



## ICAEW REPRESENTATION

### TAXREP 19/10

### WORKING WITH TAX AGENTS: THE NEXT STAGE

### DRAFT LEGISLATION

*Comments submitted on 23 March 2010 by the Tax Faculty of the Institute of Chartered Accountants in England & Wales to HM Revenue & Customs in response to their invitation to comment on draft legislation published on 8 February 2010*

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# WORKING WITH TAX AGENTS THE NEXT STAGE

## DRAFT LEGISLATION

### 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 draft legislation published on 8 February 2010 by HM Revenue & Customs (HMRC) at [http://customs.hmrc.gov.uk/channelsPortalWebApp/channelsPortalWebApp.portal?\\_nfpb=true&\\_pageLabel=pageLibrary\\_ConsultationDocuments&propertyType=document&columns=1&id=HMCE\\_PROD1\\_030187](http://customs.hmrc.gov.uk/channelsPortalWebApp/channelsPortalWebApp.portal?_nfpb=true&_pageLabel=pageLibrary_ConsultationDocuments&propertyType=document&columns=1&id=HMCE_PROD1_030187).
- 2 We are pleased to have the opportunity to comment on the draft legislation. We would be happy to discuss any aspect of our comments and to take part in all further consultations on this area.
- 3 This draft legislation is stated as building on some of the proposals in the consultation document 'Working with tax agents: the next stage' (referred to below as the earlier consultation document) which was published at the time of the Pre-Budget Report 2009. We responded to the earlier consultation document in March 2010 as TAXREP 11/10. This followed the consultation document published by HMRC on 22 April 2009 to which we responded formally in TAXREP 48/09.
- 4 We welcome the announcement dated 19 February 2010 that the deadline for comments on the draft legislation would be extended from 3 March 2010 to 28 April 2010. We also welcome HMRC's subsequent confirmation that hearings will not be ex parte, although this does not remove all of our concerns.
- 5 Information about the Tax Faculty and the ICAEW is given below. We have also set out, in the Appendix, the Tax Faculty's Ten Tenets for a Better Tax System, by which we benchmark proposals to change the tax system.

### WHO WE ARE

- 6 The Institute 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 Institute provides leadership and practical support to over 132,000 members in more than 160 countries, working with governments, regulators and industry in order to ensure the highest standards are maintained. The Institute is a founding member of the Global Accounting Alliance with over 775,000 members worldwide.
- 7 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.
- 8 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.

### KEY POINT SUMMARY

- 9 As noted in our recent submission TAXREP 11/10, we are not convinced that an adequate case has been made for introducing sweeping additional powers and penalties against agents. We question the need for new legislation because HMRC already has powers in the Taxes

Management Act 1970 (TMA 1970) and elsewhere (for example Schedule 36, FA 2008) to ascertain whether returns submitted and taxpayers' tax affairs are correct and to address the activities of any agents suspected of being involved in deliberate wrongdoing. We are not convinced that these existing powers are used either as much as they could be or as effectively as they could be. We would reiterate the points made in our response to the earlier consultation document TAXREP 11/10, in particular the need for proper targeting, clarification of the tax estimated to have been lost and action taken, and working to joint standards.

- 10 Even if HMRC can make a case that new and extended powers are justified, this draft legislation is not the right way forward. In particular, the definitions of 'deliberate wrongdoing' and 'tax agent' go far beyond what most people would consider these terms to mean and the draft legislation does not in our view reflect HMRC's stated intention in the consultation document.
- 11 The definition of 'deliberate wrongdoing' is so wide that it could include an adviser recommending that a client makes a gift aid payment or utilises losses. We think that it should be confined to fraud or evasion. It is essential that the definition in the draft legislation is precise; we oppose clarification by way of guidance, particularly in such a sensitive area.
- 12 The definition of 'tax agent' is so wide it could be applied to virtually every tax agent rather than, as HMRC have stated, the minority who are dishonest. Further, it could include family members or acquaintances providing free advice. We think that the definition should be confined to those who are agents by way of business. Again, this should be within the draft legislation and not in guidance.
- 13 The legislation (like the consultation document) seeks to apply personal sanctions (access to working papers and penalties) to individuals. Whilst individuals undertake and mastermind the work, many agents are firms or companies. We think that the draft legislation does not address the many difficulties that this creates, with the result that the rules are potentially unworkable, disproportionate and unfair. HMRC needs to consult further with the tax profession to design rules that will work when applied to a firm/company etc.
- 14 The draft legislation allows HMRC to access documentation that goes far beyond what is needed to determine a tax liability. The measures should be restricted to the information necessary to determine tax liabilities.
- 15 Accessing a tax agent's working papers could destroy the agent's reputation and livelihood. Very strong safeguards are required. The agent should always be entitled to appear and speak at any Tribunal hearing where permission is being sought to seek access or apply penalties under these provisions.
- 16 A minimum penalty of £5,000 is too high, as it may be wholly disproportionate to the actual tax lost. The lack of proportionality is likely to be compounded where there are a number of individuals in a firm who may be regarded as tax agents, as the penalty applies to each.
- 17 The sum total of the above is that the legislation does not in our view meet the requirements of the Human Rights Act 1998, even allowing for the degree of discretion allowed to governments in the collection of taxation. It is disproportionate, and thus in breach of both Article 1 of the First Protocol, and Article 8 of the Treaty.
- 18 In our view, this draft legislation is fundamentally flawed and would need to be substantially redrafted to achieve the purposes as set out in the consultation document.
- 19 We believe that there should be further consultation on the various issues we have identified and that legislation should then be redrafted for further consultation. Legislation should not be included in a Finance Bill until 2011 at the earliest.

## GENERAL COMMENTS

- 20 In paragraph 1.6, HMRC states that ‘the aim is not root and branch reform, but rather a modernisation of existing powers which already apply to direct taxes to, in future, apply across taxes and duties’. The draft rules are set out in a Schedule and would apply to:
- enable HMRC to access the working papers of tax agents who engage in deliberate wrongdoing which leads or is intended to lead to a loss of tax; and
  - make a tax agent who has been involved in deliberate wrongdoing liable to a sanction which acts as an effective deterrent.
- 21 We said in our response to the April 2009 consultation (TAXREP 48/09) and in our later TAXREP 11/10 that we were not convinced that a case had been made for changes to the existing rules. We have yet to see compelling evidence that these powers are needed. We remain unconvinced as to why HMRC’s current powers, including the extensive new provisions contained in Schedule 36 of FA 2008 are not adequate to deal with the issue.
- 22 We note that the draft legislation does not include anything in relation to the proposed ‘naming and shaming’ provisions set out in the consultation document, nor do they include any proposal in respect of ‘High volume agents’. We are concerned by both proposals, but as they are not covered in the draft legislation, we have not commented further on them in this submission.
- 23 We appreciate that publication of draft legislation is intended to be helpful and is an important part of the consultation process. However, in this instance, the draft legislation is so different from the intentions stated by HMRC in its consultation document that it has not unexpectedly created considerable controversy and has almost universally been condemned as not fit for purpose by the very people who would be expected to support any necessary measures that may be needed in this area, namely the professionally-qualified tax agent community.
- 24 Although HMRC has confirmed subsequently that the draft legislation was intended to do no more than implement the proposals in the consultation document, the draft goes far wider than that and potentially applies to anyone giving tax advice, even informally. Given the sensitivity of the proposals, we are disappointed that the wording of the legislation suggests that, before it was released for comment, HMRC did not consider whether the draft legislation actually aligned with what had been said in the earlier consultation document and, if not, what its likely reception would be from the tax profession. We are concerned that considerable damage has been done to agent/HMRC relations by the publication of this draft.
- 25 The draft legislation is at odds with the intended target of these proposals as stated in the earlier consultation document, namely the small minority of agents who engage in what is effectively fraudulent behaviour. This is confirmed by paragraph 1.6 of the earlier consultation document which states that a ‘tax agent behaving in accordance with appropriate professional standards would not be affected personally by the proposals on which HMRC is now seeking views’.
- 26 In recent years the trend in tax law has been to have very wide-ranging provisions in the legislation which are then reigned in by guidance. This practice we consider wrong in principle, given that HMRC guidance cannot be relied on in the courts and can be changed at any time. The wide-ranging approach adopted in this draft legislation is so extreme that it will catch almost anyone giving bona fide tax advice. Such an approach is unsupportable.
- 27 In our view, the draft legislation is unworkable in its current form. It should be put on hold pending further consultation on the issues that have been identified and how they might be resolved. It requires considerable revision to ensure that it is properly targeted and proportionate. Only then should a further draft be published for comment. If a consensus is achieved at that stage, then the legislation could be included in a Finance Bill. Given the need to get this right and for the rest of the

package to be exposed for comment, our suggestion is that these provisions should not be included in a Finance Bill until 2011 at the earliest.

## **DETAILED COMMENTS AND CONCERNS ON THE DRAFT LEGISLATION**

### **Clause 1, Tax agents: deliberate wrongdoing**

- 28 We consider that any change to this legislation, particularly 'supplemental' changes as envisaged in sub-clause (4), should be made in primary legislation not secondary, so that it can be debated by Parliament in public. This is necessary to prevent erosion of safeguards by their unwarranted extension. Failing that, as a minimum any Order should be subject to affirmative resolution not the negative resolution envisaged in sub-clause (7). We would also welcome confirmation that HM Treasury would not seek to make an Order under this section that might put taxpayers at a further disadvantage.

### **Schedule 1**

#### **PART 1, Introduction**

- 29 The draft rules in relation to access to a tax agent's working papers appear to be modelled on the current rules in this area as set out in ss 20A & B, TMA 1970 ('the existing powers'). However, a crucial difference is that the existing powers only apply if a 'tax accountant' (in the draft rules this term is replaced by 'tax agent') has been convicted of an offence or had a penalty levied under s 99, TMA 1970 and there is no outstanding appeal. Under the draft rules, HMRC may issue a notice to access a tax agent's files whether or not a penalty has been levied on the tax agent.
- 30 Like the existing rules, the draft rules allow HMRC to require the provision of documents. They do not allow HMRC to enter premises and take any papers. We would welcome clarification of how HMRC envisage these new powers fitting with the powers under Schedule 36, which do of course give wide-ranging power of entry and the right to take papers.
- 31 The rules in this Part define who is a tax agent and what is deliberate wrongdoing. However, the rules are far too widely drafted and catch ordinary tax advice. They do not appear to link back to the changes that have already been made as a result of the powers review, eg Schedule 24 of FA 2007 and, as stated above, Schedule 36 of FA 2008.

#### **Paragraph 2, Tax agent**

- 32 A tax agent is anybody who assists another person (the client) with their tax affairs. The draft rules appear to be limited to individuals but do not exclude anyone who does not charge or do it for a business. If a client is assisted by more than one individual, each individual is regarded as a separate tax agent.
- 33 Assistance **includes** (our emphasis) assistance with any document 'that is likely to be relied on by HMRC to determine the client's tax position'. This wide definition would appear to include, for example, an accountant preparing accounts that will be used as the basis for preparing a tax return.
- 34 Whilst we understand why HMRC would like a broad definition of tax agent, this is far too widely drafted and uncertain in scope. It is not limited to the submission of a tax return, merely for assisting in tax affairs. It is much wider than the existing s 99, TMA 1970, which is written in terms of preparation or delivery of any information, return, accounts, documents etc.
- 35 Thus (particularly given the definition of deliberate wrongdoing) it could include, for example, someone who gave tax advice to a friend at the golf club or helped a family member. It also includes people giving their help to taxpayers free of charge, eg charities such as Tax Aid etc or even HMRC staff. We are concerned that even if the definition of deliberate wrongdoing is changed

(see below) to align with fraudulent behaviour, such draconian powers are likely to discourage the voluntary sector from providing help to taxpayers.

36 The definition needs to be amended to ensure it is properly targeted. As a minimum, we think that paragraph 2(3) needs to be amended by using some of the wording in s 99, TMA 1970, for example that 'assistance' means 'where the tax agent assists in or induces the preparation of any information, return, accounts or documents which the tax agent knows will be, or is or are likely to be, relied on by HMRC to determine the client's tax position.'

### **Paragraph 3, Deliberate wrongdoing**

37 These provisions are aimed at what is in effect fraudulent behaviour by agents. However, rather than use such a term the draft legislation refers to where tax agents undertake 'deliberate wrongdoing'. Whilst we think that a reference to fraud or dishonest act would be preferable, we would be content with 'deliberate wrongdoing' if it were defined properly. However, it is not. In the draft legislation the definition of deliberate wrongdoing is where a tax agent does an act that is capable of bringing about a loss of tax and that act is done deliberately.

38 The definition therefore does not require any deliberate wrongdoing at all in the ordinary meaning of the words, merely a deliberate act that gave rise to a loss of tax. It would appear to include, for example, an agent suggesting a Gift Aid payment to a client or recommending that the client makes a claim to utilise losses against other income. It would also cover an agent taking a different technical view to that of HMRC. As drafted, therefore, most tax agents advising their clients will be engaged in 'deliberate wrongdoing'. That cannot be right and is clearly contrary to HMRC's statement in the earlier consultation document (at paragraph 5.4) that tax planning and taking a different but defensible view of the law would not be deliberate wrongdoing. This wording in the draft legislation has been hugely counterproductive and created much anger amongst the tax profession.

39 It is essential that this definition is redrafted so that it is properly targeted. In paragraph 5.3 of the earlier consultation document HMRC describe deliberate wrongdoing as 'conduct that tax legislation previously described as fraud or dishonest evasion'. We do not see why this definition needs to be changed but if it is to be then the wording must be changed to reflect this target.

38 If the definition needs to be aligned more closely with the provisions that have been enacted under the powers review, 'deliberate wrongdoing' could be based partly on the definition in paragraph 3(1)(c) of Schedule 24, eg deliberate and concealed. It may be reasonable in such circumstances for HMRC to request access to files and consider possible penalties on the agent, although there would need to be good evidence that there was a wider problem.

### *Paragraph 3(2)*

39 This sub-paragraph makes it clear that deliberate wrongdoing can still apply even if there was no loss of tax. The result of this could be that HMRC could access the tax agent's working papers and it would appear that the agent could be fined £5,000 even though there was no loss of tax and therefore no offence was actually committed. We think that this provision is dangerously wide and that its scope should be narrowed.

## **Part 2, Power to obtain tax agent's files etc**

### **Paragraph 4, Tax agent notice**

40 The information power is exercisable if the tax agent has engaged in deliberate wrongdoing whether or not a penalty has been or is to be imposed.

41 The existing provisions state that any notice shall be given within 12 months of any conviction or penalty. The draft rules appear to contain no time limits. We believe that there should be a reasonable time limit in which HMRC must exercise this power.

## **Paragraph 5**

- 42 This para exposes a further fundamental flaw at the heart of these provisions, namely that the thrust is aimed at deliberate wrongdoing by individuals whereas many individuals will work for firms, companies, etc. The working papers will usually be the property of the firm rather than the personal property of the individual carrying out the work.
- 43 An officer of Revenue and Customs may by notice in writing require the tax agent or the person he believes may hold 'relevant documents' to provide them. This would appear to allow HMRC to, say, ask the firm for whom the tax agent works for the records of the tax agent's clients.
- 44 Whilst provisions such as access to working papers might work for sole practitioners and very small firms who have few or no employees engaged in client work, the operation of the provisions for larger firms with partners, employees, multiple offices, etc is likely quickly to become problematic, uncertain in scope and potentially unworkable.
- 45 This provision needs to be redrafted so as to ensure that it is clearly targeted and proportionate to the likely extent of the problem.

## **Paragraph 6, Relevant documents**

- 46 The existing rules are framed in terms of documents that 'in the inspector's reasonable opinion' contain information relevant to any tax liability. We believe that this wording was proportionate and is also similar to the wording used in Schedule 36 of FA 2008. The draft rules refer only to 'relevant documents', and then refer to items that are included. This appears to us a widening of the existing rules and goes far beyond what is needed to determine a tax liability. We think that the provision needs to be amended to ensure that it is proportional: it should be restricted to the information necessary to determine tax liabilities.
- 47 In paragraph 6(2), given that these provisions apply to deliberate wrongdoing the words 'or committed the offence' appear unnecessary and potentially confusing. We think that they should be removed.

## **Paragraph 7, Content of notice**

- 48 The notice does not need to specify the tax agent's clients. Whilst we can understand why this is the case, it should be subject to some limitations.

## **Paragraph 8, Compliance**

- 49 This sets out how documents are to be provided. Documents are to be provided within such period, by such means and to such a person and place as is reasonably specified in the notice.
- 50 This is very widely drafted. The existing provisions provide for a period of not less than 30 days even though the tax agent would already have been convicted of an offence or subject to a penalty. Given the potentially wide ranging nature of an information request under these provisions we think 30 days would be a minimum reasonable period and that paragraph 8(a) should be amended by the addition of the words 'not being less than 30 days.'

## **Paragraph 10, Approval by tribunal**

- 51 A tax agent notice can only be issued with the approval of a Tribunal. The Tribunal needs to be satisfied that there is deliberate wrongdoing, but as mentioned earlier this term is far too widely drafted at present.
- 52 The application must be made by or with the agreement of an 'Authorised officer'. This term is defined in paragraph 10(3) but it appears that any class of officer could be so authorised. We understand that authorisation would be set at a high level but this definition could potentially include most HMRC staff. Whilst we recognise that this drafting approach has been used elsewhere (for example paragraph 13 of Schedule 36), given the seriousness of these powers the

definition needs to be amended to make it clear that it can only be authorised by a high level of officer.

53 The need for a notice to be approved by the Tribunal appears on the face of it to be a strong safeguard. But the safeguard may be more apparent than real given that the tax agent does not appear to have the right to challenge the notice in front of the Tribunal. Whilst we recognise that the existing provision does not contain a right of appeal, the existing provisions only apply if the 'tax agent' has been found guilty of an offence or had a penalty imposed under s 99, TMA 1970. Under the draft legislation, no penalty need be imposed for this new provision to apply. This is a very significant difference.

54 All that the agent is given is a reasonable opportunity to make representations to an officer of Revenue and Customs and that the Tribunal be provided with a summary of any representations (which presumably need not be shown to or approved by the tax agent). This does not amount to an effective right of appeal and appears both unfair and unjust. It also appears to be contrary to the explanatory notes which state that '*Such applications would not concern whether a tax agent had engaged in deliberate wrongdoing where the agent would always be entitled to be present*'. This latter statement appears difficult to reconcile to the draft rules and we would welcome clarification as to how this result can be inferred from the draft.

55 The provision needs to be amended so that the tax agent has a right to appear before and be heard by the Tribunal. Any other result would be contrary to natural justice.

#### **Paragraph 12**

56 As drafted this paragraph states that an application for approval may be made without notice, but the Tribunal may call for submissions and participation in the proceedings. As noted in TAXREP 11/10, we consider that an ex parte hearing in such circumstances would not constitute a fair trial. However, we understand that HMRC has decided not to pursue the option of an HMRC requirement for a 'without notice' hearing so that a tribunal hearing would always be with notice to the tax agent.

57 We welcome the fact that HMRC do not now propose to pursue ex parte hearings and consider that, as a strong safeguard, the paragraph must be amended to provide specifically that the application can be made only with notice and that the agent is entitled to appear and be heard.

#### **Paragraph 13**

58 Under this provision any Tribunal decision is final. Given the very serious nature of this power and that the taxpayer would appear not to have the right to appear before the Tribunal, this appears contrary to natural justice. Even if the earlier provisions were to be amended, so that there was a right to appear, there should still be a right of appeal: its absence is, again, disproportionate, given the major impact such a Notice is likely to have on the agent's livelihood.

59 We thus believe that this para should be amended to allow for any Tribunal decision to be appealed. This should be the case even if the hearing is intra partes.

#### **Paragraph 16, Privileged communications**

60 Documents do not have to be provided if they are covered by privilege. This is similar to the existing provisions although the extra requirement under s 20B(3), TMA 1970 of the existing provisions that any notice to a legally qualified person must be given by the Board has not been reproduced.

61 Given that these provisions are in effect aimed at fraudulent behaviour where privilege would not normally be available, we would welcome clarification of the sort of communications which would be covered by privilege and those that would not.

#### **Paragraph 21, Daily penalty for failure to comply**

62 A daily penalty of up to £60 can be levied if the failure to comply continues after the issue of a penalty notice (ie, it is automatic). We think that the taxpayer should be allowed a short period of grace after the issue of a penalty notice under paragraph 20. The penalty notice should make it clear that daily penalties will also start to accrue if the tax agent has not delivered the documents within a certain time and that no appeal has been lodged.

### **Paragraph 23, Reasonable excuse**

63 Penalties do not apply if the taxpayer has a reasonable excuse (which can be appealed to a Tribunal). The proposals as drafted mean that a tax agent's right of appeal against a tax agent notice is limited because the agent is not entitled to appear before a Tribunal. Whilst we have asked for this to be amended, if it is not changed it is highly likely that taxpayers will be forced to appeal against a penalty notice. As such, we think that a reasonable excuse is that the information notice is not reasonably required.

### **Part 3, Sanctions for deliberate wrongdoing**

64 These provisions need to be reconsidered. They are not properly targeted and potentially disproportionate to the amount of tax actually lost.

### **Paragraph 25, Amount of penalty**

65 We should welcome clarification of why there is a minimum penalty in sub-paragraphs (2) and (3). If the potential lost revenue is, say, £500, we fail to see why the penalty should be ten times that amount. We accept that this para is subject to reductions for disclosure etc, but it is a disproportionate response. Given that this is a civil penalty and that penalties are already likely to be charged in respect of the wrong returns, any penalty should not exceed 100% of the potential lost revenue. We therefore suggest that the following be deleted: in sub-paragraph (1) the words 'In Case 1 or Case 2' and 'the greater of', in sub-paragraph (1)(a) the word 'and' and sub-paragraphs (1)(b) and (2).

66 We are concerned that under sub-paragraph (3), penalties for the same offence could be doubled up. If we assume that a tax agent supplied false information to a taxpayer, who then completed a return, it would appear that the taxpayer is potentially liable to 100% of the potential lost tax under paragraph 1 of Sch 24 of FA 2007. In addition, it would appear that a tax agent could be liable to a penalty of 100% of the lost tax under paragraph 1A of that same schedule and could now be liable to a penalty of 100% of the lost tax under this paragraph, subject to the double jeopardy provision in paragraph 36 of the draft legislation. Nevertheless, it appears that in effect two penalties can be charged in respect of the same offence.

67 More seriously, penalties can be applied on any person acting as a tax agent, and where there is more than one tax agent then it appears penalties can be multiplied very quickly. The example on page 8 of *Taxation* magazine on 4 March 2010 shows how even small amounts of lost tax and NIC over a number of years could result in multiple penalties that would be far out of proportion to the actual tax lost.

68 This also raises the problem of applying what are personal penalties to firms. In the context of a firm we think that the provisions are potentially unworkable and unfair, particularly where there are employees who might be subject to these provisions. Whilst we appreciate that criminal sanctions would by their nature be personal, we are not convinced that this approach works in a civil penalty context where it is applied to firms.

### **Paragraph 28, Reductions for disclosure**

69 In cases where there was no loss of tax and unprompted disclosure, we think it reasonable that the relevant minimum penalty should be lower than 30% (but see our comments above about paragraph 25, Amount of penalty) and that in those circumstances it would be reasonable to allow suspension of the penalty.

### **Para 29, Special reduction**

70 In the absence of these provisions including any de minimis in determining 'deliberate wrongdoing' and to mitigate against double counting, we consider that it should be specifically provided in this paragraph that the penalty can be reduced to below £5,000 when the tax lost is less than £5,000 and where there is double counting. This point is even more important if our recommended changes to sub-paragraph 25 are not accepted.

**Paragraph 30, Annual cap**

71 See comments made concerning paragraph 25 above. The annual cap needs to take into account not just penalties under these provisions but also any penalties levied under Sch 24, FA 2007.

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## APPENDIX

### 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/index.cfm?route=128518> ).