

Written evidence submitted by the Chartered Institute of Taxation (FB23)

Representation to Finance Bill 2020 Public Bill Committee

Clauses 100-101

Tax Administration and Compliance

Executive Summary

Clauses 100 and 101 both legislate to confirm in law things that were already generally believed to be the case in relation to HMRC's compliance powers, but nevertheless raise questions regarding the Government's readiness to legislate retrospectively to cover an actual or potential failure to apply legislation correctly in the first instance. This stands in contrast to the non-retrospective approach to clarifications around taxpayer benefits and protections such as in relation to the pension contribution annual allowance changes (see clause 21) and to top slicing relief on life insurance gains (see clause 36).

Clause 100 - HMRC: exercise of officer functions

1. Overview

- 1.1. Clause 100 confirms an announcement by made by written ministerial statement (WMS) on 31 October 2019 that the government would legislate to confirm that HMRC may use automated processes to issue taxpayers with notices to file tax returns and penalty notices, rather than these processes needing to be carried out by an individual HMRC officer.
- 1.2. This measure will apply prospectively and retrospectively to put beyond doubt that the rules work as designed and intended.
- 1.3. There was no consultation on this measure prior to the WMS on 31 October 2019.
- 1.4. The measure was considered necessary in the light of ongoing litigation challenging the validity of HMRC's practices, which could have put significant amounts of revenue at risk.

2. Comments

- 2.1 At the time of the WMS we recognised the merit in seeking to maintain the 'status quo' and to put beyond doubt what most people's (HMRC and taxpayers) understanding was of the law. We also recognised the importance of preventing opportunities to reopen settled cases to seek repayment of tax, interest and penalties; although we were concerned that blanket retrospection could prejudice a class of taxpayer - namely, those taxpayers who had a live challenge against the validity of HMRC's actions, which commenced prior to the WMS.

- 2.2 As it transpired the Upper Tribunal found, in a decision¹ published on 30 December 2019, that HMRC's practices were lawful and this legislation does, therefore, maintain the status quo.
- 2.3 However, there remains a sense that in limited circumstances the measure could have gone beyond that which was fair, and again could have been a further example of history being rewritten by HMRC to correct otherwise flawed administrative processes – a route that is clearly not open to taxpayers.

Clause 101 - Returns relating to LLP not carrying on business etc with view to profit

3. Overview

- 3.1. Clause 101 makes provision about tax returns in relation to Limited Liability Partnerships (LLPs) that are not carrying on a trade, profession or business with a view to profit. It is intended to put beyond doubt that LLPs should be treated as general partnerships for the purposes of the Income Tax rules. This change will not affect the majority of LLPs; only those LLPs who do not trade with a view to a profit.
- 3.2. This measure takes immediate effect and applies prospectively and retrospectively to put beyond doubt that the rules work as designed and intended.
- 3.3. There was no prior consultation on this measure. We believe that the risk to the Exchequer is the reason that is likely to have prevented the Government from consulting in accordance with its tax consultation framework.

4. Comments

- 4.1 Although not mentioned in the impact note we believe that this provision has been enacted following the decision of the First-tier Tribunal in 2019 in the case of *Inverclyde Property Renovation LLP and Clackmannanshire Regeneration LLP v HMRC* [2019] UKFTT 0408 (TC)² that HMRC had no power to open enquiries into LLPs under s 12AC Taxes Management Act 1970 (notice of enquiry into a partnership return) because they should have been opened under paragraph 24 Schedule 18 Finance Act 1998 (enquiry into company tax return)³.
- 4.2 Again, although not mentioned in the impact assessment, we believe that if retrospective and prospective action had not been taken, a large amount of tax would have been at risk (for example, from payments already made by affected LLPs having to be repaid, and open enquiries not being valid and it being too late for HMRC to raise discovery assessments).
- 4.3 Until the *Inverclyde* case, most people (HMRC and taxpayers) had believed the tax provisions as they relate to LLPs (which have been in place since the creation of LLPs in 2001) were operating as intended.

¹ *The Commissioners for HM Revenue and Customs v Nigel Rogers and Craig Shaw* [2019] UKUT 0406 (TCC) https://assets.publishing.service.gov.uk/media/5e09d95ce5274a33f074ff3b/HMRC_v_Rogers_and_Shaw.pdf

² <http://financeandtax.decisions.tribunals.gov.uk/judgmentfiles/j11186/TC07223.pdf>

³ The decision of the First-tier Tribunal was recently overturned on appeal by the Upper Tribunal - see [The Commissioners for HM Revenue and Customs v Inverclyde Property Renovation LLP and Clackmannanshire Regeneration LLP: \[2020\] UKUT 0161 \(TCC\)](#). Therefore this legislation does for the time being maintain the status quo, but noting that the case may still be appealed further.

4.4 It is arguable that HMRC should not be asking Parliament to legislate retrospectively simply because it turns out at a much later date that HMRC have not been applying the legislation correctly from its inception. In other words, this is another example of history being rewritten by HMRC to correct otherwise flawed administrative processes. Added to this HMRC are in a uniquely powerful position compared to taxpayers in being able to do that.

5. The Chartered Institute of Taxation

5.1. 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.

5.2. The CIOT draws on our members' experience in private practice, commerce and industry, government and academia to improve tax administration and propose and explain how tax policy objectives can most effectively be achieved. We also link to, and draw on, similar leading professional tax bodies in other countries. The CIOT's comments and recommendations on tax issues are made in line with our charitable objectives: we are politically neutral in our work.

5.3. 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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