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The Rt Hon Philip Hammond MP
Chancellor of the Exchequer
HM Treasury
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6 November 2018

Dear Philip

Draft Finance Bill 2018: interim conclusions and recommendations

1. As you are aware, the Finance Bill Sub-Committee of the Economic Affairs Committee has been inquiring into the draft Finance Bill 2018 since it was re-appointed on September 4. The Sub-Committee has considered two themes: Making Tax Digital for VAT, and the powers of HMRC. The Sub-Committee will publish two reports in the coming weeks—one on each theme.
2. The Budget took place earlier than many expected this year, and as a result the Sub-Committee has been unable to keep to its usual practice of publishing in advance of the Budget and introduction of the Finance Bill. As such, we are writing in advance of the Finance Bill's publication to share with you our interim conclusions and recommendations (in bold text) on specific provisions in the draft Finance Bill. These are based on the evidence we have gathered in the course of our inquiry.

Offshore time limits

3. There was deep and consistent opposition to this measure from witnesses to our inquiry, primarily because the impact would extend beyond the high net worth individuals at whom one might expect it was targeted. The Low Incomes Tax Reform Group were concerned that many individuals affected by clauses 33 and 34 would be elderly people on low incomes. They, together with several other witnesses, suggested the measure be withdrawn, or at least replaced by something more proportionate and targeted.
4. The Tax Consultation Framework sets out five stages of the development and implementation of tax policy. Although the measures in clauses 33 and 34 extending assessing time limits to 12 years where offshore matters are concerned were the subject of consultation, witnesses told us that HMRC did not consult at the first stage of policy-making—setting out objectives and identifying options. Consultation began at the second stage—once HMRC had decided that an extension was the best option for change—and did not give stakeholders a realistic opportunity to challenge that decision or offer alternatives.
5. The only reason given for the extension in the consultation document was that offshore matters are complex and take a long time to resolve. Witnesses disagreed with this assertion.

Pinsent Masons LLP noted that while a "complex offshore structure" may cause delay, the powers would also apply where there was no complexity, or where only a small amount of tax is at stake. "Offshore" does not equal complexity in the drafting of this measure: having a holiday home, shares in an overseas listed company, an overseas bank account or small pension would be enough to bring a taxpayer within its scope. This could affect many thousands of taxpayers. Now that the common reporting standard has been adopted by over 100 countries it should be more straightforward for HMRC to obtain any information it needs from overseas tax authorities. It is therefore difficult to understand why this proposal has been brought forward now.

6. It is also unclear how the period of 12 years was arrived at. There was no consideration in the consultation of alternative time periods. The normal time limit for assessments, which aims to give taxpayers certainty about their tax affairs within a reasonable period, is four years. This is extended to six years where a taxpayer has failed to take reasonable care and to 20 years where there is deliberately non-compliant behaviour amounting to fraud. The evidence we received emphasised that these time limits should be sufficient in relation to both offshore and onshore matters.
7. The draft proposals would treble the normal time limit for compliant taxpayers and double the limit for those who fail to take reasonable care. In doing so it would remove the distinction between fully compliant and careless taxpayers, which makes the existing time limits proportionate. Compliant and non-compliant would be treated alike. This would disregard an important design principle in the tax system; that honest taxpayers have a fundamental right to certainty and closure after a reasonable time. This risks the removal of an important safeguard for compliant taxpayers.
8. Under the proposal, all those with offshore elements to their tax affairs would have to wait for a lengthy period before they could achieve certainty and settle matters finally. In the meantime, they would have to retain records to deal with any questions HMRC may raise. The longer after the event a question is raised, the more difficult this would be. We consider this unreasonably onerous and disproportionate to the risk.
9. Some witnesses suggested that this proposal could have been necessitated by resource problems in HMRC, and that without the appropriately trained staff needed to work cases with an offshore element, HMRC cannot complete them in a reasonable timescale. It would certainly be wrong for the Government to choose to place disproportionate burdens on taxpayers and erode important taxpayer safeguards instead of funding HMRC sufficiently to conduct offshore enquiries in a timely manner.
10. The Association for Taxation Technicians suggested the legislation be amended to exclude from the extended time limits those taxpayers who have made all the necessary information available to HMRC at the appropriate time. Subsection 7 of Clause 33 contains an exclusion for situations where HMRC has received the information it needs from an overseas tax authority within the normal time limits and could make an assessment within those time limits. Inexplicably, there is no parallel provision for the situation where the information has been provided by the taxpayer.
11. **We see no logic in the application of this exclusion to situations where information has been supplied by overseas tax authorities, but not where that same information has been supplied by the taxpayer.**
12. **On the whole, this measure is unnecessary and undesirable. We recommend that it is withdrawn from the Bill. The Government should start a fresh dialogue with representatives of tax professionals to consider how offshore tax matters can be managed more effectively.**

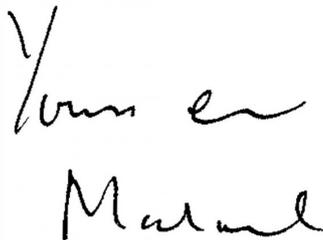
13. Some witnesses remarked that HMRC's approach to clauses 33 and 34 was indicative of a system where the balance of powers has started to tip in HMRC's favour. The Sub-Committee will return to this, and consider the substantial evidence we received alleging abuse and inappropriate use of HMRC powers, when we publish our full report on this issue before Christmas.

Penalties and interest

14. We welcome the publication of the penalties and interest provisions for Making Tax Digital, although we note from the overview of tax legislation and rates that these will not be included in the Finance Bill 2018. We therefore offer only brief comment here.
15. We commend the three-stage consultation process which has assisted the design and development of these provisions. Several witnesses told the Sub-Committee they valued this process and the time and effort HMRC put into it. We have no doubt that it has contributed to the broad support that this new framework clearly commands. Witnesses raised some areas of concern, which we will address in our full report on Making Tax Digital for VAT.

Response

16. We hope this letter will aid the House of Commons in its scrutiny of the Finance Bill, and allow you sufficient time to bring forward amendments in the House in response to our recommendations. We would be grateful for a response by **17 November 2018**.



The Rt Hon. the Lord Forsyth of Drumlean
Chairman of the Economic Affairs Finance Bill Sub-Committee