

TAXREP 7/05

HMRC POWERS AND YOUR RIGHTS

*Comments in February 2005 from the Tax Faculty of the Institute of Chartered Accountants in England & Wales
on the draft Advice Note issued by the Inland Revenue
and Customs & Excise in December 2004*

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HMRC POWERS AND YOUR RIGHTS

INTRODUCTION

1. This Representation sets out the Tax Faculty's comments on the draft Advice Note **HMRC powers and your rights** (the Advice Note) which was published for comment on 8 December 2004.
2. The draft Advice Note can be found at www.inlandrevenue.gov.uk/news/hmrc-powers-rights.pdf or on the C&E website by following the link from the front page.

KEY POINTS

3. Our detailed comments on the Advice Note are set out in paragraphs 13 to 35.
4. We welcome the publication of guidance for those who will have contact with HMRC. However, as currently drafted, this Advice Note is not adequate or effective as a customer information leaflet. It is unclear who the note is aimed at or how it will be used, and is not likely to be easily understood by the non-specialist reader. There is insufficient coverage of taxpayers' rights, and we have concerns about some of the statements made about powers (for example, on the subject of meetings).
5. We also note that the whole question of HMRC rights and powers is to be the subject of detailed consultation – the announcement of which was actually expected in January 2005 but which is still awaited. This will look at aligning powers for the future, whereas the HMRC bill currently going through Parliament is intended to preserve the status quo, and it is our understanding that the draft Advice Note is intended to reflect that.
6. However, the Advice Note says that all HMRC officers will be authorised to use all powers available to HMRC, not just those powers that each specific officer enjoyed as part of either Customs or the Revenue and that a single officer of HMRC may want to inspect records relating to a number of different taxes at one time or, alternatively, different specialists will review different taxes at the same time.
7. We are concerned that this approach could lead to problems or misunderstandings where rules attaching to one tax are different from those for another tax. It is essential that this be properly controlled, and we would welcome more information about how this will be done in practice.

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8. We also think it essential to set out what a taxpayer or claimant can do if they think the HMRC officer is trying to gather information outside the scope of his powers for the particular purpose in hand.
9. We would recommend that the guidance should be redrafted, to make clearer what it is designed to cover and who it is aimed at. One option would be to provide different guidance tailored to particular customer groups. All the terminology should be clearly explained, with more information about taxpayers' rights and signposting to further sources of information, and clarification of the points we have raised concerning powers and information sharing.

WHO WE ARE

10. The Institute of Chartered Accountants in England and Wales 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.
11. The Institute operates under a Royal Charter, working in the public interest. It is regulated by the Department of Trade and Industry (DTI) through the Accountancy Foundation. 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 (which includes taxation).
12. The Tax Faculty is the focus for tax within the Institute. It is responsible for technical tax submissions 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 who pay an additional subscription.

COMMENTS ON THE DRAFT ADVICE NOTE

13. This document is called an 'Advice Note'. This appears to be a new category of document and we would welcome clarification of its status. We think it would be clearer to slot it into a category of document which already exists, such as a leaflet or a helpsheet, or (better still) give it a more formal status as a Code of Practice.
14. It is not clear who this Advice Note is aimed at or how it will be used. Will it be sent to all 'customers'? Or just to those getting an enquiry or compliance visit? Will it be issued as a matter of course or only on demand? Will it be sent to agents and also to other intermediaries such as Citizens' Advice Bureaux? Will it be just on the internet or will hard copies be available?
15. The Advice Note starts by saying it will explain how the creation of HMRC 'will affect you in your day to day dealings with officers....', and that it will explain rights and powers 'in relation to some of the more common contacts...'. But in fact it deals entirely with compliance situations.

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16. If the Advice Note is intended to tell people about how their day to day dealings with the revenue departments will be affected by the creation of the HMRC, it needs to answer some general questions about all aspects of contact and customer service, and not plunge straight into compliance issues. If it is just intended to deal with compliance situations, it should say so at the start.
17. If it is intended as a customer information leaflet, the Advice Note assumes too much knowledge and does not explain jargon. For example, it assumes that readers will know about the merger to form HMRC. This may be common knowledge in tax circles, but it needs a few lines of explanation for everyone else. As examples of jargon which require explanation: What are 'individual tax regime powers'? An 'officer' of HMRC means any member of staff but will readers know that? and so on.
18. The Advice Note takes a 'one size fits all' approach. While this has the advantage of simplicity, we are not convinced that in this instance it works, as in fact it does not really fit anyone, for the following reasons:
 - For unrepresented taxpayers, there is insufficient clear, jargon-free explanation, or information about rights.
 - For agents and tax specialists, the information merely scratches the surface of what they might wish to know.
 - For those readers who have tax advisers, there is no explanation of how their agents will fit into the picture. There are situations where the revenue departments will contact agents directly, situation where they go only to the taxpayer, and situations where the contact is with both. It would be helpful to clarify this or provide a signpost to further information.
19. The Q&As should be numbered for ease of reference.
20. The first paragraph lists a few things that HMRC will deal with, but there are some significant omissions – tax credits, IHT, National Insurance and the national minimum wage. There should be a comprehensive list of all the areas HMRC handles (this could be an appendix).
21. In the third paragraph it is unhelpful to tell people to look at the Inland Revenue codes of practice (COPs) for more information on 'each tax'. COPs do not explain powers on a tax-by-tax basis – they deal with particular situations, and tend to be lengthy and a difficult read for the non-specialist.
22. There is no indication of how someone without internet access could get hold of the COPs or Public Notices.
23. **Powers and information sharing:** One of our main concerns is how in practice the powers will be used to obtain and share information. The Treasury has said that the merger will not result in any significant change to the current powers of either department, and that those powers will be ring-fenced so that, for example,

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powers currently used by Customs and Excise to collect VAT will not be available to collect income tax. However, the Advice Note says that all HMRC officers will be authorised to use all powers available to HMRC, not just those powers that each specific officer enjoyed as part of either Customs or the Revenue and that a single officer of HMRC may want to inspect records relating to a number of different taxes at one time or, alternatively, different specialists will review different taxes at the same time.

24. We are concerned that this approach could lead to problems or misunderstandings where rules attaching to one tax are different from those for another tax. It is essential that this be properly controlled, and we would welcome more information about how this will be done in practice.
25. There is no indication of what a taxpayer or claimant can do if they think the HMRC officer is trying to gather information outside the scope of his powers for the particular purpose in hand.
26. In several places there is reference to 'VAT, customs or excise records'. We think this should read 'customs or excise duties records'.
27. References to VAT are frequent in the document, and quite a few of the questions start with 'if you intend to contact me to inspect my VAT records...'. This gives rather a VAT-orientated impression, which may put off many readers – most HMRC customers will not be involved with VAT.
28. **Meetings:** The information about meetings is very unsatisfactory. It implies that whether there is a meeting and where it is held is a matter for HMRC. It does not set out the taxpayer's rights.
29. The legal position is that taxpayers or claimants are not obliged to attend meetings. There is also the option of the revenue officer meeting the adviser rather than the client. There are COPs and other published materials (such as manuals) give much more accurate and helpful guidance on this, which is not reflected in this Advice Note.
30. In at least one place the word 'enquiry' is used as though synonymous with inspection or information request, which is inaccurate and misleading.
31. The last Answer refers to different rules for cases of serious fraud. The reference to serious fraud could be highly intimidating for the taxpayer or tax credit claimant reading it. It is also very unhelpful as there is no explanation or signposting to further information.
32. The Q&As concentrate on information-gathering and enquiry situations. One important area of powers – recovery and collection procedures – is not mentioned at all.

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33. Regardless of the title of the Advice Note, it in fact gives virtually no information about taxpayers' or claimants' rights. Nor does it tell the reader to precisely how or where he can find out more about these.
34. There is no reference to customer service standards, complaints procedure, etc. We trust that this will be included in the final version.
35. There is no reference to sources of help – not least, to the option of having an agent or tax adviser.

JMM

11 February 2005