HMRC Powers and Safeguards Evaluation Forum

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Back in July 2019, the financial secretary to the Treasury (FST) committed HMRC to undertaking an evaluation of the implementation of their additional statutory powers introduced since 2012 against the same powers and safeguards principles which underpinned the 2005 to 2012 powers review. In order to obtain external input, HMRC has set up the Powers and Customer Safeguards Implementation Evaluation Forum on which CIOT, LITRG and ATT are represented and which had its inaugural meeting at the end of October 2019.

Following a delay due to the General Election in December, the forum met again in January 2020 and identified eight specific post-2012 powers for detailed consideration. These eight powers, together with a list of all the relevant powers which are in scope for the review, are shown on both the CIOT (www.tax.org.uk/powers_safeguards) and ATT (www.att.org.uk/powers_safeguards) websites. Some additional information is included on the LITRG website (www.litrg.org.uk/certain_powers).

During February, CIOT and ATT asked members to share their experiences of how HMRC has implemented these powers by completing a questionnaire provided by HMRC. We did not receive many responses (fewer than 20), which was not entirely unexpected. We believe that this was predominantly because a lot of the powers in scope operate in relatively specialist areas of the tax code (such as offshore tax non-compliance and the general anti-abuse rule) and others are still in the very early days of being implemented by HMRC (such as the corporate criminal offence), so experience of them being used is inevitably limited. The timetable to collect responses from members was also very short.

At the time of writing, sessions of the forum are due to take place during March involving HMRC and experts from practice, including CIOT and ATT members and LITRG representatives, in order to take a closer look at the eight powers (mentioned above) and the feedback received on those particular powers.

The highest number of responses the CIOT and ATT received were about the requirement to correct (RTC) past offshore tax non-compliance (F(No 2)A 2017 Sch 18). In particular, the following concerns were raised:

- The publicity about the RTC failed to reach many taxpayers who as a consequence failed to come forward before the deadline of 30 September 2018.
- The level of the failure to correct (FTC) penalty is disproportionate, particularly as the cases seen have involved people who have failed to declare offshore income through ignorance of the correct tax treatment, rather than those who were deliberately trying to evade tax.
- HMRC's decision to apply a minimum of 150% FTC penalty in 'prompted' disclosure cases is arbitrary and unfair.
- HMRC are adopting an inflexible and inconsistent approach to reasonable excuse arguments put forward by taxpayers.
- The punitive nature of the FTC penalty risks discourage people to come forward and disclose in the future.

For taxpayers who were aware of the RTC and sought advice and contacted HMRC in time, the feedback we received was that the process was reasonably straightforward, and HMRC's guidance was practical and relatively clear on what needed to be done, and by when. However, due to the rushed implementation of the power, which was caused mainly by the unexpected general election in 2017 and so was outside of HMRC's control, this meant that insufficient consideration was given to the different situations taxpayers might find themselves in and a consistent approach/treatment was not adopted across HMRC.

We also received a few responses about accelerated payment notices, in particular around the governance process, and follower notices, especially how HMRC are applying the 50% penalty.

Given the limitations of the review, we are concerned that it is simply too early to draw any firm conclusions into how HMRC are implementing their post-2012 powers. For this reason, we think a further review should be conducted in a few years' time.

LITRG has also submitted evidence which discusses the impact on low-income taxpayers of HMRC's powers in relation to the collection of self-assessment debt (either by coding adjustment or by direct recovery from a taxpayer's bank account) – including the inappropriate use of threats to use certain powers. The submission also focuses on the impact of RTC on migrant taxpayers with small overseas pensions who were unaware of their obligations under RTC or even that the income is taxable in the UK, especially in cases where overseas tax had been deducted at source.

LITRG calls for HMRC to issue clearer guidance around the concept of reasonable excuse, with particular reference to taxpayers who understood that their overseas income was only taxable overseas and who were not aware of their obligations under RTC because of an insufficient communication effort by HMRC. It also points out the inequity of those taxpayers whom HMRC had approached prior to 30 September 2018 and who were therefore able to make a disclosure before the RTC deadline versus those who were first approached after 30 September 2018 and were therefore faced with minimum penalties of 150% of the unpaid tax.

The forum is due to publish its report at the end of May 2020.

Data and Transparency – a call for evidence

As a separate matter, forum members have been asked to identify:

- how understanding of HMRC's use of its powers and the operation of taxpayer safeguards might be improved by the publication of data which is currently not in the public domain; and
- what information it would be most important for HMRC to publish to improve trust and transparency in relation to powers and safeguards.

Unlike the evaluation referred to above, this request relates to all current powers and safeguards, regardless of their date of origin. More information can be found on the CIOT website (https://tinyurl.com/ufuh27p). Please email any comments on this topic by Friday 10 April to technical@ciot.org.uk or atttechnical@att.org.uk using the subject heading Data and Transparency.