



ICAEW TAX REPRESENTATION

DRAFT LITIGATION AND SETTLEMENT STRATEGY GUIDANCE AND ACCOMPANYING DRAFT ALTERNATIVE DISPUTE RESOLUTION GUIDANCE

Comments submitted on 31 October 2011 by the Tax Faculty of the Institute of Chartered Accountants in England & Wales (ICAEW) to HM Revenue & Customs in response to the HMRC draft Guidance published on 28 June 2011

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DRAFT LITIGATION AND SETTLEMENT STRATEGY GUIDANCE AND ACCOMPANYING DRAFT ALTERNATIVE DISPUTE RESOLUTION GUIDANCE

INTRODUCTION

1. We set out below our comments on the draft Litigation and Settlement Strategy Guidance and accompanying draft Alternative Dispute Resolution Guidance published in June 2011. .

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, the ICAEW provides leadership and practical support to over 136,000 members in more than 160 countries, working with governments, regulators and industry in order to ensure the highest standards are maintained. The ICAEW is a founding member of the Global Accounting Alliance with over 775,000 members worldwide. The Tax Faculty is the focus for tax within ICAEW.
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. The Institute ensures 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.

GENERAL COMMENTS

5. We welcome the collaborative approach to be adopted by HMRC. If there is a genuine attempt to understand each others' position and point of view and to resolve issues by agreement rather than through confrontation then we anticipate that this will remove much needless dispute. This will be a much more efficient use of limited HMRC resources and the burdens that business faces in dealing with the tax system could be considerably reduced.
6. In particular we welcome the more targeted approach in order to understand the facts of any particular situation and seek to investigate only those facts that are relevant to the particular liability. Paragraph 11 of the Strategy document seems to be key to a quicker and more efficient resolution of the underlying issues in most cases. Paragraph 11 states:

In any dispute, HMRC will seek to establish and understand the relevant facts as quickly and efficiently as possible.

- A non-confrontational approach is likely to help identify and establish relevant facts. For example, HMRC will aim early on to articulate the basis of its enquiries – in terms of tax risks perceived. Wherever possible, HMRC will also seek to clarify and confirm its understanding of the relevant facts with the customer.
- Where needed, however, HMRC will make use of its statutory information powers in order to obtain the relevant facts and documents quickly and efficiently.

7. We welcome the introduction of Alternative Dispute Resolution methods to try and solve issues when the initial collaborative approach has not proved successful. We do not underestimate the challenge in making ADR work well and note the comments of Dave Hartnett, Permanent Secretary for Tax, quoted in Tax Journal of April 2010:

‘Behavioural changes are needed to make ADR work well. Taxpayers have to change, their advisers have to change, but tax administrations have to change most.’

DRAFT LITIGATION AND SETTLEMENT STRATEGY GUIDANCE

8. Paragraph 18 of the Strategy document covers disputes which are ‘all or nothing’ and the guidance states ‘Many tax disputes are genuinely ‘all or nothing’,’ but by no means all’. We believe the use of the word ‘many’ may give the wrong impression.
9. We believe that one of the key principles underlying the LSS is the recognition that even where there is disagreement that does not inevitably have to lead to litigation and that the more collaborative approach will allow many more disagreements to be settled without recourse to litigation.
10. So it would be more helpful if the guidance indicates that litigation is only going to be necessary in a minority of cases and we would suggest that ‘many’ be replaced by ‘some’.

Further contact

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ICAEW AND THE TAX FACULTY: WHO WE ARE

1. ICAEW is a world-leading professional accountancy body. We operate under a Royal Charter which obliges us to work in the public interest. ICAEW's regulation of its members, in particular its responsibilities in respect of auditors, is overseen by the UK Financial Reporting Council. We provide leadership and practical support to over 136,000 member chartered accountants in more than 160 countries, working with governments, regulators and industry in order to ensure that the highest standards are maintained.
2. ICAEW members operate across a wide range of areas in business, practice and the public sector. They provide financial expertise and guidance based on the highest professional, technical and ethical standards. They are trained to provide clarity and apply rigour, and so help create long-term sustainable economic value.
3. The Tax Faculty is the voice of tax within ICAEW and is a leading authority on taxation. Internationally recognised as a source of expertise, the faculty is responsible for submissions to tax authorities on behalf of ICAEW as a whole. It also provides a range of tax services, including TAXline, a monthly journal sent to more than 8,000 members, a weekly newswire and a referral scheme.

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.com/~media/Files/Technical/Tax/Tax%20news/TaxGuides/tax_towards-a-better-tax-system.ashx)