

Written evidence submitted by the Chartered Institute of Taxation (FB22)

Representation to Finance Bill 2020 Public Bill Committee

Clause 97 and Schedule 12

Joint and several liability of company directors etc

Executive Summary

This is a reasonable measure to tackle tax abuse using company insolvencies, but we are concerned it is too broad and could catch people beyond those acting abusively.

1. Overview

- 1.1 Clause 97 & Sch 12 introduce a new power, effective from Royal Assent, for HMRC to issue notices to make company directors, shadow directors and participators, jointly and severally liable for the company's tax liabilities in circumstances where the liability arises from tax avoidance, tax evasion, repeated insolvency or a penalty for facilitating avoidance or evasion, and the company commences insolvency proceedings, or is expected to do so, meaning some or all of the tax will not be paid.
- 1.2 We understand that HMRC will be publishing guidance shortly to explain how the clause will operate.

2. Comments

- 2.1 During the consultation process, we expressed concerns¹ about the breadth of the legislation, as then drafted, since we considered that it could apply more widely than to genuine phoenixism and tax avoidance and evasion arrangements using insolvency. Some of these concerns have been addressed, but others have not. For example, no linkage is apparently required in the draft legislation between the liquidation event and the evasion or avoidance arrangements in order for joint and several liability to apply. We think the legislation is not intended to apply if it can be demonstrated that the insolvency is not caused by the tax evasion or avoidance arrangement - but on a literal reading of the draft legislation it would seem that it would apply.
- 2.2 HMRC have said that they will use guidance to explain when the measure will apply and when it will not to try to reduce uncertainty over its application. This is helpful, but in our view is not a substitute for more clearly targeted legislation which we would have preferred.
- 2.3 We have specific concerns about the inclusion of participators². The definition of participator in Section 454 CTA 2010 is being used for the purposes of this legislation. This appears to be

¹ See <https://www.tax.org.uk/sites/default/files/190822-Tax-abuse-using-company-insolvencies-draft-legislation-CIOT-comments.pdf> 22 August 2019

² See paragraph 9 *ibid*

much too broad for the legislative intention since it will include an employee shareholder and a loan creditor.

- 2.4 We understand that HMRC's guidance will provide that when a person falls within this legislation solely by virtue of being a participator in the company, HMRC will not issue a notice to that person "where they are satisfied the person acted in good faith, having no influence over the company's affairs." It is our view that, to provide greater certainty, the tightening of the definition of participator should be in the legislation itself, not just in guidance. The requirement for the participator to have "no influence over the company's affairs" also appears to be quite restrictive. It might in practice be difficult to prove that a person, even an employee shareholder or loan creditor, has no influence at all over a company's affairs.

3. The Chartered Institute of Taxation

- 3.1. The Chartered Institute of Taxation (CIOT) is the leading professional body in the United Kingdom concerned solely with taxation. The CIOT is an educational charity, promoting education and study of the administration and practice of taxation. One of our key aims is to work for a better, more efficient, tax system for all affected by it – taxpayers, their advisers and the authorities. The CIOT's work covers all aspects of taxation, including direct and indirect taxes and duties. Through our Low Incomes Tax Reform Group (LITRG), the CIOT has a particular focus on improving the tax system, including tax credits and benefits, for the unrepresented taxpayer.
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- 3.3. The CIOT's 19,000 members have the practising title of 'Chartered Tax Adviser' and the designatory letters 'CTA', to represent the leading tax qualification.

The Chartered Institute of Taxation

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