittance basis applies automatically and thus the unremitted income is excluded from UK tax *without the need for a claim*.[2] If this applies to a taxpayer filing a Self Assessment tax return (for a reason other than having foreign income), question 5 on page TR2 (and the equivalent question on HMRC's online portal), invites them to read the notes to the Foreign pages to find out whether they need to

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[1] The accuracy of third-party data in general is a theme we explore as part of the Office of Tax Simplification Third Party Data Reporting Review: https://www.litrg.org.uk/sites/default/files/files/210330-LITRG-response-OTS-Third-Party-Data-Reporting-Review.pdf

[2] s 809D Income Tax Act (ITA) 2007. The guidance at https://www.gov.uk/tax-foreign-income/non-domiciled-residents says that in this situation the taxpayer 'do[es] not need to do anything'. Most of these taxpayers will not file a Self Assessment tax return.

be completed to report the offshore income [1]. But these notes make no reference to the possibility of the income being excluded from UK tax under s 809D ITA 2007.

4.8 Similarly, question 8 of page TR2 (and its online equivalent) refers to being not domiciled and *claiming* the remittance basis. Aside from the fact that no claim is necessary under s 809D, the language is technical and the fact that s 809D ITA 2007 may apply might be missed.[2] If a taxpayer is filing online using HMRC's portal, then they cannot complete the SA109 *Residence, remittance basis etc* pages in any case.[3] One can easily see how a taxpayer might mistakenly report offshore income on the Foreign pages in this situation, leading to an overpayment of tax. We think it unlikely that, as paragraph 1.9 of the discussion document suggests, HMRC would intervene in this scenario.

4.9 The notes also make no reference to how to calculate income for the £2,000 threshold. We sometimes see confusion on this point. For example, there is no official guidance available (so far as we can determine) for cases where split-year treatment applies and whether one should take the amount arising across the whole tax year or just the UK part. Similarly, as we highlighted earlier, it is not clear whether one should calculate overseas income under UK principles or foreign principles – this applies particularly for taxpayers in the case where rental profits are being calculated and the taxpayer cannot take deductions for capital depreciation or finance costs in the same way as they might be able to under foreign tax laws. We have even seen one case where a taxpayer misunderstood the £2,000 threshold for income and gains as relating to the amount of the income 'gain', that is, the amount *after* foreign tax has been deducted.

4.10 We therefore urge HMRC to overhaul their guidance on this point and make the Self Assessment return much more intuitive and user-friendly for unrepresented taxpayers in this situation. We would be very happy to assist HMRC in this exercise.

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[1] https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/874083/sa100_English_Form.pdf and https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/975554/sa150-notes-2021.pdf

[2] It is also slightly unclear how a taxpayer should complete the SA109 pages if s 809D applies in any case, as the notes suggest both boxes 28 and 29 should be completed even though box 28 refers to a 'claim'. The effect of this is that HMRC will not have reliable data to discriminate between a taxpayer who is consciously not reporting the income because s 809D applies, versus the case where s 809D does not apply and the taxpayer has therefore under-declared their tax liability. This can lead to unnecessary compliance activity for HMRC and unnecessary distress for the taxpayer if they receive an offshore income 'nudge' letter.

[3] We see no good reason for this, and it puts unrepresented taxpayers wishing to file online at a disadvantage. They must either pay for third-party software or otherwise find some workaround (such as a 'white space note') to explain the position.

4.11 **Q6. What terminology do you think would help a broader range of taxpayers associate themselves more accurately with their offshore obligations?**

4.12 We agree with the comments at paragraph 3.4 of the discussion document that Self Assessment has somewhat of an image problem, in that taxpayers may feel it is not applicable to them if they are not wealthy or self-employed. Self Assessment can also be seen as complex, unwieldy, and administratively burdensome. These are barriers to taxpayers complying with their offshore tax obligations because Self Assessment is the only mechanism through which tax on offshore income can be paid.

4.13 Paragraph 3.4 of the discussion document also mentions that the words 'offshore', 'overseas' or 'foreign' can sometimes mean different things. We agree this can be confusing. The word 'offshore' also has connotations of wealthy taxpayers – one refers to such taxpayers having 'offshore investments' rather than 'foreign investments' or 'non-UK investments'. We have already discussed how low-income taxpayers can easily face offshore tax issues. Therefore, if an awareness-raising campaign or communication starts by mentioning offshore tax or offshore income, such taxpayers may switch off automatically and not take in the message, since they do not realise that it may be relevant to their situation.

4.14 We would therefore encourage use of the terms 'UK' and 'non-UK' to address both of these issues: to avoid ambiguity, and to help avoid policy-makers and taxpayers being misguided about the scope of the broader issue. In addition, we would strongly discourage HMRC's use of the phrase 'offshore tax' in public-facing guidance and awareness-raising communications as it is inherently not clear whether this refers to UK tax on offshore income or tax which is charged by the offshore jurisdiction. This is another trap: if the taxpayer thinks 'offshore tax' refers to the latter, in their minds they may not consider that they have any 'offshore tax non-compliance' at all and as a result completely ignore communications addressed at those with that issue.

4.15 **Q7. In which areas of offshore tax should HMRC focus communication efforts and why?**

Q8. How should HMRC best carry out public communications to have the most impact in helping taxpayers get their offshore tax right?

4.16 HMRC appear to consider their public communications campaign for the Requirement to Correct to be successful, but sadly the number of cases which we have come across where taxpayers have been unaware of this obligation, and faced severe penalties as a result, suggests otherwise.

4.17 HMRC have asked the question of how best to approach hard-to-reach groups several times before. For example, as part of the recent Powers and Safeguards Evaluation by HMRC, this

topic was debated in a 'deep dive' meeting and discussed in chapter 5 of the report.[1] We urge HMRC to consider the outcomes of that review in this context.

4.18 For migrants to the UK, we think HMRC should consider producing (or funding production of) guidance in foreign languages.[2] This guidance should include targeted, clear, and easy-to-understand information about offshore income. It needs to be actively disseminated among migrant communities – passively publishing information on GOV.UK does not help the taxpayer who does not check GOV.UK. Examples of channels which could be used include voluntary sector organisations dealing with certain parts of the population and large employers of migrant labour.

4.19 But despite HMRC's best efforts, they will not be able to reach everyone. These taxpayers are those who may be digitally excluded, elderly, vulnerable, without the necessary command of English to understand complex law, excluded or disengaged from society in some way, or with some mental or physical disability which may make it difficult for them to deal with their tax affairs without support. In other words, they are precisely the kind of taxpayer for whom ignorance of the law may be a reasonable excuse, following the principles set out in *Perrin v HMRC*.[3] HMRC's default approach to these taxpayers should be to explore *why* they not aware of the relevant obligation, with regard for any part HMRC may have played in that (notwithstanding the lack of any legal duty for HMRC to ensure taxpayer awareness[4]), rather than applying statutory penalties which only a small proportion of taxpayers would have the confidence to appeal.

4.20 **Q9. How can HMRC raise awareness of changes in legislation when the target audience is based offshore?**

4.21 We are not sure why this question has been included in the discussion document, as taxpayers based offshore who are not resident in the UK will not be taxable in the UK on their offshore income. An exception may be taxpayers who are temporarily non-resident in the UK for capital gains tax purposes, but for such taxpayers the gains brought within scope are treated as arising when the taxpayer returns to the UK and is no longer offshore. Offshore assets sold by non-residents are not in scope of UK capital gains tax. Other changes

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[1] https://www.gov.uk/government/publications/evaluation-of-hmrcs-implementation-of-powers-obligations-and-safeguards

[2] HMRC used to produce booklets titled 'Coming to work in the UK?' in various different languages, but these have now been withdrawn: https://webarchive.nationalarchives.gov.uk/20110617022057/http://www.hmrc.gov.uk///migrantworkers/index.htm

[3] See footnote 2 on page 4.

[4] HMRC's Charter, however, does commit HMRC to providing accurate, consistent, and clear information to help taxpayers meet their obligations.

potentially relevant to non-residents, such as those relating to deemed UK domicile, also only affect taxpayers once they resume UK residence. For these changes, it appears that HMRC's efforts may be better targeted in raising awareness at the point of charge, i.e. if and when the taxpayer returns to the UK. When the taxpayer is still based offshore, communications about UK tax changes risk being dismissed as not relevant or otherwise forgotten by the time the tax charge applies.

4.22 Some taxpayers may usually live overseas but trigger UK residence because of their UK trips or other connections to the UK. In most cases, these taxpayers will remain treaty-resident overseas provided they do not have a permanent home in the UK.[1]

4.23 **Q10. What data would be useful to you when receiving a prompt and when in the process would you like to receive it?**

4.24 Regarding the timing of prompts, the principle of transparency would point to HMRC writing to the taxpayer at the point they receive information about the offshore income from the overseas jurisdiction. This would give the taxpayer the maximum time to ask themselves the question of whether – and if so, how – they need to report the income to HMRC. However, it may not be practical or cost-effective for HMRC to write to every taxpayer in this way. If so, HMRC might restrict such communications to those who are not already registered for Self Assessment and/or where the offshore income appears to exceed a certain threshold above which it is likely to be taxable in the UK.[2] Clearly, HMRC would not have the information or the resource to determine whether there is in fact any UK tax to pay on the offshore income in every case, after accounting for any available allowances and reliefs, though the likelihood of a taxpayer being prompted unnecessarily should be minimised as far as practicable to avoid over-reporting and taxpayer confusion.

4.25 If prompts are not given at the point HMRC receives the information, then in the context of helping a taxpayer meet any obligation to notify liability under s 7 TMA 1970, HMRC should consider whether to issue such communications before or after the 5 October deadline, or otherwise before or after the deadline for paying the tax (and hence avoiding a penalty for the failure to notify under s 7). To target communications most effectively, it might be sensible to issue such communications to taxpayers shortly after the 5 October deadline if they have not already registered for Self Assessment by that point. This should give them sufficient opportunity to ensure they are registered, and any tax paid by the following 31 January.

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[1] Under Article 4 of, for example, the OECD Model Tax Convention

[2] For example, such risk parameters could be where bank interest does not exceed the personal savings allowance, or dividends do not exceed the dividend allowance. HMRC could also use RTI data and information on third-party data on UK investments to estimate the taxpayer's level of personal savings allowance and the remaining amount of it.

4.26 HMRC could issue such prompts in the form of a letter. These are likely to be most effective in terms of raising awareness, especially to those who are digitally challenged, but because they may cause unnecessary distress they should be worded carefully with input from stakeholders. Emails carry the risk of being ignored and being copied by scammers. Prompts within the Personal Tax Account (PTA) may not be seen if a taxpayer does not access it – though we would not discourage digital prompts within the PTA for those who do, perhaps accompanied by an email inviting the taxpayer to review their PTA when the prompt is added.

4.27 Once a taxpayer has received a notice to file a tax return under s 8 TMA 1970, we agree there is an additional opportunity for a prompt at the time of filing. This is difficult where the taxpayer files on paper or uses third-party software. We understand that HMRC no longer issue paper tax returns by default to those who file on paper, but perhaps an exception could be made for those whose HMRC records show a foreign income source. These taxpayers could then be provided with the SA109 *Residence, remittance basis etc* and SA106 *Foreign* pages as part of the bundle.

4.28 It is important that such prompts anticipate any questions the taxpayer may have so that they are not dismissed as irrelevant. For example, if a prompt says 'please don't forget to declare any income and gains from the assets you hold in country X' (to which the words 'if UK tax is due' should be added), a taxpayer may think 'I don't need to report those on my UK return, because they are already being taxed in country X'. A short statement such as 'If you are tax resident in the UK, you may need to pay UK tax on your offshore income even if the income is already taxed overseas' would therefore be appropriate, with clear links to guidance so that the taxpayer can explore the question in more detail. Clearly, the prompt should be given at the appropriate stage of the online filing process – that is, at the tailoring stage, rather than hidden 'within' the SA106 *Foreign* pages (for example). The prompt could even be interactive, and ultimately help the taxpayer determine which set of pages they need to complete.

4.29 For those filing through HMRC's online portal, we think this kind of digital prompt would be helpful. However, it is essential that the taxpayer is also given links to guidance on how to report their offshore income properly, and that the facility to file the SA109 pages through HMRC's system is provided (or, failing that, an option to declare on the SA100 that s 809D ITA 2007 applies, and accordingly offshore income has not been reported).

4.30 **Q11. How could HMRC work with agents and intermediaries to improve offshore tax compliance?**

Q12. What are your views about more direct sharing of information with agents?

4.31 The charities TaxAid and Tax Help for Older People regularly assist taxpayers in respect of their offshore income.[1] While they do not form an ongoing agent-client relationship with those they support, they will often obtain authority from the individual to speak with the Voluntary Sector Taxes Resolution Service (VSTRS) with a view to regularising the individual's historic tax affairs. If either charity is completing a disclosure under the Worldwide Disclosure Facility on the taxpayer's behalf, however, a workaround must be put in place for the VSTRS authorisation to carry over to the separate HMRC team who have access to the data from the foreign jurisdiction and who are dealing with the disclosure. Therefore, our first observation is that offshore data could be made available directly to the VSTRS team to make the process more efficient.

4.32 Second, as we observed in our submission to the Office of Tax Simplification in their call for evidence into the use of third party data, we think HMRC should be more willing to share offshore data with taxpayers who simply want to make sure that they make a full disclosure.[2] Currently, we understand HMRC are reluctant to share this data on the assumption that the taxpayer would then limit their disclosure to that which they know HMRC have uncovered. For those cases handled by VSTRS, the risk of this happening should be sufficiently low to allow for a more collaborative and transparent approach.

LITRG
10 June 2021

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[1] https://taxaid.org.uk, https://taxvol.org.uk

[2] *LITRG response: OTS Third Party Data Reporting Review (March 2021)*, paragraphs 7.7 and 7.8: https://www.litrg.org.uk/sites/default/files/files/210330-LITRG-response-OTS-Third-Party-Data-Reporting-Review.pdf