House of Lords Finance Bill Sub-Committee inquiry into the draft Finance Bill 2020-21

General Features | Large Corporate | Management of taxes

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The House of Lords commenced its inquiry into the draft Finance Bill 2020-21, concentrating on the measures relating to HMRC's powers and tax administration matters. The CIOT and LITRG provided written and oral evidence to the inquiry. The ATT provided oral evidence.

On 11 September, the House of Lords Finance Bill Sub-Committee opened its inquiry into the draft Finance Bill 2020-21. The

Sub-Committee undertakes a similar inquiry each year, and this year is focusing its attention on those measures which provide HMRC with additional powers, or place additional obligations on taxpayers. The Sub-Committee's inquiry focuses on three areas of the draft Bill:

- new proposals for tackling promoters and enablers of tax avoidance schemes;
- new tax checks on licence renewal applications; and
- amendments to HMRC's civil information powers.

The Sub-Committee also invited views on the government's proposals on new notification requirements for uncertain tax treatments, and on the use of retrospective provisions in other areas of the draft Bill. A high-level summary of our comments on the three main areas is outlined below.

New proposals for tackling promoters and enablers of tax avoidance schemes

The CIOT and ATT cautiously welcomed the proposals, agreeing that the government is right to be taking a robust approach to uncooperative and unscrupulous

promoters who continue to devise, promote or sell tax avoidance schemes. However, we raised concerns around the lack of a right of appeal against the new information notice which forms part of the changes to DOTAS, and inclusion of ‘DAC 6’ within the definition of ‘defeated arrangements’ in the POTAS regime.

In the oral evidence session, LITRG added further comments on HMRC’s wider efforts to tackle tax avoidance through the use of disguised remuneration schemes at the lower end of the labour market. It highlighted the need for HMRC to focus their activity more directly at PAYE-avoidant employment intermediaries rather than individual taxpayers or promoters and enablers.

New tax checks on licence renewal applications

The CIOT, ATT and LITRG all commented on these proposals. Whilst recognising that, if they operate effectively, they could help to reduce the hidden economy element of the tax gap, between us we expressed a number of concerns. First, the risk of pushing businesses further into the hidden economy if they decide to operate on an unlicensed basis. Second, the need for clear guidance and a simple process, recognising that in this first cohort of businesses are taxpayers who are on average older and more likely to be from ethnic minority groups than the general working age population. Third, the level of detail required and the possibility that even a slight delay in meeting a reporting requirement could result in a licence applicant failing the tax check and being denied a licence.

Amendments to HMRC’s civil information powers

Again the CIOT, ATT and LITRG all commented on these proposals. Whilst welcoming the fact that HMRC have decided not to pursue their original ‘option 1’, which would have involved removing the requirement to obtain tribunal approval in all cases, we expressed four main concerns about the remaining proposal in relation to Financial Institution Notices (FINs). First, HMRC’s ability to issue a third-party notice to a financial institution, without taxpayer agreement or independent tribunal approval, doing so under their own jurisdiction and determining themselves whether the notice is ‘reasonably required’; thus becoming both judge and jury in a matter of their own interest. Second, the removal of the right of appeal against a FIN. Third, the risk of ‘mission creep’; that is that FINs will be issued with requests for information about UK taxpayers as well as overseas taxpayers, bypassing a number of safeguards that would otherwise apply. Fourth, the expansion of the purpose for which information

notices may be issued to include tax debt collection. It was highlighted that HMRC could, potentially, combine all four changes to issue a FIN for a UK taxpayer with a tax debt, with no independent check on whether this was appropriate and no right of appeal for the financial institution.

The Sub-Committee has not, at the time of writing, published our written evidence, and so we are currently unable to publish it ourselves, but keep an eye on the publications page of the inquiry website, and the CIOT and LITRG websites. The oral evidence sessions can be viewed from the events page of the inquiry website.

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