

Tax Representation



TAXREP 20/09

HM REVENUE & CUSTOMS CHARTER

Memorandum submitted on 9 April 2009 by the Tax Faculty of the Institute of Chartered Accountants in England and Wales in response to a consultation document published on 3 February 2009 by HMRC

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The Tax Faculty of the Institute of Chartered Accountants in England and Wales

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HM Revenue & Customs Charter

HM REVENUE & CUSTOMS CHARTER

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 *HMRC Revenue & Customs Charter* published by HM Revenue & Customs (HMRC) on 3 February 2009.
2. This consultation follows an earlier consultation *A new Charter for HMRC and its customers* which was issued by HMRC on 19 June 2008 and to which we responded on 11 September 2008 (TAXREP 71/08).
3. Information about the Institute of Chartered Accountants in England and Wales and the Tax Faculty is given at Annex B. Our Ten Tenets for a Better Tax System which we use as a benchmark are summarised in Annex C.

EXECUTIVE SUMMARY

4. The current draft Charter needs significant revision before the final Charter is published if the Charter is to serve its proper purpose which is to set out clearly the rights (and obligations) that taxpayers enjoy (or owe) in their relationship with HMRC.
5. The rights of taxpayers need to be more clearly stated in the final Charter and many important rights are currently omitted from the draft Charter.
6. The decision to give explicit legislative authority to the proposed new Charter is welcomed.
7. It is appropriate for the Charter to be a simple short statement but this needs to be underpinned by more detailed statements explaining what the various rights and obligations mean in practice, plus where further information is available.
8. The Charter should be called Taxpayers' Charter for reasons explained below. If that is not acceptable then we make further suggestions but to call the proposed Charter HMRC's Charter would be quite wrong as the primary focus of the Charter is taxpayers and not HMRC.

DETAILED COMMENTS

Statutory underpinning

9. We welcome the decision, announced at the 2008 Pre-Budget Report and reported in paragraph 1.5 of the Consultation Document, to give explicit legislative authority to the proposed new Charter. This was one of the recommendations in our earlier representation.
10. We met with the HMRC Charter Team in early March 2009 but at that stage no details were available as to what form such statutory backing will take. We understand relevant details, including draft clauses, are not likely to be in the public domain before Budget Day, 22 April.

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11. In our earlier representation we made several recommendations as to the form and content of such statutory backing and we will judge the draft clauses by reference to those recommendations, which are:
- The legislation should set out the process by which the Charter is established and kept under regular review and how and when appropriate reports are to be made.
 - The legal effect of the Charter should be covered and the extent to which HMRC should take account of the Charter.
 - There should be independent oversight of the Charter and the regular review process should be under the aegis of a Parliamentary Select Committee.

The content of the draft Charter

12. While we appreciate that the Charter is 'work in progress', we are disappointed with the current draft. It includes a number of incorrect statements, contains emotive language, but does not include some material we would expect.
13. The final Charter should be more explicit as to the rights of taxpayers. We are also concerned that the current draft is more of a mission statement for HMRC rather than a Charter of rights. In addition, some of the wording is needlessly emotive and needs to be toned down.
14. A number of important rights are not at the moment set out in the draft Charter. In particular the Charter should be expanded to include:
- right to privacy – which goes further than confidentiality;
 - right to certainty;
 - right to pay no more than the correct amount of tax; and
 - right to have the costs of complying with the system kept to a minimum;
- and the following rights should be elevated from *Accessing information about HMRC* where they are placed in the current draft Charter:
- right to complain; and
 - right to appeal.
15. There are a number of specific questions raised in the Consultation Document which are summarised in Appendix A. We have set out our responses to those explicit questions in Annex A to this document.

The style of the document and the process

16. It is clear that the draft Charter document copies some of the form and content of the HMRC document *HMRC Purpose, Vision and Way* which was published, without public consultation, by HMRC and its new Senior Management Team in November 2008. This Vision statement has been circulated internally within HMRC but has not been formally issued externally although its content is widely known.
17. We appreciate that it could be confusing for HMRC staff, and to that extent counter-productive, if the HMRC Charter is markedly different in tone and style from the Vision statement. Nevertheless the Vision statement sets out the guiding principles for HMRC staff and does not seek to reflect the rights that taxpayers

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can expect HMRC to honour. The two documents have different objectives and they should reflect those different objectives.

18. We are very disappointed that the consultation on the Taxpayers' Charter, which began publicly in June 2008, now seems to be subservient to a quite separate exercise which took place in the latter half of 2008 and on which there was no public consultation. We do not believe that this has helped the likely acceptability of the final Charter.

Format of the Charter

19. We support the proposal that the basic Charter should be contained on a single A4 sheet of paper, or electronic equivalent, which is comprehensive and uses language which can be understood by the average reader.
20. The Charter should then be backed up by more detailed statements as to what these rights, obligations etc mean in practice.

Opening statement of the Charter

21. We do not believe it is correct to state that 'HMRC makes sure that money is available to fund the UK's public services'. HMRC's role is to administer the tax and some of the benefits system in accordance with the decisions taken by Government and Parliament. Exactly the same comments apply to the statement 'We also help families and individuals with targeted financial support' where HMRC's role is to administer the tax credits system.
22. In our discussions with the HMRC Charter Team they have on several occasions told us that there is a strong feeling within HMRC that the advantage of a Charter will be undermined if it promises outcomes which are unlikely to be delivered. While it may be a laudable aim to have a tax and benefits system that 'feels simple to use' that is, in our experience and that of our members, a very long way off at the present time. While the Charter can sensibly be somewhat aspirational in tone it also needs to be realistic. We suggest that the phrase 'feel simple to use' be dropped from the final version of the Charter.
23. We believe that an Opening Statement similar to that made by the Commissioner at the beginning of the Australian Taxpayers' Charter, reproduced below, is a more appropriate beginning:

'We want to manage the tax system in a way that builds community confidence.

'To do this, we need to have a relationship with the community based on mutual trust and respect.

'In building that relationship, we:

- are open, transparent and accountable in our dealings with the community
- are professional, responsive and fair, taking into account your circumstances and previous compliance behaviour
- try to make it as easy as possible for you to comply with your tax obligations

- help you to comply by giving you advice and information you can rely on
- try to reduce the cost to you of complying, and
- are firm with those who try to avoid their obligations and effective in bringing them to account.

‘The taxpayers’ charter explains what you can expect from us in meeting these commitments.’

You can expect HMRC to

24. We do not think this is an appropriate heading for this part of the Charter which in our view ought to be about the rights of the taxpayers. We suggest as an alternative *You can expect HMRC to respect your Rights*.
25. The phrase ‘pursue relentlessly those that break or bend the rules’ is wholly inappropriate. We appreciate that taxpayers will want to feel that the tax system is being administered in an even handed way but to ‘pursue relentlessly’, albeit copied from the HMRC Vision statement, is unnecessarily emotive in the Charter.
26. In addition, this statement does not distinguish between those who break the rules deliberately and those who do their best but get things wrong. In a tax system which is extremely complex and where it is often difficult to ascertain what the rules mean in practice, or how they apply to a particular transaction or set of circumstances, the tax authority should not be pursuing relentlessly those who inadvertently break the rules.
27. Further, while taxpayers will want to feel that those who deliberately break the rules are not allowed to get away with it, ‘pursuing relentlessly’ those who ‘bend the rules’ is a much more difficult concept. It is a much less obvious objective in the context of a tax system which is extremely complex and when it is often difficult to discern what the rules mean in practice or how they apply to a particular transaction or set of circumstances. In our view rules can either be broken or complied with and we are unclear what the phrase ‘bending the rules’ is aimed at.
28. Having said all the above, and while we appreciate the need for HMRC to have a strategy to deal with those who deliberately break the rules, we do not think a statement to that effect has any place in the section of a Taxpayers’ Charter dealing with the rights of such taxpayers. For the above reasons we believe the whole phrase should be removed from this section of the Charter.

HMRC expects you to

29. We do not believe the current version of the Charter adequately captures some of the ‘obligations’ which we believe represent good standards of behaviour on behalf of those with whom HMRC deals. For instance, we believe the following ‘obligations’ taken from the equivalent Australian Charter could usefully be incorporated into the UK Charter:
 - Be truthful in your dealings with us;
 - Keep records in accordance with the law; and
 - Take reasonable care in preparing your tax returns and other documents and in keeping records.

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Accessing information about HMRC

30. We agree that the Charter should be accompanied by details of where to find further information, though this should be separate from the Charter rights and obligations. This section, as presented in the draft Charter, needs to be drafted in a much clearer and more helpful way.
31. We think the first two points re 'Service standards' and 'Data protection policy' are items on which the taxpayer can reasonably expect to be able to get more details if they require.
32. The final two items are different and relate, in our view, more to the rights of the taxpayer than to background information about the tax system.
33. At the moment the draft Charter merely lists:
- Complaints process
 - Appeals process
34. In our view the rights of the taxpayer, in the earlier section of the Charter, should include:
- Right to complain
 - Right to appeal
35. As we have said, the actual Charter should contain not only the single A4 sheet of rights, obligations and additional information but should be backed up by statements as to what these rights etc mean in practice.
36. This will be easy to achieve with the electronic version of the Charter as the detailed statements can be available as hyperlinks from the main statement. There are a number of taxpayers who will not have easy and regular access to the internet and the Charter needs to be available to them also. The Charter and the backup material need to be readily available at libraries, Citizen Advice Bureaux and relevant Government public offices.

What is the Charter to be called?

37. The Consultation Document is silent as to the name of the Charter but we believe that the current intention is that it should be called HMRC's Charter.
38. We believe that it would be wrong to use such a title because the primary focus of the Charter should not be HMRC but the people with whom HMRC deals.
39. The Charter should reflect the rights, and obligations, of all those with whom HMRC has dealings. We accept that this goes wider than formal (income) taxpayers so the title that has been adopted in other jurisdictions – Taxpayers' Charter – may be considered insufficiently descriptive of the people who are to be covered by the UK Charter.

40. Nevertheless HMRC is responsible for the collection of a very considerable number of different taxes and all residents in the UK will pay one or other of those. For example, those below the income tax threshold will nevertheless pay VAT. So we would still prefer that the Charter be called a **Taxpayers' Charter**.
41. If that title is decided not to be appropriate then in our earlier representation we suggested that an alternative could be **Tax Charter**.
42. If all the above suggestions are rejected then we suggest **HMRC Users' Charter**.
43. Finally, repeating what we stated at the beginning of this sub-section, we believe that the title HMRC's Charter should under no circumstances be used as this would be extremely misleading. The Charter should set out the rights of taxpayers and others, and not the rights of HMRC.

Detailed questions

44. We have set out our responses to the detailed questions in the Consultation Document in Annex A.

ICAEW Tax Faculty
April 2009

ANNEX A

DETAILED QUESTIONS IN THE CONSULTATION DOCUMENT OUR RESPONSES

Chapter 2 A draft Charter for HMRC

2.3 Does this draft contain the right material to stand alone as a single accessible document setting out the rights and responsibilities of individuals and businesses?

No. We cannot support the draft Charter as it stands. We are happy with some of the content but we believe the Charter needs to make explicit what are the rights of the taxpayer.

2.4 We recognise that you want us to be relentless in dealing with those who try to cheat the system. Does the draft Charter have the right emphasis on that point?

No, it is far too emotive and fails to recognise the important distinction between breaking and bending the rules, and between breaking rules deliberately or inadvertently. For reasons set out in the main response we do not believe that statements about 'relentlessly pursuing those who bend the rules' have any place in a Taxpayers' Charter.

2.5 Do you think that there is an advantage in supporting the Charter with additional, more detailed information? If so, what kind of information would you want to see?

Yes, we think it is very important that further explanations and more detailed information is available to explain and expand upon the points made in the Charter. We would like to be able to comment on all such material before it is published.

Chapter 3 Key components of the Charter

3.10 Do you agree that the draft Charter is in line with your views on what it needs to contain?

No, for the reasons explained above.

3.11 Are any of the statements in Appendix B more appropriate to the draft Charter than those currently included?

The Charter should include a *Right to have the costs of complying with the system kept to a minimum* which in Appendix B is described as:

'Making things easy

F. Aim to keep the costs of paying tax and claiming benefits as low as possible, designing our systems so they meet your expectations for a professional and fair service.'

3.12 Are there any statements in Appendix B which should be added to the draft Charter because they are not sufficiently covered by the current draft?

We have set out in the main response what additional issues we believe the Charter ought to cover, some of which are to be found in Appendix B of the Consultation Document.

Chapter 4 Next steps

4.4 We would like to hear from you if there are further activities you think it would be useful for us to undertake to increase public awareness of the Charter.

The Tax Faculty will be willing to do all it can to publicise the new Charter. This is on the basis that the final Charter reflects the major points raised in the present representation and those of other interested parties.

We suggest that the new Charter could be publicised at the same time that publicity is being given to encourage taxpayers to complete their tax returns.

HMRC could add an appropriate note as a footer to every communication it sends out and a prominent link added on the front page of the website.

HMRC could also liaise with those organisations which produce commentaries on income tax for the general public, or explanatory booklets about completing tax returns, such as *Which?*, to enlist their help in getting publicity for the new Charter.

HMRC must make sure that the Charter and all relevant supporting information is available to those who do not have access to the online versions, or who have special requirements such as Braille, large print or foreign language versions.

ANNEX B

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 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 +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 C

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>.