



**Low Incomes  
Tax Reform  
Group**

A voice for the unrepresented

## **Preventing and collecting international tax debt 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 better prevent and collect international tax debt. This response should be read in conjunction with our submission to HMRC's discussion document *Helping taxpayers get offshore tax right*, in which we discuss how HMRC can prevent UK-resident taxpayers making non-deliberate errors in relation to offshore income and gains.
- 1.2 We urge HMRC to look at how they can effect these twin objectives by considering different groups of taxpayers separately. This is because the reasons behind international tax debt arising and being difficult to collect are different in each case, and therefore so are the optimum solutions.
- 1.3 More broadly, there are several ways in which the figure for international tax debt might be reduced in addition to considering how to prevent it arising or how it might be collected. These include ensuring the debt is accurate and assessable, and offering support in appealing penalties and removing filing requirements. We also think HMRC should be clearer about how non-Self Assessment debts and refunds contribute to the overall figure for international tax debt, so stakeholders can provide more valuable input.
- 1.4 The P85 form needs an overhaul to ensure that the process for notifying HMRC of leaving the UK is easier and clearer. Not only will this benefit taxpayers, but HMRC will also have better information with which to pursue those who have trailing liabilities in the UK. In particular, further work is required to raise awareness among migrants to the UK who return to their home country and whose Self Assessment records are not closed down properly.

- 1.5 Timely payment of tax will also clearly assist with HMRC's aims in this area, as will the sensible suggestions proposed regarding improving taxpayer communications and increasing the number of ways a taxpayer can pay HMRC from overseas.

## **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 appreciate that international tax debt is essentially UK tax debt which has some international angle to it, but we are not convinced that the types of international tax debt set out in the discussion document have much in common with one another. Tackling debt which accrues to UK resident individuals with overseas assets is a very different problem to debt which arises to individuals based overseas with a UK source liability, or UK resident individuals who have moved overseas without paying the tax owed. We would encourage HMRC to look at these sub-categories of international tax debt separately to tackle them most effectively.
- 3.2 For example, UK-resident taxpayers with tax debt in respect of offshore income and gains is an issue we cover in depth in our parallel response to HMRC's discussion document *Helping taxpayers get their offshore tax right*. We discuss the various ways in which unrepresented taxpayers may end up making a mistake in respect of their offshore tax and especially how they can end up with a tax debt because of the mistaken but genuine belief that their offshore income is not taxable in the UK. There is plenty of scope for HMRC to provide more assistance to this group to prevent non-compliance from happening in the first place, such as better guidance and intelligent use of data provided by overseas jurisdictions.

*Reducing international tax debt*

- 3.3 Once a tax debt has been attributed to a taxpayer, there are two key steps which unrepresented taxpayers often miss or otherwise need assistance with. First, is the debt correct?<sup>1</sup> Because of the general complexity of cross-border tax situations, it is even more likely than in a domestic context that some mistake has been made which means that the debt is overstated. Both HMRC and the taxpayer may make such a mistake. For example, a UK resident taxpayer may 'on paper' have a tax debt relating to offshore income – but the liability may be reduced or eliminated once the income is excluded from UK tax because the remittance basis applies automatically,<sup>2</sup> and/or double taxation relief is applied by means of treaty relief or a unilateral foreign tax credit.
- 3.4 Second, is the debt assessable? The number of years which HMRC can assess can also involve a complex analysis, depending on various factors such as whether the taxpayer has failed to notify liability under s 7 TMA 1970, whether the taxpayer has a reasonable excuse for such a failure, or otherwise the behaviour of the taxpayer leading to the failure. When a taxpayer has submitted an incorrect Self Assessment tax return, a different set of questions comes into play and again the taxpayer's behaviour leading to the error is key to understanding the position. As above, both HMRC and the taxpayer can get this analysis wrong. We do not think that debt which HMRC are out of time to assess should be considered as part of the figure for international tax debt which HMRC are looking to reduce.
- 3.5 It is not clear whether unpaid penalties form part of the figure for international tax debt, but we assume they do. When HMRC assess penalties on a taxpayer, that penalty can generally be appealed if the taxpayer has a reasonable excuse for the failure which led to the penalty. But such an appeal requires action on behalf of the taxpayer, a coherently argued case and a sympathetic HMRC officer making the decision. For the unrepresented taxpayer, the first two of these may be challenging. They may be discouraged from challenging a decision laid down by an imposing government authority, for fear of being labelled as uncooperative. They (and, incidentally, HMRC) may lack the skills to identify the relevant facts from their situation which reveal that the legal test of a reasonable excuse is met. What proportion of the international debt relates to penalties behind which there may be valid grounds for an unclaimed reasonable excuse? If HMRC were to provide more assistance to unrepresented

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<sup>1</sup> TaxAid, a charity which assists taxpayers on a low income who often have tax debt, has provided us with data for a sample of beneficiaries for which it was able to reduce the debt owed from an average £3,516 per taxpayer to an average of £697.

<sup>2</sup> s 809D, ITA 2007

taxpayers in this situation, it would reduce the international tax debt without requiring that HMRC expend resources in collecting it.<sup>1</sup>

- 3.6 A similar point can be made about the case where late-filing penalties have accrued for taxpayers which do not meet HMRC's Self Assessment criteria for the year. These can amount to £1,600 per taxpayer per year. We think there is scope for HMRC to withdraw filing requirements for such taxpayers more proactively, which would cause the associated late-filing penalties to evaporate.
- 3.7 For example, a common scenario is where migrants to the UK return to their home country and their Self Assessment record is not closed down properly. We feel that HMRC could do more specific outreach work with migrants to raise awareness about this issue – for example, publishing guidance in foreign languages. As one taxpayer wrote to us:

*"I started to work on my own in 2012 as a cleaning lady, and a lady [at HMRC] advised me to pay [tax] and so I did until May 2013. I asked her to close [my record] because I returned to [my home country] to take care of my son who had [...] surgery [...]. I know that I signed the request to close the activity [...]. But unfortunately, it did not happen [...] [and when I returned from overseas, I], received a bill and another letter charging a fine of 1600.00 for not having paid those years that was not here. What [do] I do, I work a few hours, 2 hours a day and I cannot afford. Thank you for your attention and help."*

- 3.8 Finally, it is not clear whether the figures for international tax debt are net of unpaid refunds due to taxpayers who, for example, have left the UK without filing a P85 or otherwise may find it difficult to receive a repayment because they either do not have a UK bank account or are unsuccessful in receiving a cheque through overseas post or in cashing such a cheque with their local bank. Also, we note that the figures in paragraph 2.8 do not include outstanding P800 international tax debts<sup>2</sup> (for example, where the taxpayer has left the UK). It would be useful if these figures could be quantified separately so that stakeholders can provide input with a more complete picture of how the figure for international debt is made up and therefore how it might be tackled most effectively.

#### *Departure notifications*

- 3.9 For UK-resident taxpayers leaving the UK, the process for notifying HMRC is unclear and needs improvement. For example, migrants who arrive in the UK no longer complete a P86(Arrival) form (instead their tax record is created only when an RTI submission is made

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<sup>1</sup> We acknowledge HMRC's ongoing work in this area, as part of Commitment 16 of HMRC's recent Powers and Safeguards Evaluation.

<sup>2</sup> Though some of these debts may be a result of employer error, for example PAYE non-compliance.

on their behalf or they are otherwise registered for Self Assessment). It is natural for them to then assume that no notification is required when they leave.

- 3.10 The P85 form is confusing. Its purpose is not clear – it is often considered to be a ‘departure form’ but its function is limited to non-Self Assessment cases where a taxpayer wishes to claim a refund for taxes withheld to date in the departure year.<sup>1</sup> Some taxpayers might complete the form unnecessarily (for example, where there is no refund or where they intend to file a Self Assessment tax return for the year) or otherwise get confused and not fill it in at all.
- 3.11 Furthermore, the paper version of the form is no longer published on GOV.UK.<sup>2</sup> Taxpayers can instead claim online after signing in with a Government Gateway account (this can be challenging to set up for migrants or other groups who struggle to provide the necessary documentation to prove their identity) or by filling in an online form and then printing it off. The online form can be challenging to complete, even if you consider yourself digitally competent. You cannot view the form in its entirety from the outset, so it is difficult to know what information you need to gather in advance of completing it. It also asks questions which taxpayers may not know the answer to (such as the number of days they expect to spend in the UK each year, or their overseas address) which prevents progress through the form. You cannot save the form and return to it later, or print it out and complete it by hand. It is not clear whether you should complete the form before or after departure. If before, you may not know your departure date (and there is no space to indicate whether this date is estimated). We suspect that some taxpayers may attempt to complete the form but give up.
- 3.12 Of course, the P85 is aimed at taxpayers who have a refund – not those who have a debt to HMRC. If you do not have a refund, then you are unlikely to complete the P85 in any case and taxpayers may not think to update their address with HMRC as a separate exercise.
- 3.13 We therefore recommend that the purpose of the P85 is reviewed, the form itself is simplified, the opportunity to fill-in the form on paper is reinstated and awareness of the form is raised. These will all encourage completion rates of the form and accordingly mean that HMRC is better equipped to pursue tax debt while the taxpayer is overseas because they have more accurate information as to their circumstances and whereabouts.
- 3.14 HMRC might also consider introducing an optional checkbox as part of the RTI process when a P45 is issued which flags that the employee is leaving UK employment and the employee has indicated that they will be leaving the UK. This could prompt the taxpayer to be provided with a copy of the P85 form for completion.

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<sup>1</sup> The P85 is also sometimes used as sufficient proof of non-residence on departure for HMRC to issue an NT tax code in cases where the taxpayer continues to be paid under UK PAYE.

<sup>2</sup> <https://www.gov.uk/government/publications/income-tax-leaving-the-uk-getting-your-tax-right-p85>

- 3.15 *Other measures*
- 3.16 Alongside this, HMRC might work with banks and the Student Loans Company with a view to raising awareness of the P85 when a taxpayer informs such organisations that they are leaving the UK.
- 3.17 The general move towards more timely payment of tax will naturally assist in the collection of tax debt from taxpayers who leave the UK with trailing liabilities.<sup>1</sup> Some taxpayers will prefer to ensure that they do not leave the UK with any UK tax debt – and for this group HMRC should surely make it as easy as possible for them to achieve that objective. However, this is difficult when a taxpayer’s final liability cannot be calculated until the end of the tax year. Perhaps provision could be made, as part of the tax administration framework review,<sup>2</sup> for taxpayers to be able to finalise an in-year calculation and make a payment in advance of their departure?
- 3.18 We support the measures proposed in section 4 of the discussion document with a view to improving the collection of international tax debt. As discussed in paragraphs 4.5ff, reliance on overseas post presents a particular challenge. The document does not state how HMRC ensure that correct postage is used when the address is overseas. We understand that, historically, HMRC issued correspondence by second-class post unless an address was specifically flagged as overseas (even if it was obvious that the address was outside the UK) – which understandably led to post not being delivered, or otherwise severely delayed and with additional charges payable by the recipient. We would also be interested in how robust HMRC’s systems and process are in capturing and identifying a non-UK address on a Self Assessment tax return. For all these reasons, we would recommend email as a more efficient and effective way of communicating with overseas taxpayers.
- 3.19 Finally, we also agree with the common-sense measures discussed at paragraph 4.10 (particularly the use of bilingual letters and guidance in foreign languages) and increasing the payment options available to taxpayers outside of the UK. In parallel, we think that HMRC should consider how they might introduce the facility to make repayments into non-UK bank accounts, with appropriate security safeguards.

LITRG  
11 June 2021

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<sup>1</sup> <https://www.gov.uk/government/consultations/call-for-evidence-timely-payment>

<sup>2</sup> <https://www.gov.uk/government/consultations/call-for-evidence-the-tax-administration-framework-supporting-a-21st-century-tax-system>