TAX FRAMEWORK FOR BUSINESS: DOCUMENT FOR CONSULTATION

Memorandum of comment submitted in March 2010 by Tax Faculty of The Institute of Chartered Accountants in England and Wales, in response to a consultation document *Tax Framework for Business* published on 21 February 2010.

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INTRODUCTION

1. The ICAEW welcomes the opportunity to comment on the consultation document *Tax Framework for Business* published by HM Treasury on 21 February 2010.

WHO WE ARE

2. The ICAEW operates under a Royal Charter, working in the public interest. Its regulation of its members, in particular its responsibilities in respect of auditors, is overseen by the Financial Reporting Council. As a world leading professional accountancy body, we provide leadership and practical support to over 134,000 members in more than 160 countries, working with governments, regulators and industry in order to ensure the highest standards are maintained. We are a founding member of the Global Accounting Alliance with over 775,000 members worldwide.

3. Our members provide financial knowledge and guidance based on the highest technical and ethical standards. They are trained to challenge people and organisations to think and act differently, to provide clarity and rigour, and so help create and sustain prosperity. We ensure these skills are constantly developed, recognised and valued.

4. 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 of the Institute who pay an additional subscription, and a free weekly newswire.

SPECIFIC POINTS

5. Almost ten years ago the Government outlined in a consultation document[1] published in July 2001 a strategy for large business taxation. The key principles set out in that document were business competitiveness and fairness. The present document extends the range of those basic principles with a number of underlying principles for the tax system itself as well as the principles that should underpin the tax-policy making process.

Principles of a good tax system: the Ten Tenets

6. We are pleased to note that the current, more extended, outline of the fundamental policy principles to underpin the tax system mirror very closely our own **Ten Tenets for a Better Tax System.** The Ten Tenets were first published in 1999 and we have used them ever since to evaluate new tax policy initiatives. They are reproduced in the Appendix. We believe that our Ten Tenets need to be at the heart of measures that will need to be taken over the coming years to ensure that the UK tax system is fit for purpose.

The need for certainty

7. The key business requirement identified in this consultation is that taxpayers need certainty. We agree. Tax legislation should be properly targeted and set out clearly in primary legislation. In recent years, the trend has been to have wide ranging tax legislation that is then 'cut down' by HMRC guidance, coupled with wide powers given to HMRC/HM Treasury to amend primary legislation by way of statutory instrument. This approach does not provide the necessary level of certainty that is required in tax legislation.

8. We appreciate that secondary legislation has an important role to play and can be particularly useful in areas such as commencement dates, transitional provisions, 'approved lists' etc. However, it should be used sparingly and we do not think it is right that primary tax legislation should include powers which enable HM Treasury to 'rewrite' the statutory provisions. HM Treasury should confirm that such provisions will only be used to correct emerging deficiencies and unfairness and that they will not be used to impose any further tax charges on taxpayers.

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[1] Large Business Taxation: The Government's Strategy and Corporation Tax Reform. See http://www.hm-treasury.gov.uk/d/p1.pdf

9. There are a number of reasons why reliance on HMRC guidance is not satisfactory. First, HMRC guidance cannot be relied upon in a court of law. The recent case of *Gaines-Cooper* has highlighted the difficulties in seeking to rely on a generally accepted view of the residence laws as set out in longstanding HMRC guidance. Second, HMRC may change its guidance at any time, leaving taxpayers vulnerable to unexpected tax charges which may be contrary to the taxpayers' legitimate expectations. An example of the latter was the recent revision of HMRC's views on the taxation of share options following the *Mansworth v Jelley* case. Whilst we understand why HMRC decided to change its view, any change should only apply to transactions occurring on or after the date of change.

Improving how tax law is made

10. As we noted in our recent Budget 2010 submission (TAXREP 9/10), the current approach to formulating tax law provides little opportunity for detailed Parliamentary scrutiny. The Finance Bill process should be reformed to improve the quality of tax law, provide greater clarity and improved certainty to taxpayers.

11. To give taxpayers greater certainty, government should commit to introducing a clear timetable for the annual Finance Bill process. More time needs to be allowed for proper consultation with stakeholders and for detailed scrutiny of provisions, both by reference to the practicality of proposals and the costs of implementation, which often appear to be underestimated.

12. Our recommendations were as follows:

- The Pre-Budget Report (PBR) should be held no later than the end of November. The Budget should be held no later than the end of February and the Finance Bill should be published before 31 March.

- Except in extenuating circumstances, for example to tackle identified tax avoidance schemes, tax changes should be announced only at the PBR or Budget.

- The Government should commit formally to improving tax policy formulation by engaging in consultation with key stakeholders on proposed tax policy changes. This should be undertaken as a matter of course unless there are exceptional circumstances, in which case reasons should be given.

- Consultation on potential tax policy changes should take place at an early stage and before major decisions are made. This process should include detailed, accurate and realistic analysis of the practical considerations and the costs of implementation. Adequate time should be allowed for consultation responses to be analysed and changes to be considered.

- The UK tax code needs to be simplified and an independent Tax Simplification Commission should be established to oversee this work.

13. We welcome the Government's commitment to improved consultation and we look forward to contributing to that work in the future.

UK competitiveness

14. We have become concerned over recent years that the UK tax system is slowly becoming less competitive and that other tax jurisdictions are actively seeking to exploit this. Whilst relatively few companies have decided to relocate to other jurisdictions, we know that many of the UK FTSE companies now examine this issue regularly and would consider relocating if the circumstances are right.

15. Against this background we welcome the Government's clear commitment to ensure that the UK remains an attractive location for businesses. Whilst the attractiveness of the UK as a base depends upon many factors, tax issues are crucial and key factors in any assessment include not just headline rates but complexity, certainty and ease of administration.

16. As we noted in our 2010 Budget submission, in addition to the very valuable work of the Forum and HM Treasury on the issue of competitiveness, we believe that the Chancellor should also commission an independent study to assess the relative importance of these issues to multinational businesses, where the UK stands relative to other jurisdictions and make recommendations for improving the UK's competitiveness. The study should report back in the 2010 PBR. We have extensive international contacts and would be happy to oversee or contribute to such a review.

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APPENDIX

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.