HMRC consultation – ‘Tax enquiries: closure rules’

Technical Management of taxes

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The CIOT, ATT and LITRG have each responded to HMRC’s consultation document Tax enquiries: closure rules. This sought comments on HMRC’s proposal to introduce legislation so that they could refer matters to a tax tribunal without the taxpayer’s consent, with a view to achieving early resolution of one or more aspects of an enquiry into a tax return should it not be appropriate to close the entire case.

All three of the responses agree with HMRC that the current rules could be made more effective by allowing resolution of one or more issues without concluding the entire enquiry. We also agree that the tax paid under self-assessment should reflect the issues determined in this way, although this may not be straightforward in many cases.

However, all three responses emphasise that the proposals cannot be supported as set out in the consultation document because they are so one-sided in favour of HMRC. Under the proposals, HMRC would have the power to seek early resolution of one or more aspects of an enquiry by making a sole referral to the tribunal without the consent of the taxpayer. There would, however, be no comparable right for the taxpayer to make such an application. To ensure a level playing field, if these proposals are introduced, the taxpayer must be given the same right to seek a tribunal referral notice without needing the agreement of HMRC. Both CIOT and ATT noted that many of HMRC’s arguments for early resolution apply equally to taxpayers.

LITRG made the case for a de minimis provision in relation to the tax at stake and for adequate safeguards to protect low-income and vulnerable taxpayers. All three responses noted HMRC’s assurance that the powers would be used sparingly but emphasised the need for statutory definition of when the powers might be used.

Rather than adapting the proposals in the consultation document, the CIOT suggested that it might be simpler to introduce a ‘single issue (or partial) closure notice procedure’, based on the current closure notice provisions in TMA 1970 s 28A, as long as taxpayers also had the right to apply for them.

Both the CIOT and ATT agreed that a joint referral under s 28ZA should always be explored in the first instance.

The selection of one issue is likely to be problematic because, in a case with many open issues, the taxpayer would probably prefer that the tribunal take into account other issues at the same time. The ATT suggested that this could be addressed by the non-referring party having the right to seek the tribunal’s consent to the admission of additional issues.

The CIOT noted that difficulties might arise with HMRC demanding payment of tax after the resolution of a single issue. In some cases it may be clear how much more tax follows from the conclusion of the particular issue. However, in others it will not be possible to compute the tax payable on a single issue until there has been closure of all open points.

Given the serious concerns about the one-sidedness of these proposals, all three responses welcomed this being a ‘Stage 1’ consultation ‘setting out objectives and identifying options’. In particular, we welcomed the statement in Chapter 7: ‘The purpose of the consultation is to seek views on the policy design and any suitable possible alternatives before consulting later on a specific proposal for reform.’ Notwithstanding our concerns, we can foresee that the discussions that will be prompted by this consultation might produce some ideas that could be developed into a more collaborative way of resolving open issues to the benefit of all multi-issue enquiries. Although the document refers mainly to ‘avoidance’, multi-issue enquiries are not limited to those concerning avoidance. We therefore look forward to taking part in a future consultation exercise which we hope will take on board our concerns and suggestions in determining the best option.

HMRC’s consultation document can be read on the CIOT website.

The CIOT’s response can be read on the CIOT website.

ATT’s response can be read on the ATT website.

LITRG’s response can be read on the LITRG website.