

TAXREP 37/09

Finance Bill 2009: Clause 91

HMRC Charter

Parliamentary Briefing submitted on 17 June 2009 by the Tax Faculty of the Institute of Chartered Accountants in England and Wales setting out concerns with the proposed clause which will give statutory backing to a 'Taxpayers' Charter'.

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Finance Bill 2009: Clause 91

HMRC Charter

Introduction

- 1 In this briefing we explain a number of concerns with Clause 91 as drafted and propose amendments designed to address these concerns.
- 2 Clause 91 inserts a new section 16A in the Commissioners for Revenue and Customs Act 2005 (CRCA 2005). It introduces a requirement for HMRC to prepare a Charter which sets out 'standards and behaviour to which [HMRC] will aspire when dealing with people in the exercise of their functions'. The Charter itself will not be included in statute.
- 3 The ICAEW very much supports the introduction of a Charter making clear the rights of those who deal with HMRC, and the obligations of HMRC and taxpayers (using 'taxpayer' to mean all those who deal with HMRC). There has been extensive consultation on the wording and content of the Charter, and we are broadly content with the most recent (unpublished) version of it which we have seen.
- 4 We also welcome the provision of statutory backing for the Charter. However, the current wording of the clause does not meet the needs of taxpayers. Firstly, it is drafted in terms of HMRC's 'behaviour and values' rather than the rights of the taxpayer. Secondly, it does not make adequate provision for oversight and review.
- 5 We have already submitted a written representation to HM Government on 18 May 2009 which covered all the provisions in Finance Bill 2009 including the Charter provisions in Clause 91. The part of our earlier representation covering Clause 91 is reproduced in the Annex. (The full representations are published as TAXREP 30/09 dated 18 May 2009.)

The text of the Charter

- 6 Before discussing Clause 91, a brief word about the text of the Charter itself, as this is relevant to understanding our comments on the clause.
- 7 We understand that a final version of the draft Charter is being submitted to the Minister (Financial Secretary to the Treasury (FST)) in the week beginning 15 June. When it has been agreed by the FST we understand the (agreed) version of the Charter is to be circulated to members of the Public Bill Committee.
- 8 The most recent version of the Charter we have seen was sent to us by HMRC on a confidential basis on 9 June 2009. Since it is unpublished, we are unable to include a transcript in this briefing. It is this version which, after any further amendments by HMRC, is being presented to the FST.
- 9 We support the current version of the Charter which we believe is a well balanced document which sets out the rights and obligations of the taxpayer.

Clause 91

- 10 We welcome the fact that the Government has accepted the need for there to be statutory underpinning for the new Charter.

11 But now that the Charter has been amended in a suitable way it is necessary for the rest of the 'statutory underpinning' to reflect the current, revised, version of the Charter.

12 We believe that the recommendations we put forward earlier (see Annex) remain the right prescription for the legislation.

A clear statement of taxpayers' rights

13 New s 16A(2) requires HMRC to prepare a Charter which includes 'standards and behaviour to which [HMRC] will aspire when dealing with people in the exercise of their functions'. There is no mention of taxpayer's rights, in contrast to the current draft of the Charter itself, which sets out a clear statement of taxpayers' rights. In our view the main point of the Charter is that it should be a statement of 'the rights and responsibilities of taxpayers and other persons that HMRC deals with' (to quote the wording in the Explanatory Notes to Clause 91). Clause 91 needs to be amended to reflect this fact and ensure that it remains in future iterations of the Charter.

14 We support the amendment that has already been tabled to the effect that new section 16A(2), CRCA 2005 should be extended to include a reference to taxpayers' rights and responsibilities – for further details see below.

15 We are also particularly concerned by the use of the word 'aspire'. Given the wide obligations placed upon taxpayers in dealing with HMRC, we believe it is reasonable that HMRC should have similar obligations to taxpayers. The word 'aspire' does not give taxpayers that necessary confidence. We have seen a proposed amendment which would replace 'aspire' with 'use all reasonable endeavours to achieve' which looks reasonable enough but we think that the obligation should go further.

16 ***Proposed amendments***

- On page 45, line 2, delete 'aspire' and insert 'work'.

We also support the following amendment which has already tabled [See amendment 75 on the Finance Bill list of amendments dated 16 June 2009]

- On page 45, line 3, at the end of that line add the following words:

'and set out the rights and responsibilities of taxpayers and others with whom HMRC deals'

It is to be noted that the proposed new wording above is exactly the same as contained in the Explanatory Note to Clause 91 published at the same time as the Finance Bill.

Review of the Charter

17 New section 16A(3), CRCA 2005 sets out how the Charter will be reviewed.

18 At present the clause prescribes that the Charter be reviewed 'regularly' and this is too imprecise – a clear time frame is needed. There are two proposed amendments already tabled, to prescribe that the Charter be reviewed either at least once a year or at least once every three years. We support an annual review and consider that every three years would not be often enough.

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19 We also welcome the proposed amendment to require HMRC to consult with outside stakeholders when carrying out the review of the Charter.

20 **Proposed amendments**

The following amendments have already been tabled and we support them.

- On page 45, line 5 delete the word ‘regularly’ and insert ‘at least once every year’ after the word ‘Charter’ so that section 16A(3)(a) reads:

(a) review the Charter at least once every year, and

[see amendments 77 and 78 on the tabled list of amendment dated 16 June 2009]

- On page 45, line 6, insert a new subsection 3(b) before the existing subsection 3(b) which will thereby become subsection 3(c). The new subsection 3(b) would read as follows:

(b) consult with stakeholders in carrying out the review, and

[see amendment 80 on the tabled list of amendments dated 16 June 2009]

- On page 45, line 6, renumber subsection 3(b) subsection 3(c).

Independent scrutiny

21 Clause 91, as currently drafted, does not provide a robust system of overview for the new Charter. New section 16A(4), CRCA 2005 provides for HMRC to ‘make a report which reviews the extent to which [HMRC] has demonstrated the standards of behaviour and values included in the Charter’. This must be done ‘at least once a year’.

22 We support the requirement for an annual report. However, there needs to be independent scrutiny of how HMRC is complying with the Charter, and we recommend that there should be regular reports to a Parliamentary Select Committee.

23 In our earlier representation we observed that:

we cannot support this clause as it is entirely in the favour of HMRC: HMRC will set its own standards to which it aspires and will then report on its own behaviour and whether it met those standards. There is no independent oversight of whether those standards are reasonable in the eyes of taxpayers, no verification of whether those standards were actually reached and no sanctions against HMRC if they fail to reach them.

24 Our final recommendation for amendment is therefore to require independent scrutiny of the review of the Charter which the Commissioners are required to undertake in accordance with section 3(a).

25 In our view this would best be undertaken by the Treasury Select Committee.

26 **Proposed amendments**

- On page 45, line 8 insert after 'report':

 'to the Treasury Select Committee'
- On page 45, line 11 add a new sentence at the end:

 'The Treasury Select Committee shall review the report and make appropriate recommendations to the Commissioners.'

Summary of proposed clause after amendments

27 As a result of the above amendments section 16A CRCA 2005 will read as follows:

- (1) The Commissioners must prepare a Charter.
- (2) The Charter must include standards of behaviour and values to which Her Majesty's Revenue and Customs will work when dealing with people in the exercise of their functions and set out the rights and responsibilities of taxpayers with whom HMRC deals.
- (3) The Commissioners must:
 - (a) review the Charter at least once every year, and
 - (b) consult with stakeholders in carrying out their review, and
 - (c) publish revisions, or revised versions, of it when they consider it appropriate to do so.
- (4) The Commissioners must, at least once a year, make a report to the Treasury Select Committee reviewing the extent to which HMRC have demonstrated the standards of behaviour and values included in the Charter. The Treasury Select Committee shall review the report and make appropriate recommendations to the Commissioners.

Further contact

28 For any further enquiries please contact:

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17 June 2009

ANNEX

Tax Faculty Representations on Clause 91 – in TAXREP 30/09, May 2009

FINANCE BILL 2009 TAX FACULTY REPRESENTATION EXTRACT

Clause 91, HMRC Charter

- 201 We recommended previously that the proposed Taxpayer's Charter (now referred to as an HMRC Charter) should have statutory backing so in principle we welcome this clause. However, we cannot support this clause as it is entirely in the favour of HMRC: HMRC will set its own standards to which it aspires and will then report on its own behaviour and whether it met those standards. There is no independent oversight of whether those standards are reasonable in the eyes of taxpayers, no verification of whether those standards were actually reached and no sanctions against HMRC if they fail to reach them.
- 202 The purpose of the statutory backing is to enable it to be relied on in Court. If the Charter provides taxpayers with no substantive remedies or clarity on taxpayers' rights the Charter lacks real value. Statutory backing will also ensure that the Charter remains in existence and does not lapse as happened to the earlier Charters introduced in the 1980s.
- 203 In view of our rationale set out above of the need for statutory backing, we are very disappointed with the clause itself and the underlying draft Charter. We have always expected that any Charter should set out clearly taxpayers' rights: the dictionary definition of a Charter refers to 'a written grant of rights by the Sovereign or legislature'. However, this clause and the draft Charter bear little resemblance to what taxpayers have a right to expect and we are concerned that the Charter will be of limited use in protecting taxpayers' rights.
- 204 The confusion over what is the actual purpose of this Charter is reflected in the supporting material to the Bill. New s 16A(2) of Commissioners for Revenue and Customs Act 2005 will lay down that the Charter will 'include standards of behaviour and values to which HMRC will aspire when dealing with people in the exercise of their functions'. In other words, the clause makes it clear that the Charter is entirely aspirational on the part of HMRC about their standards. However the explanatory note to clause 91 the Finance Bill states that the new Charter is intended to 'set out the rights and responsibilities of taxpayers and other persons that HMRC deals with'. There is a world of difference between these two statements. If the new Charter is to achieve its intended purpose and have support outside HMRC, we believe that the provisions of new 16A(2) need to reflect the wording in the explanatory notes
- 205 In summary we do not think that this clause is good enough, particularly when compared to the detailed and onerous requirements being imposed upon 'senior accounting officers in Clause 92 (see below). There needs to be a proper balance of powers, responsibilities and safeguards as between taxpayers and HMRC.
- 206 **ICAEW recommendations**
We believe that this clause needs to be redrafted to reflect:

- a clear statement on taxpayers' rights;
- that HMRC must be required to act in accordance with independently determined standards of service levels;
- that there should be independent oversight of the Charter; and
- a regular review process that should be under the aegis of a Parliamentary Select Committee.