

TAXREP 71/08

A NEW TAXPAYERS' CHARTER

Comments submitted on 11 September 2008 by the Tax Faculty of the Institute of Chartered Accountants in England & Wales in response to a consultation document 'A new Charter for HMRC and its customers' published by HM Revenue & Customs on 19 June 2008.

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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 *A new Charter for HMRC and its customers* (the Condoc) which was issued by HM Revenue and Customs (HMRC) on 19 June 2008.
2. We set out below our general comments and the key issues that should be addressed in the Charter. We have set out in Appendix 1 our answers to the questions that were posed in the Condoc.
3. Information about the Tax Faculty and the ICAEW is given in Appendix 2. We have also set out, in Appendix 3, the Tax Faculty's ten tenets for a better tax system, by which we benchmark proposals to change the tax system.

GENERAL COMMENTS

4. We welcome the decision of the Government to consult on the introduction of a new Charter.
5. We believe that this new Charter should cover the relationship of all those who interact with the government departments and, in particular, HMRC. This will include not only taxpayers but also recipients of tax credits,
6. We also believe the Charter should cover not only individuals but companies, partnerships and tax advisers/intermediaries.
7. We fully support the statement in the Budget 2008 document which is quoted in paragraph 1.4 of the Condoc:

'the Government is committed to ensuring that the tax system is useable and accessible for all taxpayers. A taxpayers' charter could play an important role in that relationship.'
8. We set out below some of the key issues that need to be considered as part of the current consultation.
9. In Appendix 1 we have set out answers to the specific questions in the Condoc.

LEGAL STATUS OF THE CHARTER

10. We note that the question in paragraph 1.13 states that:

'Although the Charter will not be set in legislation, what other options are there for enacting the Charter to ensure it is an effective and enduring document?'
11. We agree that the **full** Charter does not have to be enacted in legislation.
12. But we strongly believe that there should be appropriate legal underpinning for the Charter.

13. We would have serious reservations about the usefulness of any Charter which did not have such legal status. For instance the predecessor Charter, first published in 1986, did not have such status and consequently it was possible for it to be allowed to lapse.
14. As we have stated above, we do not believe that it is necessary to enact the full Charter in primary legislation (as was done for the European Convention on Human Rights which is included as Schedule 1 to the Human Rights Act 1998).
15. We suggest that appropriate enabling, primary, legislation should direct the Commissioners of HMRC to issue a new Charter.
16. The legislation should also set out the process under which the Charter, and the extent to which taxpayers' rights have been upheld by the government departments concerned, are kept under regular independent review and how, and when, appropriate reports are made.
17. The law should also lay down the process under which the Charter will be updated from time to time.
18. The legal effect of the Charter should also be covered in the statutory provisions. The provisions would cover the extent to which HMRC must take account of the Charter. However, we do not believe that an individual within HMRC should be held to be legally liable if there were to be a breach of the Charter. Finally the law would set out the extent that tribunals and other such bodies should take account of the Charter.
19. Our view is that there should be independent oversight of the Charter and we also recommend a regular review process which could be carried out under the aegis of a Parliamentary Select Committee.
20. Finally we note that there are many other precedents for the approach that we are advocating. There is statutory underpinning in other areas of law for such charters or codes of practice. For instance there are provisions for codes of practice under the Education Act 1996 and the Freedom of Information Act 2000.
21. In conclusion, there is in our view no reason why appropriate statutory provisions should not also be introduced to ensure that the Charter fulfils the purpose for which it is intended. We think that the statutory provisions needed should be simple and straightforward to draft.

RIGHTS AND RESPONSIBILITIES

22. We do not think that the Charter should give equal weight to responsibilities as it gives to rights.
23. There is a widely held belief among our members that the main purpose of a Charter should be to set down the rights of taxpayers which HMRC will uphold with the aim of creating a relationship which is based more on trust. This would accord with the definition in, for instance, the *Concise Oxford Dictionary* (11th edition) that a charter is:

'a written statement of the rights of a specified group of people'

24. Taxpayers have legal responsibilities that they must meet which are enshrined in statute. Further, HMRC has wide statutory powers available to ensure that taxpayers meet those responsibilities. We do not see that setting them down in detail in the Charter will add further clarity and may merely serve to confuse taxpayers as to whether they have legal responsibilities or whether it is purely aspirational. However, we think a reasonable approach is that the Charter should set out taxpayers' rights and this could be supplemented by a reminder that taxpayers have responsibilities to keep appropriate records, file returns and pay tax by certain times etc, and that the proper operation of the tax system depends upon taxpayers complying with those responsibilities.
25. This last point about the way in which taxpayers can help to make the tax system run properly was also made by HMRC personnel at the HMRC Taxpayers' Charter workshop on Monday 8 September 2008. It was suggested by them that the question of responsibilities could be dealt with by noting in the Charter that the operation of the tax system would be helped if taxpayers assisted the process by keeping records, making returns and paying their tax liabilities on time.
26. Amongst our members there is a very clear consensus that the rights laid down in the Charter should never be dependent on the individual in question having properly discharged his, or her, responsibilities. The one should not be dependent on the other.
27. For example, the rights enshrined in the Human Rights Act 1998 are not predicated on the citizen discharging his responsibilities. This issue came up very recently in the July 2008 report of the Joint Committee of the two Houses *A Bill of Rights for the UK?* and Michael Wills, Minister of State at the Ministry of Justice, in his evidence to that Committee stated that 'rights are not contingent on discharge of responsibilities' (paragraph 264 of the Report).
28. If these principles hold good generally, we believe that the same principle should also apply in the area of taxation.

ONE OR MORE DOCUMENTS?

29. We believe that there should be one main document which sets out the basic proposals contained in the Charter. We do not favour the idea that there should be different documents, for instance, for different parts of HMRC or different sorts of taxpayer or claimant. That will merely serve to cause confusion.
30. The one, over-arching, document containing the fundamental issues covered by the Charter could then be supplemented by a number of subsidiary documents to provide more information on the Charter rights and setting out in more detail how they will apply to particular types of taxpayer and claimant. However, we believe that the Charter should be short and as far as possible self-contained.

THE CONTENT OF THE CHARTER

31. We believe that the basic Charter should cover the fundamentals of the relationship between the taxpayer and the authority. In this respect we find the Introduction to the Australian Charter helpful in setting out the underlying purpose of such a charter:

‘The charter sets out the way we conduct ourselves when dealing with you. It will help you to understand:

- Your rights
- The services and standards you can expect from us
- Your important tax obligations, and
- What you can do if you are not satisfied with our decisions, actions or service, or you want to make a complaint.’

32. We believe that the Australian Charter also provides a helpful ‘check list’ of the sort of issues that need to be addressed in any charter. In particular, the Australian Charter states that the Australian Tax office will:

‘Treat you fairly and reasonably
Trust you as being honest in your tax affairs unless you act otherwise
Offer you professional service and assistance to help you understand and meet your tax obligations
Accept you can be represented by a person of your choice and get advice about your tax affairs
Respect your privacy
Keep the information held about you confidential in accordance with the law
Give you access to information we hold about you in accordance with the law
Give you advice and information you can rely on
Explain to you the decisions we make about your tax affairs
Respect your right to a review
Respect your right to make a complaint
Administer the tax system in a way that minimises the costs of complying
Be accountable for what we do’

33. The basic Charter document should not go into details by, for example, including a list of service standards, although we believe it should indicate that HMRC will publish and adhere to a number of key service standards.

34. In the light of the controversy surrounding the changes to the previous Charter in the early 1990s we believe that there should be an explicit statement to the effect that every taxpayer/benefit recipient has the right to be treated as honest and truthful unless HMRC has evidence to the contrary. This is a point explicitly covered in the Australian Charter quoted above.

THE TITLE OF THE CHARTER

35. We accept that if the title of the Charter is to cover all those affected by it, then ‘Taxpayers’ Charter’ does not describe them all.

36. To the extent that tax can cover both taxpayers and recipients of tax credits then a possible alternative title might be: **The Tax Charter**.

SCOPE AND COVERAGE OF THE CHARTER

37. We believe that the Charter should also cover substantive legal rights such as a provision that, in normal circumstances, legislation should not have retrospective effect.
38. We also believe that the Charter provisions should cover all government departments which deal with tax. This would therefore include HM Treasury in its role determining tax policy.

ENFORCING THE CHARTER

39. As we have said above we believe the Charter should be underpinned by primary legislation.
40. As a consequence the Government will have formally accepted that the Charter has a fundamental and continuing role to play in the establishment and continuation of a modern tax system.

NEXT STEPS

41. We have met with the team tasked with the Taxpayers' Charter project and we understand that in the light of representations received in response to the 19 June 2008 Condoc a more detailed document is to be published, with detailed proposals, probably in January 2009.
42. We further understand that the Charter is likely to be finalised and published in summer 2009. If that is the case, and it is accepted that there needs to be appropriate legal underpinning, then the appropriate (statutory) provision will need to be included in Finance Act 2009.
43. We strongly recommend that a commitment to give legal underpinning to the proposed new Charter is included in the 2008 Pre-Budget Report.
44. We will be more than happy to meet with the project team to consider in more detail the points raised in the current paper and to discuss the detailed issues that will need to be covered in the actual Charter itself.
45. We believe that there are very good examples of existing Taxpayers' Charters in different countries of the world and these are listed in Annex B to the June Condoc. We believe that the Australian Charter and the process by which it was introduced and has since been kept relevant and up to date establishes a good model for other countries to follow, including the UK.

ICAEW Tax Faculty
11 September 2008

Appendix 1

RESPONSES TO DETAILED QUESTIONS IN THE CONSULTATION DOCUMENT

Chapter 1: Introduction

1.13 Although the Charter will not be set in legislation, what other options are there for enacting the Charter to ensure it is an effective and enduring document?

We believe that there should be statutory underpinning to the Charter.

Chapter 2: The Role of a Charter

2.20 Which of the roles described above do you think the charter should play?

We believe the Charter ought in the main to should reflect the *Rights Headlines* and the higher level *Organisational Values* but that the more detailed service standards should not be explicitly articulated in the Charter itself.

2.21 If you think the charter should do more or something different, please give us your ideas

See our detailed comments above.

2.22 How would you or your members use the charter?

We believe the Charter would give a clear and straightforward indication of the sort of relationship our members can reasonably expect to maintain with any part of HMRC. We believe that this will give our members greater confidence in their dealings with HMRC and is likely to result in a better experience for them.

2.23 What will make the charter useful in your relationship with HMRC?

If the content covers the major issues which will determine a good and productive working relationship between HMRC and taxpayers then the Charter will perform a very useful function. Taxpayers also need to be made aware of the existence of the Charter on each occasion when there is a major contact with HMRC.

2.24 How could the charter be useful in your trust and perception of HMRC?

If the Charter is clear and straightforward about the relationships which HMRC seeks to maintain with taxpayers, and there is independent, and regular, oversight of the workings of the Charter, plus a publicly available report, then this should enhance the trust in and perception of HMRC.

Chapter 3: One Charter or several?

3.9 Do you agree that a Charter should as far as possible cover the whole range of the department's customer base in a single document?

We believe there should be one main document.

3.10 If separate charters are considered appropriate:

- *What specific groups should be covered by those charters?*
- *Why should those specific groups be covered separately?*
- *What is the most appropriate way of segmenting the charter?*

As mentioned we believe that in the interests of simplicity there should be a single Charter.

3.11 If there is to be only one Charter, what is the best way of integrating the specific needs of particular groups within the overall framework?

We believe the main Charter should be supplemented, as necessary, by subsidiary documents to cover particular groups of taxpayers. These could be set out as Appendices or Annexes to the main document.

3.12 What aspects of a charter could be developed across government departments to provide some commonality of approach whilst ensuring that each department focuses on its own customer groups?

Given the diversity of government departments and their levels of interaction with citizens we are wary of adopting a 'one size fits all' approach. We believe that if the behaviours of the relevant government departments are clearly stated and properly articulated then this will provide a means of ensuring that there is a common standard of behaviour and approach across all relevant departments.

3.13 What would be the most appropriate title for the Charter?

If the title **Taxpayers' Charter** is no longer acceptable due to the other functions that HMRC now has, we suggest The **Tax Charter**.

3.14 What is your view about a charter which extends beyond HMRC?

[This question is in the shorter version of the Consultation Document but is not reproduced in the full version.]

We believe that the Charter should cover all government departments which deal with tax so the Charter should also cover HM Treasury in relation to its role determining tax policy.

Chapter 4: Rights and Responsibilities

4.7 Should a Charter cover both rights (expectations of how customers should be treated by HMRC) and responsibilities (what HMRC expects from customers)?

We believe that the prime purpose of the Charter is to set out taxpayers' rights. In addition, it will be helpful to provide a convenient link to, and reminder of, the responsibilities placed upon taxpayers by law. However, the reminder about responsibilities should not have the same importance attached to it as the section on rights.

4.9 If it does, should those elements be mutually dependent in any way?

We believe that taxpayer rights should be inalienable and need to be quite independent of responsibilities.

4.10 If it does not, what other steps could be taken to ensure that customers have access to full information about their responsibilities?

We believe that the Charter could also provide a link to responsibilities placed upon taxpayers by law but, as stated above, such a statement should not have the importance attached to it as the statement of rights.

4.11 How can a charter be used to make customers more aware of their rights to appeal and redress?

If the Charter is readily available and is mentioned on all appropriate occasions when there is an interaction between taxpayer and the authority, then there should be greater awareness of all issues covered in the Charter, including rights of appeal and redress.

Appendix 2

THE 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 11,000 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.

Appendix 3

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 www.icaew.com/index.cfm?route=128518).