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Treasury Committee Inquiry into the 2020 Spring Budget

Response by the Chartered Institute of Taxation

1 Introduction

1.1 The Treasury Committee has invited comments on how the 2020 Spring Budget meets the Committee's tax policy principles, as expressed in its 2011 report Principles of Tax Policy.[1]

1.2 The Committee's report recommended that tax policy should be measured by reference to the following principles. Tax policy should:

1. ***be fair***. *We accept that not all commentators will agree on the detail of what constitutes a fair tax, but a tax system which is considered to be fundamentally unfair will ultimately fail to command consent.*
2. ***support growth and encourage competition***.
3. ***provide certainty***. *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.* ***Certainty about tax requires***
    i. ***legal clarity:*** *Tax legislation should be based on statute and subject to proper democratic scrutiny by Parliament.*
    ii. ***Simplicity:*** *The tax rules should aim to be simple, understandable and clear in their objectives.*
    iii. ***Targeting:*** *It should be clear to taxpayers whether or not they are liable for particular types of charges to tax. When anti-avoidance legislation is passed, due regard should be had to maintaining the simplicity and certainty of the tax system.*
4. ***provide stability***. *Changes to the underlying rules should be kept to a minimum and policy shocks should both be avoided. 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.*
5. *The Committee also considers that it is important that a person's tax liability should be easy to calculate and straightforward and cheap to collect. To this end, tax policy should be* ***practicable***.
6. *The tax system as a whole must be* ***coherent***. *New provisions should complement the existing tax system, not conflict with it.*

[1] See http://www.publications.parliament.uk/pa/cm201011/cmselect/cmtreasy/753/75302.htm

1.3 The Chartered Institute of Taxation (CIOT) is pleased to submit some comments, which includes observations from our Low Incomes Tax Reform Group (LITRG).

1.4 Our stated objectives for the tax system have much in common with the Committee's tax policy principles, and include:

- A legislative process which 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.

1.5 In the short time available to submit comments, we have limited ourselves to what we consider to be some of the more important announcements; both in terms of their fiscal impact, and measures which particularly meet or contravene the Committee's principles, and which are within the scope of our expertise. We also do not normally comment upon changes to tax rates and allowances.

1.6 We would be happy to elaborate on any of the comments or ratings if requested to do so.

2 Executive summary

2.1 Budget 2020 announced a number of consultations across a range of taxes, both new and existing, and this is welcome. So in this regard the Budget scores relatively well, both against the Committee's principles and the tax consultation framework. Similarly, reviews of existing taxes and measures were also announced and (subject to these being undertaken in a collaborative fashion) are also welcome. Our 'traffic light' system therefore shows a large amount of green and amber.

2.2 Unfortunately, there are exceptions, including one of the most important tax announcements in the Budget – the 90% reduction of the lifetime limit in entrepreneurs' relief from £10 million to £1 million, as well as the significant increase in the pensions allowances. These therefore score poorly around certainty and stability.

2.3 A number of measures have an element of retroaction, including the changes to entrepreneurs' relief, private residence relief, and protecting your taxes in insolvency – all of which will impact to the detriment of the taxpayer. These measures also score poorly around certainty and stability.

2.4 There are also measures which seek to 'rewrite the rules', namely clarifying the treatment of Limited Liability Partnership (LLP) returns and HMRC Automation. Whilst these two measures are intended to maintain the 'status quo' in a practical sense, we are concerned about the fairness of changes which legitimise the (potentially erroneous) actions of HMRC when such reparatory measures are clearly not open to taxpayers. So, whilst these measure may score highly such as around certainty and coherence, there may be a fairness issue as some taxpayers may have had their rights retrospectively removed.

2.5 The remaining measures are a mixture of scoring, with our greatest concerns around the property taxes changes, but most other measures receiving a cautions approval.

2.6 Last night the government announced a deferral of the off-payroll measures to April 2021. We had already prepared our comments on this and other areas. We have left these as drafted as action will still be needed to address many of our concerns, but we would expect awareness of the measure to be greater in a year's time. We are also encouraging the government to consider what other measures might be deferred, in order to minimise disruption on individuals and businesses during the COVID-19 pandemic.

3 Personal Tax

3.1 Tapered annual allowance for pensions

3.2 The pensions annual allowance tapering rules are to be revised from 6 April 2020 such that the 'threshold income' for triggering the rules on tapering will be increased from £110,000 to £200,000 with effect from 6 April 2020. A corresponding increase will be made to the 'adjusted income' from £150,000 to £240,000. These changes respond to the adverse tax consequences for senior NHS clinicians of the existing rules whereby many have been materially disadvantaged in undertaking extra work which has taken them over the threshold income limit.

3.3 We think the government is right to act in this area. With the current pressures on the NHS created by the coronavirus it is even more essential that perverse tax results do not lead to senior clinicians being disadvantaged from working extra shifts when they are most needed.

3.4 The impact of the tapered annual allowance and resulting pensions tax charge on savings in excess of the tapered allowance in the NHS is well known. However, the tapering and resulting tax charge affect many other sectors as well, both in the public sector (fire, police, armed services, local government, etc) and private sector. It is right and sensible that these changes apply across the board. We therefore welcome the announcement and these increases will come as a welcome relief to all those affected.

3.5 However, we should not forget that this issue was created in the first place by unconsulted-on and complicating measures announced as surprises on previous Budget Days. It is now being addressed, again in an unconsulted on way, at a cost of £670m pa directed at higher earners (only a minority of whom may be in the target group). Further, the underlying issues remain; that pensions relief is in principle very generous (although tempered with complex restrictions), benefited mostly by the better off, and above all things pensions is an area in which stability is vital. A consultative approach is needed to address these issues.

3.6 Also from 6 April 2020 the government will reduce the minimum tapered annual allowance from a base of £10,000 to £4,000. While the reduction in the minimum annual allowance will disappoint many higher earners looking to save for their retirement, we think it's an acceptable quid-pro-quo for the increased threshold at which tapering begins to apply.

3.7 We also welcome the promise of a call for evidence on pension administration to remedy the situation whereby some earning around or below the level of the personal allowance and saving into a pension benefit from a tax top-up on their pension savings while others do not, dependent on how their pension scheme administers relief. There are a number of aspects of the pensions tax regime that would benefit – for example, benefit crystallisation events and the taxation of international pensions – from a review and we hope that the government will also consider looking at simplifying the taxation of pensions generally.

3.8 Top Slicing Relief on life insurance policy gains

3.9 Top Slicing Relief legislation has been amended to 'put beyond doubt' the effect of the legislation relating to the availability of a taxpayer's allowances when calculating Top Slicing Relief (TSR). The issue was considered by the First-tier Tribunal in *Silver v HMRC.*[2] The amendments provide for the personal allowance to be reinstated within the calculation for TSR in accordance with the decision in *Silver* in favour of the taxpayer. The measure also clarifies the order of the treatment of allowances and reliefs within the TSR calculation. The amendments are estimated to affect about 2,000 taxpayers.

3.10 The amendments have effect, with some restrictions (see below) from 2019/20. It is not clear why the amendments, which are clarificatory in nature, should not be extended to years prior to 2019/20.

3.11 The amendments are disapplied for both 2019/20 and 2020/21 for someone whose income tax liability on gains from chargeable events only applies to events before 11 March 2020.

3.12 For example, suppose Fred has just one chargeable event in 2019/20, in January 2020. His brother Tom has two events in 2019/20: one in January 2020 and one on 23 March 2020. Seemingly, Fred would not be affected by the amendments, but Tom would. The rationale for this approach is not clear.

3.13 Entrepreneurs' Relief

3.14 The Entrepreneurs' Relief lifetime cap has been reduced from £10 million to the original limit of £1 million when the relief was introduced in 2008. The Conservative manifesto promised to 'review and reform entrepreneurs' relief', but we did not expect such a review to be undertaken privately. We would have preferred a broader public consultation about the objectives and efficacy of this controversial and complex relief to examine the economic rationale and coherency of other aspects beyond the lifetime cap, such as the five per cent ownership condition (where the sale is of a company), the two-year ownership requirement, and more widely the overall policy intent.

3.15 Not only was there no consultation prior to this change taking effect, it seems as if there will be no systematic consultation over the draft legislation. Moreover, the change reverses a series of previous Budget announcements which also took effect without consultation, and we are not aware of any public post implementation review of introduction of this relief or previous enhancements.

3.16 The relief remains complex. It is neither simple, understandable nor clear in its objectives. The lifetime cap has changed a number of times since the introduction of the relief in 2008. In all cases these have been 'surprise' Budget announcements with no 'roadmap' to provide a background idea of the government's thinking. A transparent evaluation, conducted as an open consultation or public call for evidence, would have allowed taxpayers some indication of the direction of policy to inform investment decisions.

3.17 One of the issues that might have been addressed differently as a result of a consultative process is whether it was right to withdraw much of the relief suddenly and with very aggressive 'anti-forestalling' rules (which are more usually associated with anti-avoidance measures than with policy changes) and thus has an element of retroaction in that investment decisions may have been taken on the basis of the pre-11 March £10 million cap. Absent transitional relief, changes to CGT rates and reliefs inevitably carry the risk that unrealised gains will be affected by any adverse change. We recognise that immediate action may be needed to prevent forestalling, but a transitional period for those who have entered into transactions in good faith in reliance

[2] [2019] UKFTT 0263 (TC)

on existing relief in tandem with appropriate forestalling measures would score more highly in terms of stability and certainty.

3.18 Review of changes to the off-payroll working rules (commonly known as IR35)

3.19 On 6 April 2017 the IR35 rules were amended such that where an engagement is with a public sector body the responsibility for deciding whether or not IR35 applies moved to the public sector body (known as the 'Off-Payroll Working' rules). From 6 April 2020 this is now extended, with some changes, to private sector entities that are not 'small'.

3.20 HM Treasury published the outcome of a review into the IR35 Off-Payroll Working rules on 27 February 2020. This made (or rehearsed) a number of welcome announcements, such as:

- Taxpayers will not have to pay penalties for errors relating to off-payroll in the first year, except in cases of deliberate non-compliance;
- information resulting from changes to the rules will not be used to open new investigations into personal service companies (PSCs) for tax years prior to 6 April 2020, unless there is reason to suspect fraud or criminal behaviour;
- the rules will only apply to services carried out from 6 April 2020 onwards.

3.21 However, whilst the government has listened to a fair many of the concerns raised with these new rules, there are still a number of areas of anxiety, both around the absence of technical guidance and final legislation meaning that businesses have very little time in which to be ready. The lack of communications means that awareness may not be as great as it should be, and compliance difficulties are likely to arise.

3.22 There are also concerns about the transfer of debt provisions in cases where a third party has taken reasonable care to ensure that the deemed employer complies with their obligations. We are concerned that they could leave third parties such as the first agency or the client in a very uncertain position and with the risk of significant potential liabilities which may arise by virtue of matters which are outside their control.

3.23 While the line between employment and self-employment may be obvious at either extreme, it remains very unclear in some cases. We think that the government needs to initiate a review of employment status – as was mooted in the previous government's Good Work Plan – and codify what it means to be employed or self-employed (or a worker) in the modern working environment. The current uncertainty in when an individual is employed, a worker or self-employed, and the rights and obligations attaching to each status, and how those who work through their own PSC are to be treated, remains a problem.

3.24 LITRG's main concern with the rules is the potential knock on effects of the legislation in terms of the possible mass shift of low paid agency workers out of limited companies and into other arrangements. We are concerned that not enough thought has been given to what the reaction of the temporary labour market will be. Firstly, the worker could be left with messy limited company and corporation tax compliance issues. Secondly, workers could be put into potentially non-compliant arrangements. This was one of the undesirable outcomes of the public sector changes where there was a shift of contractors (often unwittingly) into highly aggressive umbrella models, including ones based on loan arrangements. LITRG have recently put forward a number of suggestions in order to help prevent the purpose of the off payroll legislation being undermined and also help stop vulnerable workers getting caught up in confusing arrangements.

4 Corporate Tax

4.1 Intangible fixed assets: relief for pre-Finance Act 2002 assets

4.2 We welcome this measure which will remove the restriction in relation to pre-FA 2002 intangible assets. The current distinction between pre-FA 2002 intangible assets and those arising after the date the IFA regime was first introduced is an artificial boundary in tax law that does not exist in commerce. Removal of this boundary will simplify the tax code, results in the taxation of more intangible assets being aligned with the accounts, and makes the UK a more attractive place to do business.

4.3 In our view, this change will benefit many taxpayers. However, there will also be taxpayers that have capital losses or non-trading deficits and who would have anticipated using them against any gain on pre-2002 intangible assets. In addition, there will be taxpayers who, having been through the transition to the new rules in 2002, are now quite happily running the two regimes side by side and for whom a compulsory change to the system would be more disruptive than maintaining the status quo. These taxpayers may be disadvantaged. We welcome that the TIIN published on Budget Day refers to transitional rules which will be introduced to protect these taxpayers and we look forward to seeing the detail of these.

4.4 Digital Services Tax (DST)

4.5 Budget 2020 confirms that, from April 2020, the government will introduce a new 2% tax on the revenues of certain digital businesses which derive value from their UK users. The rules will be consistent with draft legislation published in July 2019, although there are still aspects of the rules that are under consideration.

4.6 We remain of the view (as previously stated to this Committee) that this interim tax is very much a second-best solution and the downside risks are of provoking retaliation which could affect British-based businesses, and / or 'copycat' measures which may be less narrowly targeted. Ultimately governments are more likely to be able to tax global multinationals effectively by working together rather than each going their own way.

4.7 As a result we welcome the confirmation that the government remains committed to a multilateral solution to taxing digital multinational companies, and the commitment to repeal the DST once an appropriate global solution is in place.

4.8 The thresholds for the application of the DST are as previously announced; this will mean that only a small number of business will be in scope, which will mitigate the impact of the new tax. However, we suspect that identifying the revenues which are to be subject to the DST (broadly, those revenues which are linked in some way to British users, who themselves typically access the underlying technology without charge) will be complex, and may lead to disputes over how much tax is due.

4.9 Preventing abuse of the R&D tax relief for small and medium enterprises (SME)

4.10 We welcome the announcement by the Chancellor that the introduction of the PAYE cap on the payable tax credit in the SME R&D schemes will be delayed until 1 April 2021.

4.11 We accept that HMRC must work to counter fraudulent attempts to claim the SME scheme payable tax credit and support HMRC in this aim. However, as we noted in our response to the consultation last year, we are concerned that the proposed cap will have an impact on, and may prevent claims from, some genuine businesses, consequently acting as a deterrent to such companies from undertaking R&D.

4.12 Thus we welcome the further consultation that the government intends to undertake to ensure that the cap is better targeted to counter abusive behaviour while ensuring that eligible businesses are able to access the relief. We will once again encourage HMRC to ensure that the impact of this cap on genuine businesses is minimised as much as possible and to use other tools at its disposal, rather than rely on this cap, to continue its campaign against fraudulent and abusive claims.

4.13 CIOT is engaged in developing specific guidance for research and development credits advisers on the implementation in their sector of professional ethical requirements (Professional Conduct in Relation to Taxation - 'PCRT') and is in dialogue with HMRC on this.

5 Property Tax

5.1 Non-UK resident Stamp Duty Land Tax (SDLT) surcharge

5.2 The surcharge was originally announced at Budget 2018 with a proposed rate of 1%. The government consulted on the design of the surcharge (but not the policy) in February 2019 and we note that in November 2019, the Conservative party announced that (if a majority government) they would introduce the surcharge at 3%.[3] At Budget 2020, the government confirmed that it will legislate in Finance Bill 2020-21 for a 2% surcharge to take effect from 1 April 2021. Even prior to its implementation the measure seems to have suffered a lack of stability, and indeed SDLT has been subject to change in virtually every year since its introduction in 2003.

5.3 Subject to confirmation of the design, the surcharge will compound the existing complexity of SDLT, the brunt of which is borne by conveyancers who generally complete the SDLT returns but often do not have tax expertise. In recognition that not all conveyancers are tax professionals, the consultation proposed a new standalone SDLT residence test for individuals (instead of using the existing statutory residence test that applies for income tax and CGT) designed to be simple to understand and apply. While a more straightforward individual residence test scores well in terms of simplicity and practicability, coherence of the tax system as a whole is not well-served by more than one residence test.

5.4 Refunds of the surcharge will be available to those who become resident after their purchase. While that is consistent with the rationale and therefore in part at least satisfies 'fairness', the need to build in SDLT refunds into the system imposes costs and administrative burdens on both taxpayers and HMRC. The existing system for issuing SDLT refunds in respect of the higher rates is already under pressure in terms of resourcing.

5.5 We also note that the policy costings for this measure, whilst indicating an increase in revenues in 2020/21 (as overseas buyers advance purchases) will not produce an ongoing net revenue benefit until around the beginning of 2024.[4] This seems at odds with the pledge that the money raised from the surcharge will be used to help address the immediate problem of rough sleeping.

5.6 Capital Gains Tax private residence relief: reform of ancillary reliefs

5.7 Budget 2018 announced that, following consultation, private residence relief will be changed, broadly to reduce the final period exemption from 18 months to 9 months, and to reform lettings relief so that it only

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[3] https://vote.conservatives.com/news/stamp-duty-land-tax-surcharge-for-non-uk-residents-to-make-housing-fairer
[4] Table 2.1: Budget 2020 policy decisions

applies in circumstances where the owner of the property is in 'shared-occupancy' with a tenant. A 'stage 2' consultation took place during spring 2019 and draft legislation was published on 11 July 2019.

5.8 Whilst Budget 2020 confirms that the measure is unchanged from the draft legislation, this is our first opportunity to comment here on the measure. We are disappointed that, having raised concerns with elements of the proposed changes and their operation (such as the qualification in that the letting out as residential accommodation must be 'otherwise in the course of a trade or business' and the basis on which extra statutory concessions will be legislated), they are apparently unchanged as a result of consultation. The measure is retroactive in that it withdraws letting relief for any previously 'qualifying' lettings, if disposal is made post 6 April, and we are concerned that many will simply not understand how narrow the relief will become. We note, however, that this measure does represent some re-balancing between the generosity of tax relief to homeowners and the lack of relief for tenants.

5.9 We remain concerned that awareness of these changes is too low, with the risk that some homeowners may find themselves facing an unexpected tax liability, and particularly concerning as these changes will take effect at the same time as the payment and return obligation for Capital Gains Tax reduces to 30 days from completion.

6 Indirect Tax

6.1 Plastic Packaging Tax

6.2 Budget 2018 announced that there would be a consultation on a new plastic packaging tax for produced or imported plastic packaging that does not include at least 30% recycled content. The tax is levied on the full weight of the packaging product, at a rate set per tonne of packaging material. Budget 2020 announced key decisions the government has taken for the design of the tax, and we welcome the announced period of further consultation that looks at details of the design, implementation and administration of the tax, and considering the proportionate burden to affected businesses, ready for implementation in April 2022. This measure has therefore been a good exemplar of the consultation process.

6.3 Whilst we welcome the encouragement of environmentally friendly initiatives to drive changes in more polluting behaviour, setting this aim aside, it does mean that businesses that deal in packaging that will be impacted by the tax will incur higher costs, which will reduce growth and competition for its pricing, ultimately borne by the end consumer. Further, the anticipated revenue yield is uncertain as it depends on the pace of business behaviour change. The tax yield for the Soft Drinks Levy did not meet expectations as businesses made changes to ensure, where possible, the tax would not be charged. Although this was the aim of the environmental policy it did impact the anticipated tax yield. The position may be similar for the Plastic Packaging Tax.

6.4 VAT: applying a zero rate to e-publications

6.5 We welcome the announcement of the zero VAT rate for e-publications, which provides for a uniform VAT rate position for the purchase of books and similar publications, whether it is in paper or digital format, which is fair and provides certainty (particularly in the light of recent litigation). This change has derived from EC legislation, adopted on 28 September 2018, that allowed member states to reduce the VAT rate on digital publications as long as it was not lower than the physical publication.

6.6 Whilst a change in the VAT rate for these products appears simple in nature, the change will require businesses to make changes to accounting software and website pricing on 1 December 2010 in the busy pre-Christmas period. For businesses unable to make a manual adjustment to their VAT accounting software and/or website, they will require assistance from their providers, whose time may be at a premium with the end of the transition period on 31 December 2020. It remains to be seen whether website pricing will be reduced so that consumers pay the same net price without VAT.

6.7 Introduction of a zero rate of VAT for women's sanitary products

6.8 It was agreed at the March 2016 European Council that it was the intention of the Commission to enable increased flexibility for member states with respect to zero and reduced rates of VAT. Budget 2020 introduces the zero VAT rate to women's sanitary products with effect from 1 January 2021; the day after the end of the transition period of the UK leaving the EU.

6.9 Currently, the VAT rate is 5%, though it was announced in the 2015 Autumn Statement, that government would donate the VAT received to women's charities. The introduction date now gives businesses clarity and certainty on the position. The timing of the introduction is in retailers' busy New Year and January sales period so the repricing of stock in shops and amending prices on websites will require additional staff or external resource for affected businesses at a very busy time of the year.

6.10 Postponed VAT accounting

6.11 The Value Added Tax (Accounting Procedures for Import VAT for VAT Registered Persons and Amendment) (EU Exit) Regulations 2019 (SI 2019/60), laid on 22 January 2019, introduced a new self-assessed method for importers to account for import VAT in the UK in the event of a no-deal outcome of the withdrawal negotiations between the UK and the EU. As agreement was reached, the legislation was not brought into force.

6.12 Budget 2020 announced that from 1 January 2021, the first day after the end of the transition period of leaving the EU, postponed VAT accounting would come into force. It changes the method of accounting for import VAT by VAT registered businesses established in the UK so that instead of declaring import VAT at the time of entry or by means of a monthly accrual in a deferment account, importers will account for the VAT as a self-assessed entry in the VAT return; they will recover the import VAT (if entitled to do so) in the same VAT return, in a similar manner to the current rules for accounting for EU acquisitions of goods so the VAT accounting is administrative only. This creates a cash flow benefit to importers as the declaration is paper based and may also reduce costs for businesses that must have a bank guarantee for import VAT.

6.13 The confirmation that postponed VAT accounting will commence on 1 January 2021 for importers of goods sourced from all countries is welcomed. It provides certainty for importers and the rules are similar in nature to long term rules for acquisitions of goods from the EU which are simple and practicable. The rules are not currently available to businesses that are registered for VAT in the UK but which do not have a UK permanent establishment, so there is a question of balancing the protection of the revenue over fairness to businesses.

7 Avoidance, evasion & non-compliance

7.1 Response to the Independent Loan Charge Review

7.2 The Budget confirmed the government's response to Sir Amyas Morse's Independent Loan Charge Review, which recommended a number of relaxations (such as that the charge should not apply to loans outstanding at 5 April 2019 that were made before 9 December 2010, nor to those made before 6 April 2016 where the scheme use was disclosed to HMRC and HMRC did not act). The changes will be legislated for in the forthcoming Finance Bill. Draft legislation published on 20 January and 27 February aims to give effect to this response. The government also confirmed that it will shortly issue a call for evidence on further action to stamp out these schemes.

7.3 These relaxations to the loan charge are welcome. However, taxpayers may be treated differently as a result of the changes to the loan charge depending on whether they have 'done nothing', voluntarily settled or repaid a loan; which could result in a further outcry of unfair treatment. The government will need to consider this carefully, preferably not penalising those who have engaged and settled compared to the situation they would have been in had they sat on their hands.

7.4 Further, there remain areas which require further clarity, such as whether an employer (or other party) that has paid tax under PAYE in respect of the 5 April 2019 loan charge for years which are now outside the scope of the loan charge can claim a refund, and the repayment scheme provides HMRC with considerable discretion as to how to operate it and we are concerned that rights of appeal are not clearly set out in legislation.

7.5 <u>Tackling Construction Industry Scheme (CIS) abuse</u>

7.6 The government has announced that it will legislate to prevent non-compliant businesses from using the CIS to claim tax refunds to which they are not entitled. The government will also be publishing a consultation which introduces options on how to promote supply chain due diligence.

7.7 The CIOT supports initiatives aimed at reducing the incidence of tax fraud, where such measures are proportionate to the risk to revenue, contain safeguards for those potentially affected and are necessary to achieve their aims.

7.8 The measure is intended to allow HMRC to reduce or deny the CIS credit claimed on employer returns where the sub-contractor cannot evidence the deductions and does not correct their return when asked. It will also simplify the rules covering deemed contractors, clarify the rules on allowable deductions for expenditure on materials, and expand the scope of the penalty for supplying false information when registering for CIS.

7.9 While we await the detail, our main concern in relation to the proposals is the potential denial of CIS credits where a sub-contractor cannot evidence the deductions in circumstances where the contractor has failed to provide the sub-contractor with a CIS payment and deduction statement. Often the contractor will make CIS deductions and pay the sub-contractor the net amount but then fail to provide such statements, and in the worst case scenario will also fail to account to HMRC for the CIS deducted. In such circumstances, HMRC needs to take a light touch approach to the evidence of deduction it will accept from sub-contractors – for example, a copy of the invoice and evidence of banking receipt for the net amount ought to be sufficient to evidence deductions.

7.10 The CIOT welcomes consultation on simplifying the rules covering deemed contractors and clarification of the rules on allowable deductions for expenditure on materials. We think that it would be helpful to also consult on what work is included / not included within CIS, given changes in methods of construction and materials used since the scheme was introduced.

7.11 Conditionality: hidden economy

7.12 As announced at Budget 2020, the government will legislate in Finance Bill 2020-21 to make the renewal of certain business conditional on applicants completing checks that confirm they are appropriately registered for tax. Licensing bodies will have to obtain confirmation that an applicant has completed the check before making a decision on their renewal application, thus making it more difficult for non-compliant traders to operate in the hidden economy and help level the playing field for the compliant majority.

7.13 This measure was the subject of a 'stage 1' consultation in 2016 and the changes will take effect in England and Wales in April 2022; thus benefiting from a suitable lead-in time. Unfortunately, the measure does not quite level the playing field as it will not as yet apply in Scotland and Northern Ireland.

7.14 It is clearly sensible to highlight, and where possible ensure compliance with, tax obligations when businesses or individuals interact with other government or public sector departments, and so we give this a cautious welcome. However, we are yet to see the detail of how these checks will work in practice, and we do have a concern that delays or discrepancies might arise (eg through differences in governmental IT systems) which could lead to trading licences being delayed or withheld.

8 Tax administration

8.1 Clarifying the treatment of Limited Liability Partnership (LLP) returns

8.2 This measure makes provision with immediate effect (both prospectively and retrospectively) about tax returns in relation to LLPs that are not carrying on a trade, profession or business with a view to profit. It is intended to put beyond doubt that LLPs should be treated as general partnerships for the purposes of the Income Tax rules, and to clarify the law to ensure the rules work as always intended. This change will not affect the majority of LLPs; only those LLPs who do not trade with a view to a profit.

8.3 Although not mentioned in the impact note we believe that this provision has been enacted following the decision of the First-tier Tribunal in 2019 in the case of *Inverclyde Property Renovation LLP and Clackmannanshire Regeneration LLP v HMRC* [2019] UKFTT 0408 (TC) that HMRC had no power to open enquiries into LLPs under s 12AC Taxes Management Act 1970 (notice of enquiry into a partnership return) because they should have been opened under paragraph 24 Schedule 18 Finance Act 1998 (enquiry into company tax return). HMRC had lodged an appeal against the decision with the Upper Tribunal but we note that the appeal has been withdrawn. Again, although not mentioned in the impact assessment, we believe that if retrospective and prospective action had not been taken, a large amount of tax would have been at risk (for example, from payments already made by affected LLPs having to be repaid, and open enquiries not being valid and it being too late for HMRC to raise discovery assessments).

8.4 This change has not been consulted on, takes immediate effect and is retrospective. We believe that the risk to the Exchequer is the reason that is likely to have prevented the Government from consulting in accordance with its tax consultation framework. Until the *Inverclyde* case, everyone (HMRC and taxpayers) had believed the tax provisions as they relate to LLPs (which have been in place since the creation of LLPs in 2001) were operating as intended. It is arguable that HMRC should not be asking Parliament to legislate retrospectively simply because it turns out at a much later date that HMRC have not been applying the legislation correctly from its inception. Added to this HMRC are in a uniquely powerful position compared to taxpayers in being able to do that.

8.5 HMRC Automation

8.6 As announced by written ministerial statement (WMS) on 31 October 2019 and confirmed at Budget 2020, the government will legislate to confirm that HMRC may use automated processes to issue taxpayers with notices to file tax returns and penalty notices. This measure will apply prospectively and retrospectively to put beyond doubt that the rules work as designed and intended. The WMS was considered necessary in the light of ongoing litigation challenging the validity of HMRC's practices, which could have put significant amounts of revenue at risk.

8.7 At the time of the WMS we recognised the merit in seeking to maintain the 'status quo' and preventing opportunities to reopen settled cases to seek repayment of tax, interest and penalties; although we were concerned that blanket retrospection could prejudice a class of taxpayer - namely, those taxpayers who had a live challenge against the validity of HMRC's actions, which commenced prior to the WMS.

8.8 As it transpired the Upper Tribunal found that HMRC's practices were lawful and (at the time of writing) this legislation does, therefore, maintain the status quo. However, there remains a sense that in limited circumstances the measure could have gone beyond that which was fair, and again could have been a further example of history being rewritten to correct otherwise flawed administrative processes.

8.9 Protecting your taxes in insolvency

8.10 Budget 2020 delays the commencement of the measure announced at Budget 2018 from 6 April to 1 December 2020, and extends this measure to Northern Ireland. The measure makes HMRC a second preferential creditor for amounts described as being collected and held by businesses on behalf of other taxpayers; namely VAT, PAYE Income Tax, Employee NICs, student loan deductions and Construction Industry Scheme deductions.

8.11 At Budget 2018 we gave the measure a cautious welcome. During the subsequent consultation we expressed concerns that the proposal could lead to an increase in insolvencies (reflecting that fact that HMRC are more likely to be able to collect sums due to them), the consultation had commenced at 'stage 2', the measure applied to insolvencies commencing from 6 April 2020 (meaning that it will apply to tax debts that arose before the legislation was enacted), and a number of practical queries (such as how amounts of payroll taxes paid by employers will be apportioned between the employer (non-preferential) and the employee (preferential) elements.

8.12 The Budget 2020 announcement simply defers the effective date, and does not appear to address these operational concerns. We note that Budget 2020 also announces 'investment in HMRC to improve tax compliance' and revenues of nearly £4 billion by the end of 2024-25. Part of this revenue will come from 'expanding debt collection capabilities'[5] and we wonder whether these measures will overlap.

[5] Paragraph 2.254, Red Book

9 Universal Credit / lower paid individuals

9.1 The Universal Credit (UC) announcements are welcome, as are those widening the scope of Statutory Sick Pay (SSP), but overall the position of self-employed people and employees earning below the SSP qualifying threshold remains complex. Those who cannot claim SSP or new style ESA will have to rely on income-based benefits – and for most people that means UC. However, there are a number of conditions that have to be satisfied in order to claim UC and if they have a partner who is working their household income may be too high to qualify for any support, so it is not a solution for everyone. Also, those who are already in receipt of other support, for example child tax credit or housing benefit, will need to seek specialist welfare rights advice before making a UC claim, especially if it is only needed for a short period, because once a UC claim is made their other benefits will stop.

9.2 While the Chancellor announced the National Insurance threshold increase would save employees around £100 per year, this is not quite the case for everyone. The lowest paid, earning below the existing threshold of £8,632, do not pay NIC at the moment, so the increased starting point makes no difference to them. Also, workers who pay NIC but claim universal credit may see an extra £100 in their wage packet over the year, but their universal credit payment will reduce by £63, leaving them only £37 better off. Increasing the work allowances in Universal Credit would be another way of helping those on the lowest incomes.

10 Acknowledgement of submission

10.1 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.

11 The Chartered Institute of Taxation

11.1 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.

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.

The CIOT's 18,500 members have the practising title of 'Chartered Tax Adviser' and the designatory letters 'CTA', to represent the leading tax qualification.

The Chartered Institute of Taxation18 March 2020

Ref - OOTLAR	Ref – Red Book	Nature of measure	Be fair	Support growth and encourage competition	Provide certainty	Provide stability	Be practicable	Be coherent	Overall
Personal tax									
1.3	2.182 - 2.186	Tapered annual allowance for pensions	G	A	G	R	G	A	G
1.4	2.181	Top Slicing Relief on life insurance policy gains	A	A	A	A	G	G	A
1.5	2.199	Capital Gains Tax (CGT) reduction in the Entrepreneurs' Relief lifetime limit	A	A	A	R	A	A	A
1.10	2.178	Review of changes to the off-payroll working rules (commonly known as IR35)	A	R	A	A	A	A	A
Corporate tax									
1.15	2.206	Intangible fixed assets: relief for pre-Finance Act 2002 assets	A	G	G	G	G	G	G
1.16	2.205	Digital Services Tax	A	R	R	R	A	A	A
2.17	2.203	Preventing abuse of the R&D tax relief for small and medium enterprises (SME)	G	A	A	A	A	G	A
Property tax									
2.44	2.212	Non-UK resident Stamp Duty Land Tax surcharge	A	A	R	R	R	R	R
N/A	N/A	Capital Gains Tax private residence relief: reform of ancillary reliefs	A	A	R	A	R	A	A
Indirect Tax									
1.21	2.214	Plastic Packaging Tax	A	A	G	G	A	G	G
2.21	2.233	VAT: applying a zero rate to e-publications	G	G	G	G	A	G	G
2.23	2.235	Introduction of a zero rate of VAT for women's sanitary products [	G	G	G	G	A	G	G
2.29	2.234	Postponed VAT accounting	G	G	G	G	G	G	G

Ref - OOTLAR	Ref – Red Book	Nature of measure	Be fair	Support growth and encourage competition	Provide certainty	Provide stability	Be practicable	Be coherent	Overall
Avoidance, evasion & non-compliance									
1.31	2.255	Response to the Independent Loan Charge Review	G	A	G	A	G	G	G
2.49	2.249	Tackling Construction Industry Scheme (CIS) abuse	A	G	G	G	A	A	A
2.50	2.252	Conditionality: hidden economy	G	G	G	A	A	A	A
Tax administration									
1.33	2.262	Clarifying the treatment of Limited Liability Partnership (LLP) returns	A	A	G	G	G	G	G
1.34	2.263	HMRC Automation	A	A	G	G	G	G	G
1.35	2.261	Protecting your taxes in insolvency	G	A	A	A	A	A	A
Universal Credit / lower paid individuals									
N/A	2.9 – 2.16, 2.172	Measures taken as a whole	A	G	A	G	G	A	G

Key to traffic light system:

Green = pass, generally meets the principles, Amber = cautious approval, but with some reservations, Red = fail - generally fails to meet the principles