**Representation from the Chartered Institute of Taxation**
**for Finance Bill 2021 Committee Stage**

# Financial Information Notices
# Collection of Tax Debts &
# Miscellaneous Amendments to Sch 36 to FA 2008
# Clauses 122 to 124

Chartered Institute of Taxation
Excellence in Taxation


**Executive Summary**

**Clause 122 introduces a new HMRC information notice power which does not have the usual safeguards associated with such a power, such as appeal rights and independent oversight by the tax tribunal. This raises serious questions about the erosion of taxpayer protections in the face of new powers taken by HMRC.**

**We recognise the importance of the UK meeting international standards in information exchange, which the measure is being introduced to address, but we are concerned that the new financial information notice may not necessarily help with this whilst at the same time the measure is not confined to international cases but can be used in domestic cases as well.**

**We seek reassurance from the Minister that the notice will be used only in accordance with the original policy intent, that is to speed up the time HMRC takes to deal with international exchange of information requests from overseas jurisdictions, rather than as an additional compliance tool for enquiring into UK taxpayers' affairs.**


## 1. Overview

1.1. Clause 122 introduces a new Financial Institution Notice (FIN) that will be used to require financial institutions to provide information to HMRC when requested about a specific taxpayer for the purposes of checking their tax position or collecting a tax debt, without the need for HMRC to seek approval from the independent tax tribunal. The original policy objective[1] behind the measure is to speed up the time HMRC takes to deal with international exchange of information requests from overseas jurisdictions and bring the UK into line with international standards on tax transparency and on the quality and speed of exchange on tax information.

1.2. Clause 123 gives HMRC a new power to issue an information notice for the purposes of collecting a tax debt.

[1] https://www.gov.uk/government/publications/amending-hmrcs-civil-information-powers/amending-hmrcs-civil-information-powers

1.3. Clause 124 introduces Schedule 33 which corrects a drafting error in Schedule 36 of Finance Act 2008 that governs the issuing of increased daily penalties for failure to comply with an information notice. It also introduces a rule to prevent a third party telling the taxpayer about a third party information notice, where the tribunal has decided that is appropriate.

1.4. These measures were originally consulted on by HMRC in the consultation document 'Amending HMRC's Civil Information Powers'[2] which was published on 10 July 2018, and to which the CIOT responded[3] on 25 September 2018. The CIOT was pleased to note that a number of the proposals that were originally put forward in HMRC's consultation document were not developed further, particularly Option 1 ('Aligning with Taxpayer Notice') which would have involved removing the requirement to obtain tribunal approval in all cases (not just those sent to financial institutions). We thought this would have gone significantly further than was needed for HMRC to cope more promptly with requests for information from overseas jurisdictions. Instead, Option 2 (the FIN) was developed.

## 2. CIOT comments

2.1. We see the value in a limited power that enables HMRC to request certain information that financial institutions will hold, but we are concerned about the loss of independent tribunal oversight. Independent oversight by the tax tribunal is an important safeguard which should not be dispensed with lightly.

2.2. In addition, unlike the position for existing third party information notices[4], there is to be no right of appeal by the financial institution against the issue of a FIN even if it would be unduly onerous for it to comply with the notice. This lack of a formal appeal route combined with the lack of independent tribunal oversight for issuing the notice in the first place is particularly concerning.

2.3. We appreciate that the legislation does contain some other safeguards, including that the information must be reasonably required and a notice may only be issued if the information is, in the reasonable opinion of the authorised HMRC officer giving the notice, of a kind that it would not be onerous for the institution to produce or provide. However, in our view, an HMRC official is not in an objective position to make this assessment.

2.4. As noted above, the driver for change is requests for financial information from overseas tax authorities. We understand that HMRC receive a large number of such requests and it currently takes the UK 12 months on average to obtain this information when an information notice is needed, whereas the target under international standards for exchange of information is 6 months. The introduction of the FIN is designed to enable the UK to meet these international standards and bring the UK into line with practice in all other G20 states.

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[2] https://www.gov.uk/government/consultations/amending-hmrcs-civil-information-powers

[3] https://www.tax.org.uk/sites/default/files/180925%20Amending%20HMRC%27s%20Civil%20Information%20Powers%20-%20CIOT%20comments.pdf

[4] Para 30 Sch 36 FA 2008

Without removal of the tribunal process the Government is concerned that the UK would continue to fail to meet the international standards it is committed to[5]. This is likely to lead to the UK failing this part of the standard in the next peer review process and there is a risk that the UK's overall marking will drop from largely compliant (a "pass") to partially compliant (a "fail"). We fully support the Government's efforts in striving to meet international standards in exchange of information but, for the reasons outlined below, are not convinced that the introduction of the FIN in the way proposed is necessary to meet, or indeed will be successful, in meeting those standards.

2.5. It was noted by the House of Lords in their recent report[6] covering this measure that the vast majority of the delay in obtaining information in international cases was not caused by delays obtaining tribunal approval (HMRC acknowledge that the tribunal service typically takes 4 to 6 weeks to process an application), but rather to delays in HMRC corresponding with overseas jurisdictions to obtain additional information, which HMRC told peers takes over eight months on average. Based on this, it is not at all obvious that the new FIN will offer any significant help to HMRC in meeting international targets.

2.6. The House of Lords report also noted that the numbers of international requests going to the tribunal are small in relation to the total number of requests received. This raises concerns about whether, even if the FIN did help with meeting international targets, it would be a proportionate response to the problem it is ostensibly being introduced to deal with.

2.7. We would not be as concerned about the removal of the requirement for HMRC to obtain tribunal approval if the new FIN could only be used for international information requests from other tax authorities because at least this would mean it could only be used in a limited way. However, it can potentially be used more widely than that as we explain below.

2.8. HMRC said (during the consultation process) that they are not able to have a different notice for international requests because UK law, and some international treaties, require them to obtain information in the same way for both domestic and international requests. This means that the legislation does not restrict the new FIN to requests for information from overseas jurisdictions about non-UK taxpayers, so it will also be available for HMRC potentially to use to obtain information from financial institutions in cases involving UK taxpayers as well, for example during the course of a UK tax enquiry.

2.9. We would like to understand how this will work in practice given that now, under existing Schedule 36 powers, HMRC must (a) obtain tribunal approval before requesting the information from financial institutions (unless the taxpayer has agreed to HMRC contacting the third party for information) and (b) there is a right of appeal if it would be unduly onerous to comply with the notice. Neither of these safeguards are available if a FIN is used instead.

[5] https://www.gov.uk/government/publications/amending-hmrcs-civil-information-powers/amending-hmrcs-civil-information-powers

[6] https://publications.parliament.uk/pa/ld5801/ldselect/ldeconaf/198/19807.htm#_idTextAnchor049

2.10. HMRC should confirm in their guidance that the FIN will only be used in accordance with the policy intent – ie to speed up the time HMRC takes to deal with international exchange of information requests from overseas jurisdictions – rather than as an additional compliance tool for enquiring into UK taxpayers' affairs.

If this is not accepted, then it is our view that, in cases involving UK taxpayers, HMRC should try to obtain the information / documents from the taxpayer in the first instance and, if the taxpayer does not produce the required information, the issue of a 'standard' Schedule 36 third party notice to request the information from the financial institution should be the next step. A FIN should only be used as a very last resort; i.e in a limited and controlled way. In addition, the legislation should incorporate the protection in Condition B of para 21 Schedule 36 FA 2008 that an officer must have 'reason to suspect' an underassessment of tax[7]. This would act as an additional safeguard alongside the requirement that the document or information must be 'reasonably required' for the purposes of checking the taxpayer's position. It is not clear why Condition B is not replicated in clause 122.

2.11. The role of the authorised HMRC officer in the process of issuing the FIN is key. We encourage HMRC to make the process of issuing FINs, and the authorised officer's role in that, as transparent as possible to ensure taxpayers and their advisers can have confidence that it is being used only for the purposes of the policy intention.

2.12. Both clauses 122 and 123 contain a provision that means a FIN and the new Schedule 36 notice for collection of tax debts can be used for the purposes of checking a taxpayer's position *whenever arising* and for collecting a tax debt *whenever arising*, meaning their use is not restricted to cases involving tax years after the date this measure becomes law. This adds to our view that this is a very wide-ranging power. It is essential that HMRC use it proportionately and with appropriate oversight.

2.13. The legislation requires that HMRC must report annually to Parliament on the use of the FIN. We welcome HMRC's statement (in their response to the Lords' report[8]) that they will seek representations from stakeholders when preparing the report 'so Parliament will get a clear picture of the implementation of the new notices'. This could potentially act as an impetus for HMRC to exercise restraint in their use of this new power. However, it is not a substitute for tribunal oversight and rights of appeal.

2.14. We have only one comment on the measures in Schedule 33. This is in respect of paragraph 8 'Power to give taxpayer notice following land transaction return' which adds a new Condition D allowing a Schedule 36 taxpayer notice to be given *for the purpose of checking whether* a relief from SDLT should be withdrawn because the conditions are no longer met in the claw back period (usually 3 years). It applies to the SDLT relief for acquiring property in a freeport tax site. One of the concerns in the freeports consultation is the potential for avoidance. However, the paragraph 8 power is not restricted to the freeport SDLT relief but extends to

[7] With a carve-out where HMRC need the information to meet a validly given international information request

[8] https://committees.parliament.uk/publications/4734/documents/48082/default/

other SDLT reliefs with a clawback period (including group relief, multiple dwellings relief, charities relief, alternative finance and others). We understand from HMRC that the power will be used on a risk basis with a 'tiny' element of random checking, but we are concerned that its use will not necessarily pass the bar of 'reason to suspect' that applies to Condition B in para 21A Schedule 36 FA 2008. This could mean that less evidence is needed by HMRC than is currently the case before they can issue a notice to the taxpayer to check their SDLT position. It would appear to be eroding the taxpayer safeguards inherent in the current requirement that HMRC must have reason to suspect that relief may have to be repaid before they issue a notice, an erosion which we do not support.

## 3. The Chartered Institute of Taxation

3.1. The Chartered Institute of Taxation (CIOT) is the leading professional body in the United Kingdom concerned solely with taxation. 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. 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.

3.2. 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. The CIOT's comments and recommendations on tax issues are made in line with our charitable objectives: we are politically neutral in our work.

3.3. The CIOT's 19,000 members have the practising title of 'Chartered Tax Adviser' and the designatory letters 'CTA', to represent the leading tax qualification.

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The Chartered Institute of Taxation
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