Response from ICAS

Extension of Offshore Time Limits

14 May 2018

About ICAS

1. The following submission has been prepared by the ICAS Tax Board. The Board, with its five technical committees, is responsible for putting forward the views of the ICAS tax community, which consists of Chartered Accountants and ICAS Tax Professionals working across the UK and beyond, and it does this with the active input and support of over 60 committee members. The Institute of Chartered Accountants of Scotland ('ICAS') is the world's oldest professional body of accountants and we represent over 21,000 members working across the UK and internationally. Our members work in all fields, predominantly across the private and not for profit sectors.

General comments

2. ICAS welcomes the opportunity to respond to the HMRC consultation on Extension of Offshore Time Limits, published on 19 February 2018.

3. We note that this consultation is taking place at Stage 2 of the process. This is unfortunate as there is a lack of clarity about the policy objectives behind the proposals, particularly the proposal to bring corporation tax within the scope of the proposed changes.

4. The consultation document suggests that the extension to the time limits is required because it can take longer to establish the facts in offshore cases. However, we do not believe that this takes into account the impact of CRS reporting which in many cases should provide HMRC with detailed information at a much earlier stage.

5. Assessment time limits have already been extended by the Requirement to Correct (RTC) rules; this should allow HMRC to deal with the initial inflow of CRS data. After that HMRC needs to have adequate resources to deal with CRS data on an ongoing basis without a significant extension of time limits (in non-deliberate cases).

6. Where deliberate behaviour is involved HMRC already has 20 years to make assessments/issue determinations. HMRC should ensure that it establishes deliberate behaviour in appropriate cases so that it can look back 20 years; we have been told that currently it does not always seek to do so. This would be preferable to extending the time limits for non-deliberate behaviour, particularly cases where the taxpayer has taken reasonable care. The existing time limits are intended to give taxpayers certainty after a reasonable period and should be retained, particularly for those who have taken reasonable care but have nevertheless made a mistake.

7. If the proposed changes are implemented HMRC needs to review and potentially change record keeping requirements. These relate to the current time limits; they will arguably not be fit for purpose for the proposed 12 year time limit.

8. Corporation tax should not be brought within the scope of the proposals. CT was not included in RTC (or other civil measures relating to offshore tax evasion) and we cannot see any justification for imposing a 12 year time limit on all companies – given the regulatory and compliance regimes already in place. This will increase administrative burdens, create uncertainty and potentially (alongside other factors) make the UK a less attractive destination for overseas investment.

Specific questions

What taxes should be in scope?

Q1: In addition to the taxes above, what (if any) other taxes (for example, CT) should we look to include within scope, and why?

9. As noted in our general comments we do not support the proposed extension of time limits. However, if the proposals are implemented the taxes within scope should be those within the RTC rules (and other civil measures tackling offshore evasion) ie IT, CGT and IHT.

10. We can see that in certain circumstances, where a closely held company is used as part of an offshore avoidance structure linked to an individual, there might be case for extending the time limit to the company. However, any extension should be restricted to companies being used in this way and should not be extended to all companies.

Q2: Do you foresee any difficulties for extension to other taxes and are there any potential solutions to address these?

11. Corporation tax should not be brought within the scope of the proposals. Companies are subject to a number of regulatory and compliance regimes which do not apply to individuals. We do not believe that the suggested justification for extending time limits is relevant to companies – with the possible exception (as noted above) of closely held companies specifically linked to offshore arrangements connected to an individual.

12. Imposing the extended time limit on all companies with offshore interests will increase uncertainty and compliance burdens – potentially (alongside other factors) making the UK a less attractive destination for overseas investment. The impact assessment does not appear to address this point. Many companies affected will be large multinationals which are already subject to additional compliance regimes such as the Senior Accounting Officer rules and Country-by-Country reporting; they will also be working with HMRC Customer Compliance Managers and within the Business Risk Review process.

13. If the proposals are nonetheless extended to cover corporation tax, we suggest that as a minimum there should be 'carve outs' to cover transfer pricing and CFCs. Consideration also needs to be given to the impact on the availability of double tax relief.

14. In view of the points outlined above and the exclusion of corporation tax from previous measures (including RTC) we suggest that before including CT in the scope of extended time limits there should be a separate consultation dealing specifically with CT, which sets out the problem which HMRC perceives to exist (for CT) and outlines the evidence behind the suggestion that extended time limits will address it. This would also permit a proper impact assessment to be carried out.

Defining offshore

Q3: What are your views on the proposed definitions? Cases where both undeclared offshore and onshore tax is involved

15. We agree that using the RTC definitions makes sense for IT, CGT and IHT. However, if the proposals are extended to corporation tax there should be a separate consultation, as noted above. The RTC definitions may be less appropriate for other taxes.

Q4: What are your views on the proposed scope of the rule?

16. See our response to question 14 above. For IT, CGT and IHT apportionment on a just and reasonable basis based on the RTC rules makes sense.

Q5: What are your views on the proposed commencement rule?

17. The consultation states that the legislation will not apply retrospectively but arguably there is an element of retrospection because the new time limit will apply to any year that is still in date for assessment when the new legislation comes into effect from April 2019. This is particularly significant where the RTC extended time limit applies.

18. We do not believe that this approach is appropriate where taxpayers have taken reasonable care. As noted in our general comments the existing time limits are intended to give taxpayers certainty after a reasonable period. We suggest that consideration should be given to excluding taxpayers who have taken reasonable care – ie they have made a mistake – from the extended time limits altogether. It seems unlikely that these would be cases where HMRC would struggle to obtain information.

Other considerations

Q6: In your view, are there any other considerations that HMRC should take into account when considering the design of this measure?

19. As noted in our general comments above, if the proposed changes are implemented HMRC needs to review and potentially change record keeping requirements. These relate to the current time limits; they will arguably not be fit for purpose for the proposed 12 year time limit.

Assessment of impacts

Q7: Do you have any comments on the assessment of equality or other impacts?

20. The assessment of impacts notes that 'the impact on HMRC resources will be considered further once the proposals are fully developed'. HMRC staffing levels have been significantly reduced since 2010, with adverse impacts. We believe that it is essential that HMRC is properly resourced; it will be receiving significant quantities of CRS data and needs to be able to analyse this within a reasonable timescale. The assessment time limits have already been extended by the RTC rules; this should allow HMRC to deal with the initial inflow of CRS data. For the future we do not believe that there should be blanket extensions of assessment time limits; instead the underlying problem of inadequate HMRC resources should be addressed.

21. As noted above the assessment of impacts does not appear to consider the possible impact on overseas investment which might arise from extending the proposal to all companies. We would have expected some comment and analysis on this in the section on 'economic impact'. This should be addressed before any decision is taken on including corporation tax within the scope of the proposals.