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## Section 126: financial institution notices

### Overview

Section 126 of the Finance Act 2021 (FA 2021) provides HMRC with an additional power to obtain information and documents specifically from financial institutions by way of “financial institution notices” (FINs). Section 126 FA 2021 introduces this power by way of amendments to Schedule 36 to the Finance Act 2008 (Schedule 36). Although FA 2021 introduces other amendments to Schedule 36, this note focuses only on the introduction of FINs.

### Legislative background: third party notices

Schedule 36 in its existing form provides officers of HMRC with the power to obtain information and documents from taxpayers and third parties. The paragraph (and conditions) under which HMRC would request a *third party* to provide information about a taxpayer (different from the third party), will depend on whether the identity of the taxpayer is known (and if not known whether the taxpayer’s identity can be ascertained).<sup>1</sup> Section 126 FA 2021 (and hence this note) applies only to situations where the taxpayer’s identity is known.

Under Schedule 36 officers of HMRC have the power to issue a notice in writing (a third party notice (TPN)) to require any third party (including a financial institution) to provide information or produce a document, if the information or document is reasonably required by the officer for

<sup>1</sup> The provision that deals with third party information requests where 1) the taxpayer’s identity is not known and not ascertainable is Finance Act 2008 (FA 2008) Sch.36, para.5 and 2) the taxpayer’s identity is not known but can be ascertained is FA 2008 Sch.36, para.6.

the purpose of checking the tax position (including foreign taxes) of a known taxpayer<sup>2</sup> (which has been extended under FA 2021 to also cover information or documentation required for the purpose of collecting a tax debt of the taxpayer<sup>3</sup>). Schedule 36 enshrines various protections and safeguards with respect to TPNs.

First, the information or documents requested must be reasonably required by the officer for the purpose noted above.

Secondly (and arguably the most important safeguard), a TPN can only be given if it is either agreed to by the taxpayer, or if the First-tier Tribunal (Tax) (FTT) has approved the giving of the TPN.<sup>4</sup> Correspondingly, FTT approval is not always required before giving a TPN, although an officer of HMRC may ask for FTT approval even if the taxpayer has agreed to the TPN.<sup>5</sup> An important distinction between the two routes is that a third party receiving a TPN agreed to by a taxpayer (but not approved by the FTT) has the right to appeal to the FTT against the TPN or any requirement in the TPN on the basis that it would be unduly onerous to comply with the TPN or requirement therein<sup>6</sup> (except where the requirement being appealed against is that the third party is to provide information or produce documents that form part of a taxpayer's statutory record),<sup>7</sup> whereas a third party receiving an FTT-approved TPN has no such right of appeal.<sup>8</sup> There are also no appeal rights against a decision of the FTT under paragraph 3 of Schedule 36.<sup>9</sup> Taxpayers have no right to appeal a TPN on any grounds.

Thirdly, the FTT cannot approve a TPN unless it is satisfied that: an application for approval is made by, or with the agreement of, an authorised officer of HMRC<sup>10</sup>; the FTT is satisfied that, in the circumstances, the officer giving the TPN is justified in giving the TPN; the third party receiving the TPN has been given a reasonable opportunity to make representations to an officer of HMRC, and the FTT is given a summary of these representations (although the FTT may waive these requirements under certain circumstances); and the taxpayer has been given a summary of the reasons why such information and documents are required (although the FTT may waive these requirements under certain circumstances) (and HMRC must also provide a copy of the TPN to the relevant taxpayer unless disapplied by the FTT).<sup>11,12</sup>

Prior to the publication of the draft legislation on FINs, HMRC published a consultation document, *Amending HMRC's Civil Information Powers: Consultation Document* (Consultation),<sup>13</sup> followed by a Summary of Responses, *Amending HMRC's Civil Information Powers*, dated 21 July 2020 (SOR).<sup>14</sup>

<sup>2</sup> FA 2008 Sch.36, para.2(1).

<sup>3</sup> Finance Act 2021 (FA 2021) s.127.

<sup>4</sup> FA 2008 Sch.36, para.3(1).

<sup>5</sup> FA 2008 Sch.36, para.3(2).

<sup>6</sup> FA 2008 Sch.36, para.30(1).

<sup>7</sup> FA 2008 Sch.36, para.30(2).

<sup>8</sup> FA 2008 Sch.36, para.30(3).

<sup>9</sup> FA 2008 Sch.36, para.6(4).

<sup>10</sup> "Authorised officer" is defined in FA 2008 Sch.36, para.59 and would in this context be expected in practice to include officers of HMRC authorised to make or agree to such an application to the FTT.

<sup>11</sup> FA 2008 Sch.36, para.4(1).

<sup>12</sup> FA 2008 Sch.36, para.3(3).

<sup>13</sup> HMRC, *Amending HMRC's Civil Information Powers: Consultation Document* (10 July 2018).

<sup>14</sup> HMRC, *Amending HMRC's Civil Information Powers: Summary of Responses* (21 July 2020).

## FINs

FA 2021 introduces FINs. FINs operate alongside TPNs and serve as an additional power available to HMRC.

Section 126(2) FA 2021 provides that an officer of HMRC may by notice in writing (i.e. by way of a FIN) require a “financial institution” to provide information or produce a document if two conditions are satisfied. The first condition “is that the information or document is, in the reasonable opinion of the officer giving the notice, of a kind that it would not be onerous for the institution to provide or produce” (Condition A).<sup>15</sup> The second condition “is that the information or document is reasonably required by the officer (a) for the purpose of checking the tax position of” a known taxpayer or “(b) for the purpose of collecting a tax debt of the taxpayer” (including foreign taxes) (Condition B).<sup>16</sup> Unlike for TPNs, there is no requirement for a FIN to be approved by the FTT or agreed to by the taxpayer. Further, a financial institution receiving a FIN has no right to appeal a FIN or a requirement therein.

There are some additional safeguards built into the legislation in relation to FINs. First, a FIN may only be given by an officer of HMRC if the relevant officer is an authorised officer of HMRC, or if an authorised officer of HMRC has agreed to the giving of the FIN.<sup>17</sup> Secondly, a FIN must name the taxpayer to whom it relates<sup>18</sup> (unless disapplied by the FTT, and the FTT must disapply this requirement if the FTT is satisfied that the HMRC officer has reasonable grounds for believing that naming the taxpayer might seriously prejudice the assessment or collection of tax).<sup>19</sup> Thirdly, an HMRC officer must give a copy of the FIN to the relevant taxpayer along with a summary of the reasons why an officer of HMRC requires the information and documents<sup>20</sup> (unless disapplied by the FTT, and the FTT must disapply this requirement if the FTT is satisfied that complying with the requirement might prejudice the assessment or collection of tax).<sup>21</sup>

Finally, there is an obligation on HMRC to provide the Treasury with information on the number of FINs given during the preceding financial year, and other information relating to FINs as the Treasury may reasonably require,<sup>22</sup> which must be presented in an annual report to the House of Commons by the Treasury.<sup>23</sup> However, in substance, this is more a reporting obligation than a taxpayer or third party safeguard, and therefore, while this may make HMRC eventually accountable to the House of Commons, this does not provide any legal protection in individual cases.

<sup>15</sup> FA 2008 Sch.36 new para.4A(2) inserted by FA 2021 s.126(2).

<sup>16</sup> FA 2008 Sch.36 new para.4A(3) inserted by FA 2021 s.126(2).

<sup>17</sup> FA 2008 Sch.36 new para.4A(5) inserted by FA 2021 s.126(2).

<sup>18</sup> FA 2008 Sch.36 new para.4A(6) inserted by FA 2021 s.126(2).

<sup>19</sup> FA 2008 Sch.36 new para.4A(8) and (9) inserted by FA 2021 s.126(2).

<sup>20</sup> FA 2008 Sch.36 new para.4A(7) inserted by FA 2021 s.126(2).

<sup>21</sup> FA 2008 Sch.36 new para.4A(8) and (10) inserted by FA 2021 s.126(2).

<sup>22</sup> FA 2021 s.126(5).

<sup>23</sup> FA 2021 s.126(6).

### *Judicial supervision*

A key difference between a FIN and a TPN is that, unlike a TPN, a FIN does not require any agreement of the taxpayer or approval of the FTT. FTT supervision is an important safeguard against the excessive use of or abuse of HMRC's powers to obtain information or documents in relation to taxpayers from third parties. Although the legislation provides that a FIN may only be given by an authorised officer or if an authorised officer has agreed to the giving of the notice (which is useful from a taxpayer and third party perspective to ensure that such notices are only provided with the approval of experienced and trained HMRC officers), this by design does not necessarily ensure an independent evaluation prior to the giving of a FIN (given that authorised officers are still HMRC officers). Removal of judicial supervision in relation to FINs, in effect, elevates HMRC's role to a quasi-judicial role, making HMRC the final arbiter of the appropriateness of a FIN. The independent supervision provided by the FTT to ensure a consistent and fair approach to information notices should not be understated.

In the Consultation HMRC questioned the appropriateness (and therefore efficacy) of the requirement for FTT approval, by noting that for TPNs that had arisen through the exchange of information process, HMRC's request for FTT approval had only been rejected once (implying that FTT supervision seldom operated to prevent such a request).<sup>24</sup> However, the focus of this argument is misplaced—the protection offered by FTT approval is not evidenced by the number of times that the FTT has previously blocked such information requests, but by the fact that the FTT *can* block information requests if due process is not followed. The House of Lords Economic Affairs Committee (EAC) also considered the Consultation and opined that “oversight by the [FTT] of HMRC attempts to obtain information from third parties is an important taxpayer safeguard, which should not be removed without good reason.”<sup>25</sup> The EAC considered that HMRC had “not offered a convincing rationale” in this regard.<sup>26</sup>

Amongst the various policy reasons for this measure put forth in the Consultation, HMRC cited the time added to the UK's response time to requests for banking information by foreign tax authorities (and the additional information required to be provided by such foreign tax authorities) by virtue of the FTT approval route (which HMRC suggested was a point heavily criticised by the OECD).<sup>27</sup> HMRC further contended that the UK's unusually formal and lengthy process for obtaining third party information meant that additional resources alone were unable to allow it to meet the globally agreed standard.<sup>28</sup> A lacuna in the arguments put forth by HMRC in the Consultation is that they do not address or consider the exact reasons for the delays<sup>29</sup> and, more importantly, whether removal of FTT approval would actually (and practically) lead to quicker response times.

On evaluating the evidence, it appears that the removal of FTT approval in the FIN regime has a wider scope than required. HMRC's policy paper suggests that it takes 12 months on

<sup>24</sup> HMRC, *Amending HMRC's Civil Information Powers: Consultation Document* (10 July 2018), para.3.17.

<sup>25</sup> House of Lords Economic Affairs Committee, 4th Report of Session 2017–19, *The Powers of HMRC: Treating Taxpayers Fairly* (Authority of the House of Lords, 4 December 2018), HL Paper 242, p.21, para.50.

<sup>26</sup> House of Lords Economic Affairs Committee, *The Powers of HMRC: Treating Taxpayers Fairly* (2018), p.21, para.50.

<sup>27</sup> HMRC, *Amending HMRC's Civil Information Powers: Consultation Document* (10 July 2018), p.9, para.3.8.

<sup>28</sup> HMRC, *Amending HMRC's Civil Information Powers: Consultation Document* (10 July 2018), p.9, para.3.8.

<sup>29</sup> House of Lords Economic Affairs Committee, *The Powers of HMRC: Treating Taxpayers Fairly* (2018), p.21.

average to obtain third party financial information requested by foreign tax authorities, whereas the target under international standards is six months.<sup>30</sup> In contrast, the OECD provides more nuanced evidence—the OECD reports that while the UK acknowledges that *bank information* takes an average of 12 months, the shortest possible time it will take to provide a full response to a request is three to four months (although the UK’s peers have noted longer response periods).<sup>31</sup> This raises the question as to whether the scope of the FIN regime is arguably wider than it should be, since FINs cover notices to “financial institutions” more generally, and not just banks, even though it is not apparent from the evidence that obtaining third party information from non-banking third parties is problematic (a point discussed in further detail below).

A second, and more fundamental point, is based on Judge Sinfield’s (President, First-tier Tribunal (Tax Chamber)) evidence to the House of Lords Select Committee on Economic Affairs Finance Bill Sub-Committee (FBSC)—Judge Sinfield noted to the FBSC that seeking approval from the FTT generally added only a month to six weeks to the entire process,<sup>32</sup> and was not the reason for any delays in relation to HMRC’s compliance with their international obligations.<sup>33</sup> HMRC’s evidence to the FBSC acknowledged that the FTT process was not necessarily the reason for the delay, and it was further acknowledged that getting FTT hearings quicker would not help bring the timeframe within the international standard.<sup>34</sup> Therefore, the collective evidence to the FBSC seemed to suggest that removing FTT approval in relation to information notices would not itself help HMRC achieve their international obligations. The removal of FTT approval of information notices, which is an important safeguard, without HMRC providing adequate reasoning or without the measure being grounded in evidence is alarming.

### *Objective standard*

A key issue with the legislation is that it appears to adopt an objective standard (as opposed to a subjective one)—although this might be a point of contention going forward. Condition A stipulates that information or documents requested under a FIN be, “in the reasonable opinion of the officer giving the notice, *of a kind*<sup>35</sup> that it would not be onerous for the [financial] institution to provide or produce.”<sup>36</sup> This standard seemingly ignores any subjective hardship or

<sup>30</sup> HMRC, Policy Paper, *Amending HMRC’s Civil Information Powers* (HMRC, 2021), <https://www.gov.uk/government/publications/amending-hmrcs-civil-information-powers/amending-hmrcs-civil-information-powers> [Accessed 14 September 2021], under “Policy Objective”, para.1.

<sup>31</sup> OECD, *Global Forum on Transparency and Exchange of Information for Tax Purposes Peer Reviews: United Kingdom 2013: Combined: Phase 1 + Phase 2, incorporating Phase 2 ratings* (OECD Publishing, 2013), <http://dx.doi.org/10.1787/9789264205987-en> [Accessed 14 September 2021], p.66.

<sup>32</sup> House of Lords Select Committee on Economic Affairs Finance Bill Sub-Committee, *Uncorrected oral evidence: Draft Finance Bill 2020-21* (2020), <https://committees.parliament.uk/oralevidence/1223/html/> [Accessed 14 September 2021], q.74.

<sup>33</sup> House of Lords Select Committee on Economic Affairs Finance Bill Sub-Committee, *Uncorrected oral evidence: Draft Finance Bill 2020-21* (2020), <https://committees.parliament.uk/oralevidence/1223/html/> [Accessed 14 September 2021], q.75.

<sup>34</sup> House of Lords Select Committee on Economic Affairs Finance Bill Sub-Committee, *Uncorrected oral evidence: Draft Finance Bill 2020-21* (2020), <https://committees.parliament.uk/oralevidence/1224/html/> [Accessed 14 September 2021], q.93.

<sup>35</sup> Writer’s italics.

<sup>36</sup> FA 2008 Sch.36 new para.4A(2) inserted by FA 2021 s.126(2).

difficulties that a financial institution may face in procuring or providing or producing such information or documents.

This legislation does not take into account certain practical realities in relation to the provision of information and documents. In practice, financial institutions will store vast amounts of information going back many years across multiple information technology systems, and the information on such information technology systems is not necessarily synced. Therefore, information or document requests that span multiple years (especially those going back more than six years) can sometimes require financial institutions to mine data across multiple databases or systems, with such information or documentation often not being easily retrievable. Such requests can therefore result in routinely expensive and time-intensive operations for financial institutions, depending on how such information or documents have been stored by these institutions (i.e. subjectively onerous). Therefore, even though information or documents requested by HMRC may *objectively* be of a kind that would not be onerous to provide or produce, there could be material factors that make them *subjectively* onerous to provide or produce. Based on an interpretation of Condition A, HMRC will not be required to consider any financial institution-specific factors. This may create difficulties for certain financial institutions receiving FINs.

### *Representation rights and appeal rights*

The lack of judicial supervision is made more significant by the fact that a financial institution receiving a FIN has no right to make any representations to HMRC with regard to such a FIN, and has no right to appeal a FIN or any requirement in the FIN on the ground that it is unduly onerous to comply with the FIN or the requirement.

In relation to the right to make representations, HMRC provided evidence to the FBSC that in general providing a third party with the right to make representations (in the context of TPNs) “takes at least a month”.<sup>37</sup> In a similar way to the FTT approval process, this does not yield adequate evidence to support the contention that providing a third party with the right to make representations is responsible for the UK not meeting its international obligations and that eliminating this safeguard can, therefore, be justified.

This should be compared with the time required to obtain additional background information from the requesting jurisdictions—this was reported to take, on average, over eight months.<sup>38</sup> HMRC suggested to the FBSC that even if the FTT was not involved, they would need the additional information to show that a request is reasonably required to check a known person’s tax position or to collect a tax debt (as provided for in Schedule 36).<sup>39</sup> However, HMRC further

<sup>37</sup> House of Lords Select Committee on Economic Affairs Finance Bill Sub-Committee, *Uncorrected oral evidence: Draft Finance Bill 2020-21 (2020)*, <https://committees.parliament.uk/oralevidence/1224/html/> [Accessed 14 September 2021], q.93.

<sup>38</sup> House of Lords Select Committee on Economic Affairs Finance Bill Sub-Committee, *Uncorrected oral evidence: Draft Finance Bill 2020-21*, <https://committees.parliament.uk/oralevidence/1224/html/> [Accessed 14 September 2021], q.93.

<sup>39</sup> House of Lords Select Committee on Economic Affairs Finance Bill Sub-Committee, *Uncorrected oral evidence: Draft Finance Bill 2020-21*, <https://committees.parliament.uk/oralevidence/1224/html/> [Accessed 14 September 2021], q.93.

noted that they would not need as much “background information in the future, and that is a major cause of the delay”.<sup>40</sup>

Furthermore, the OECD criticised a document prepared by HMRC’s Exchange of Information team and provided to the requesting jurisdictions to assist these requesting jurisdictions with providing the types of details that can support the UK tribunal process (in relation to TPNs).<sup>41</sup> The UK’s response to that criticism, however, was that “some peers mistakenly thought that all information requested in the aide memoire had to be provided”.<sup>42</sup> Therefore, although not completely clear from the OECD’s report, it appears that it could be that HMRC’s information gathering process is a reason for the OECD’s criticism of the UK’s stringent information requirements (for foreign jurisdictions making information requests to the UK) and the delay in complying with the UK’s international obligations. Based on this it appears that efficiencies could be gained by amending HMRC’s internal information gathering systems but that the actual extent of such a gain in efficiencies is unclear. To the extent, however, that it is possible to amend HMRC’s internal information systems, from a policy perspective it could be asked whether trading-off third party safeguards in favour of efficiency is in fact justified and, more importantly, whether the elimination of tribunal approval and representation rights will be effective in achieving the desired result.

Unlike the TPN regime,<sup>43</sup> the FIN regime does not provide any appeal rights (although, as noted above, under the TPN regime where the FTT does approve the giving of a TPN there is no appeal right and in practice TPNs given to banks are generally approved by the FTT and are, therefore, non-appealable<sup>44</sup>). Taxpayers do not have appeal rights under either the FIN or TPN regimes.

If a financial institution fails to comply with a FIN, it can appeal to the FTT against a penalty on the basis that there is a reasonable excuse for its failure to comply.<sup>45</sup> However, the definition of what constitutes “reasonable excuse” could be seen to be fairly constrained and may not in all circumstances provide adequate protection to financial institutions looking to challenge a FIN on the grounds of it being unduly onerous. However, the FTT decisions in *Spring Capital Ltd v HMRC* (2015)<sup>46</sup> and *Spring Capital Ltd v HMRC* (2016)<sup>47</sup> (in relation to statutory records, which are also non-appealable) suggest that, even where an information notice is non-appealable, the FTT is not required to assume that an information notice has been validly issued. Extrapolating

<sup>40</sup> House of Lords Select Committee on Economic Affairs Finance Bill Sub-Committee, *Uncorrected oral evidence: Draft Finance Bill 2020-21*, <https://committees.parliament.uk/oralevidence/1224/html/> [Accessed 14 September 2021], q.93.

<sup>41</sup> OECD, *Global Forum on Transparency and Exchange of Information for Tax Purposes: United Kingdom 2018 (Second Round): Peer Review Report on the Exchange of Information on Request* (Paris: OECD Publishing, 2018), <https://doi.org/10.1787/9789264306189-en> [Accessed 14 September 2021], p.90.

<sup>42</sup> OECD, *Global Forum on Transparency and Exchange of Information for Tax Purposes: United Kingdom 2018 (Second Round): Peer Review Report on the Exchange of Information on Request* (2018), <https://doi.org/10.1787/9789264306189-en> [Accessed 14 September 2021], p.90, para.277.

<sup>43</sup> FA 2008 Sch.36, para.30(1).

<sup>44</sup> OECD, *Global Forum on Transparency and Exchange of Information for Tax Purposes Peer Reviews: United Kingdom 2013: Combined: Phase 1 + Phase 2, incorporating Phase 2 ratings* (2013), <http://dx.doi.org/10.1787/9789264205987-en> [Accessed 14 September 2021], p.65.

<sup>45</sup> FA 2008 Sch.36, para.45(1).

<sup>46</sup> *Spring Capital Ltd v HMRC* [2015] UKFTT 8 (TC) at [31].

<sup>47</sup> *Spring Capital Ltd v HMRC* [2016] UKFTT 232 (TC) at [34].

from this, it is arguable that third parties may be able to challenge the validity of an information notice in a penalty hearing in the FTT, even if this relates to a FIN (which is non-appellable).

A taxpayer could make an application for judicial review in relation to a FIN, which would provide the taxpayer with recourse to the courts, but given the time and costs involved in judicial review such a route may not often be a practical solution.

### *Scope*

Section 126 FA 2021 does not limit the information or documents that can be requested under a FIN (other than the standard limitations that apply to all information notices under Schedule 36). Therefore, as long as the conditions noted above are satisfied and the recipient of the FIN is a “financial institution”, there is no restriction on the information that can be requested. This position is an expansion of that put forth in the Consultation in which it was proposed that FINs should only apply to “banking information”, which was defined in the Consultation “to include bank statements, information about transactions on the account and information held about the legal and beneficial ownership of the account (e.g. Know Your Customer information)”.<sup>48</sup>

“Financial institution” has also been widely defined to mean all financial institutions under the Common Reporting Standard (CRS) (other than an entity that is a financial institution only because it is an investment entity within section VIII(A)(6)(b) of CRS (thereby exempting certain entities that invest, reinvest or trade in financial assets (as defined in the CRS) and are managed by certain other financial institutions)<sup>49</sup>) and any persons that issue credit cards.<sup>50</sup> Financial institutions under CRS include custodial institutions, depository institutions, investment entities and specified insurance companies (all of which are defined in the CRS).<sup>51</sup> This definition is broad and is not only limited to banks, which the evidence discussed above suggests is the main area of concern (and the exception expressly included is narrow). Further, the rationale for adopting such a wide definition is unclear. HMRC note that the measure is expected to have an impact on only around 20 financial institutions like banks and building societies.<sup>52</sup> Given the scope of the definition, however, the basis upon which this assertion has been made is unclear.

As a result of the expansive scope of the regime, there is a risk that by virtue of the information and documentation that can be requested under a FIN and the definition of financial institutions, the scope of the legislation is disproportionate to the issue being tackled. Consequently, there could be a distortionary effect because whenever information or documents are being requested from a financial institution (even though not a bank), HMRC may opt to use FINs rather than TPNs (due to the simpler process involved for FINs). This vitiates the purpose of the measure, which was fundamentally targeted at decreasing the time taken in exchanging banking information with foreign tax authorities.

<sup>48</sup> HMRC, *Amending HMRC’s Civil Information Powers: Consultation Document* (10 July 2018), p.14.

<sup>49</sup> OECD, *Standard for Automatic Exchange of Financial Account Information in Tax Matters* (OECD Publishing, 2014), <http://dx.doi.org/10.1787/9789264216525-en> [Accessed 14 September 2021], Pt II(B), s.VIII(A)(6)(b).

<sup>50</sup> FA 2021 s.126(4).

<sup>51</sup> OECD, *Standard for Automatic Exchange of Financial Account Information in Tax Matters* (2014), <http://dx.doi.org/10.1787/9789264216525-en> [Accessed 14 September 2021], Pt II(B), s.VIII(A)(3).

<sup>52</sup> HMRC, Policy Paper, *Amending HMRC’s Civil Information Powers* (2021), <https://www.gov.uk/government/publications/amending-hmrcs-civil-information-powers/amending-hmrcs-civil-information-powers> [Accessed 14 September 2021].

## **Conclusion**

FINs provide HMRC with a significant new power to obtain information and documents in relation to taxpayers from third party financial institutions. The wide scope of the regime, combined with the lack of judicial supervision, representation rights for third parties and appeal rights, substantially diminishes safeguards for third parties and taxpayers. The evidence available does not support the conclusion that trading-off these third party and taxpayer safeguards in favour of efficiency, will actually help the UK meet its international obligations. HMRC may exercise their discretion and use the legislation in a more targeted manner in practice, but until that stage is reached there are important questions that remain unanswered.

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