House of Lords Finance Bill Sub-Committee: call for evidence on HMRC powers and Making Tax Digital

General Features **Management of taxes**

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The ATT, CIOT and LITRG have responded to a call for evidence by the House of Lords Economic Affairs Finance Bill Sub-Committee on HMRC powers and Making Tax Digital

The House of Lords Finance Bill Sub-Committee (the 'Sub-Committee') have announced that, in scrutinising the draft Finance Bill, they will examine developments in the balance of powers and safeguards between HMRC and the taxpayer, and also progress on the Making Tax Digital (MTD) programme.

To assist the Sub-Committee a call for evidence was launched on 12 September 2018. This posed a number of questions covering areas such as the design, principle and operation of HMRC powers, key concerns around MTD's progress and the level of preparedness ahead of its introduction for VAT next April.

The ATT response

The ATT submission considers specific provisions in the draft Finance Bill and how these may affect the balance of powers and safeguards, including:

- The 'points based' system for late filing penalties in Schedule 11: the ATT is concerned that HMRC will have an excessive length of time to assess a penalty once the required number of points have been amassed.
- The penalties for failure to pay tax in Schedule 13: the ATT's main concern is the potentially harsh consequences of a taxpayer entering into a Time to Pay Agreement but then failing to make an instalment payment on time.

- The increased 12-year time limits for non-deliberate behaviour relating to offshore matters in Clauses 33 and 34: the ATT's concerns are that this proposal erodes the differentiation between taking reasonable care and not, and accords a privileged status to information which HMRC receive by automatic exchange compared with taxpayer provided information.

On MTD for VAT, the ATT's main concern is the relatively short amount of time remaining between now and April 2019, and that many businesses, and HMRC, may not be adequately prepared by then. In particular, the slippage in the timetable for HMRC's pilot means that this will have an extremely limited timescale, which could result in issues with HMRC's systems and third party software not being uncovered until MTD is in effect next year.

The ATT are also concerned that many businesses, particularly those who do not use an agent to prepare their VAT returns, remain unaware of the MTD requirements.

To address these concerns, the ATT believe that HMRC should commit to applying a light touch with respect to late filing penalties during the first period of MTD and consider keeping the existing online VAT filing portal open alongside the MTD systems for a period after April 2019.

The CIOT response

The CIOT provided both written and oral evidence to the call for evidence. We noted that HMRC's powers permit them to carry out a broad range of actions and activities, such as the ability to undertake compliance checks, obtain and provide information and documents, make decisions, raise assessments and apply interest and penalties. The exercise of these powers can take many forms. Notwithstanding the major review of HMRC powers which ran from 2005 to 2012, the pace of change in recent years has been relentless, with numerous additional (and often piecemeal) measures in each Finance Act from 2013 to the current Bill, as well as in Part 3 of the Criminal Finances Act 2017. We consider that HMRC has sufficient powers, and the effect of the recent measures should be reviewed before any further changes are contemplated.

We consider that HMRC's powers should (broadly speaking) encourage and support the compliant, discourage and provide a compliance response to the non-compliant, and be clearly set out; recognising the impact of factors such as complexity, level of

taxpayer sophistication, use of an adviser etc.

We recommended an overhaul of the Taxes Management Act 1970, which has not kept pace with HMRC's processes and practice. In particular, the transition to digital means that HMRC's powers need to reflect this fundamental change.

We expressed concern at the increasing number of measures which remove the differentiation between taxpayer behaviour, and re-iterated our concerns over the proposal to increase the time limit for offshore matters to twelve years. We further pointed out a tendency for HMRC to allege a category of behaviour worse than it actually is, and reflected that the relationship between HMRC and taxpayers / their advisers seems to have been eroded.

In relation to MTD for VAT, we echoed the ATT's concerns over the timescale for implementation. We highlighted the lack of adequate early consultation around MTD for VAT, and the numerous issues which have come to light in the subsequent engagement process, but which could easily have been identified before the commitment to 1 April 2019 was made.

We remain concerned over the commencement of MTD for VAT being within just days of the UK leaving the EU. We are also still unconvinced about the 'business case' for MTD for VAT; with the costs to businesses likely to be significantly higher than those estimated by HMRC, yet with little evidence that it will produce the expected reductions in the tax gap. We also emphasised our concern over the proposed removal of the VAT Repayment Supplement, and the lack of repayment interest for periods in which HMRC are undertaking enquiries.

LITRG's response

LITRG's submission acknowledges that HMRC must have the power to administer and enforce the tax system effectively, but that the powers need to be proportionate to be effective and that there need to be accessible safeguards and independent oversight.

LITRG believe the new proposals in clauses 33-34 of Finance Bill (and those relating to HMRC's civil information powers which are the subject of a separate consultation) are starting to tip the balance of power much more in favour of HMRC. LITRG strongly recommend that further safeguards are incorporated into the legislation relating to the extension of the time limit for assessing additional tax in offshore

cases to 12 years, and specifically recommend a de minimis limit to prevent the collection of immaterial amounts of tax, often from elderly low income taxpayers who have made an innocent error.

With regard to MTD for VAT, LITRG highlight five key areas that remain of concern to them, namely

- timetable for implementation;
- development and testing of software;
- the apparently slow progress of the pilots;
- lack of clarity in relation to support for those who are digitally excluded or who require digital assistance in some form; and
- HMRCs communications strategy to overcome the lack of awareness amongst businesses.

LITRG broadly support the new 'points based' penalty system introduced by schedules 11-13 Finance Bill 2018, but they call for some amendments including the reduction in the time HMRC have to assess a penalty once the requisite number of penalty points have accrued (which is currently two years), and an obligation to cancel any penalties if a tax return is withdrawn. LITRG do have some reservations about the potential complexity of the new scheme as penalty points are to be recorded separately for different taxes and so it may become rather confusing to keep track of penalty points incurred where this applies.

More information on the call for evidence, including all of the submissions received, can be found on the Sub-Committee website. The session at which CIOT provided oral evidence can be viewed on Parliamentary TV.