



**HM Revenue and Customs and the Taxpayer:  
Modernising Powers, Deterrents and Safeguards**

**Summary of Responses to the Consultation**  
July 2005

## **Introduction**

During Second Reading of the Commissioners for Revenue and Customs Bill, the Paymaster General announced a major review, involving wide consultation, of the powers, deterrents and safeguards that will underpin the new revenue department, HM Revenue and Customs (HMRC).

To launch the review the Government published a consultation document on 24 March 2005 to seek people's views. The aim of the review is to provide a framework of law and practice for HMRC that supports the Government's objective of a tax system that is fair and better adapted to the needs of customers.

In total 37 responses were received. Respondents welcomed the opportunity to respond but stressed that full consultation was needed on reform proposals and on draft legislation. HMRC are planning to publish any draft clauses for the Finance Bill 2006 plus details of proposed changes to procedures, together with explanations, early next year.

Most respondents supported the idea of considering principles and objectives before working up detailed proposals. But there was some concern about the timetable. In fact any legislation in Finance Bill 2006 would be intended to harmonise different approaches in tax-based powers inherited from the predecessor departments where these are likely to impact adversely on HMRC's effectiveness or where the position for taxpayers is unclear. Ministers will consider the potential for wider reform of the sort foreshadowed in the Consultative Document in later Finance Bills.

There was not a consistent format to the responses to the Consultative document, some concentrated on the specific questions asked, others took more of an overview and still others were concerned about specific points. We have therefore tried to group responses around common themes.

As well as considering the responses as part of the Review of Powers, all relevant material will be passed to other parts of HMRC who deal with particular taxes or taxpayer groups.

## **Supporting taxpayers in complying with their obligations**

There was strong support for taxpayers providing information only once but recognition that HMRC would need systems that could enable re-use of that information across heads of tax or duty and credits. Many felt that this could only be achieved if the department were to adopt a single identification number. A common identifier for businesses covering income tax, corporation tax and value added tax was felt to be a good starting point. This was seen not just as something that would enable HMRC to bring its data together but it should also be less confusing for taxpayers and claimants.

Many respondents favoured a single consolidated HMRC Management Act, which would allow alignment of existing powers. Although introducing more consistent powers, deterrents and safeguards across the main business taxes (Income Tax, Corporation Tax and VAT) was largely supported, there were mixed views about going further. Some felt that it was more important to align technical rules and definitions across business taxes and that only once this had been achieved could there be a single set of information gathering and regulatory powers. While others argued that the fundamental differences between various taxes would preclude any real prospect of consistency different respondents felt that there should be broad consistency across powers regardless of differences in the underlying tax regimes.

There was some concern that the role of the tax adviser had been underplayed in the consultative document and respondents urged that this imbalance should be addressed in the ongoing review process. A number of respondents called for extension of Legal Professional Privilege.

It was suggested that existing systems offered to customers were not of equal quality between the English and Welsh languages.

## **A fair and risk-based approach to compliance**

Respondents strongly believed that life should be made easier for the compliant and harder for the non-compliant. Some saw closer working with other enforcement agencies as a way to catch more of the seriously non-compliant. And there was recognition that HMRC would need strong powers to combat complex evasion and fraud, but that these should not be available across the board.

It was seen as vital that taxpayers' costs and administrative burdens were kept to the minimum. A move to a risk based approach to compliance was favoured and was seen as a possible way of reducing burdens on the compliant. Some respondents were concerned that this should not increase the amount of

information required, but others saw it as a trade-off for the compliant who would face fewer inspections or enquiries. Combined visits to inspect VAT and PAYE Employer records were seen by some as a potential cost-saver.

Many respondents were concerned that the complexity of the tax system led to innocent errors and that imposing penalties for such was inappropriate especially when taxpayers had a record of previously good compliance. A more positive approach for HMRC should be to educate and support those who are unaware of their obligations or who find the tax system complex.

There was concern that some of the powers inherited from HM Customs & Excise, particularly to enter premises or make seizures documents, had been developed to tackle smuggling and drugs related issues and were inappropriate to a fiscal regime. Respondents saw the review as a major opportunity to decide what is appropriate for dealing with fiscal fraud.

Respondents saw it as important that HMRC staff should be well trained and that there should be ready access to those who had a greater knowledge of particular taxes when staff in Contact Centres are unable to answer their detailed enquiries.

There was a suggestion that HMRC should benchmark itself against best assurance and inspection/enforcement approaches used by other regulators in both the UK and internationally (including non-revenue regulators).

Extension of the practice recommended by the Hartnett Review on links with Business for a single point of contact was recommended. Of particular importance was the need for HMRC officers to have a better understanding of how businesses actually operate and their working methods, especially when assessing risk or undertaking enquiries.

There were some concerns about the use of Section 20 Taxes Management Act to obtain information in relatively routine enquiries and in cases of alleged avoidance. Many respondents favoured a review of the section and in particular of its ex-parte applications.

There was strong support for taxpayers to be told the reasons for audits, inspections and enquiries. Some respondents suggested that a more informal approach to enquiries rather than going straight down the formal route would reduce any feeling of confrontation and generally improve relations between taxpayers and HMRC officers. Once enquiries had been started there was concern that time limits for provision of information could be too rigid and did not take account of the difficulties in obtaining what was needed.

## **An efficient organisation in tune with modern technology and business practices**

Respondents welcomed the aims of using new technology and new forms of electronic data management and communications to reduce costs for both taxpayers and HMRC. There was a general desire for HMRC to have effective IT systems to achieve greater efficiency, tackle fraud and limit the burden on legitimate businesses. Progress might be assisted by involving external technology experts and business representatives in the design of systems.

The importance was also stressed of including adequate safeguards to ensure compliance with domestic data protection standards and so prevent information becoming accessible to parties who have no legal right to it.

There is a clear desire for more communication via a secure e-mail channel and wider availability of electronic means to make payment. However, many respondents emphasised that some people would not have access to the Internet or would not be able to use a computer. They felt strongly that these taxpayers and claimants should not be penalised or disadvantaged and stressed that differences within a diverse taxpayer and claimant population had to be acknowledged. Incentives should be given to encourage electronic filing but there should also be the option to submit hard copies.

There was some concern about the over-reliance upon systems to tackle fraud. It was felt that previous experience showed that complete withdrawal of a local presence tends to increase the likelihood of tax evasion because the tax authority is seen as something remote which is unlikely to have local knowledge.

Some respondents felt the judgement in the case of *Langham v Veltema* had changed the interpretation of when HMRC officers could make a “discovery”, and that this had affected the relationship between the taxpayer and HMRC. There were calls for the position to be reviewed.

A few respondents thought costs to a third party for complying with a specific information notice, where granted, should be reimbursed. A number of respondents suggested that the information requirement in Stamp Duty Land Tax returns was excessive.

## The principles, which should support taxpayers' relationship with HMRC

Most respondents welcomed the set of principles in the Consultation Document, which were consistent with the Hampton Review<sup>1</sup>. They also felt that the principles which underpinned Lord Keith's Review<sup>2</sup> in the early 1980s remained relevant today, particularly the importance of maintaining good relations between the tax authority, taxpayer and tax adviser.

Several representations suggested that the first bullet<sup>3</sup> should include reference to the Freedom of Information Act 2000 and Disability Discrimination Act 2005.

Various respondents favoured an additional principle to those listed in the Consultative Document which the Institute for Fiscal Studies Tax Law Review Committee suggested might be drafted as: *"The scope of HMRC's powers and the manner of their exercise should be required to minimise burdens on taxpayers in general, and businesses in particular, consistent with meeting the legitimate expectations of those powers."*

Two other principles were suggested:

- *'A statement that significant changes will be made by primary legislation, not regulations, to ensure proper Parliamentary scrutiny'*
- *'An undertaking, in line with Better Regulation, to consult fully and timeously on proposals where possible'*

More generally, there was a strong feeling amongst respondents that powers should be both reasonable and proportionate, so powers should be related to the offences they were intended to combat. The impact of powers and penalties on both costs and behaviours need to be understood.

There was also a view that there should be more recognition for those who made a real effort to be compliant and that they should be treated differently to those who made no such effort or deliberately sought to evade their responsibilities. The extension to other taxes was recommended of that element in the VAT default surcharge whereby taxpayers are allowed one missed deadline before penalties are charged.

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<sup>1</sup> *The Hampton Review on regulatory inspections and enforcement* published on Budget Day and available on HM Treasury Budget website

<sup>2</sup> Committee on the Enforcement Powers of the Revenue Departments, Volume 1, page 9

<sup>3</sup> HMRC must continue to deal with all information lawfully, including complying with the safeguards for taxpayer confidentiality, the Human Rights Act and the Data Protection Act.

## **How best to build in safeguards**

Respondents supported legislation for a new regime for powers, deterrents and safeguards to be introduced in primary legislation, to be included in due course in a new combined Management Act, rather than being introduced through Statutory Instruments.

It was seen as very important that taxpayers and claimants should be made aware of their obligations and rights and that such statements should be clear and easy to understand. Suggestions ranged from a Code of Practice explaining how powers were to be used, with definitions of what might be reasonable in particular circumstances, through a new 'Taxpayer's Charter' to a full-blown 'Bill of Rights'. Some respondents felt that there should be independent oversight of the new regime for powers, deterrents and safeguards during its first three to five years.

Some concerns were expressed about the ease and cost of access to the existing appeals procedures and the need for taxpayers to have a simpler, quicker, cheaper and more informal route for appeals and complaints. This could apply to any decision made by HMRC and there were suggestions for a more informal dispute resolution procedure. Suggestions ranged from an in-house HMRC process to an independent body including, for instance, a businessperson and a tax professional, which might be funded separately from HMRC.

Some respondents wanted procedures to be put in place to ensure HMRC personnel justified the use of the more onerous powers available to them. There were suggestions that HMRC should pay costs incurred in tribunal cases which were found against the department or where there was any unfair or unreasonable use of powers.

There were concerns that there may be insufficient safeguards and rules to protect business sensitive information which was subject to cross border exchange.

## **A number of responses related solely to Indirect taxation; comments include:**

- Respondents emphasised that Better regulation principles should be applied to instruments affecting the spirits industry and excise trade in general.
- A few respondents felt strongly that there was a need to review the C&E Management Act 1979 (CEMA) as there was concern about the powers contained in this legislation covering both national and EU issues. Attention was drawn to areas such as CEMA Section 78 which, it was felt, needed to be clearer and unambiguous.

- Concern was expressed about the department's powers in relation to activities undertaken on board ships, usually passenger ships. Particular issues were the distinction between movements of goods to or from a country outside the EU, which are subject to customs control and intra EU traffic on the other, which is not. A re-casting of powers to reflect fully the Single European Market would remove the current scope for dispute.
  - There was concern about the VAT appeal procedures, where there is delay prior to commencement of an internal review.
  - Some respondents wanted to see increased resources at UK ports and airports to restrict the supply of illicit products entering the country and inland to remove goods that evade detection at 'borders'.
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## List of Respondents to Consultative Document

Anonymous
Association of British Insurers
J Bevan
British Property Federation
CBI
Chamber of Shipping
Chartered Institute of Taxation
Chartered Institute of Taxation (Low Incomes Tax Reform Group)
City of Westminster and Holborn Law Society: Revenue Committee
J Crisp
Deloitte
Ernst & Young
Federation of Petroleum Suppliers Ltd
Garbetts (Chartered Certified Accountants)
Gin and Vodka Association of GB
R Irwin
Institute of Chartered Accountants in England and Wales
Institute of Chartered Accountants of Scotland
Institute of Directors
Institute of Indirect Taxation
Institute of Payroll and Pensions Management
KPMG
Law Society (E&W)
London Investment Banking Association
London Society of Chartered Accountants Taxation Committee
PKF (UK) LLP
Port of Dover
PriceWaterHouseCoopers
Professional Contractors Group Ltd
S C Sutton
Scotch Whisky Association
Tax Law Review Committee
Tobacco Manufacturers Ass
Trade Representatives
UK Tax Department ConocoPhillips (UK) Ltd/UK Petroleum Industry Ass. Ltd
VAT Practitioners Group
Welsh Language Board