

TAXREP 53/09

BULK AND SPECIALIST INFORMATION POWERS

Comments submitted on 2 October 2009 by the Tax Faculty of the Institute of Chartered Accountants in England & Wales to HM Revenue & Customs in response to the consultation document 'Modernising Powers, Deterrents and Safeguards: Bulk and specialist information powers' issued on 9 July 2009.

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BULK AND SPECIALIST INFORMATION POWERS

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: Bulk and specialist information powers* (the Condoc) issued by HM Revenue & Customs (HMRC) on 9 July 2009.
2. We are pleased to have the opportunity to respond to this consultation. We would be happy to discuss any aspect of our comments and to take part in all further consultations on this area.
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 POINTS SUMMARY

4. In principle we have no problem with the aim of the proposals but have a number of key concerns as follows.
 - These proposals will give HMRC wide powers to request a variety of information from third parties – HMRC needs to first ensure that it does not hold or could not extract the information from its own records before it issues any information notice.
 - Different principles are needed when designing information powers for third parties as compared to taxpayers: any information requests need to be given in good time, be proportionate, not be overly burdensome and it should be for the third party to decide how best to comply with the notice.
 - The third party should be able to copy the taxpayer with the information provided unless the First-tier Tribunal decides otherwise.
 - For security reasons information should be sent to an HMRC address.
 - Third parties should not be required to collect information they do not need for their own purposes and it should be HMRC's responsibility to match the data to its own records.
 - Levying penalties on third parties should only be done as a last resort and must be proportionate to the failure.
 - We are concerned about safeguards and that the third party should be able to make representations before any penalties are levied.

- Notices should require the approval of an authorised officer who is not involved in the particular case and is of sufficient seniority.
- We think that the specialist powers should be left where they are and not be incorporated into Sch 36, FA 2008.

GENERAL COMMENTS

Bulk information powers

5. In general we have no difficulty with HMRC's proposals for bulk information powers. However, it is important to remember that these proposals will give HMRC wide powers to request a variety of information not from the taxpayer but from a third party. This means that the threshold that should be reached before any request for information is issued should be set at a higher level than it would be if the information request is made to the taxpayer. HMRC should not use the powers to ask for information which it already has or which it could reasonably have extracted or prepared from information that it already holds.
6. It is also important to remember that third party requests have the potential to inflict commercial damage on business relationships so they need to be used with discretion and care. Strong safeguards are an important principle and we welcome the attention given to them in the Condoc.
7. Further, it is very important that any additional bulk information powers should not add an unacceptable compliance burden to the third party providers. This should be included as a key principle. HMRC should also ensure that providers are given as much advance notice as they need in order to make sure their systems are geared to producing the information required.

Bulk information powers and overpaid tax

8. We are pleased to note at para 1.7 of the Condoc (in the first bullet point) that one of the uses of bulk information is for HMRC to target publicity and support where there is a risk tax has been overpaid. We very much support this – HMRC's duty is to make sure that taxpayers pay the right amount of tax, which includes ensuring that those who have overpaid get refunded. However, we are not aware of a great deal of HMRC activity in identifying and contacting those who have overpaid, and indeed the rest of the Condoc concentrates on compliance and underpaid tax. We would ask HMRC to set out the details of their current and proposed campaigns to assist those who have overpaid.

Specialist information powers

9. We are far less happy with the proposals on specialist information powers for the reasons set out below.

COMMENTS ON SPECIFIC QUESTIONS IN THE CONSULTATION DOCUMENT

Question 1: Are these principles appropriate for bulk and specialist information powers? What other principles might be appropriate?

10. We agree that all the principles listed at para 2.2 should apply to bulk and specialist information powers.
11. However, as HMRC says at para 2.4, the relationship between HMRC and the providers of third party information is different from that between HMRC and the taxpayer. The statement of design principles does not recognise these information providers – it is worded in terms of taxpayers, agents and representatives. Providers of bulk and specialist information should be named in this statement.
12. We believe that third party information powers should meet the following principles in addition to those set out at 2.2.
 - a) They must recognise that the information sought has no benefit to the provider so should not be exercised in a manner that would be unduly burdensome to the third party. In particular third parties should be entitled to provide the information in the format that is most convenient to them. The third party should also be entitled on receipt of an Information Notice to explain to HMRC what information can be readily obtained from his accounting system and HMRC should be required to consider whether the receipt of that information alone could reasonably meet their needs.
 - b) The third party should be entitled to expect either the powers to be applied sparingly or, if HMRC are likely to require the information in consecutive years, that he or she is given advance notice of this so that he can adopt his accounting system to provide the information.
 - c) It should be clear that third parties are entitled to copy the information provided to HMRC to the taxpayers concerned, should they wish to do so, unless the notice is given with the consent of the First-tier Tribunal and the notice specifies that the information cannot be passed to the taxpayers. The First-tier Tribunal should be entitled to impose such a provision only where HMRC satisfies it that they believe that the taxpayers concerned may be involved in fraud.
 - d) We also think that consideration should be given to providing feedback in at least some of the cases to the third party so as to provide at least some benefit to the third party from having to provide the information. Most taxpayers do not wish to deal with fraudsters and if HMRC's use of the information indicates that their supplier or customer is a fraudster, the third party should be given the opportunity to consider whether he or she wishes to continue to deal with that person.
13. We endorse the proposal at 2.7 that there needs to be “increased safeguards against disproportionate requests”. However this needs to be not only statutory but applied by HMRC ‘on the ground’. For example, it is not readily apparent why the information sought from banks in relation to offshore accounts before the Offshore Disclosure Facility did not exclude information about taxpayers who were non-UK

domiciled where either no transfers were made from the overseas account to a UK account or the overseas account was a non-interest bearing account. Such exclusions would have significantly reduced the burdens on the banks and as information on such accounts has no UK tax effect, would probably have also made it easier for HMRC to identify tax defaulters.

14. The fact that the information sought under the New Disclosure Opportunity again does not appear to exclude such information, suggests that in reality HMRC are unconcerned about disproportionate requests. We suggest that HMRC should be statutorily required to use any such powers reasonably.
15. Although we accept that it should not be statutory, we believe that HMRC should also introduce a procedure to ensure that information sought under the bulk information powers needs to be approved by someone not involved in the project who can certify that the information sought does not go beyond that which is likely to be necessary for tax purposes.

Question 2: Should the law be changed so that the address to which bulk information must be sent may be any specified address, rather than that of an officer?

16. We do not think that HMRC should be able to specify a third party address, such as that of one of its IT partners, for the transfer of information. Providing a recognisable HMRC address will give third parties confidence that they are sending material to a bona fide destination. Given the constant concerns about security and fraud, it is important that HMRC does not unwittingly encourage fraudulent requests for information.
17. Addresses – postal and email – may change or experience problems. An address that HMRC publishes might cease to be valid – how would HMRC deal with the fact that bulk information providers might keep using it? At least with an HMRC address, the department should be able to keep control of material sent to an old address.
18. Bearing in mind that the sole beneficiary of the bulk information powers is HMRC, we believe that the third party should be entitled to deliver the information to HMRC in a form and manner that is most convenient to them. This is because we believe that there should be no restriction on the format for the provision of information. In some cases it may be easiest to provide it by photocopying existing documents and delivering them to a nearby HMRC office. We appreciate that in most cases HMRC would prefer to receive the information in an electronic format. However we believe that the convenience of HMRC needs to be weighed against the inconvenience to the third party and that, as the information is solely for the benefit of HMRC, the latter ought to prevail.
19. We would have thought that most third parties would be willing to provide the data in some mutually acceptable electronic form, for example an Excel spreadsheet. Where a person is happy to provide information electronically, this can be done either by the provision of a computer disc or by transmission over the internet. Where there is a facility for transmission over the internet, delivery to a specified internet address clearly should satisfy the statutory requirement.

20. At para 4.7 the Condoc suggests that an alternative would be for HMRC to visit providers' business premises to extract bulk information rather than have them send it to HMRC. Whilst this may be attractive to HMRC, we have the following concerns:
- We suspect that actually sending the information is the less burdensome aspect for providers. The burdensome part is extracting the data, including setting up their systems to provide what is required by HMRC.
 - We are not sure how HMRC would set about extracting data unless the provider's systems were already set up to provide it. A general interrogation of the computer or other systems by HMRC could be perceived as intrusive, and possibly as an excuse for a 'fishing expedition'. It is probable that it would also offend the taxpayers' rights under both the Data Protection Act 1998 and the Human Rights Act 1998 as it is difficult to see how HMRC could extract statutory information without also viewing confidential information.
 - Having an HMRC data-extraction team on the premises could be disruptive for the business.
21. Having said that, it is possible, although we suspect fairly unlikely that this approach would suit some businesses. We suggest that it is offered as an option but should not be made compulsory.

Question 3: HMRC welcomes views as to whether advance notice of bulk information requests would be helpful. How long a period before the start of the period in question would be appropriate?

22. We fully support the idea that HMRC should give bulk information providers as much advance notice as possible of what information will be required. This should certainly be before the start of the relevant tax year (or any other period). As stated above we believe that the administrative burdens could also be substantially reduced if HMRC were to give more thought as to the relevance for tax purposes of the information that they require and to the burden that providing it might impose on the third party.
23. In fact, telling providers 'at the start of the tax year' (as per para 4.9 of the Condoc) may not be sufficient advance notice given the lengthy lead times for IT-related systems changes. Providers need to be told in sufficient time to incorporate the necessary information-gathering features into their systems. Most businesses will plan their systems well in advance of the year. In practice we very much doubt that many people within HMRC appreciate that it can sometimes take the best part of a year to re-program a computer to provide information that is of no relevance to the business and so was not built into the original specification.
24. It is difficult to suggest a specific time period for giving advance warning, as the types of information required, and the size and type of business which may be providing it, are so varied. HMRC should consult with representatives of the relevant business sectors.
25. HMRC should also consult with commercial software companies about how much notice would be desirable. Once these consultations have been undertaken, HMRC should be in a position to propose realistic time periods.

Question 4: HMRC welcomes views on how it should specify the format in which bulk information should be provided. What could HMRC do to reduce the administration burden of providing information in a required format?

26. We can see the benefits to HMRC of receiving information in a particular format. However this is likely to increase significantly the burden of providing the information for many taxpayers. We believe that HMRC should not **specify** a format but believe it would be sensible for HMRC to publish its ideal format so that this could be used by those that can readily comply with it.
27. Specifying a format for the larger, regular providers of bulk information should help to reduce the potential burdens that are being imposed on businesses, subject to the requirement for sufficient advance notice to be given.
28. However, HMRC must be more flexible in relation to smaller businesses, or those who are asked to provide information as a one/off, or who do not receive the request from HMRC until after the event.
29. We agree with the suggestion at para 4.12 that HMRC should provide a range of options for acceptable formats.

Question 5: HMRC welcomes views as to whether bulk information powers should apply across taxes.

30. We have no objection in principle to extending the powers to obtain bulk information across taxes. However, this is with the proviso that it should not increase the compliance burden for businesses by presenting them with a multiplicity of requests for different purposes.
31. We would appreciate clarification as to exactly what powers and what types of information request HMRC has in mind.
32. We also have a concern that seeking information in order to work across taxes could well make the obligation on the third party far more burdensome. We think it important that HMRC is conscious of this and does not seek extra information to, for example, that which they require for direct tax purposes on the basis that some of such extra information will be useful for VAT purposes and the extra information in respect of taxpayers who are not within the scope of VAT does not create extra burdens for HMRC. It may well create extra burdens for the third party.

Question 6: Should HMRC require providers of bulk information to obtain and verify people's identities, or should HMRC rely on other ways of matching data with individuals?

33. Data providers should not be asked to obtain and verify the identity of taxpayers if they would not have to do this for any other purpose. As noted in para 4.19, this would impose an administrative burden: in many cases this could be a considerable and unacceptable one. There is also the danger that requesting the information solely for HMRC's benefit may put a business at a competitive disadvantage, as it may put off customers from dealing with the business, not least due to worries about data security.

34. Where providers already collect such information for commercial reasons or because of a regulatory requirement (eg for anti-money laundering purposes) it may be reasonable to ask them to include it with the data provided to HMRC, but only if they are given sufficient advance notice so that their systems can be geared to do this with minimal cost.
35. HMRC should (as proposed in para 4.20) make it a priority to develop its own technology in order to match data.
36. HMRC's staff need to understand the problems of matching data with individuals. For example many, if not most, of our members have experience of cases where HMRC have mismatched third party information with a taxpayer but have persisted in pursuing their incorrect match at significant costs to a taxpayer as they seek to show that the taxpayer does not have the source of income that HMRC are not prepared to identify. We make this point not as a criticism but to emphasise that matching data with individuals can often be difficult but we believe that it should be for HMRC to accept the prime responsibility for doing so.

Question 7: Would there be benefits to information providers in gathering identification numbers such as national insurance or VAT numbers where relevant?

37. If businesses need this information for commercial reasons, presumably they will already be gathering it. If not, they won't be. We fail to see how any additional HMRC requirement would be of benefit to data providers and, for the reasons given above, may put businesses at a commercial disadvantage.

Question 8: HMRC welcomes views on including a declaration that a return is complete with bulk information returns.

38. We do not believe that it is reasonable with bulk information returns to expect a declaration that a return is complete.
39. Indeed, we think that it should be acceptable for a business to provide the information in tranches. It will sometimes be convenient to a business to provide information branch by branch or, where the information required spans accounting periods, in two parts by reference to each accounting period. We find it hard to believe that if one or two possible entries fall into a 'black hole' between branches, that would significantly reduce the utility of the information to HMRC.
40. We think that data providers would be very reluctant to sign a declaration saying a return is complete, and risk a penalty, unless it is much clearer what is meant by 'complete'. A confirmation that all the data batches from subsidiaries and other units are included in the return might be acceptable, coupled with a list. But the return might include thousands of individual pieces of data – would the declaration be taken as confirmation that every single relevant piece of data is included?
41. There could be minor (unintentional) errors or omissions which the senior accounting officer (or whoever signs the declaration) could not check in detail. HMRC needs to remember that the third party is helping HMRC to ensure that the right amount of tax is collected but it is not directly connected to its own tax

position. HMRC needs to encourage businesses that seek to comply with requests to do so.

Question 9: What would be the impact on data providers of any reduction in the amount of time allowed from the end of the tax year to provide data?

42. The impact of a very short period in which to provide information would be likely to be very burdensome to small businesses and also to those larger businesses whose computers are not programmed to collect the relevant information during the course of the year. Many small businesses rely on outside accountants or book-keepers to extract the information and the costs to such businesses are significantly reduced if the accountant can extract the information at the same time as they visit the client's premises for some other purpose. A 90-day time limit enables the extraction of the information to be combined with a visit for the preparation of a VAT return or of quarterly management accounts.
43. We are a little concerned at paragraph 4.25. We believe in principle that HMRC's powers should be designed to enable them to operate efficiently but that they should not impose unnecessary burdens on taxpayers. We strongly oppose the concept of powers being designed 'just in case the information might possibly be useful at some future date should HMRC change its procedures'. We strongly believe that HMRC's powers ought to be designed to meet the requirements of its current processes. There is a Finance Bill every year so there is always an opportunity to amend the powers where changes in HMRC procedures make this desirable. Indeed we have long advocated 'sunset' clauses. HMRC powers would be an ideal instance in which to adopt such clauses as it would force the need for the powers to be reviewed periodically and for the government to convince Parliament that the powers were still needed.

Question 10: To what extent could this be mitigated? For example, would impacts be reduced if HMRC specified what information it will ask for in advance, by saying before the start of the period or tax year in question what information it will require and in what format?

44. Advance warning of requirements is desirable (as noted at Question 3 above) but we are not convinced that mitigation is the answer to the proposal at Question 9 – we do not think that proposal should be implemented.

Question 11: HMRC welcomes views as to whether penalties should be applied by HMRC rather than the tribunal, retaining the right of appeal to the tribunal. Should penalty levels be fixed, or based on another factor such as the number of entries on a return? Should there also be a penalty at a level set by the tribunal for those who continue to fail to provide information?

45. The basic premise of the new penalty regime is that penalties should be based on behaviour. We do not think that, in this case, the law should depart from that principle and instead base penalties on the quantum of the default. Even leaving aside that principle, we find it difficult to see any justification for basing third party penalties on the number of entries on a return. We are also unclear as to what is actually meant – does it mean the number of entries that would have been on the return had it been completed correctly or the number of entries that have been omitted from the return?

46. Such a penalty does not satisfy the proportionality test. If, for example, HMRC were to require from an estate agent a return of rental income and the agent ignored the request completely, we are unclear why the penalty ought to be higher if he has 100 clients with an average rent of £10,000 pa than if he has 5 clients with an average rent of £250,000 each. The potential tax loss in the latter case is 25% higher than the former but the potential penalty is only 5% of that which would apply in the former case.
47. We believe that there are major problems with third party penalties which the Condoc does not address. Most people are likely to resent complying with third party information requests within a fairly tight time limit as it requires them to make time in a busy schedule to carry out work which is of no obvious benefit to their business. In these circumstances it could well be counterproductive to seek to impose heavy penalties for non-compliance other than when that behaviour is deliberate. In these circumstances we believe that the current maximum penalty of £300 is not an unreasonable one in most cases. We accept that a higher penalty may be needed in the case of persistent failure to comply with the Notice, but do not think that this should be applicable unless the third party has failed to comply with, say, two reminders without asking for extra time or has specifically said that he does not intend to comply with the Notice.
48. We have no strong views as to whether penalties should be applied by HMRC with the taxpayer having a right of appeal or should be imposed by the Tribunal. We can see merit in the former insofar as it gives an opportunity to discuss and possibly negotiate the size of the penalty, which would probably obviate a large number of appeals.
49. We suspect that in most cases non-compliance will reflect the fact that the information notice is either burdensome or unclear. It might accordingly be sensible to consider a procedure for bulk information notices under which HMRC publish a draft of the Notice for comment with the final version of the Notice then having to be approved by the First-tier Tribunal with the Tribunal being required to consider the representations made in response to the Consultation. That would ensure that the Notice is properly targeted and a balance has been drawn between the needs of HMRC and the burdens on the general public. Such a procedure would probably obviate most appeals.

Question 12: HMRC welcomes views on these proposals for new bulk information powers.

Power to obtain details of suppliers from VAT-registered traders

50. We agree that it would be wrong in principle to make payments to those who are required to provide bulk information. However, making payments emphasises that complying with information requests costs businesses money. It would concentrate the minds of those seeking the information and would help to obviate requests for information that have little intelligence benefit to HMRC. This emphasises how important it is that HMRC should put in place an internal system to weed out such requests.

51. We are concerned that the suggestion in para 4.39 that HMRC might ask a VAT registered trader for a list of all of its suppliers for which supplies received in a year (we are unclear whether that means a calendar year, the trader's VAT year or something else) exceed the VAT registration threshold could be burdensome. We assume that such a request would not be made to very small businesses as by definition they are not likely to have suppliers that fit this profile. Further, in computerised accounting systems extracting gross rather than net supplier balances may not be as straightforward as it might at first sight appear.

Power to obtain additional details from letting agents

52. We can see merit in HMRC having power to require agents to provide details of persons for whom they act where the existing rules will not permit this. The proposal at 4.40 to require a letting agent to identify those cases where he was paid only an introduction fee could be burdensome.

Question 13: HMRC welcomes views on the level of safeguards attached to paragraph 5 of Schedule 36 to Finance Act 2008.

53. It is hard to comment on safeguards in the light of the recent application to the First-tier Tribunal for an order against 308 banks where, as we understand it, each of those banks was not given an opportunity to make advance representations to the Tribunal. This seems to us to ignore undertakings given by HMRC and Treasury Ministers as detailed below. In these circumstances, safeguards appear illusory.
54. The original consultation document on the information powers of 10 January 2008 stated:
- “5.47 In most cases ex parte authorisation from the appeal tribunal for the issue of a notice would still be required as it is now
- 5.48 Precursor letters, initial information requests for information, would no longer be required before application for a formal notice. However, where an authorisation was being sought from an appeal tribunal the officer would need to have made the relevant parties aware of the information to be requested. This would allow representations to be made against the information being provided.”
55. The FA 2008 Finance Bill Explanatory Notes do not repeat this undertaking but does say (paragraph 18) that Paragraph 5 is based on section 28(8A) of the Taxes Management Act 1970 (TMA), but is extended to VAT. However, they do not say that the protection provided for taxpayers by s 28 (8A) to allow them to make representations is being removed and that taxpayers have been given the impression that this does not matter as an assurance has been given that it would continue on a non-statutory basis. However, it appears that this assurance has been ignored.
56. In the debates the then Financial Secretary to the Treasury Jane Kennedy said:
- “... The hon. Member for South-West Hertfordshire moved several amendments out of a concern that I have heard expressed by a number of people as the

powers have been developed and the consultation has gone through the usual process. His questions deserve a proper and reasonable answer.

Once again, the amendments all seek to add extra safeguards to the provisions about information powers. In a broader debate last Thursday, we talked about the overall aim of the changes that schedule 36 introduces. The amendments would reduce flexibility and affect HMRC's effectiveness, particularly in dealing with the minority of taxpayers who do not wish to comply. To safeguard the majority, it is important that I set out what HMRC's intent is.

Tribunal approval is required before an information notice can be issued to a third party. Amendments Nos. 244 and 245 seek further safeguards to require the taxpayer to be informed and, in addition, to enable them to make representations to the third party. In practice, there are two situations in which HMRC needs to approach third parties. The first involves a taxpayer who may have a gap in their records, but is otherwise generally compliant, and information is being sought to fill that gap. In those situations, HMRC would normally ask the taxpayer to obtain the information from the third party. There may be occasions in which the third party would refuse to provide that information to the taxpayer, so the notice is needed. In those circumstances, the taxpayer would be aware that a notice had been issued and of what it was requesting.

The second situation is where a taxpayer is suspected of concealing the truth from HMRC. HMRC then has to verify the true position with evidence from third parties. In such a situation, tax could be prejudiced if the taxpayer were made aware of HMRC's intentions. Therefore, the amendment does not add a great deal to the Bill for compliant taxpayers, as they have already had the chance to discuss matters with HMRC and to influence the notice. Where a deliberate mis-declaration of tax was suspected, the amendment would be overridden by paragraph (3)(4) in the way that my hon. Friend the Member for Broxtowe described...

Amendment No. 247 seeks to give taxpayers and recipients of notices a right to make representations in person to the first-tier tribunal. This is really a matter for the Ministry of Justice to decide upon, not something for a Finance Bill. However, HMRC is exploring this with the new tribunals. The consideration will be taken forward once the tribunals are established. There are difficulties over taxpayer confidentiality and prejudicing the case where the third party and taxpayer are present for the whole hearing. Members of the Committee can imagine what those would be. We do think that it would be helpful for parties to make their representations in person to the tribunal as that would allow the tribunal to clarify particular points and ask questions. In principle, therefore, we think this is fine."

Hansard, Standing Committee, 10 June 2008, col 581

57. Amendment 247 was a Conservative amendment. Introducing it Mr Gauke said:

"The broader issue is addressed in amendment No. 247, which states:

"No notice shall be given by the First-tier Tribunal unless the person to whom the notice is addressed and the taxpayer have been given notice of a hearing at

which the Tribunal is to consider the issue of the notice and have been given an opportunity to attend the hearing and make representations.”

Given that there is no real right of appeal, the initial decision at least by the first-tier tribunal should be made in such a way that there is due process. There should be an opportunity for the relevant parties to make representations to attend a hearing and then the first-tier tribunal can make the decision. If the decision is that the notice is correct and appropriate, so be it. At the moment we have a system where, essentially, we go straight to the first-tier tribunal. The only representations it will receive from somebody who disputes the process will be through a summary prepared by HMRC of the representations made by one of the parties.” (col 578)

58. Accordingly not only do HMRC appear to have gone back on an undertaking they gave in January 2008 but the Minister told parliament that the Treasury was happy to strengthen existing safeguards if the MOJ were willing to do so, not that the government intended to remove the limited safeguard of being able to make representations that currently existed. Further, we do not believe that HMRC explored the position with the new tribunals as was promised by the Minister.

Question 14: HMRC welcomes views on whether a new appeal right for bulk information powers would be useful.

59. We welcome the proposal for an appeal right as outlined in para 5.7. However we believe that it would be far better to reintroduce precursor letters to the third party.

Question 15: Should bulk information powers require the approval of an authorised officer?

60. We agree that the bulk of the information powers should require the approval of an authorised Officer. We are however concerned that in many cases either the person issuing the Notice or his immediate superior is likely to be an authorised Officer. On the basis that bulk information powers are likely to relate to specific projects, we suggest that the authorised Officer should be someone not involved in the project and be a grade higher than those directly involved in the project and, if there is no such person, then the authorised person ought to be the Board.

Question 16: Should these specialist powers be left as they are in legislation, or brought alongside other information powers at Schedule 36 to Finance Act 2008?

61. Whilst we understand the rationale for rationalising the range of powers within the framework of Sch 36, we believe that the specialised powers should be left as they are as they define the information that can be sought. Indeed we think that Schedule 36 should be disapplied where a specialist power can be exercised.

Question 17: Is the limited scope of specialist information powers safeguard enough, or should there also be a requirement for pre-authorisation by the tribunal or a right of appeal for the third party?

62. We would welcome such further safeguards.

Question 18: HMRC would be grateful for views on a power to seek the identities of those using a disclosable avoidance scheme. What would be the appropriate safeguards? Should the supplier have a right of appeal against the request, or should tribunal authorisation be required?

63. We can see why HMRC would want a power to require a promoter to identify taxpayers who enter into a disclosable scheme. In principle we do not have an objection to such a power. HMRC should appreciate that not everyone who purchases a disclosable scheme may actually have used it, so investigations using this information need to proceed on that basis.

JMM/FJH
2 October 2009

ANNEX A

THE 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 128,000 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 11,000 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 +44 (0)20 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.

ANNEX B

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.com/index.cfm?route=128518>).