



## DISCUSSION DOCUMENT: PREVENTING AND COLLECTING INTERNATIONAL TAX DEBT

15 JUNE 2021

ICAEW welcomes the opportunity to comment on the Discussion document: preventing and collecting international tax debt published by HMRC on 23 March 2021, a copy of which is available from this [link](#).

Enter summary of major points

- We believe that significant improvements could be made in the methods that non-UK nationals have available to register with HMRC and make UK tax payments, especially where the individual concerned does not have a national insurance number.
- HMRC could run campaigns to educate non-UK individuals on some of the main ways in which liabilities to UK taxes arise.
- We believe that the most effective way of reducing tax debt owed by overseas sports people and entertainers is to foster closer relations between HMRC's foreign entertainers' unit and UK agents representing overseas performers.
- Great care and consideration should be taken before introducing any form of conditionality as a way of preventing international tax debt. Except perhaps in the case of deliberate and repeated evasion, all other available methods should be exhausted first.

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## KEY POINTS

1. Please note that we have not answered every question contained in the consultation document. We set out below the key points arising from our responses and more general comments on the areas being consulted on.

## WHERE INTERNATIONAL TAX DEBT MOSTLY ARISES

2. There appears to be tension within the consultation document as to whether HMRC's focus is on recovering international tax debt from a small number of high-net-worth individuals, such as international sports and entertainment stars, or a larger group of smaller debt holders. We welcome further analysis from HMRC as to where the most significant outstanding tax debts arise.
3. Our observation is that international tax debt is most likely to arise in the normal tax return filing cycle where taxpayers leave the UK either before or after filing a UK tax return, rather than where there is an open dispute with a taxpayer. We therefore recommend that significant focus is placed on making it as easy as possible for taxpayers to make tax payments. Greater publicity should be given to the benefits of completing form P85 on individuals leaving the UK for tying up any outstanding tax matters. Nudges and prompts should also be provided to remind taxpayers of their obligations. We make further comments on such measures in our response to the consultation document: 'Helping taxpayers get offshore tax right'.
4. In particular, we consider that if it became easier to register individuals as UK taxpayers with HMRC (including those without a National Insurance Number (NINO)), then HMRC would find it easier to collect debts outstanding.
5. It would be helpful if HMRC explained in more simple terms in what situations overseas debt typically arises so that taxpayers become more aware of being in these situations and remember to check whether they have any outstanding tax debt they had not been aware of. For example, HMRC could run a campaign on the reporting of income generated from overseas holiday rental properties. HMRC could also explain what it can do to recover tax debt even when the person is not present in the UK. Representatives of ICAEW who attended a recent HMRC roadshow in this area were unaware of the debt collection processes referred to during the meeting.

## FOREIGN ENTERTAINERS

6. We believe that the most effective way of reducing tax debt owed by overseas entertainers and sportspersons in relation to fees from appearances in the UK would be for the foreign entertainers' unit to foster closer relationships with those persons' agents in the UK.
7. We believe that the rate of withholding tax charged on appearance fees should only be amended from the basic rate in exceptional circumstances.

## CONDITIONALITY

8. While we support the use of conditionality in principle as a way of preventing international tax debt from arising, HMRC should be mindful of the unintended impact of any measures introduced, including any impact on human rights issues and the potential reduction in tax receipts that could result from preventing individuals from doing business or making public appearances in the UK.
9. All possible methods of cross-border tax collection should be exhausted first before applying any form of restrictions or conditions to individuals gaining access to UK markets or residence. Ideally, restrictions should only apply to those who have deliberately evaded tax or are repeatedly and deliberately non-compliant.

## PRIOR ASSURANCES

10. We also request that HMRC considers any assurances given to taxpayers and professional bodies about how data sources on individuals' debts would be used before introducing measures that utilise these data sources.

## ANSWERS TO SPECIFIC QUESTIONS

### ***Question 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?***

11. Taxpayers need to be able to challenge HMRC's decisions, including the existence of a debt as well as the recovery action, regardless of where they are based. It would be helpful if HMRC allowed more time for appeals and time to pay requests from overseas taxpayers given the time that it takes for post to arrive and for taxpayers to obtain professional advice in response. A 90-day timeframe seems to use to be more appropriate rather than the existing 30-day appeal window. It would also be helpful if appeals could be filed by e-mail or some other electronic means.
12. Some people also have difficulty in using HMRC helplines from abroad, perhaps for cost reasons, time differences or not having English as a first language. HMRC should consider setting up a dedicated offshore helpline with flexible opening times and manned by staff with particular language skills and who are trained in dealing with offshore compliance matters.

### ***Question 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?***

13. One of the key difficulties involved in the payment of international tax debt is getting an overseas taxpayer registered with HMRC in the first place. HMRC generally requires a national insurance number but this is only required if you wish to work in the UK. It would be of great benefit if HMRC expanded the range of methods through which overseas taxpayers could obtain a unique tax reference (UTR). It might help, for example, for HMRC to have a batch of dummy UTRs that can be issued once a taxpayer has proven his or her identity.
14. It would also help if HMRC could keep a track of enquiries received from agents and taxpayers relating to registration queries so that they can more easily enquire about the progress of applications.
15. Even when the individual concerned has become registered with HMRC, it still is not easy for him or her to engage with the UK tax system and make or understand tax liabilities arising. The system for payment of non-resident capital gains tax is a very good case in point.
16. In addition to making it easier for taxpayers to register with HMRC, it should also be easier for them to appoint a UK agent to interact with HMRC on their behalf. In the absence of a Government gateway account, a form 64-8 can be used and we recommend that the current relaxation on requiring a wet signature is continued after the impact of the pandemic recedes.

### ***Question 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?***

17. One of the problems that can lead to the existence of overseas tax debt is the difficulty of paying amounts from overseas, such as using a non-business credit card registered outside the UK or paying VAT via direct debit from offshore accounts. HMRC should investigate the

ability that its systems have to interface with overseas financial systems and make changes where necessary to make paying tax as easy as possible.

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

18. Professions which cause a particular problem are those where individuals visit the UK for a relatively short period and are able to earn income which does not get taxed before they leave the country. Typical secondments of staff from overseas operations of multi-national enterprises are unlikely to pose a significant risk as the UK operations are generally organised sufficiently to bring the individuals concerned into the UK tax system. However, individuals who are able to earn revenue through exploitation of their image or brand, such as footballers and other high-profile personalities, cause a more significant risk as they can often forget to declare such revenue or even realise that it is taxable.

**Question 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?**

19. While we can see the attraction of setting a higher withholding tax rate for artists and sportspersons who have a track record of earning amounts in the UK above the basic income tax band, we think that this would place too much responsibility on the person withholding the tax in determining which rate to apply. We therefore believe that the current basic rate of withholding tax should be retained except in cases where the foreign entertainers' unit (FEU) enters into discussions in advance with the relevant agent to agree the tax to be withheld (see point below).

**Question 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?**

20. We do see the appeal of restricting the availability of reduced rates of withholding tax where there is an outstanding tax debt owed by the individual concerned. Of course, if the amount of expenses involved are not significant then the individual may just decide to forgo the reduced rate in order to keep the earlier debt outstanding but nonetheless it would prove a useful tool for HMRC to have in its armoury to encourage payment.
21. Another and perhaps more effective solution would be to foster greater collaboration between the FEU and tax agents. In many cases, foreign artists and sportspeople will have relatively advanced notice that they are due to appear in the UK so there should be sufficient time for their agents and HMRC to engage and agree the amount of tax involved. This would prevent the individual creating an unexpected debt which he or she then has resistance to repaying.
22. We do not support restricting the availability of a reduced rate only to those individuals who have built up a track record of compliance. Many artists only visit the UK once every two years, for example, and so these individuals would be penalised through such a system. We are sympathetic to the idea of restricting access to reduced withholding in cases where there is an historic outstanding tax debt but consider that liaison and collaboration between the FEU, the artist and the agent should be the first course of action.

**Question 3.10. What are your views on using tax conditionality to limit the creation of international tax debt?**

23. Conditionality could be a useful tool for enforcement of overseas tax debts by HMRC more generally, but it is important that any difficulties in being able to comply are ironed out first so as not to create a culture of resentment. It needs to be easy for taxpayers to register, engage and pay their liabilities. Cross-border tax collection procedures should also be exhausted first before sanctions are applied in the UK. Often, overseas individuals find it easier to make UK tax payments if prompted and facilitated by overseas tax authorities. Greater pressure can also be placed on withholding tax agents provided their responsibilities are clear and facilities for them to fulfil those responsibilities are made easily available.
24. It is also worth stressing that HMRC's powers in respect of investigations and enforcement has continued to increase significantly over the past ten years. While we note that the collection of overseas tax debt is a particular issue for HMRC and that existing tools are more easily applied to collect onshore debt, it is still important to analyse in the first instance whether the use HMRC is making of its existing powers is as effective as it can be before introducing new ones.
25. Having said that, if conditionality were considered as an option, there are various forms that this could take, each with their own practical and legal challenges. For example, you could introduce a certificate of tax compliance which would allow a non-resident to return to do business in the UK if his or her UK tax affairs are up to date. There is an issue here because it can be counter-productive to discourage individuals from returning or doing business in the UK as this can reduce tax-take overall. For example, preventing a recording artist from touring the UK would mean that the UK misses out on the VAT on ticket sales, merchandise etc. Some measures might also encourage tit-for-tat measures in other countries in relation to UK nationals.
26. It might be more politically acceptable to refuse entry to those who have deliberately evaded UK taxes (as there appears to be no desire to make contributions to the UK exchequer out of profits earned here) but there remains a question mark over how you determine whether someone is a deliberate evader. One possible indicator would be if all possible means of recovering known tax liabilities have been exhausted (including use of cross-border tax collection facilities) and liabilities still remain outstanding. However, this can be a very long-drawn-out process.
27. Another possible defining point for introducing conditionality is where HMRC's civil procedures have been fully exhausted and criminal proceedings have now begun. Both of these tests/defining points would prevent conditionality from applying where the individuals concerned unwittingly have tax outstanding (for example, where any tax demands sent in the post have not been received by them).
28. We also believe that it is important that such measures only apply in cases where it is clear that tax liabilities have arisen that remain outstanding. It seems premature to apply these measures to cases where there remains some uncertainty as to the existence of a liability, such as in the application of anti-avoidance measures, like the transfer of assets abroad legislation.
29. A system that prevented someone from leaving the UK without paying all outstanding UK tax debts would be particularly problematic and may bring up human rights issues. Hence, rather than preventing exit or entrance to the UK, an interview system could be introduced whereby individuals are reminded of their outstanding obligations and arrangements put in place to ensure timely resolution. A more collaborative approach might be more successful, especially in those cases where there is no deliberate action of intent to evade taxes.

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

30. Other services that could be restricted or made conditional on good tax compliance include setting up a UK registered company or a UK bank account. However, as referred to above, this could be counter-productive in the individual genuinely wants to set up a business here to contribute to the UK economy but needs to generate funds before he or she can pay the outstanding tax debts. It may therefore be more productive to concentrate on ensuring that those who contribute to the UK economy meet their tax obligations on an ongoing basis rather than preventing them from making that contribution in the first place. Again, we recommend that conditionality is restricted to only those who deliberately evade UK tax or who have a long-standing (say, over six years) liability.

**Question 4.1 How could the collection of international tax debt be improved?**

31. As a general rule, it is easier to collect debt from individuals who are still in the UK than it is after they have left. Hence, more work could be done in recovering tax debt from specific individuals before the debt becomes international (owed by a non-UK resident individual). This implies that HMRC should make greater use of the powers already available rather than introducing new ones.
32. In respect of UK tax debts owed by non-UK residents, HMRC should look to improve the cross-border arrangements it has with more countries who are prepared to enforce UK tax debts, which should then be publicised via the Home Office or UK embassies (as they did with Requirement to Correct) so that non-residents become more aware of their UK tax liabilities.

**Question 4.2. How might HMRC improve our communications to collect international tax debt more effectively?**

33. Simplicity and ease of understanding is key. Managing their cross-border tax compliance can be very daunting for a lot of individuals so anything that can be done to 'walk them through' the process would be beneficial.
34. Information campaigns should be more encouraging and less threatening. The emphasis should be 'we are here to help you get your tax compliance right' rather than 'we are out to catch you if you don't pay up'.
35. HMRC should explore multiple channels for prompting UK taxpayers to declare and pay tax on offshore income. These could include:
- reminders to check for any offshore income included in notices to file tax returns
  - foreign pages appearing as a default on completion of a tax return where individual had previously declared offshore income or gains
  - prompts and messages included in the individual's personal tax account.
36. HMRC should also explore other ways to communicate with overseas taxpayers other than by post which can take a long time to arrive, especially during a pandemic. For example, e-mails could be sent and copies to taxpayers' agents.

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

37. For corporate debts, one potential option here might be to utilise the powers created at section 100 and schedule 13 of FA 2020 to make company directors jointly and severally liable for amounts payable to HMRC in insolvency or potential insolvency circumstances.

## APPENDIX 1

### ICAEW TAX FACULTY'S TEN TENETS FOR A BETTER TAX SYSTEM

The tax system should be:

1. **Statutory:** tax legislation should be enacted by statute and subject to proper democratic scrutiny by Parliament.
2. **Certain:** in virtually all circumstances the application of the tax rules should be certain. It should not normally be necessary for anyone to resort to the courts in order to resolve how the rules operate in relation to his or her tax affairs.
3. **Simple:** the tax rules should aim to be simple, understandable and clear in their objectives.
4. **Easy to collect and to calculate:** a person's tax liability should be easy to calculate and straightforward and cheap to collect.
5. **Properly targeted:** when anti-avoidance legislation is passed, due regard should be had to maintaining the simplicity and certainty of the tax system by targeting it to close specific loopholes.
6. **Constant:** Changes to the underlying rules should be kept to a minimum. There should be a justifiable economic and/or social basis for any change to the tax rules and this justification should be made public and the underlying policy made clear.
7. **Subject to proper consultation:** other than in exceptional circumstances, the Government should allow adequate time for both the drafting of tax legislation and full consultation on it.
8. **Regularly reviewed:** the tax rules should be subject to a regular public review to determine their continuing relevance and whether their original justification has been realised. If a tax rule is no longer relevant, then it should be repealed.
9. **Fair and reasonable:** the revenue authorities have a duty to exercise their powers reasonably. There should be a right of appeal to an independent tribunal against all their decisions.
10. **Competitive:** tax rules and rates should be framed so as to encourage investment, capital and trade in and with the UK.

These are explained in more detail in our discussion document published in October 1999 as TAXGUIDE 4/99 (see <https://goo.gl/x6UjJ5>).