Extension of Offshore Time Limits: Clauses 79 and 80

Management of taxes

01 January 2019

The ATT, CIOT and LITRG continue to have concerns over legislation which introduces a new tax assessment time limit of 12 years in cases involving offshore matters and transfers.

Clauses 79 and 80 of the Finance Bill increase the assessment time limits for income tax, capital gains tax and inheritance tax to 12 years where there is non-deliberate offshore tax non-compliance (the ‘extended time limits’). Where there is deliberate non-compliant behaviour, the current time limit of 20 years will remain, whether offshore matters are involved or not.

The ATT, CIOT and LITRG continue to have concerns about the extended time limits, in particular:

- Unlike the normal four-year and six-year time limits, the extended time limits make no distinction between taxpayers who have taken reasonable care to comply with their tax obligations and those who have failed to take reasonable care. This does not strike the right balance between the public interest in collecting the correct amount of tax due, even where this relates to many years ago, and the right of taxpayers to finality in their tax position after a reasonable amount of time.
- Consultation on the extended time limits 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 the time limits to 12 years already having been made.
- The argument put forward by HMRC to justify such a major extension in time limits – that it can take longer to establish the facts in cases involving offshore

matters as it can be more difficult to access the information needed to understand the transactions – does not make sense in today's world where vast amounts of data are available to HMRC via Exchange of information agreements.

- The extended time limits may disproportionately affect elderly people and migrants to the UK, who are each more likely to have sources of offshore income. LITRG has raised particular concerns about the impact of threatening letters from HMRC causing unnecessary distress, particularly when the taxpayer is vulnerable. In many cases, the amounts involved are trivial or even nil once double tax relief is applied, so LITRG has argued for a de minimis amount of lost tax for the extended time limits to apply.
- A restriction on the application of the extended time limits where information is received from an overseas tax authority, and HMRC could reasonably have been expected to become aware of the lost tax and raise an assessment within normal time limits, does not extend to equivalent information provided by the taxpayer themselves. Furthermore, it is unclear who has the burden of proof for demonstrating that HMRC could not meet this test.
- There are no changes being proposed to existing statutory record keeping rules, so it is not clear what happens if a taxpayer who becomes subject to extended time limits has legitimately destroyed relevant documents.
- Finally, given the new rules potentially impact tax years as far back as 2013/14, they cannot be argued not to have retrospective impact.

The ATT, CIOT and LITRG addressed these concerns in their responses to the House of Lords Economic Affairs Finance Bill Sub-Committee inquiry into the draft Finance Bill. Both the LITRG and ATT submissions were referenced in a letter from the Chair of that Sub-Committee to the Chancellor on 6 November 2018 (see tinyurl.com/y8mne49b), which made the following conclusions in respect of the extended time limits:

> *'We see no logic in the application of this exclusion to situations where information has been supplied by overseas tax authorities, but not where the same information has been supplied by the taxpayer.'*
>
> *'On the whole, this measure is unnecessary and undesirable. We recommend that it is withdrawn from the Bill. The Government should start a fresh dialogue with representatives of tax professionals to consider how offshore tax matters can be managed more efficiently.'*

The ATT, CIOT and LITRG have also made submissions setting out their concerns on the extended time limits to the Public Bill Committee to assist with their scrutiny of the Finance Bill.

The CIOT submissions can be found on the CIOT website.

The ATT submissions can be found on the ATT website.

The LITRG submissions can be found on the LITRG website.