



HMRC'S INFORMATION POWERS AND INTERNATIONAL STANDARDS FOR TAX INFORMATION EXCHANGE

Comments submitted in October 2011 by the Tax Faculty of the Institute of Chartered Accountants in England & Wales to HM Revenue & Customs in response to the consultation document *Modernising Powers, Deterrents and Safeguards: Bringing HMRC's information powers into line with international standards for tax information exchange* issued on 7 July 2011.

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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 *Modernising Powers, Deterrents and Safeguards: Bringing HMRC's information powers into line with international standards for tax information exchange* (the condoc) issued by HM Revenue & Customs (HMRC) on 7 July 2011.
2. ICAEW has been an active participant in all the consultations issued by the HMRC Review of Powers and we are pleased to have the opportunity to respond to this consultation. We would be happy to discuss any aspect of our comments and to take part in all further consultations on this area.
3. Information about the Tax Faculty and the ICAEW is given below. We have also set out, in Appendix 1, the Tax Faculty's ten tenets for a better tax system, by which we benchmark proposals to change the tax system.

WHO WE ARE

4. 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.
5. In the region of 43,000 ICAEW individual members are in practice. 12,000 firms, ranging from the 'Big 4' to sole practitioners, are authorised by ICAEW to practice.
6. 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.
7. 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 referral scheme and a weekly tax newswire sent to over 18,000 registered users.

COMMENTS ON THE CONSULTATION

8. We set out below our comments on the consultation. These include our comments on the specific consultation questions.
9. We accept the need to amend the Sch 36, Finance Act 2008 information powers for the reasons set out in the condoc, ie to satisfy the UK's international information exchange obligations as determined by the OECD and the findings of the Global Forum's peer review.
10. In our view the extension to powers should be no more than is absolutely necessary to enable the UK to satisfy these information exchange requirements. We would be very concerned if, in catering for that requirement, the UK widened its domestic information powers in any significant way.

11. Therefore, of the three options to amend Sch 36 set in Chapter 3 of the condoc, we support the third (para 3.11), ie inserting a new power which enables HMRC to find out from a third party some or all of a taxpayer's name, address and date of birth if it holds other information from which the third party can identify the taxpayer.
12. We are pleased to note that this is the option HMRC proposes to follow. We would not support either of the other two options for amending Sch 36 as they would considerably widen the powers which HMRC could use in many other circumstances, and this would be a disproportionate and unnecessary response to the Peer Review.
13. With regard to safeguards, we are broadly satisfied with those listed in the condoc and included in the draft legislation.
14. HMRC should only use the new power where the third party can be expected to be able to identify the taxpayer from the information given, and can do so without a disproportionate compliance burden. We trust that HMRC guidance will make this clear and also clarify what sort of identifying information HMRC must hold before issuing a notice to a third party.
15. We think that an additional safeguard would be for HMRC to provide a report on the use of this new power. This could be an annual report and would set out how often the power had been used and whether it was used solely in connection with information exchange requests or for domestic purposes as well.

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APPENDIX 1

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.