Extension of Offshore Time Limits

Management of taxes

01 July 2018

CIOT, LITRG and ATT have all criticised the government's proposal in its consultation document to introduce legislation to implement a new tax assessment time limit of 12 years in cases involving offshore matters: the case for such a large and broadly applied increase in the time limit has not been made.

At the Autumn Budget 2017, the government announced that the assessment time limit for cases of mistakes or non-deliberate offshore tax non-compliance will be increased to at least 12 years after the end of the relevant tax year or relevant period. Where there is deliberate non-compliant behaviour, the current time limit of 20 years will remain, whether offshore matters are involved or not. HMRC say the additional time is needed to address situations where the current assessment time limits of four and six years are not sufficient to establish the facts and determine and assess the amount of tax due.

The CIOT supports the government's efforts to tackle offshore tax evasion and agrees that HMRC should have appropriate powers and resources for combatting and investigating it. However, we have significant concerns about the plan to extend offshore time limits in the way proposed. In summary, these are:

1. **Consultation should have started earlier**: the consultation started at Stage 2 of the consultation process ('Determining the best option and developing a framework for implementation including detailed policy design') not at Stage 1 ('Setting out objectives and identifying options'), with the decision to extend certain offshore time limits for income tax, capital gains tax and inheritance tax to 12 years for both failure to take reasonable care and where reasonable care has been taken already having been made. In our view a better policy outcome would have been achieved if the consultation process had started earlier, the kind of approach we argued for strongly in the Better Budget report – see https://tinyurl.com/yby2tl7c. This would have enabled stakeholders to engage

on a range of possibly better targeted options at a much earlier stage.

2. **Policy making should be evidence-based**: the argument that HMRC are so much in the dark about offshore matters that they need a major extension in offshore time limits per se made more sense in the world as it was decades ago, when knowing anything may indeed have been the tax authorities' key challenge; this is not the case now. HMRC now have access to a huge amount of taxpayer data through the US' Foreign Account Tax Compliance Act (FATCA) and automatic exchange of information agreements with other jurisdictions, plus powerful internal data analysis systems, so the key challenge now is likely to be a data analytical one. We ask that HMRC publish the analysis they have carried out on which they have based their decision to extend time limits in this way. This would also help in deciding whether the measure should be extended to other taxes, which the consultation is also asking for views on.
3. **Certainty**: in any tax system, there is a balance to be struck between the public interest in collecting the right amount of tax and the right of taxpayers to finality in their tax position after a reasonable period of time. A 12 year time limit that can apply even where a taxpayer has taken reasonable care does not strike the correct balance. If, for whatever reason, HMRC are not able to obtain enough information to make an assessment within existing time limits in a particular case, we suggest that consideration should be given to establishing a process which enables HMRC within the existing time limits to issue a notice or similar to inform the taxpayer that an existing investigation would be subject to extended time limits. The Tribunal could have a role in overseeing this process.
4. **Conflation of time limits for both failures to take reasonable care and accidental errors**: there is no evidence presented in the consultation to support the unprecedented merging of normal assessing time limits and failure to take reasonable care. Currently for assessing beyond four years HMRC must demonstrate that the taxpayer failed to take reasonable care or had acted deliberately. Merging offshore time limits risks setting a dangerous precedent and could potentially undermine and devalue compliant behaviour.
5. **Equality and fairness**: if the enquiry limit is extended to 12 years in the way proposed, the government should consider whether/how the taxpayer's ability to make a claim should also be extended. In the context of corporation tax and multinational companies, we anticipate that the measure is likely to cause significant problems for companies where mutual agreement procedures (MAPs) cannot be revisited. This is unfair.

6. **Record keeping**: this measure will have a significant impact on record keeping obligations. It will mean that taxpayers will have to keep records of offshore matters for 12 years against the risk that they have, entirely accidentally, not paid the right UK tax despite taking reasonable care. This is a big increase on the current length of time that legislation dictates records must be kept for which will come with a significant cost and will not be attractive from an international competitiveness perspective.
7. **Exchange of information agreements**: if the offshore jurisdiction is party to an automatic exchange of information agreement with the UK, there should not be a need for the extended 12 year time limit for these jurisdictions. Indeed, it is perverse that this measure is being proposed at the same time that more data is flowing into HMRC from overseas jurisdictions than ever before and HMRC have better systems to analyse the data than ever before. We suggest therefore that consideration might be given to applying the extended time limits only to offshore matters involving those jurisdictions which attract a Category 3 territory classification (those that have not agreed to share any tax information with the UK). This would be more proportionate.
8. **Other taxes**: we do not think that the measure should be extended to other taxes such as corporation tax. In our view, extending offshore time limits to corporation tax is unnecessary given the number of measures which already exist to address tax risks in cross border transactions involving corporates, such as transfer pricing and the controlled foreign company rules. Furthermore, it risks adversely affecting the government's aim of having a UK tax system that encourages international businesses to come and invest here, and does so disproportionately to the very modest additional revenue which is anticipated from this measure.

In its response, ATT identified many of the same points as CIOT and specifically endorsed the first two of CIOT's points (the consultation should have started at an earlier stage and policy making should be evidence-based). In addition, it developed in detail the requirement for a statutory notice whenever HMRC intended to use the extended time period with the safeguard of a right of appeal to the tribunal and the usual statutory review process.

LITRG's response also highlighted the unfairness of the proposals, focussing on the impact of threatening letters from HMRC to unrepresented taxpayers where the tax unpaid is often trivial. It called for measures to restrict the scope of the new rules

where the loss to the Exchequer is immaterial and for retrospective claims for reliefs to be specifically allowed to mitigate the taxes due. LITRG adds that HMRC should focus on providing guidance and assistance to help low-income groups – pensioners and migrants in particular – understand and comply with their UK tax liabilities relating to offshore investments, rather than denying them the closure of normal time limits.

The CIOT response can be found at on the CIOT website.

ATT's response can be found on the ATT website.

LITRG's response can be found on the LITRG website.