

Finance (No. 2) Bill 2021 – Clause 122
Financial Institution Notices
Briefing from the Low Incomes Tax Reform Group (LITRG)

1 Executive summary

- 1.1 This measure introduces new powers for HMRC to request information about known taxpayers from financial institutions such as banks, without needing to seek the prior approval of either the taxpayer or a tribunal (as is currently required). It also removes the right of appeal by the financial institution and extends the scope for which the notice may be issued.
- 1.2 The introduction of these powers lacks justification. The evidence shows that the tribunal process is not a significant cause of delays in obtaining information from financial institutions.
- 1.3 Accordingly, we think that Clause 122 should be dropped from the Bill. Rather than removing important taxpayer safeguards, HMRC should consider other ways of streamlining the relevant processes so that they can meet their international obligations.

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.

- 2.3 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 Overview of the measure

- 3.1 Clause 122 of the Bill introduces new powers for HMRC to issue financial institutions with a statutory demand for information, called a Financial Institution Notice (FIN), about a known taxpayer. The FIN differs from existing powers of HMRC to issue third party information notices in three key respects:

- it can be issued without the prior approval of either the taxpayer or a tribunal;
- the financial institution has no right of appeal against the notice; and
- the notice can be issued for the purpose of collecting a tax debt of the taxpayer.

- 3.2 HMRC has justified the introduction of the FIN by stating that the existing statutory safeguards on third party information notices mean that they cannot meet their international obligations to tackle offshore tax avoidance and evasion, in obtaining information on behalf of overseas jurisdictions, on a timely basis. HMRC say it takes them an average of 12 months to obtain information when the international standard is six months. In particular, HMRC considers that the requirement of seeking the approval of a tribunal takes too long.

4 LITRG comments

- 4.1 HMRC state that it is not possible to introduce a different process for domestic cases because of restrictions in UK law and international treaties. As a result, HMRC are introducing powers which will be used in a domestic context even though there is no domestic justification for them.
- 4.2 The House of Lords Economic Affairs Finance Bill Sub-Committee, in their report *New powers for HMRC: fair and proportionate?*, squarely rejected the basis for introducing the new powers after receiving evidence from HMRC that only a small proportion (approximately 12%) of information notices involved international requests.¹
- 4.3 Additionally it was clear from evidence given to the House of Lords – including by HMRC – that the vast majority of the delay in obtaining information in international cases was not

¹ Paragraph 105, *ibid.*

down to the UK courts service, who (HMRC acknowledge) take 4 to 6 weeks to process an application, but rather to delays in obtaining information required from overseas jurisdictions, which HMRC told peers takes over eight months on average.¹

- 4.4 Furthermore, the justification for the removal of the existing tribunal safeguard for international cases has become stale, as it does not take account of the digital transformation of the courts over the past year, which has been prompted by the coronavirus pandemic. This offers the potential to make the tribunal part of the process quicker still.
- 4.5 LITRG wholeheartedly agrees with the Lords' recommendations on this matter, which are repeated here for reference:

The requirement for tribunal approval for a third-party information request to a financial institution should remain;

Financial institutions should have a right of appeal against any request they consider unduly onerous;

The Government should clarify the interaction between the use of Financial Information Notices for debt collection and the direct recovery of debt provisions, and ensure that the safeguards for Financial Information Notices relating to debt are no less stringent than those for direct recovery of debt;

HMRC should review the whole process for dealing with international information requests requiring tribunal approval, working with financial institutions, the tax tribunal and others, to find other means of streamlining the process; and

Given the lack of consultation, HMRC should reconsider the implementation date. In doing so, they should undertake further consultation and communication to ensure that financial institutions are fully apprised of the implications of the measures and have sufficient time to prepare for them. Any revised implementation date should be determined in light of this consultation.²

LITRG
4 May 2021

¹ Paragraph 118, *ibid.*

² Paragraph 122, *ibid.*