



Faculty of Taxation

TAXREP 43/03

CONSULTATION

Memorandum submitted in November 2003 by the Tax Faculty of the Institute of Chartered Accountants in England and Wales (ICAEW) to the Cabinet Office in response to a consultation document issued in September 2003

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THE CODE OF PRACTICE ON CONSULTATION

INTRODUCTION

1. We welcome the opportunity to comment on the consultation document published by the Cabinet Office on 1 September 2003 at <http://www.cabinet-office.gov.uk/regulation/Consultation/introduction.htm>.

WHO WE ARE

2. The Institute of Chartered Accountants in England and Wales is the largest accountancy body in Europe, with more than 125,000 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.
3. 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 (which includes taxation).
4. 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 11,000 members of the ICAEW who pay an additional subscription.

EXECUTIVE SUMMARY

5. We at the Tax Faculty of the Institute of Chartered Accountants in England and Wales are heavily involved in responding to consultations. We consider that:
 - a code of practice is an essential part of a consultation process;
 - it is essential that such a code is followed;
 - a reasonable consultation period is an essential part of a consultation process and we welcome the retaining of the twelve week period that is in the existing code;
 - feedback to respondents after a consultation is an essential part of a consultation process, not least as it lets respondents know that their contributions have been worthwhile and that their time and effort have been recognised; and
 - the criteria in the current code and in the new draft code are sensible, but the draft code would benefit from including guidance within the same document, as does the current code, so that it is more comprehensive and complete, which would make it easier for people to comply.

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GENERAL COMMENTS

6. At the Tax Faculty we respond to all consultations that have relevance to the tax system. We therefore have considerable experience of the consultative process. The Institute responds to consultations relevant to accountants issued by a wide range of organisations and whilst we in the Tax Faculty respond only to those relating to tax, UK Government consultations that we respond to are issued by, inter alia, the Revenue, Customs, the Treasury, the Department for Constitutional Affairs and the Cabinet Office.

7. We commented in July 2000 on a draft of the existing *Code of Practice on Written Consultation* (published as TAXREP 23/00). We believe that a proper system of public consultation is vital to the democratic process and we reaffirm the opening comments in our earlier paper:

‘We are very pleased to see that the Government is taking the issue of consultations seriously by issuing this draft Code. 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.’

8. A code of practice on consulting which is not only coherent and comprehensive but adhered to by those who are developing technical and operational policy is an essential part of this process.

9. We note the three messages recorded as coming out of the informal consultation in April 2003 and have the following comments on each.

The twelve week consultation period

10. Whilst the message that the twelve week consultation period is ‘embedded’ into the minds of those who respond to consultations is correct, and we think that it is a reasonable period, there are still too many instances where Government organisations do not adhere to it.

11. We accept that in some cases, for example in promptu informal consultations or where there are Budget/ Finance Bill timetable constraints, a shorter time may be appropriate. However, the timescales for many consultations, for example those via revenue department consultative committees, are simply unrealistic, especially given that those who are expected to contribute their technical knowledge to any response are, for the most part, volunteers with other full-time commitments. Set out below are some recent examples of consultations where the twelve-week consultation period has not been adhered to.

<u>Issuer of invitation to comment</u>	<u>Type of consultation, ie invitation to...</u>	<u>Topic</u>	<u>Date issued</u>	<u>Deadline for submitting comments</u>
Treasury Committee	...submit evidence	Child Trust Funds	Press release: 28.10.03	7.11.03

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Revenue	...comment on draft leaflet	Child Tax Credits	Informal: 21.10.03	4.11.03
Treasury/ Cabinet Office	...comment	Efficiency review of public sector	Press release: 20.10.03	21.11.03
Revenue	...comment on draft legislation	National Insurance Contributions	Informal: 8.9.03	30.9.03
Revenue	...comment on draft regulations	Savings Directive	Press release: 30.6.03	22.8.03
Customs	... comment on draft regulations	VAT: time of supply	Press release: 9.4.03	20.6.03

Feedback

12. We support fully the second conclusion from the informal consultation that there should be an improvement in the feedback given to respondents after consultation. Comments made by organisations such as ourselves are a synthesis of our members' knowledge. Our members who provide such input on a voluntary basis and the secretariat devote a considerable amount of time and resources to responding to Government consultations. Consultation is devalued where the final outcome appears to be at odds with the views that we and other representative bodies have put forward. In relation to this we welcome the clear statement at proposed Criterion 4 ii that:

‘This [feedback] summary should give an analysis of the questions asked, for each question there should be a summary of responses to that question and then an explanation of how these responses are influencing the policy.’.

13. We also suggest as a more detailed point that where a taxation matter has gone out to consultation, and a further document such as a clause in a Finance Bill or a White Paper follows, it should be automatic for the Government to include a summary of the representations received and replies thereto in the published successor document, just as it now publishes the Notes on Clauses in a Finance Bill. This would demonstrate joined-up Government.

Criteria, length and content

14. The final message concerning the criteria, length, and content is true. The criteria are indeed sensible. As to the other matters, the draft code comprises a statement of principles and, as noted in the Executive Summary of the consultation document, guidance on the application of the principles is intended to be developed with departments. The consultation document implies that the fact that the existing code is

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a mixture of guidance and principles and is quite long has been interpreted as a criticism. We do not agree with this view. Whilst we accept that including guidance as part of the code does make the existing code longer than it would be were it simply a statement of principles, the guidance is very useful and we would not want it lost in the revised code. The existing code also has cross references to other documents, but these provide the background or rationale for the recommendations in the code and are not a part of the code itself.

15. We consider that the draft code without the guidance is not entirely satisfactory. The mix of principles and guidance in the existing code is more helpful than confining the code to principles, for both those who prepare consultation documents and those who respond, because having the principles and the guidance in one place obviates the need for users to refer elsewhere. We commend the example set by the Tax Law Rewrite where brevity is considered a virtue but clarity is more so.

RESPONSES TO THE QUESTIONS RAISED

Do you feel that government consults effectively at the moment? Please make suggestions about what could be done better and also highlight things that are done well.

16. We think that the Government consults reasonably effectively but that there is room for improvement. The consultation process works because representative bodies and their members invest considerable time and resources into it in order to help the Government get it right. High level and wide-ranging consultations are generally carried out satisfactorily but even for these the time given is often less than twelve weeks and/or the consultation period spans the summer holiday or Christmas periods. Meetings to discuss issues are sometimes too prescriptive and too unwieldy for a proper free flow of ideas and comment. There is often little guidance as to what respondents can change and what is immutable.
17. Much ongoing informal consultation is carried out via joint consultative committees set up by Government departments; we are represented on many such groups. They are also used a conduit for informal consultations, often on a confidential basis. In principle we value these as they enable us and other professional bodies to make Government organisations and others aware of our views and vice versa.
18. However, we are concerned that the code of practice is not always honoured, especially for informal consultations. We have seen this in particular with the working groups on tax credits and stamp duty land tax and as referred to in the table above.
19. Often we gain the impression that the only purpose of a consultation is to have a proposal 'blessed' rather than engage in an open debate on a number of possible options. This happened in the Carter review on electronic payroll filing, where it appeared that offering a financial incentive was the preferred solution but it was contrived to get that idea suggested at the consultation meeting.

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20. Where there are underlying policy givens, these should be disclosed as part of the consultation. This would enable respondents to make comments in context. For example, when requesting respondents' views on small business or small company-related matters, is it government policy to encourage small businesses to incorporate?

21. It is sometimes difficult to discern what if any influence representations have had on the final decisions. Standardising the proposed feedback under the new code will make the decision-making and implementing process much more transparent and we welcome this.

Is the proposed revised code an improvement on the existing code? If not, why not?

22. As mentioned above, we consider that due to a lack of guidance the new code is not as comprehensive as the old code and therefore less successful. For example, Criterion 3, items 4-12 in the existing code provide practical guidance to those preparing consultation documents that may seem obvious but need to be followed across Government departments in order that best practice is followed in all cases. The comment in the Executive Summary that the guidance will be 'supplemented by guidance that is being developed with departments' suggests that the guidance will be in separate documents which may discourage preparers of consultative documents from referring to them.

23. We consider that the guidance is an essential part of the package and rather than have such guidance published all over the place or, worse still, having different guidance adopted by different departments, we would prefer the code to include such guidance as part of the same document.

Do you find the criteria clear, if not what would help to make them clearer?

24. As mentioned above, we consider that including guidance on the lines of that which was in the old code would help clarify the criteria.

Is there anything within the criteria that you would change, what would that be and why would you change it?

25. Provided the criteria include all that is in the draft and does not omit that which was in the old code, then we will be content.

Is there anything missing from the code? If so please explain why you think is missing and why it should be included.

26. The criteria seem clear when read in isolation, but when preparing a consultative document and therefore trying to apply the principles in actual cases, people will be more likely to refer to the guidance and put it into practice if it is immediately and easily to hand. Thus, as mentioned above, we consider that the detailed guidance should be incorporated within or attached to the code.

What would be helpful to be included in the guidance which will be available to departments?

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27. We suggest that a Consultation Code Checklist on the lines of the existing (see <http://www.cabinet-office.gov.uk/regulation/Consultation/Checklist.doc>) would help to ensure that those preparing consultation documents follow best practice.

Do you have any further comments on the code of practice/

28. No.

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PCB

26.11.03