

TAXREP 15/09

COMPLIANCE CHECKS: THE NEXT STAGE: DRAFT LEGISLATION AND COMMENTARY

Comments submitted in March 2009 by the Tax Faculty of the Institute of Chartered Accountants in England & Wales in response to the consultation document 'Modernising Powers, Deterrents and Safeguards - Compliance Checks: The Next Stage – Draft Legislation and Commentary' published by HM Revenue & Customs on 6 February 2009

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INTRODUCTION

- 1 In this document we present the comments of the Tax Faculty of the Institute of Chartered Accountants in England and Wales (ICAEW) on the consultation document *Modernising Powers, Deterrents and Safeguards - Compliance Checks: The Next Stage: draft legislation and commentary* published by HM Revenue & Customs (HMRC) on 6 February 2009 at http://customs.hmrc.gov.uk/channelsPortalWebApp/channelsPortalWebApp.portal?nfpb=true&pageL_abel=pageExcise_ShowContent&propertyType=document&columns=1&id=HMCE_PROD1_029224.
- 2 We are pleased to have the opportunity to respond to this consultation. As mentioned in our responses to the other consultations, we welcome the opportunity to discuss the proposals with HMRC staff and look forward to continuing discussions on these proposals as part of the powers review. In the meantime, we would be happy to discuss any aspect of our comments and to take part in all further consultations on this subject.
- 3 Information about the Tax Faculty and the ICAEW is given in Annex A. We have also set out, in Annex B, the Tax Faculty's ten tenets for a better tax system, by which we benchmark proposals to change the tax system.

KEY POINT SUMMARY

- 4 We reiterate our comments in TAXREP 10/09 dated 18 February in which we said, inter alia:
- We agree that there should be a coherent set of powers that apply to all taxes but this needs to be balanced against reasonableness and the principle should not become an end in itself.
 - We do not object to the principle of extending Schedule 36 to other taxes. However, Schedule 36 has a number of provisions that remain controversial. It seems to us premature to extend the rules to other taxes before the current provisions have actually been used in practice. We would prefer that the provisions are given a chance to bed down properly before any decision is taken to extend them further.
 - We remain concerned at the considerable volume of material that is being produced by the powers review and that there is insufficient time to ensure that the material is given a thorough and considered review.
 - We are concerned that extending many of these provisions to inheritance tax (IHT) requires much more thought and consultation over a longer time period that is envisaged, and we think that a working party should be set up to examine the issues.
 - The proposal to have a consistent set of time limits is reasonable but there needs to be proper transitional arrangements so as to ensure that taxpayers' legitimate expectations are protected.
 - We appreciate the need for a penalty where the taxpayer carelessly or deliberately provides incorrect information but it is essential that any penalty is a reasonable and proportionate response to the incorrect information provided.

RESPONSES TO THE QUESTIONS POSED IN THE CONSULTATION DOCUMENT AND COMMENTS ON THE DRAFT LEGISLATION

- 5 We comment below specifically on IHT, but the comments apply as appropriate to other taxes. We will be reviewing the legislation in more detail in the Finance Bill itself.

Record-keeping rules

Question: HMRC would welcome views on the approach for record-keeping requirements particularly for IHT

- 6 In our reply to Question 6 in TAXREP 10/09 we said inter alia that ‘...IHT presents particular challenges in terms of record-keeping for the estate of a deceased person (unless of course it is the relatively unusual event of a lifetime chargeable transfer). The executors’ role in establishing the value of the estate can be like fitting together pieces in a jig saw when you do not know what the picture looks like nor whether you have all the pieces...’
- 7 In paragraph 3(2) of the Schedule, we would welcome confirmation that new section 218B IHTA 1984 applies only where an account has been submitted or tax is payable. Otherwise, if records are required to be kept for all cases where an account may need to be delivered under section 216 (under which section various people can be required to deliver an account), it seems unnecessary to require some to keep records that may never be required and indeed difficult for them to know what records are required for a return that they will probably never have to complete, and therefore such duplication of responsibility needs to be removed.
- 8 In paragraph 2(3) of the Schedule in new section 245ZA we question whether a £3,000 fine for not preserving documents is proportionate. We consider that the legislation should make it clear that such a fine should be regarded very much as a maximum and tailored to the circumstances, ie tax lost and and, as it is inheritance tax, the state of mind of the taxpayer.

Time limits for claims and assessments

Question: HMRC would welcome views on the approach for applying the aligned time limits in FA 2008 to other taxes

- 9 In our reply to Question 13 in TAXREP 10/09 we said, inter alia that ‘If existing time limits are changed, it is important to ensure that there are proper transitional arrangements to any new rules. We stated in Finance Bill Committee stage briefing (see TAXREP 43/08 in relation to Schedule 39) that EU law is clear that legitimate expectations ought to be preserved and that a transitional period is required.’.
- 10 However, we cannot see any transitional period in the draft legislation and feel that the legislation should provide that no four year period starts to run before the six year period that it is replacing has expired.

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ICAEW AND THE TAX FACULTY: WHO WE ARE

1. The Institute of Chartered Accountants in England and Wales (ICAEW) is the largest accountancy body in Europe, with more than 130,000 members. Three thousand new members qualify each year. The prestigious qualifications offered by the Institute are recognised around the world and allow members to call themselves Chartered Accountants and to use the designatory letters ACA or FCA.
2. The Institute operates under a Royal Charter, working in the public interest. It is regulated by the Department for Business, Enterprise and Regulatory Reform through the Financial Reporting Council. Its primary objectives are to educate and train Chartered Accountants, to maintain high standards for professional conduct among members, to provide services to its members and students, and to advance the theory and practice of accountancy, including taxation.
3. The Tax Faculty is the focus for tax within the Institute. It is responsible for tax representations on behalf of the Institute as a whole and it also provides various tax services including the monthly newsletter *TAXline* to more than 10,000 members of the ICAEW who pay an additional subscription.
4. To find out more about the Tax Faculty and ICAEW including how to become a member, please call us on 020 7920 8646 or email us at taxfac@icaew.com or write to us at Chartered Accountants' Hall, PO Box 433, Moorgate Place, London EC2P 2BJ.

THE TAX FACULTY'S TEN TENETS FOR A BETTER TAX SYSTEM

The tax system should be:

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

These are explained in more detail in our discussion document published in October 1999 as **TAXGUIDE 4/99**; see <http://www.icaew.co.uk/index.cfm?route=128518>.