

# Tax Representation



## TAXREP 17/07 – HMRC Consultation Framework

WRITTEN RESPONSE SUBMITTED ON 19 FEBRUARY 2007 BY  
THE ICAEW TAX FACULTY RELATING TO THE DRAFT  
FRAMEWORK DOCUMENTS ISSUED BY HMRC ON  
6 FEBRUARY 2007

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## **INTRODUCTION**

1. The ICAEW Tax Faculty and other professional representative bodies were circulated on 6 February 2007 with two draft Consultation Frameworks as part of the Varney Review of Links with Large Business.
2. We welcome the fact that the consultation rules are going to be enshrined in Guidelines – a Consultation Framework - and are to be published.
3. We have a number of comments in relation to the current proposals and the draft Framework documents.
4. We favour the use of the longer Consultation Framework which is reproduced as Appendix 2. The other, shorter, Consultation Framework is reproduced as Appendix 3.

## **EXECUTIVE SUMMARY**

5. For a long time we have believed that proper consultation is fundamental in the development and maintenance of a good tax system and we have expressed our views consistently on this.
6. The time for response to this current consultation was inadequate.
7. We recommend the longer Framework should be revised in the light of comments received and re-circulated for further comment with a more realistic response time.

## **DETAILED COMMENTS**

### **Good consultation**

8. In 1999 the Tax Faculty published its Ten Tenets Towards a Better Tax System and Tenet Seven was the need for proper consultation. In the 1999 document we stated:

‘Consultation is a vital part of tax law development. This is recognised by the present Government. ....The best legislation tends to arise after full and genuine consultation with representative bodies. Such consultation requires adequate time to complete and should follow a formal process.’

9. When the Government published a draft Code of Practice on Consultation in the following year, 2000, we wrote in our representation, TAXREP 23/00:

‘We believe it is essential to the democratic process for there to be an effective method of consulting with those who will be affected by new rules or legislation. Not only is it important that consultation takes place on such issues but it should be seen to be taking place, to give the public confidence in the process.’

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10. It was a happy, numerical, coincidence that Key Proposal Seven of the Varney Review of Links with Large Business covers the same point as is contained in our own Tenet Seven and proposed that:

‘HMRC will be accountable for taking the business perspective into consideration in everything it does from implementing policy decisions to designing systems and processes. A consistent approach to informal and formal consultation with clear accountabilities and parameters will ensure the business perspective is taken into account as the norm, so contributing to a more certain administrative framework within which business can thrive.’

11. The time-table laid down in the Varney Review published in November 2006 was that the above Consultation proposal would be in place ‘with effect from Budget 2007’.

12. HMRC published two draft Consultation Frameworks on 6 February 2007 and asked for comments by 15 February 2007.

13. The time allowed for comments to this consultation is completely inadequate and contrary to the Cabinet Office Code of Practice, which the longer draft Consultation Framework indicates will be followed for Full Public Consultations. Clearly, there needs to be enough time in any consultation exercise, even if it is not a full public consultation, for the issues to be properly considered. In the case of Representative Bodies, such as the ICAEW Tax Faculty, time needs to be given to seek the views of our Committee members.

14. In the very short time available we have obtained some immediate reactions from those Committee members. However, it is not surprising that the major reaction was one of extreme disappointment and concern at the very short time they were given to comment.

15. In view of this, our comments below should be considered as an initial response on the key issues.

16. It is ironic that a consultation on better consultation should be open to the suggestion that it has not provided adequate time for comment. We therefore recommend the longer Framework should be revised in the light of comments received and should then be re-circulated for further comment, with a more realistic response time.

### **Full public consultation**

17. We believe that if there is to be public consultation on anything other than minor matters, then there should be a presumption that it will be a Full Public Consultation and we suggest that the exceptions to Full Public Consultation should have to be ‘signed off’ by the Consultation Co-ordinator as a matter of course.

### **Informal Consultation is sometimes appropriate**

18. There is concern that those formulating policy do not always appreciate what policy changes may cause serious problems, for example the IHT trust changes and the Lord Carter e-filing recommendations which were announced in the 2006

Budget. We think there is a wide recognition from all sides of the need to avoid such mistakes in the future.

19. Accordingly, we suggest that consideration is given to seeking the views of Professional Bodies about what consultation process would be appropriate right at the outset, perhaps by way of a 'focus group' or something similar, which would provide a 'reality check' on what form of consultation is required.
20. In the longer Consultation Framework under Key Principles there is a bullet point list of key principles when 'informal consultation routes are undertaken'. We welcome the formulation of such principles but we believe they are a little too imprecise at the moment i.e. sufficient time will be given for responses, careful consideration will be given to all responses, feedback communicating what is going to be done will be given in good time. If such principles are to be of maximum use then we believe the principles need to be more precise – how much time is to be allowed for instance. We appreciate that sometimes it is not possible to have hard and fast rules but we do believe it is possible to devise some basic principles which would provide a minimum starting point. We are happy to provide further information on this concept if required.
21. We also believe use can be made of the newly formed Agents and Advisers Strategy Steering Group to provide informal guidance.
22. We have some concerns about the increased use of informal consultations over more public methods. We have noticed a marked increase in the use of informal consultations e.g. HMRC powers, managed service companies. These can be useful and effective but it is vital that the public are still given the opportunity to comment on the main proposals arising from those informal discussions and adequate time in which to comment.
23. It should also be clear to Parliament, for example, when there has been an open discussion of views with the tax representative bodies and when instead there has been an informal chat with people selected in their personal capacity. The former line can easily be blurred e.g. evidence given to the Treasury Select Committee by Dave Hartnett on the merger of HMRC on 27 January 2007 at question 26.

#### **Other non HMRC bodies should have a route to initiate Consultations**

24. There are occasions when Business or Representative Bodies will recognise a failure in the system or a lacuna in the law and we recommend that the Framework should formally recognise this and provide a means whereby issues considered to be of wide importance can be formally brought to the attention of HMRC for further consideration and consultation. There should also be a transparent procedure whereby it can be shown that the issue has been properly considered even if the conclusion reached by HMRC is that no action will be taken.

#### **The two Frameworks**

25. While two Frameworks have been published, it would appear that only one will be chosen for use post Budget 2007 when this proposal of the Varney Review is to be put in place.

26. We favour the longer Framework as it is more comprehensive and provides more essential detail than the shorter version.
27. In the section How do we ensure an inclusive approach/proper representation? there is a statement in relation to Standing Consultation Groups that 'The chair of all Standing Consultation Groups has the final decision as to membership'. We do not think that should be the case. We believe representative bodies should be free to put forward their own representatives based on their knowledge of the capabilities of their members. If the chairman of the Standing Consultation Group subsequently believes that the particular representative is not making a positive contribution then we believe the chairman should be free to suggest to the representative body that the existing representative ought to be replaced. But the chairman should not have the absolute right to choose the representatives.
28. It is essential that the Frameworks are written in plain English.
29. In the longer Framework we do not find the statement in the second line 'when we make changes to the tax and customs systems' very clear. Presumably this refers to everything which HMRC is responsible for or which it is able to make changes to. This ought to be more clearly stated.
30. In relation to the shorter Framework, the final paragraph is rather full of hyperbole and it is not clear to us what is meant by 'inclusive' in the phrase 'inclusive contribution to the development and implementation of our policies and processes.' If this Framework was used it needs to be redrafted to take account of these points.

### **The role of the Consultation Co-ordinator**

31. We believe that the Consultation Co-ordinator should be involved in decisions as to what type of consultation is to be followed or, at the very least, the Co-ordinator should carry out a regular 'cold', after the event, review of these decisions to ensure that the appropriate level of consultation is being undertaken and that there is a consistent approach across HMRC.
32. We also suggest that there should be an annual report by the Consultation Co-ordinator on all, other than minor, consultations carried out by HMRC over the previous 12 month period with an assessment of which consultations have gone well, and which have gone badly, and what changes are recommended for the following twelve month period.
33. The longer Framework indicates that:
- 'If anyone is concerned that any particular consultation is falling short of the standards set out in this framework please contact [the consultation Co-ordinator].'
34. In the light of the concerns we have expressed about the very short time allowed for the present consultation we have sent a copy of this paper to the current consultation co-ordinator, Duncan Calloway.

### **The longer Framework**

35. As mentioned above, we prefer the longer Framework to the shorter Framework.
36. We believe that the heading **Planning your consultation** on page 2 should be changed to **Key principles for good consultation** and the heading Key principles on page 3 should be changed to **Cabinet Office Code of Practice**.
37. In relation to the list of six principles set out in the Cabinet Code of Practice we suggest there should be a further point which needs to be adhered to and suggest additional wording along the following lines:

‘In addition to the above six key principles you should identify the key stakeholders in the proposed activity and ensure that they are included in the consultation and that an appropriate weight is attached to their representation.’

38. This section refers to both ‘criteria’ and ‘principles’: one term should be used consistently.
39. In the section currently headed **Planning your consultation** we suggest you expand the second bullet point to reflect some of the benefits from consulting with outside parties. Before the final sentence ‘So it is important ...’ We suggest you add:

‘If you consult with representative and trade bodies they will be able to provide early warnings on contentious issues and threats to the successful implementation of the proposed policy.’

40. In the same section, final bullet point, we think there should be a commitment to provide rather more than ‘some feedback’ and we recommend this should be changed to ‘full feedback’. We also recommend that this same bullet point should be extended at the end by adding:

‘This will encourage future participants by providing recognition that their current responses have been properly considered.’

### **Confidentiality and named participants**

41. We recognise that in some cases it is necessary to consult on a confidential basis but the Framework should, in our view, make it clear that this is very much the exception.
42. We are also concerned by what appears to be a recent trend to invite named individuals to take part in Consultation exercises and then heavily restrict their ability to take soundings with other members of the Representative Body with which they are associated. Recent examples include the Powers review committee, Managed Service Companies and offshore bank account issues, where invitees were initially asked not to divulge anything to anyone. It was only later, following requests from delegates, that they were allowed to involve others.
43. If a view is required then the invitee is better able to provide a considered opinion if they can discuss the matter with their peers. Confidentiality can be paramount in such cases but we believe it is possible to limit such matters to a tight group within the tax representative organisations and it provides overall a better end

result. We also believe such restricted consultations should not become the norm but should be kept for only a few highly unusual cases.

44. In addition we believe in relation to more controversial issues, it should be normal practice that HMRC write to the professional bodies asking them to nominate a representative. This will ensure that an appropriate person can be put forward. We would stress that this is no reflection on the excellent quality of those who have been invited to contribute, but would go towards setting out some useful ground rules in such cases.

**ICAEW Tax Faculty**  
**19 February 2007**

**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 of Trade and Industry 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, 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.

This framework aims to make a positive impact on the way in which HMRC consults with interested parties when we make changes to the tax and customs systems. By setting out clearly the ways in which we will seek views and opinions we aim to ensure that all interested parties can make an inclusive contribution to the development and implementation of our policies and processes.

## **Introduction**

Businesses, individuals, employers and agents all play a vital role in ensuring the tax and customs systems operate effectively. HMRC wants to improve its administration of these systems by putting the customer at the heart of everything we do. Consultation is an important part of partnership working. HMRC believes that listening to and engaging with our customers will lead to better design and delivery of our services. That in turn will lead to lower costs for customers and HMRC and to better compliance.

## **What do we mean by consultation?**

In the context of this framework consultation is taken to mean the routes through which HMRC obtains the views of interested parties when legislative and administrative changes to the tax and customs systems are being planned.

When we consult we want to ensure that we reflect the widest possible range of opinions in developing our policies and processes by reaching out to people making it easy for them to respond. By setting out the recognised routes through which consultation can take place and the standards HMRC commits to in conducting a meaningful dialogue this framework should encourage a greater openness and responsiveness in HMRC.

## **Recognised Consultation Routes**

This framework covers the following recognised consultation routes:

1. Full Public Consultation – carried out under the Cabinet Office Code of Practice
2. Written Consultation – where Cabinet Office Code of Practice not fully met
3. Consultation Forums – can be standing forums as listed on HMRC internet or created specifically for the proposed changes
4. Open Days/ Road Shows
5. Workshops
6. Focus Groups
7. User Panels
8. Meetings with representative bodies and business experts
9. Confidential Discussions

## **Which route should be used?**

In areas where change is being planned which will have a significant impact on business, HMRC will undertake Full Public Consultation following the Cabinet Office Code of Practice. In all but the most important cases the decision as to what type of consultation will lie with the person responsible for developing the change proposal. That decision will be taken using the key principles set out below. In important cases

Ministers will use their existing discretion whether and how to consult. HMRC will inform any interested party who is the decision taker and, if within HMRC, the reasoning behind any decision taken as to the form of consultation adopted.

Principles governing the type of consultation adopted:

- Whenever options are being considered for a new policy, or if regulation is required, a Full Public Consultation will be adopted.
- In areas of significant change where Budget or legislative timetables prevent a full 12 week consultation a written consultation with a shorter period will be considered where practicable.
- Where there are a limited number of stakeholders affected written consultation with a targeted group of stakeholders will be considered.
- The needs of those likely to be affected by the change and the best means of engaging them in a meaningful dialog will be taken into account when deciding which method or methods to adopt.
- Using more than one route is likely to increase the chances of a better response.

### **Planning your consultation**

To make your consultation effective the following principles should be adopted:

- You should start your consultation with business as early as possible.
- Using early informal consultation to inform later public consultations is good practice and aids understanding of potential issues. The aim as far as possible is to design with the grain of customer processes/practices. So it is important to start talking outside before ideas have crystallised.
- Stakeholder meetings and workshops should be run along side public consultation for key stakeholders on significant issues.
- Where there is no public consultation any informal consultation should ensure that all customer groups affected by the change are included in the consultation.
- Where there is no public consultation any informal consultation should be for as long as possible and for 12 weeks if at all possible.
- You should always provide some feedback to those consulted with on how their contribution has been taken forward, or reasons why it has not been.

### **How do we ensure an inclusive approach/proper representation?**

There is no right method to reach a target audience but clearly the type of route adopted will influence who can and cannot take part in any consultation. Whenever possible, more than one route will be chosen to ensure as many different types of stakeholders as possible have the opportunity to make their views known.

Full Public Consultation gives everyone a chance to contribute. Where more informal consultation routes are adopted HMRC are committed to including as broad a range of stakeholders as time and circumstances permit.

Standing Consultation Groups – Membership of these groups is voluntary and HMRC are committed to ensuring that representatives are selected to ensure the group can carry out its terms of reference. The chair of all Standing Consultation Groups has the final decision as to membership. All such groups will review both the Terms of

Reference and membership every two years, or more often if required, to encourage participation and inclusivity.

Other Groups and meetings will be held at the discretion of the change owner who will identify interested parties. The subject matter, level of change being proposed, and timetable for change will all have a bearing who is asked to contribute. HMRC are committed to obtaining as broad a range of views as practicable to maintain the principle of inclusivity.

### **Extending consultation when there are issues of confidentiality**

In cases where a loophole needs to be plugged immediately, or some other circumstance means confidentiality takes precedence over transparency, change owners should also seek to consult externally on a strictly limited basis to ensure any change being proposed is fit for purpose – if at all possible. In such cases HMRC will work on the principle of extending consultation to maximise participation as confidentiality issues decrease.

### **Making best use of limited resources**

Conscious that time given to participate in consultation is voluntary, and often on top of other commitments, HMRC are keen to engage with stakeholders to ensure we make best use of limited resources by.

- Looking to work with stakeholders to set priorities as to which changes require consultation and which do not;
- Ensuring as early engagement as possible to allow trust and meaningful dialogue to build over time
- Appreciating the need for the recommended 12 week timetable if representatives are to properly canvass their members for views
- Listening to concerns about duplication of effort and taking steps to deliver consultations on connected areas in a joined up way. In doing this, it is better to use existing forums than set up new structures to minimise the time demands on customers.

### **Key Principles**

Where the Cabinet Office Code of Practice applies there are 6 criteria which must be met when carrying out a Full Public Consultation:

1. Consult widely throughout the process, allowing a minimum of 12 weeks for written consultation at least once during the development of the policy.
2. Be clear about what your proposals are, who may be affected, what questions are being asked and the timescale for responses.
3. Ensure that your consultation is clear concise and widely accessible.
4. Give feedback regarding the responses received and how the consultation process influenced the policy.
5. Monitor your department's effectiveness at consultation, including through the use of a designated consultation co-ordinator.
6. Ensure your consultation follows better regulation best practice, including carrying out a Regulatory Impact Assessment, if appropriate.

When informal consultation routes are undertaken the following key principles will be adopted:

- Planning and consultation should start early, before key decisions are made
- There should be clarity about what areas are open to change and what are not
- Information will be made available to those most affected
- Maximum participation will be encouraged through accessible and varied consultation methods
- Written material will be clear
- Sufficient time will be given for responses
- Careful consideration will be given to all responses
- Feedback communicating what is going to be done will be given in good time
- Wherever possible the reasoning for any decisions will be reported back to those involved in consultation

### **What we aim to achieve through good consultation**

The benefit of consultation is that it

- Allows an informed debate to take place
- Gives everyone a better understanding of the likely impact of any proposed change on businesses and individuals
- Enables consideration of alternative approaches, and
- Improves the quality of the resulting product by making sure it will work in the real world

HMRC are committed to ensuring that we conduct all our consultation in accordance with this framework to bring these benefits to life.

### **Consultation Co-ordinator**

HMRC have a consultation co-ordinator whose role is to help colleagues in HMRC conduct successful consultation exercises. If anyone is concerned that any particular consultation is falling short of the standards set out in this framework please contact:

Duncan Calloway  
Business Customer Unit  
Better Regulation Team  
Room 3/39  
100 Parliament Street  
London SW1A 2BQ

Telephone 020 7147 2389

E-mail: [duncan.calloway1@hmrc.gsi.gov.uk](mailto:duncan.calloway1@hmrc.gsi.gov.uk)

**Introduction**

Businesses, individuals, employers and agents all play a vital role in ensuring the tax and customs systems operate effectively. HMRC wants to improve its administration of these systems by putting the customer at the heart of everything we do.

Consultation is an important part of partnership working. HMRC believes that listening to and engaging with our customers will lead to better design and delivery of our services. That in turn will lead to lower costs for customers and HMRC and to better compliance.

**Key Principles**

- Planning and consultation should start early, before key decisions are made
- There should be clarity about what areas are open to change and what are not
- Information will be made available to those most affected
- Maximum participation will be encouraged through accessible and varied consultation methods
- Written material will be clear
- Sufficient time will be given for responses
- Careful consideration will be given to all responses
- Feedback communicating what is going to be done as a result showing clearly who the decision represents will be given in good time

**HMRC will**

- Talk with interested parties as soon as planning begins by involving representatives in stakeholder groups
- Look to consult on how best to implement changes when policy is set by ministers
- Follow the Cabinet Office Code of Practice whenever possible and carry out a full national public consultation where there is a likely significant impact on business of any proposed change
- Where the Code of Practice does not apply, or is not followed, work with representatives in stakeholder groups to ensure external experience and expertise add value to any proposed change
- Where there are issues around confidentiality ensure as broad a consultation as possible, maximising participation as confidentiality issues decrease
- Produce clear and concise consultation documents
- Ensure stakeholder groups are representative of the aims and ambitions set out in their terms of reference
- Give sufficient time for considered responses (generally a minimum of 12 weeks in formal consultations)
- Encourage representatives to consult their stakeholders directly
- Review all feedback thoroughly and, where practicable, take the results into account in future planning
- Be open in reporting findings and the reasons behind decisions taken

This framework aims to make a positive impact on the way in which HMRC consults and appraises our administration of the tax and customs systems so that all interested parties can make an inclusive contribution to the development and implementation of our policies and processes.

