

15 May 2020

Dear committee

I would be grateful if you would consider my points below and consider Clause 101 in the light of them.

1. Summary

Clause 101 of the March 2020 budget seeks to introduce the following measure:

<https://www.gov.uk/government/publications/tax-treatment-of-limited-liability-partnerships/tax-treatment-of-limited-liability-partnerships> a section with explicit retrospective legal force relating to LLP's deemed by HMRC as not trading with a view to profit (see para 3.4. below).

The clause sets an unconstitutional precedent for parliament to pass legislation whose rules are applied in an explicitly retrospective manner.

The clause contains the following 2 statements:

“This measure has **no impact on individuals** as it relates to Limited Liability Partnerships.

This measure is **not expected to have any significant economic impacts.**”

The statements above are, at best, disingenuous because:

The legislation will affect all the individuals in certain LLP's where HMRC has incorrectly opened tax enquiries (and there are many of them) under the Taxes Management Act into them under the partnership rules as opposed to the rules relating to LLP's which are, of course, companies registered at Companies House. At a stroke HMRC seeks to cover its past inadequacies using retrospective legislation and this should be unacceptable to Parliament.

As the LLP's are **comprised of individuals**, there will be a significant effect on them since the proposed legislation will put HMRC in a position to continue with illegal enquiries and potentially retain millions of pounds of disputed tax relief. There will therefore be **a significant economic impact on those members of affected LLP's**. There will also be a significant economic impact on the value of taxes raised by HMRC.

2. Background

1. In 1980 Michael Heseltine was tasked by Mrs Thatcher to deal with the social conditions that had caused widespread rioting in Toxteth, Liverpool and St Pauls, Bristol that Summer. He identified unemployment as an underlying driver to the disorder. The solution was for the exchequer to encourage private investment in building business premises in circumscribed 'enterprise zones', designated by statute, the encouragement being 'tax breaks'. The reasoning was that private enterprise would be more attuned to delivering successful projects than a one size fits all direct government intervention. There was always the intention that government money would be used for the regeneration, the tax break mechanism made it more arm's length.
2. The Enterprise Zones lasted for 30 years to 2011 and were so successful that they were replaced with Business Property Renovation Allowance (BPRA) legislation, a new tax incentive to renovate derelict business property in poor areas and return the property to a business use.
3. Commercial property renovation in deprived and run-down areas is a high-risk activity as the cost often exceeds the commercial value of the property when the work is complete. The BPRA tax relief makes it viable. There is no monetary gain to the investors in any of the first several years after renovating the building. A sale is only allowable under the tax regulations after several years of active use of the building.
4. These BPRA tax reliefs are not 'get rich quick' accountancy smoke and mirrors tax avoidance schemes.
5. The visible transformation of areas such as central Birmingham is due in a large part to the renovations undertaken by the private sector, projects made viable by the BPRA tax allowances. These transformations were the express intention of successive governments.

3. BPRA interaction with HMRC

1. Under tax avoidance legislation introduced in 2004 the renovation projects possibly fall under, declaration of tax avoidance schemes (DOTAS), this was a register that had no sanctions attached to it. The LLP's willingly, and voluntarily registered themselves with HMRC despite not fully meeting the criteria to do so. HMRC suggested they register 'to be on the safe side' even though they agreed the schemes did not appear to fully meet the requirements.

2. As austerity became more stringent HMRC were given new powers in 2014 and were tasked to recover 'aggressively avoided' tax. Due to the renovation projects being on the avoidance register; their affairs being transparent for tax purposes, BPRA claims were investigated first.
3. HMRC have issued various notices under their new powers, such as Accelerated Payment Notices (APN's) and Partner Payment Notices (PPN's). These demand the return of tax reliefs previously granted to the individuals who joined LLP's undertaking BPRA related projects.
4. HMRC have arbitrarily designated these LLP's as not having been in business with a view to profit hence the wording of clause 101. HMRC's view of not trading with a view to profit seems to be determined by whether the partnership has made an actual profit i.e. with the benefit of hindsight as opposed to the view (intention) at the time the LLP was formed. As the LLP's founding purpose is to provide equity ,BORROW FINANCE, acquire and renovate property, AND THEN RENT OUT business premises the clear intention was to create a business with a view to making a profit. That LLP's did this during what became the most severe recession since the 1930's leads to a conclusion that it is unsurprising that sources of finance and rental profits have sometimes been hard to come by!
5. Nevertheless, buildings have been renovated and are readily visible, many have been successfully let albeit at lower rents than originally planned, due to adverse trading conditions. HMRC chooses to ignore all this in its pursuit of 'aggressively avoided tax'.
6. The PPN's are **interim demands** issued under tax avoidance regulations, which give HMRC the latitude to demand refund of reliefs on **suspicion** that the quantum of relief is incorrect according to HMRC's judgement.
7. There is **no right of appeal** against the PPN until that individual's tax enquiry is closed when the precise details of HMRC's views become stated to the taxpayer.
8. There is **no timetable** in the anti-avoidance legislation to guide HMRC in closing the enquiries.
9. These notices have already been in force for several years and there appears to be no alacrity from HMRC in proceeding with its enquiries. **The effect is to make temporary demands permanent**, which was not the intention behind the legislation when it was introduced in FA 2014.

4. Legal Process and HMRC/BPRA

1. As noted above, some of the LLPs affected have challenged HMRC's enquiries, on the basis that HMRC opened its enquiries under an incorrect section of the Taxes Management Act.
The section used by HMRC applies only to ordinary partnerships, not corporate bodies such as LLP's.

2. In 2019, a First Tier Tax tribunal found in favour of the taxpayer. In the cases of **INVERCLYDE PROPERTY RENOVATION LLP and CLACKMANNANSHIRE REGENERATION LLP -and- THE COMMISSIONERS FOR HER MAJESTY'S REVENUE AND CUSTOMS) on 29 and 30 April 2019.**

HMRC grudgingly offered to repay PPN's to individual members of the said LLP's but did not accept they set a precedent for other LLP's and appealed against the FTT decisions.

3. An Upper Tier Tribunal sat on 27 and 28 April 2020, to consider HMRC's appeals in the same cases. Its decision is awaited. There was no substantive change in HMRC's arguments from the previous hearings in the FTT.
4. Royal Assent to this clause of the Finance Bill is close, but the legal processes will take far longer to run their course. Clause 101 will effectively stop a legal process that HMRC is currently losing.
5. HMRC has further courses of action which it could potentially use to defeat the taxpayer without resorting to retrospective legislation.
6. The clear intention of HMRC is to prevent the many other BPRA LLP's not involved in this legal case from using it as a precedent. The explicitly retrospective nature of this clause would codify HMRC's enquiries as correctly opened, making the decisions in current legal cases irrelevant as a precedent. There can be no objection to changes being made operative from a date going forward but the very notion of retrospection is objectionable and should be rejected. After all, the Government would not put up petrol duty retrospectively and try and collect it or change the speed limit on the motorway retrospectively and seek to collect the fines as a result of its actions. The taxpayer deserves the right to make its Tax Returns to HMRC on the declared basis of the law and not HMRC's view of what it should have been.

5. Conclusions

I believe that HMRC are asking Parliament to legitimise their past (incorrect) actions by enacting a law that works explicitly in retrospect to HMRC's favour. This clause uses Parliament to circumvent the power/decisions of the judiciary.

This is a new, and sinister, development in the conduct of the UK legislative process; making it more akin to the behaviour of a totalitarian state where a regime can legitimise in retrospect any action that it chooses.

Eliminating the retrospective stipulation of the wording in clause 101 would make the measure fair in the way that it purports to be.

Yours sincerely

A handwritten signature in black ink, appearing to read 'Graham Walker', with a long horizontal flourish underneath.

Dr Graham Walker

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