Tax Representation

THE INSTITUTE OF CHARTERED ACCOUNTANTS IN ENGLAND AND WALES

TAXREP 57/09

ICAEW 2009 Pre-Budget Report Submission

Memorandum submitted on 4 November 2009 by the ICAEW to the Chancellor of the Exchequer in advance of the 2009 Pre Budget Report.

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INTRODUCTION: BUILDING COMPETITIVENESS

The 2009 Pre Budget Report (PBR) will take place in the aftermath of a financial crisis. Although there are promising signals of economic recovery, financial and business confidence remains fragile. Compounding these challenges, all future policy decisions will be taken in the context of a substantial public sector deficit, caused in part by the government's intervention to advert the collapse of the financial markets.

While views will differ on precisely what must be done, there is wide consensus that the PBR provides an opportunity to address emerging issues in public spending, tax and enterprise policy in order to build a competitive economy that can meet the challenges the UK faces coming out of the downturn. The government needs to put in place long-term structural change and policy reform if these opportunities are not to be missed.

In this year's PBR Submission, the ICAEW highlights areas where the Government improve the management of public spending, make the tax system more efficient and help business, particularly entrepreneurs. Key recommendations include:

- improving the oversight and parliamentary scrutiny of public spending;
- ensuring the Chief Financial Officer is a key member of the leadership team in all public sector organisations;
- introducing a clear timetable for the annual Finance Bill process;
- the creation of an independent tax simplification commission;
- a light touch approach will be needed as businesses adjust back to the 17.5% VAT rate; and
- the Better Regulation Executive should have formal oversight of the Regulatory Impact Assessment process and provide proper scrutiny of departments' cost/benefit assessments.

Other immediate issues for the ICAEW which are also addressed in this submission include the Banking Code of Conduct, HMRC service standards, and the need for a statutory residence test.

Many of the policy recommendations in the ICAEW PBR submission reflect those in our manifesto. The ICAEW manifesto makes practical recommendations to help government provide value for taxpayers and an environment conducive to enterprise. We set out how the UK government can support a more sustainable economy, characterised by a renewed focus on integrity and reform of the financial services sector. It can be accessed at www.icaew.com/ukmanifesto

The ICAEW is a world leading professional body working in the public interest. Our strength and knowledge is drawn from the expertise of our members who hold world class finance qualifications. Because of chartered accountants, people can do business with confidence. Our members work in every sector of the economy, size of business and public body, from global company boardrooms and government departments, to high street practitioners, small businesses and charities. Their experience gives us an acute understanding of the dynamics which drive our economy from entrepreneurship and well-informed markets to efficient public services.

The ICAEW will work with Government and opposition political parties, in the public interest, to share its expertise.

SECTION ONE: MANAGING PUBLIC SPENDING

A restrained fiscal environment will be the critical context against which wider public policy priorities are framed for the foreseeable future. Public money needs to be spent efficiently and effectively. To achieve this, the UK needs to adopt a long-term strategic approach rather than simply 'salami slicing' public expenditure.

While significant spending cuts may be necessary as a result of the fiscal crisis, there are deeper structural problems with the flow of information and financial management practices in government. Ministers, parliament and decision makers across the public sector need timely and comparable financial information about what exactly was spent and how well it was spent.

1. Business cases and performance review for public spending

Ministers, the civil service and parliament should be empowered with the information they need for leaner, fitter and more efficient government. Major spending programmes should be accompanied by clear cost/benefit business cases, including projected costs and expected financial and non-financial outcomes, and then be subject to performance review. Sustainability considerations should constitute a major element of the assessment of non-financial outcomes and performance

Policy Recommendations

- Guidance produced by the International Federation of Accountants for measuring performance in public sector entities should be the starting point for wider reform.
- As far as possible, integrated financial management information within public sector organisations should be standardised and comparable across the public sector, enabling effective scrutiny and benchmarking.
- To improve the financial capacity of the public sector, the Chief Financial Officer should be a key member of the leadership team in all public sector organisations, actively involved in decision making and not, as is common practice, positioned below other board members.

2. Effective oversight and parliamentary scrutiny

Scrutiny can drive efficiency. Public spending business cases should be subject to scrutiny. Major projects should be reviewed at development stages and after implementation, and assurance frameworks for performance information should be developed. This is a role that could be provided by UK Public Audit Forum bodies.

Policy Recommendations

- Early in the process, major departmental programmes should be referred to their respective select committee for scrutiny and comment.
- Ministers should be required to justify the relevant expenditure on the basis of the business case.

- Parliamentarians should have access to the financial expertise and resources they need to provide effective scrutiny. This could include having access to independent non-partisan financial and economic advice, with the Canadian and US Budget Offices providing possible models.

3. Focusing central government on financial management

There should be clarity about the role of the Treasury and the Cabinet Office in leading better financial management across the public sector. Sustained political commitment should be put behind the Whole of Government Accounts project and the transparent alignment of government accounts, estimates and budgets.

Policy Recommendations

- The Chancellor should make a statement on progress in delivering the Whole of Government Accounts project and the transparent alignment of government accounts, estimates and budgets.

- Supporting the Chief Secretary to the Treasury, a single Minister in every department should be responsible for championing value for money within their departments.

- Minister should be given the finance and management training they need to drive change in organisations

- Existing HM Treasury programmes to improve the financial literacy of the 'top 200' cadre of civil servants and 'fast streamers' should be strengthened.

SECTION TWO: KEY TAX ISSUES

4. Building confidence in the UK Tax System

The UK tax code is now one of the longest and most complex in the world, stretching to over 11,000 pages. Furthermore, the UK tax code lacks stability and certainty. We appreciate that the UK's track record on attracting inward investment is good but we are concerned that, in an increasingly globalised economy, structural problems with the UK tax system have the potential to undermine the UK as a place in which to invest.

The way that tax law is formulated needs an overhaul. The current approach provides little opportunity for Parliamentary scrutiny which in turn leads to hasty and poorly thought through tax law that often needs to be amended. Policy decisions often appear to underestimate the true implementation and compliance costs.

Improving the Finance Bill process and timetable

The Finance Bill process should be reformed to give more certainty as to timing, allow more time for proper consultation with stakeholders and for detailed scrutiny of provisions by reference to the practicality of proposals and the costs of implementation.

Policy recommendations

- Introduce a clear timetable for the annual Finance Bill process. There should be an agreed timetable so that taxpayers have certainty before the start of the tax year. The Pre-Budget

Report 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. The dates of the Pre-Budget Report and the Budget should be published by the preceding 1 April.

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

Improving tax policy formulation through consultation
We remain concerned that consultation on tax policy changes starts too late. Consultation needs to start earlier, when the policy options and technical delivery mechanisms are still being discussed. Government and policy makers should consult as a matter of course with bodies such as the ICAEW at an early stage in tax policy formulation. Our aim is to help government achieve its policy objectives in a way that minimises any unintended or damaging consequences.

Of course there are times when consultation is not advisable or practical, for example the Government may need to act swiftly to counter known tax avoidance schemes. Subject to this, however, there should be proper consultation on all major changes of tax policy to help ensure that any changes are workable and keep costs to a minimum. Such an approach was endorsed by the House of Lords Economic Affairs Finance Bill sub-committee last year (see its report on the 2008 Finance Bill, published on 12 June 2008).

Policy recommendations

- 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.

- Government should, as a matter of policy, consult on potential tax policy changes at an early stage and before major decisions are made. This should include detailed, accurate and realistic analysis on the practical considerations and the costs of implementation.

- Tax policy formulation process should allow adequate time for consultation responses to be analysed and for changes to be considered.

Encouraging enterprise - improving Impact Assessments
Considerable work is put into preparing Impact Assessments (IAs) but more work needs to be done to make them a useful tool for designing tax policy. We remain concerned that the burdens on businesses, especially small businesses and retail businesses are significantly underestimated in these assessments.

Greater rigour is needed in quantifying compliance costs, and the underlying figures and assumptions used in IAs need to be based on realistic assumptions. This needs to be done in consultation with businesses and there should be improved oversight of the systems and processes used to prepare IAs. The Better Regulation Executive should have formal oversight of the process and the ICAEW would like to work with HMRC to improve the formulation of IAs.

Impact Assessments are made only on business tax measures. Assessments should also be undertaken on proposed changes to personal tax measures.

ICAEW recommendations on the wider regulatory systems are set out in 'section three: encouraging enterprise' of this submission.

Policy recommendations

- Greater rigour is needed in preparing IAs and the underlying figures so that costings reflect reality. The underlying assumptions used in them need to be published and again need to reflect reality.

- The Better Regulation Executive should have formal oversight of the IA process.

- Impact Assessments should be prepared for personal tax measures.

5. Tax simplification

The UK tax system must support an environment within which UK businesses can create wealth and thereby generate tax revenues. The UK also needs a less complicated tax system, with fewer anomalies and subject to less change. Tax simplification needs to be given a higher priority: areas for simplification need to be decided and a timetable for delivery agreed. We think that an independent Commission should be established to oversee a comprehensive tax simplification programme and to present recommendations for simplification to Parliament.

Tax simplification affects a wide range of stakeholders. Those who would particularly benefit from simplification include small businesses, charities and the third sector and individuals. Accordingly, a wide range of stakeholders and experts should be represented on such a Commission to help achieve the shared objective of a less confusing and less costly tax code. We should welcome the opportunity to participate.

Policy recommendations

- Simplification of the UK tax code needs to be addressed as a matter of urgency.

- An independent Tax Simplification Commission should be established.

6. Changes to the income tax and National Insurance contribution rates

Increase in administrative burdens

We remain concerned that the changes that have been announced to the income tax rates and national insurance rates will result in added complexity and increased administrative costs.

The proposed withdrawal of the personal allowance for incomes over £100,000 lacks certainty until after the tax year has ended. Further, the PAYE system cannot deal effectively with such situations so more taxpayers will be required to complete tax returns. This will increase the administrative burden and costs for many taxpayers and HMRC. The proposal is similar to what happens at present for the less well off elderly taxpayers within age allowance taper: it does not work well and we do not see that approach as a suitable model to follow.

For trusts, the 50%/42.5% proposal for trust rates of tax is likely to result in the majority of trust beneficiaries needing to file repayment claims as few of them will pay tax at the same rate as the trust. This will create more work for HMRC as well as the beneficiaries.

Tax treatment of employment and dividend income

From April 2010 we will have an effective top rate of tax (income tax and NIC) of 51.5% (and potentially higher effective marginal rates) as compared to a maximum corporation tax rate of 28% (and more likely only 22%) and a flat rate capital gains tax of 18%. We are concerned that the proposed increases in income tax and NIC rates will increase the gap between the tax treatment of employment income and dividend income, further encouraging small businesses unnecessarily to operate through companies.

Policy recommendations

- The proposed phased withdrawal of personal allowances for incomes over £100,000 should be reconsidered so as to ensure that any changes made give taxpayers certainty.

- The proposed increases in the trust rates need to be reconsidered in order to reduce administrative burdens.

- Further consideration needs to be given to the impact of behavioural changes resulting from increases in income tax and NIC rates.

7. VAT – increase in the VAT rate from 15% to 17.5%

We remain concerned that changing the VAT rate back to 17.5% from 1 January 2010 is at a highly inconvenient time for businesses, particularly given the changes to the place of supply of services rules. Whilst we should prefer that the date of the change should be set to a more convenient time, say the start of the Financial Year (1 April), the ICAEW has previously welcomed HMRC's reassurance that they will operate a 'light touch' in relation to errors or mistakes made in the first VAT return after the rate was reduced to 15%. HMRC should continue to take this approach as businesses adjust back to the higher 17.5% rate.

Policy recommendation

- A light touch will be needed as businesses adjust back to the 17.5% rate. This should extend to any subsequent adjustment of errors where penalties might be in point. This light touch should be extended for at least one full VAT quarter after the change in rate.

8. E-business and iXBRL

Compulsory online filing and payment

We support the move to online filing as a means of saving time for both HMRC and taxpayers. Lord Carter in his report published in March 2006 recommended that online services should not, however, be implemented unless rigorous testing at least a year before implementation is successful. We are concerned that this may not always happen and that avoidable problems are being experienced by taxpayers as a result: the submission of trust tax returns is an example of taxpayers being asked to file electronically before HMRC actually has the IT capability to handle such submissions (returns filed electronically have to be manually processed by HMRC). Our support for online filing is conditional upon this key recommendation by Lord Carter being adhered to. In this way taxpayers will not be faced with unnecessary costs as a result of software inadequacies.

We remain concerned that electronic filing is being forced on businesses by means of mandation rather than by presentation of a clear business case.

In principle we welcome the HMRC and Companies House proposal for a joint filing facility, so that only one company filing will need to be made. This type of business-led approach should help to encourage businesses to adopt electronic filing, but it is important to remember that the data required by Companies House and HMRC may not always be the same, for example HMRC may require a detailed profit and loss account for all companies whereas not all companies need to submit this to Companies House.

Policy recommendation

- HMRC needs to ensure that in advance of going live it has properly tested IT systems in place and that its software developer's notes are issued sufficiently early to enable suitable well-tested and compatible commercial products to be also available.

Compulsory online filing of company tax returns, including use of iXBRL

After 31 March 2011 companies will need to e-file their corporation tax returns and pay any corporation tax electronically. As part of this process, companies will also need to submit accounts and tax computations electronically using the iXBRL standard.

It is clear that people are confused about iXBRL and there is a pressing need for more education about what it will mean in practice. We understand that accounting software providers will be building iXBRL functionality into their products so that submission of data using iXBRL should happen seamlessly. However, not all companies use accounting software. We welcome the announcement that HMRC will also be launching a new free Adobe based iXBRL product in late November 2009, but that is aimed at simple companies and is unlikely to cater for all companies that do not use proprietary accounting software.

The transition to electronic filing using iXBRL is likely to prove problematic for some companies and there needs to be a 'soft landing' for those who might struggle to meet the requirements.

We believe that there is a case to exclude small companies from the obligation to file accounts in iXBRL format and instead to allow them to provide key figures in their corporation tax return as small unincorporated businesses do. It seems to us illogical that a an unincorporated business with turnover below the VAT threshold can simply report around twelve key figures in its tax return whereas a company of the same size will have to provide iXBRL tagged accounts. This is an unwelcome additional burden for the smallest businesses.

Policy recommendations

- HMRC needs to work with stakeholders to improve the level of knowledge of the CT filing requirements and in particular iXBRL.

- A clear statement is needed that provides a 'soft landing' for those seek to comply with the new requirements but who may not be entirely compliant in the first year.

- The potential for taking an alternative approach with small businesses should be examined.

Data security

We remain very concerned about business data security and in particular about false repayment claims that have been submitted to HMRC. It has yet to be shown exactly where the problems lie that have given rise to this issue. Whilst it has been suggested by HMRC that it must be agents' systems that were at fault, there is very limited evidence in the public domain to support this and it seems equally plausible that the problems might stem from security issues at HMRC. This is a crucial issue given the push to electronic filing and payment. The potential for it to do lasting damage to the case for electronic filing is considerable.

Policy recommendation

- A public announcement should be made as a matter of urgency about the results of the review into the fraudulent tax repayment claims and what measures will need to be put in place (both by HMRC and agents) to ensure that it is not repeated.

9. Small business tax policy

The recent consultation document 'false self-employment in the construction industry' (to which we responded as TAXREP 54/09) has highlighted once again the difficulties facing those formulating small business policy. It is our view that solutions should be developed for the small business sector as a whole rather than tinkering with different aspects at different times to attempt to fix that which offends most. The small business tax review, which was started in 2004, appears to have stalled and needs to be reinvigorated in conjunction with the professional bodies. In the meantime the Government should put on hold any further changes in this area.

The ICAEW believes that one of the key principles that should underlie a good tax system is that it should have some permanence. The ICAEW remains very concerned that the business tax system is subject to endless policy changes. The total effect of all the changes is that the business tax system has become very complicated and very uncertain and the result is increased compliance costs for both taxpayers and HMRC. The government should limit policy changes to those that are essential to maintain and build the UK's competitiveness, rather than ones where the policy could be achieved through other means, for example through government grants.

An issue which we have highlighted above is the difference between the tax treatment of incorporated and unincorporated businesses. The ICAEW recognises that there have always been some differences in treatment but, in recent years, the differences have grown rather than reduced and this is now becoming a critical issue give the proposed increases in the rates of income tax/NICs (see comments above).

Policy recommendations

- Government should commit to a period of stability and should raise the hurdle before which it makes policy changes, limiting policy changes to those that are essential to maintain and build the UK's competitiveness, rather than ones where the policy could be achieved through other means, for example by the use of grants.

- HM Treasury and HMRC need to work with stakeholders to reform the business tax system as it affects smaller businesses. This should involve reinvigorating the small business review and giving further consideration to:

  - closing the gap between accounting and tax profits by reducing the number of tax adjustments that are needed; and
  - how the differences between the tax treatment of incorporated and unincorporated businesses can be minimised.

10. Protecting tax revenues and the banking Code of Practice

Protecting tax revenues

We support much of the approach the Government has adopted as regards tackling tax evasion and encouraging greater transparency. It is fundamentally wrong that taxpayers should be able to hide offshore bank accounts and income from the UK tax authorities behind banking secrecy and a lack of ability for fiscal authorities to exchange information.

We also support the UK's approach to tackling tax evasion and encouraging greater transparency at the international level through information exchange. We commend the UK revenue authorities in sealing the agreement that has been signed with Liechtenstein. When coupled with the complementary disclosure facility, these developments should provide a further incentive for taxpayers to put their affairs in order.

It remains to be seen how tax havens will apply tax information exchange agreements (TIEAs), although the OECD peer reviews should provide an opportunity to examine this aspect. Depending upon how TIEAs work in practice it may be that in the longer term information could be exchanged on a more routine basis without the need to lodge specific requests.

Policy recommendations

- The UK government should encourage the Liechtenstein model to be rolled out more widely, both unilaterally and internationally.

- The UK should continue to support the OECD in developing and monitoring tax information exchange agreements.

Tax avoidance and the Banking Code of Practice

We have stated consistently that the right approach to counter tax motivated behaviour that is considered unacceptable is through targeted anti-avoidance legislation. It is possible that some future help could be provided by using purposive legislation that is clear in its intent and wording. We have also supported the development of the disclosure of tax avoidance schemes (DOTAS) regime and we will continue to help with improving the rules whilst keeping compliance costs on business to a minimum.

We understand the rationale for the proposed Banking Code of Conduct approach (our response to the consultation document has been published as TAXREP 50/09) but are concerned as to its basis and impact.

We are concerned that the Code takes power out of the hands of Parliament and away from Parliamentary scrutiny and hands it to the executive in the form of HMRC. We are also concerned that the Code may merely divert business to those who do not sign up to the Code. This might both defeat its object and drive a range of bona fide banking services offshore.

Banks may choose for a variety of reasons not to sign up to the Code but that will not necessarily mean they are engaging in the types of behaviour the Code is targeting. HMRC will need to adopt a pragmatic and flexible approach to dealing with those who do not sign up based on all of the evidence at its disposal.

Policy recommendations

- Government should consult with stakeholders before making further changes to the DOTAS rules.

- We are not convinced that the Banking Code of Practice is a sensible course of action and our own view is that the Government should not proceed with it. If the Government does decide to proceed then the Code will need to be monitored by Parliament and there will need to be regular independent reports on its effectiveness, compliance costs and the effect on UK competitiveness.

11. HMRC Service Standards

We remain concerned that HMRC's Change Programme has resulted in a fall in service standards. Our members continue to report, amongst other things:

- Significant levels of error in PAYE coding notices (exacerbated by the coming online of the new NIC and PAYE service);

- Difficulties caused by inadequately trained personnel at HMRC's contact centres and by calls not being returned promptly or within a certain stated time; and

- General delays in dealing with post and processing, with specific concerns about delays in processing paper returns, tax repayment requests, R40s and VAT registrations which are subject to further checks when the particular registration requests do not appear to be high risk.

In 2007 we recommended that HMRC should work with the professions to develop a better set of service delivery indicators that had the confidence of stakeholders. Similar recommendations had been made by the Treasury Committee (HC 483-1, published on 23 July 2007). We are disappointed that this recommendation has not been carried forward. We believe that a set of reliable and meaningful service measures should now be developed that would be of public benefit and will help to drive improvements in service standards.

When particular problems such as delays develop, HMRC needs to communicate earlier with taxpayers and agents. We appreciate that it will not always be easy for HMRC to get the right balance, but nevertheless HMRC should as a matter of course engage in early communication with taxpayers and agents about developing problems and/or systems changes that will impact on them. This will improve confidence and help prevent wasted time for agents, taxpayers and HMRC staff. A good example of early communication policy was the introduction of new PAYE system where there was advance publicity and agents then worked around the known delays. Less helpful was the lack of warning that tax repayments subject to security checks would take three to four weeks longer than expected exacerbated by messages on taxpayer statements incorrectly stating that repayments had been made. If the correct facts had been communicated earlier it would have prevented much wasted time and the clogging up of contact centres with calls about delayed tax repayments.

Although during 2009 there has been some reduction in the number of incorrect coding notices issued, this remains a problem area. Incorrect PAYE codes result in considerable wasted time for both agents and HMRC. We believe that an improvement which would save time and money would be for taxpayers and agents to be given the ability to 'self-serve' PAYE codings should they want to. We suggest a pilot study could be undertaken to identify the merits of this option.

Policy recommendations

- HMRC needs to work with stakeholders to develop service delivery indicators which are robust and transparent and use these to make lasting improvements to its service delivery.

- Staff training and supervision should be improved to reduce errors which create more work for HMRC staff, taxpayers and their agents.

- HMRC needs to adopt a clear communications policy which gives taxpayers and agents an early warning of developing problems and any systems changes that are likely to impact on users.

- A pilot study should be undertaken on allowing taxpayers and authorised agents who wish to do so to 'self-serve' PAYE Coding notices.

12. Review of HMRC's powers

Working with tax agents
A key programme of work this year has been the consultation document 'Working with tax agents', to which we have responded (as TAXREP 43/09) and to which we have contributed in various workshops and meetings. The consultation document and impact assessment raise a number of different and distinct issues which we believe should be dealt with separately. Some are relatively straightforward and uncontroversial and could be dealt with fairly swiftly; others are more complex and need to be addressed over a longer period. It is important to make this distinction rather than to try to rush through decisions on all the issues together without adequate time for proper consideration.

HMRC now appears to be focussing its work in this area on three areas, namely

- increased use of the 'gateway in s 20 of the Commissioners for Revenue and Customs Act 2005 (CRCA 2005) to enable HMRC to report possible misconduct by members to their respective professional bodies;

- measures to tackle the growth of repayment claim agents where the underlying claims appear to have little or no merit; and

- seeking to impose penalties where agents have been deliberately non-compliant.

We welcome the proposed increased use of the gateway in clear cases of misconduct although we think it is important to emphasise that, as would be expected, cases of misconduct will require good standards of evidence in order to be proved. We will need to liaise with HMRC so as to ensure that their expectations in this regard are realistic.

If much of the activity of tax repayment agents is, or appears to be, fraudulent behaviour it needs to be dealt with accordingly.

As for penalties on agents who are deliberately non-compliant, the HMRC/agent workshop on 6 October showed that the range of behaviours that might fall within this category is considerable, that it is not always easy to identify a suitable 'boundary' and that identifying appropriate penalties or other such punishment is far from straightforward. Any solutions will require much more consideration. These issues need to be addressed in detail over time with the professional bodies and any policy changes agreed by all stakeholders.

HMRC needs to address to what extent it needs to have a higher level of confidence in the work of tax agents who are not members of a professional body and how poor or non-compliant work of this sector should be dealt with. HMRC should have some experience of this issue given the requirement under the Money Laundering Regulations for certain service providers who are not registered with professional bodies to be registered with HMRC.

Policy recommendations

- Further consideration should be given to expanded use of the s 20 CRCA 2005 gateway so that only appropriate cases are notified and that HMRC's expectations are realistic.

- If many of the bulk repayment cases appear to be fraudulent, HMRC should deal with them accordingly and ensure that bona fide agents are not disadvantaged.

- More detailed consideration is needed over a longer time period about how deliberately non-compliant agents should be identified and dealt with.

- HMRC needs to decide how to improve poor and non-compliant work by agents who are not members of professional bodies – any decisions should build on intelligence gained by HMRC from its role under the Money Laundering Regulations.

Legal professional privilege
In the context of HMRC's powers to obtain tax advice, recent developments on the issue of legal professional privilege (LPP) are a matter of serious concern. On 14 October 2009, judgment was given in the High Court in the *Prudential* case [2009] EWHC 2494 (Admin) which confirmed that tax advice given by a lawyer is covered by privilege whereas advice given by a tax adviser who is not legally qualified is not.

We are still considering the implications of this case but in our view the UK law in this area discriminates against taxpayers who seek advice from tax advisers who are not legally qualified. This is wrong in principle, contrary to the public interest and does not support the Government's desire to improve transparency in the UK tax system. In our view, all taxpayers should be subject to the same rules on disclosure regardless of who provides the advice. We consider that the current position is not sustainable, particularly given the likely developments towards multi-disciplinary professional practices as envisaged in the Legal Services Act 2007.

We believe that the Government should announce a consultative body to review LPP as it affects tax advice with the aim of ending discrimination and to establish a level playing field for all taxpayers. This body should represent the views of all those who provide tax advice, with particular emphasis on those who are not legally qualified, and should report back by the PBR 2010.

Policy recommendation

- The Government should announce a consultative body to review LPP as it affects tax advice and make recommendations for change.

13. Statutory residence tests

Residence is fundamental to the UK tax system, but the existing rules for individuals and trusts are confusing and unclear.

The UK is a major international centre and trading nation, with the result that the number of people who come to and go from the UK is considerable. These individuals need to be able to understand their UK tax position and the UK needs to ensure that it remains competitive with other jurisdictions when it comes to attracting talent. The UK therefore needs clear and reasonable residence tests based on objective measures to enable a person's residence status to be established easily.

Apart from the revised rules for individuals, the revised rules for trustee residence in Finance Act 2006 (amending for CGT s 69 TCGA 1992 and for income tax s 474 to 476 ITA 2007) lack certainty and clarity. They use the concept of a 'permanent establishment' which is appropriate for companies but not for trusts. In the light of the amount of business that is now being placed offshore rather than in the UK we are concerned about the impact of these rules on London's competitiveness as a global financial centre. Despite HMRC recently publishing their 'Trustee Residence Guidance' there are still many areas of uncertainty in the law and guidance. We have already given notice to HMRC of our intention jointly with other bodies to provide HMRC with a paper for their comment with a view to publishing a joint bodies' guidance note agreed by HMRC. However, our preferred option remains a change in legislation.

Policy recommendations

- The Government should reaffirm its commitment to introducing a clear and reasonable statutory residence test for individuals based on objective measures so that a person's residence status can be established easily.

- The Government should clarify by amendments to the law the rules for trust residence.

SECTION THREE: ENCOURAGING ENTERPRISE

The annual ICAEW Enterprise Survey consistently highlights business concerns around the burden of regulation and its effect as a barrier to growth. A large body of ICAEW research spells out shortcomings in the UK's skills base. Ensuring we build a competitive economy out of the downturn will require that reform of public spending practices and tax policy is complemented with measures to improve the regulatory environment and the skills of the UK workforce and in particular young people, entrepreneurs and innovators.

14. Improving regulation

New regulation is a major concern for business because of its volume and cost. To avoid imposing unnecessary regulatory cost on the economy, Ministers need high quality information that sets any costs imposed on the economy against an assessment of outcomes.

Policy Recommendations

- The Better Regulation Executive should have formal oversight of the Regulatory Impact Assessment process and provide proper scrutiny of departments' cost/benefit assessments.

- Parliament and the Better Regulation Executive, working with EU institutions, must also look to strengthen the scrutiny of impact assessments accompanying EU legislative initiatives and undertake full post implementation reviews.

15. Support for entrepreneurs with commercial and financial management skills

Entrepreneurs and innovators often fail to achieve commercial success because they lack the necessary financial management skills and broad commercial awareness. To help support entrepreneurial thinking, ambition and capacity there should be greater integration of financial and commercial skills in vocational and specialist training, and this should start at an early stage.

Improved financial and commercial skills will help make entrepreneurs more attractive to lenders, strengthen the durability of their start-ups and support long term business growth.

Promoting financial capability

At a more fundamental level, greater financial capability can raise individuals' financial confidence and helps to underpin an enterprising economy.

Policy Recommendation

- In partnership with the accountancy profession and others, the government should work to improve support for financial capability in schools and communities by benchmarking existing schemes and promoting best practice.

16. Streamlining public provision of business support

Public support for enterprise should be streamlined and directed at helping the UK to benefit from the global recovery. Duplication and overlap between relevant public bodies should be reduced. Better use should be made of existing private and third sector capacity and established channels to market. Where businesses find public programmes valuable, policy makers should ensure that any reform of enterprise support preserves established relationships, brands and institutional memory within the public sector bodies that lead those programmes.

Further contact

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ICAEW AND THE TAX FACULTY: WHO WE ARE

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4. To find our more about the Tax Faculty and ICAEW including how to become a member, please call us on 020 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.