

Preventing and collecting international tax debt – HMRC discussion document

Response by the Chartered Institute of Taxation

1 Executive Summary

- 1.1 The Chartered Institute of Taxation (CIOT) is the leading professional body in the UK for advisers dealing with all aspects of taxation. We are a charity and our primary purpose is to promote education in taxation with a key aim of achieving a more efficient and less complex tax system for all. We draw on the experience of our 19,000 members, and extensive volunteer network, in providing our response.
- 1.2 The CIOT supports HMRC's aims in seeking to prevent the creation of international tax debt and to improve its collection. However, without having a much fuller breakdown of the composition of international tax debt and how it might have arisen, it has been difficult for us to identify targeted solutions to tackle it. Consequently, many of our observations and comments are at a necessarily high level.
- 1.3 We would like to highlight the following points in our response:
 - We recommend that HMRC start copying letters pursuing international tax debts to a person's authorised UK tax agent (if they have one) at the same time as they are sent to the individual concerned. The agent may be in a better position to communicate with the individual, explain the position and help them navigate HMRC's systems and arrange payment of the outstanding tax due sooner.
 - There are several practical problems with registering with HMRC, contacting HMRC and paying HMRC from overseas and solutions to these problems should be explored.
 - Information about HMRC's powers in this area is not particularly easy to find on GOV.UK so improving accessibility of this information and putting it all in one place may help improve compliance.
 - Since many taxpayers with international tax debt may not speak English as a first language HMRC should consider providing communications and guidance in languages other than English.
 - We think there must be potential for greater use of cooperation with other overseas jurisdictions in the collection of international tax debts. Greater international cooperation in fiscal matters has been a feature of the last few decades, e.g. in the areas of tax avoidance and exchange of information, but it is less clear in the area of overdue tax collection, as far as we can tell.

- There should be more consultation before any changes to the rate of tax withheld from payments to non-UK resident entertainers and sports professionals are considered because it is not clear from the discussion document how large a problem this is in general or in relation to the overall size of the UK's international tax debt. There should be greater analysis undertaken by HMRC to establish the size of the problem before any further consultation is carried out.

1.4 This response should be read in conjunction with our response to the discussion document 'Helping taxpayers get offshore tax right'. Many of the measures being considered by that document could help reduce international tax debt.

1.5 This response supplements the comments we provided to HMRC in the five workshops held during May 2021.

2 About us

2.1 The CIOT is an educational charity, promoting education and study of the administration and practice of taxation. One of our key aims is to work for a better, more efficient, tax system for all affected by it – taxpayers, their advisers and the authorities. Our comments and recommendations on tax issues are made solely in order to achieve this aim; we are a non-party-political organisation.

2.2 The CIOT's work covers all aspects of taxation, including direct and indirect taxes and duties. Through our Low Incomes Tax Reform Group (LITRG), the CIOT has a particular focus on improving the tax system, including tax credits and benefits, for the unrepresented taxpayer.

2.3 The CIOT draws on our members' experience in private practice, commerce and industry, government and academia to improve tax administration and propose and explain how tax policy objectives can most effectively be achieved. We also link to, and draw on, similar leading professional tax bodies in other countries.

2.4 Our members have the practising title of 'Chartered Tax Adviser' and the designatory letters 'CTA', to represent the leading tax qualification.

3 Introduction

3.1 HMRC's discussion document seeks views on ways to prevent the creation of international tax debt and to improve its collection. The term 'international tax debt' is used to refer to a debt which has arisen because of the non-payment of UK tax, where either the taxpayer, their assets, or both, are outside of the UK.

3.2 HMRC estimate that the amount of international tax debt owed by taxpayers based abroad was around £1 billion in January 2020 (about 5% of the total tax debt (£20 billion in the period before the COVID-19 pandemic) owed to HMRC). Value Added Tax (VAT) and Income Tax from Self Assessment are estimated to be the two largest contributors by value to international tax debt.

3.3 Our stated objectives for the tax system which are relevant to this discussion document include:

- A legislative process that translates policy intentions into statute accurately and effectively, without unintended consequences.

- Greater simplicity and clarity, so people can understand how much tax they should be paying and why.
- Greater certainty, so businesses and individuals can plan ahead with confidence.
- A fair balance between the powers of tax collectors and the rights of taxpayers (both represented and unrepresented).
- Responsive and competent tax administration, with a minimum of bureaucracy.

4 A. Do you agree with the analysis of the problems identified with preventing and collecting international tax debt?

B. Are there other problems with preventing and collecting international tax debt we have not included in this document that ought to be addressed?

C. Do you believe the approaches suggested would be effective in preventing and collecting international tax debt?

D. What further ideas do you have to both better prevent and collect international tax debt?

E. What safeguards would be appropriate in conjunction with the approaches suggested or other approaches you put forward? How should they be designed to help ensure that taxpayers can challenge HMRC's decisions, where appropriate?

- 4.1 The analysis in the discussion document seems reasonable, but without having a much fuller breakdown of the composition of international tax debt it is difficult to say whether it is correct or not. If a fuller breakdown can be provided by HMRC this would improve our understanding of how international tax debt arises in practice and help us identify targeted solutions that could help tackle it.
- 4.2 HMRC's processes and the ease (or lack thereof) of taxpayer access to relevant information and guidance on GOV.UK may also be factors in the creation of international tax debt.
- 4.3 We understand that HMRC initially pursue an international tax debt by sending two letters to the taxpayer. We think this approach could be improved. Sometimes overseas taxpayers may not receive letters sent by HMRC chasing non-payment of a tax debt once they have left the UK. This could be due to a number of factors, for example HMRC not having the correct or full address, or an unreliable local postal system. We would suggest that all these letters should be sent to the person's UK tax agent (if they have one) as well and at the same time as they are sent to the individual. The agent may be in a better position to communicate with their client, explain the position and help them navigate HMRC's systems and arrange payment of the outstanding tax due sooner.
- 4.4 The discussion document does not really address the fact that cross-border arrangements for assistance in collection are already in place with many other jurisdictions and can be used if HMRC receive no response to attempts to contact the taxpayer. Although we understand that using these can be a slow process, it is not clear from the discussion document why these arrangements may not be working effectively. Following the UK's exit from the EU, we understand that the UK and European Commission held preparatory meetings earlier this year to look at VAT and debt with a view to continuing cooperation on debt recovery with wide ranging agreements which is welcome. We also recognise that the UK does not have arrangements with many jurisdictions which may impede recovery of debt from taxpayer located in those jurisdictions.

- 4.5 Some taxpayers may be unaware that HMRC can pursue debts even after they have left the UK, whether by enforcement against UK assets or by cross-border co-operation. Perhaps more can be done to educate people that HMRC can and will pursue tax debts once they leave the UK using existing cross-border arrangements; this may help compliance. Similarly, information about HMRC's powers in this area is not particularly easy to find on GOV.UK so improving accessibility of this information and putting it all in one place may also help improve compliance.
- 4.6 With regard to question E about safeguards, taxpayers need to be able to challenge HMRC's decisions, including the existence of a debt as well as the further recovery action on a timely basis regardless of their location in the world. Consequently, taxpayers should be given more time to submit appeals and time to pay requests if they are overseas (as the original decision, assessment etc often takes longer to arrive and they may then need to obtain professional advice) eg 90 days would be more appropriate rather than the current 30 days. Also ideally HMRC should enable taxpayers to email appeals to them or submit them online, for all types of decision.

5 Q 2.1 If you have had experience with international tax debt, what circumstances led to the failure to pay UK tax and the creation of an international tax debt?

Q 2.2 How did the international tax debt come to light and how was it dealt with?

5.1 Failure to pay UK tax can be due to a variety of factors. Some general observations are:

- Difficulty in obtaining a unique taxpayer reference (UTR) from HMRC, particularly if the person does not have a UK National Insurance number.
- Difficulty in registering with HMRC for an online account if based overseas.
- Registration codes from HMRC have often expired by the time they reach the person overseas due to the length of time post can take to arrive.
- Letters sent to taxpayers who reside outside the UK can take a very long time to arrive or not arrive at all. We understand that where taxpayers are registered through the non-established taxable person's unit (NETPU) (for VAT) mail can take between six weeks and three months to reach the taxable person abroad, for example.
- Letters not being copied to the UK registered agent.
- Limited payment methods for taxpayers paying from overseas (see further comments below).
- Difficulty in contacting HMRC from overseas to discuss ability to pay, payment issues or rejection by HMRC of terms proposed by the taxpayer for a time to pay arrangement.
- Lack of awareness of the existence of the tax debt (due to letters not arriving for instance) or belief that the tax debt has been written off owing to the time lag between the tax becoming due and follow up being taken by HMRC.
- Insufficient domestic funds to pay a tax debt and difficulty in being able to access funds/liquidate offshore assets on a timely basis to settle any tax liabilities due.
- Intentional non-payment.

International tax debts may have been created by:

- Taxpayers leaving the UK without realising a tax debt exists.
- Misunderstanding or not being aware of complex tax rules which, when applied correctly, lead to an unexpected tax bill which the taxpayer has difficulty paying.

International tax debts may come to light when:

- A taxpayer approaches a tax adviser for assistance in understanding and fulfilling their UK tax obligations and the tax adviser then engages with HMRC on their behalf.
- HMRC identify a tax debt during the course of an enquiry or other compliance activity.

6 Q 3.1 Are you aware from experience of other causes of international tax debt? What could be done to prevent the debt accruing in these cases?

6.1 Another cause of international tax debt is likely to arise from inadvertent non-compliance. A good example arises from the extension of Inheritance Tax (IHT) to UK residential property held in offshore company (and other) structures in 2017. If someone dies in a non-UK jurisdiction owning shares in a non-UK company, it may not be known that UK residential property is held in the corporate structure and even if it is known, the UK IHT consequences may simply not be recognised. Additionally, if someone dies in a non-UK jurisdiction owning shares in a non-UK company which owns UK residential property HMRC may be unaware of the death and therefore the triggering event for IHT. For UK estates, the need to obtain probate has always been HMRC's main means of knowing about and enforcing IHT. The proposed register of foreign companies that buy land or property in England and Wales may provide some useful information to the extent that data can be used for this purpose.

7 Q 3.2 From your experience, are there any professions or activities which are more likely to lead to the creation of tax debt?

7.1 We do not have any specific knowledge beyond noting that it will be likely to affect professions or activities which operate across international borders and individuals who move between the UK and overseas to live and work, either on a temporary or permanent basis.

8 Q 3.3 From your experience, are there particular jurisdictions which are more likely to be linked to UK international tax debt?

8.1 We do not have any knowledge of which jurisdictions may be more likely to be linked to UK international tax debt than others.

9 Q 3.4 What more could HMRC do with the data we have to prevent international tax debt?

9.1 We have mentioned delays in HMRC's post reaching the taxpayer overseas. Because of these delays, HMRC are likely accelerating action before the mail has actually arrived with the taxable person. Where HMRC have

taxpayer email addresses they should use them. Where they have a telephone contact number they should use that. We understand that there is also a private messaging service on VAT Online; this could be used as well to avoid the delays caused by using the post.

- 9.2 Where the taxpayer is represented by an authorised agent, HMRC should copy messages and letters sent to the taxpayer to their agent at the same time as they send them to the taxpayer. Agents will likely be in a better position to be able to contact their client to discuss the debt and help them to arrange payment.

10 Q 3.5 Would collecting more information (paragraphs 3.8 and 3.12) be reasonable and proportionate to prevent international tax debt? Please explain your answer.

- 10.1 The suggestions in paragraphs 3.8 and 3.12 seem reasonable and proportionate. It makes sense for HMRC to try to get a clearer picture of which activities, professions and jurisdictions present a higher risk of creating international tax debt, and why this might be occurring. Taxpayers involved in those professions and activities could be prioritised to be given information on HMRC's powers with the aim of improving their compliance. If there are found to be higher levels of debts associated with particular jurisdictions, then HMRC should consider translating a helpsheet on paying tax into the relevant language for that country.

11 Q 3.6 How can HMRC improve educational material and guidance to prevent the creation of international tax debt?

- 11.1 Consideration could be given to publicising the process for recovery of international tax debt by HMRC and the extent of data available to counteract a perception that once an individual has left the UK tax debts are not known or pursued - make the information easily accessible on GOV.UK and elsewhere (You Tube videos, social media posts) and in non-technical language, and ensure HMRC's Needs Enhanced Support team has the expertise and knowledge to help taxpayers who are unrepresented or digitally excluded and so on.
- 11.2 HMRC should make it easier for people to contact HMRC from abroad, for example make it possible for domestic call centres to be contacted via international phone numbers, and improve call answering times (as it is costly to call from overseas). Consider establishing a dedicated helpline for overseas people staffed by HMRC staff trained to help with the sort of queries on tax liabilities, compliance obligations and debts that overseas taxpayers are likely to have.
- 11.3 Since many taxpayers with international tax debt may not speak English as a first language consider providing communications and guidance in languages other than English.
- 11.4 HMRC should consider making information about how the UK taxes global income available earlier, for example if a person visits a UK Embassy overseas to apply for a visa to work in the UK, provide them with information on registering for and paying tax in the UK.

12 Q 3.7 How might HMRC better work with agents and intermediaries to ensure guidance has the most impact?

- 12.1 HMRC should engage with the taxpayer's authorised agent much earlier in the debt recovery process (as noted above) and consider providing the agent with a helpsheet (or a link to the helpsheet on GOV.UK) which covers

how to pay UK tax debt from overseas, how to contact HMRC to arrange time to pay and HMRC's powers to recover funds etc so the agent can communicate this to their client.

- 12.2 The CIOT would be happy to work with HMRC in exploring how guidance and other communications can have more of an impact.

13 Q 3.8 What factors should be taken into account in deciding the rate of tax withheld from payments to non-UK resident entertainers and sports professionals?

Q 3.9 What are your views on making the application for a reduced rate of withholding for non-UK resident entertainers and sports professionals conditional on tax compliance?

- 13.1 We think there should be further consultation on this before any decision is taken to change the existing rules. We also suggest that further analysis be undertaken by HMRC to establish the size of the problem as it is not clear from the discussion document how large a problem this is in relation to the overall size of the UK's international tax debt. It is also unclear how many individuals are involved or what the average amount of the debt owed per individual is.

- 13.2 It would be helpful to understand better how non-payment arises as there could be many different reasons for that, including lack of awareness or difficulties accessing HMRC's systems, and a 'one size fits all' approach may not be effective.

- 13.3 An educative approach should also be considered, including working with both the individuals and their agents and their UK tax representatives, to try to improve awareness and understanding of how UK tax debts can arise and how to pay them.

- 13.4 Changes to HMRC's systems and processes to enable easier access for taxpayers based overseas is also urgently needed. There have been several recent problems such as with the non-resident CGT reporting system where taxpayers based overseas have had problems accessing HMRC's systems.

14 Q 3.10 What are your views on using tax conditionality to limit the creation of international tax debt?

Q 3.11 In what other ways do you think tax conditionality could be applied to limit the creation of international tax debt?

- 14.1 Conditionality should only be considered if it is easy for the overseas individual or company to comply with their UK tax obligations, including easy access to HMRC's systems and accessible and clear guidance.

- 14.2 We suggest that further consultation is needed to explore whether tax conditionality could be effective and whether it is appropriate. We can see that it could have a role to play in limiting the creation of international tax debt, and we understand that it is already used by many other jurisdictions, particularly in Asia, but it could have consequences for the UK economy and international trade if it restricts companies or individuals from entering the UK and doing business here.

- 14.3 We understand that some government debts are already flagged at the UK border via the border control system so border force officers can speak to the person concerned but it is not clear why this is not the case for tax debts. Perhaps significant tax debts could be flagged up on border control computers so that border control could remind the person to pay when they are exiting or arriving in the UK.

15 Q 4.1 How could the collection of international tax debt be improved?

- 15.1 Professional bodies such as the CIOT can play a part in improving understanding and awareness. HMRC could consider working with the professional bodies' overseas networks to provide educational workshops to non-UK residents about offshore tax obligations.
- 15.2 Other professions could be asked to provide a pre-prepared helpsheet to overseas persons undertaking certain UK transactions (eg solicitor or estate agent involved in the purchase, letting or sale of a property to/by a person overseas) to remind them to pay the necessary tax eg CGT.

16 Q 4.2 How might HMRC improve our communications to collect international tax debt more effectively?

- 16.1 HMRC's letters should show both an email address and contact telephone number. We have heard that letters to overseas traders (VAT) from the banking section do not have email addresses on them.
- 16.2 It makes sense to focus communications on people before they leave the UK whenever possible, but understandably this is impossible if HMRC do not know someone has moved overseas until after they have left the UK. Some kind of conditionality (see above) would assist here – or a 'certificate of good standing' which is already used by some overseas jurisdictions.
- 16.3 Paragraph 4.8 of the discussion document refers to email protocols. Could HMRC explore whether it might be possible to update the agent authorisation forms 64-8 and comp 1 to include authorisation to use email so that HMRC can contact agents/taxpayers by email, without needing a separate protocol?

17 Q 4.3 What specific challenges are you aware of for taxpayers who try to pay debts from outside the UK?

- 17.1 We are aware of a specific scenario involving Annual Tax on Enveloped Dwellings (ATED) liabilities payable by overseas companies which can give rise to administrative challenges in paying international debt. As the chargeable company does not let out the property there are generally limited funds in the company available to fund the tax. As such, the ATED charge must be funded externally by the parent company or ultimate beneficial owner, which may not be straightforward if they also have liquidity challenges, especially during the Covid pandemic. It would be helpful if the return or the ATED portal from which it is completed, could include a facility to apply for payment in instalments without making a separate written application to HMRC. Furthermore, the International Debt Unit telephone line is not presently operational so the application and negotiation of the payment plan must be done in writing. Even once a payment plan is in place, HMRC have still incorrectly issued late payment penalties, which should be suspended under Para 10 Sch 56 FA 2009. Therefore it has been necessary to appeal these penalties. This additional work increases the professional costs unnecessarily and exacerbates the debt and liquidity issues.

18 Q 4.4 How could payment processes for outstanding debt be improved when the taxpayer is outside of the UK?

- 18.1 We understand that it is not possible to pay a UK VAT liability by direct debit from an international bank account. We are not sure if this is prevented by banking rules or not, but many overseas businesses would no doubt find it much easier to pay by direct debit than by bank transfer. At present, the overseas business needs to have a UK bank account to make payment by direct debit (there is a related issue with repayments of VAT

– HMRC will not send the repayment to an overseas bank account). Can HMRC investigate whether anything can be done to ease this situation, perhaps by consulting with the banking sector?

18.2 We also understand that it is often not possible to pay using a non-business credit card registered outside the UK. Again, consultation with the financial sector could be considered to seek ways to address this issue and others which may be making payment from outside the UK challenging.

19 Q 4.5 What ideas do you have to improve international cooperation and to increase the rates of collection within other jurisdictions?

19.1 The UK government should explore increasing the network of cross-border cooperation agreements that HMRC can use to enforce payment of international debts (see comments above) and engaging with those jurisdictions with which it currently has no arrangement with a view to understanding how agreement can be reached. Perhaps this would be most effectively done via the OECD so it can cover many countries at once. Once agreements are in place then they should be widely publicised.

20 Q 4.6 What opportunities and challenges should be explored around inhibiting access to UK markets for deliberate overseas tax evaders?

20.1 Firstly, it needs to be clear who is a person is a 'deliberate' evader – ie not just someone who is ignorant of their obligations and/or has made a mistake. Also, taxpayers can have acted deliberately in the past (and even gone through a Code of Practice 9 investigation for example) and then be compliant thereafter, so inhibiting access should not be based solely on past behaviour that the taxpayer has since remedied.

21 Q 4.7 Are there any sanctions which might be particularly suitable for application with regard to international tax debt arising from the VAT regime?

Q 4.8 What alternative approaches or ideas do you have to pursue the minority who deliberately do not pay their international tax debts?

21.1 HMRC could consider using the new 'joint and several liability' powers in Finance Act 2020 to collect corporate debts from directors or other persons if the legislative criteria are met.

22 Acknowledgement of submission

22.1 We would be grateful if you could acknowledge safe receipt of this submission, and ensure that the Chartered Institute of Taxation is included in the List of Respondents when any outcome of the consultation is published.

The Chartered Institute of Taxation

15 June 2021