



# **Developing a new management act**

**November 2006**

## Background

1. The creation of HMRC provides significant opportunities to “deliver the benefits of customer service, and of effective and efficient operations, to the country<sup>1</sup>”.
2. A key element in realising these opportunities is a modern, simple and consistent legislative framework for the administration of taxes. Along with other work to modernise tax administration, this would provide a modern system of law and practice to enable HMRC to support the Government’s objectives of fair tax administration that meets customer needs.
3. The Commissioners for Revenue and Customs Act 2005 that established the new Department carried forward the administrative rules of the former Customs and Excise and Inland Revenue. This helped ensure business as usual was maintained and provided time for consultation on the framework appropriate for a modern tax administration.
4. The 2005 Pre-Budget Report announced that HMRC would review its administrative rules and would develop and consult on new legislation bringing together the rules for the main taxes.
5. Consultation began in February and March 2006, with a series of workshops designed to allow the views of taxpayers and their advisers to inform the work at an early stage. HMRC invited people closely involved in tax administration in their day-to-day work to talk about their experience of the present system and what they would like to change. HMRC amassed a wealth of information through this style of open feedback that will be extremely valuable in taking forward work to modernise tax administration.
6. The present document marks the next stage in the consultation process. It sets out, and seeks views, both on the general approach to creating a new framework and on a first tranche of rewritten clauses. The draft clauses are work in progress and serve to illustrate the style and structure of a possible new bill. They cover the rules for notification and registration, returns, and assessments, for Income Tax Self Assessment, Corporation Tax Self Assessment and Value Added Tax.
7. This is the first stage in our planned consultation on a new management act. Comments will inform future work. We will continue to develop and consult on draft clauses throughout the coming months,

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<sup>1</sup> Chancellor of the Exchequer’s *Foreword to Financing Britain’s Future: Review of the Revenue Departments*, HM Treasury March 2004

with a view to having a Bill ready for introduction in the 2007-8 Parliamentary session.

8. This document is in four parts with two Annexes:

**Part 1** summarises the background to, and the reasons for, the development of a new management act.

**Part 2** explains the context in which the rewritten clauses are being published. It also identifies the general issues on which we are seeking views.

**Part 3** contains a commentary setting out what the clauses seek to achieve and highlighting those issues on which we specially invite views. The clauses are published as a separate PDF document.

**Part 4** lists possible changes and discusses them in more detail.

**Annex A** contains a Partial Regulatory Impact Assessment, on which we welcome views.

**Annex B** contains the Cabinet Office Code of Practice on written consultations

## Comments

Part 2 of this document contains a summary of the views sought and details of the consultation timetable.

**Comments should be received by Tuesday 20 February 2007.**

Comments should be sent:

by e-mail to: [Maria.Richards@hmrc.gsi.gov.uk](mailto:Maria.Richards@hmrc.gsi.gov.uk)

or by post to: Maria Richards, Room 1C/20, 1<sup>st</sup> Floor, 100 Parliament Street, London SW1A 2BQ

or by fax to: 020 7147 2460

Maria Richards can be contacted by telephone on: 020 7147 3223.

## Confidentiality

9. Information provided in response to this consultation, including personal information, may be published or disclosed in accordance with the access to information regimes (these are primarily the Freedom of Information Act 2000 (FOIA), the Data Protection Act 1998 (DPA) and the Environmental Information Regulations 2004).
10. If you want the information that you provide to be treated as confidential, please be aware that, under the FOIA, there is a statutory Code of Practice with which public authorities must comply and which deals, amongst other things, with obligations of confidence. In view of this it would be helpful if you could explain to us why you regard the information you have provided as confidential. If we receive a request for disclosure of the information we will take full account of your explanation, but we cannot give an assurance that confidentiality can be maintained in all circumstances. An automatic confidentiality disclaimer generated by your IT system will not, of itself, be regarded as binding on the Department.
11. The Department will process your personal data in accordance with the DPA and, in the majority of circumstances, this will mean that your personal data will not be disclosed to third parties.
12. Any Freedom of Information Act queries should be directed to Maria Richards, using the contact details above.

## Part 1: Developing a new management act

### Introduction – a modern tax administration

13. The aim of HMRC is to administer tax and customs systems fairly and efficiently, and make it as easy as possible for individuals and businesses to understand and comply with their obligations and receive their entitlements. Putting the customer at the heart of HMRC's activities makes our processes more efficient and cost effective.
14. The aim of a new management act is to develop so far as possible a modern, simpler and more consistent legislative framework for the administration of taxes which is easier for taxpayers to understand and comply with and for HMRC to operate.
15. HMRC aims to simplify and deregulate wherever possible so that burdens on taxpayers are minimised by:
  - improving the transparency and understanding of administrative legislation
  - removing obsolete legislation
  - aligning and rationalising legislation where it makes sense to do so.
16. The aim is to introduce an Administration of Taxes Bill in the 2007-8 parliamentary session.

### Why a new administrative framework is needed

17. Administrative legislation is a fundamental building block of the tax system, setting out the management provisions relating to the rights and obligations of taxpayers and HMRC. It needs to be easy for taxpayers to understand and for HMRC to operate. Much of our current administrative legislation is old, complex and inconsistent. Two existing management acts, now 25 to 30 years old, have been inherited from the two former revenue departments and other provisions are scattered across a number of other taxes acts. Some of this legislation is expressed in language that is difficult to understand. The following extracts from the report of research into the administrative burdens of tax on UK businesses undertaken by KPMG in 2006 support the need for new administrative legislation:

“Clearly, when establishing the foundation of a tax system, which is essentially what this tax area is, it is important to balance the needs of the taxpayer (a system that is ‘fair’, that protects the taxpayer and that they can understand) with the

needs of HMRC to protect the tax system and ensure that tax due is collected.”

“The real issue here is complexity. The Taxes Management Act for example, is quite an old Act and works in some cases as the ‘residual’ or ‘default’ regulation... Given the way that TMA operates, in particular where it acts as a ‘residual’ regulation when other regulations are silent, this may be an area where complexity, and the perception of complexity, could be addressed.’

18. And the following quote by Lord Drummond Young from a recent judicial review (*CIR v General Commissioners ex parte Hugh Love*) supports the need for new legislation:

"This difficulty arises, I suspect, because the assessment and appeal provisions that are now contained in the Taxes Management Act 1970 have their origins in a number of different Finance Acts, passed over a long period, and no attempt has been made to develop them into a coherent code using systematic concepts and terminology.

It must be said that on the whole the assessment mechanism seems to work well in practice, but this is no doubt due to the good sense of Inspectors of Taxes and tax advisers rather than the coherence of the statutory provisions."

### **Scope and approach**

19. The creation of HMRC followed a recommendation of the O'Donnell Review<sup>2</sup>, which identified that small business would gain significantly from dealing with a single department for all their tax affairs. This review is therefore looking at both direct and indirect taxes, where separate policy development and different legislative history have created divergence which may no longer be justified.
20. One possible approach would have been a single management act covering all HMRC taxes and duties. But extending HMRC's early work across the whole range of the department's business would have encompassed such diversity that it would have been difficult to find the common ground essential to a more integrated and simpler approach. And the sheer volume of the necessary legislation would have made the task unmanageable.
21. An alternative would have been two separate management acts covering direct and indirect taxes respectively and building on the two existing management acts. A division between direct and indirect taxes would have enabled some consolidation along traditional lines

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<sup>2</sup> *Review of the Revenue Departments* published 17 March 2004

but would have allowed no integration across the spectrum of taxes for which HMRC is now responsible. That would have been a missed opportunity. And the task would still have been as huge as that above.

22. The approach adopted for the review is to focus on five core schemes covering the main taxes. These are:
- Value Added Tax
  - Income Tax Self Assessment (including capital gains tax)
  - Corporation Tax Self Assessment
  - Pay As You Earn and National Insurance Contributions as operated by employers
  - National Insurance Contributions paid by the self-employed (Class 2 and 4 contributions)
23. Together these schemes cover over 11 million taxpayers, of whom over half have income from businesses. They have overlapping populations, with many customers having to deal with HMRC in connection with two or more of the schemes. These customers are most likely to have encountered differences and inconsistencies between the administrative rules, and concentrating on these schemes is likely to deliver the clearest benefits to the largest numbers of businesses, individuals and their advisers.
24. That does not mean one size fits all. We recognise that the five core schemes are distinct and that alignment of the rules will not always be possible or desirable. As the work develops we will look closely at what works and what does not, and where the greatest benefit lies.
25. We will also look at the scope for simplification in the administration of other HMRC taxes and duties. For example, where we identify changes in the core schemes we will consider whether such changes should be carried through to those other taxes and duties whose administration is based on or modelled on the Taxes Management Act provisions or VAT administration. This means that the taxes and duties that have rules consistent with the core schemes can be kept that way.

### **Modernising tax administration**

26. HMRC seeks to continually improve its processes and guidance to make it easier for all taxpayers and their advisers to understand what they need to do.
27. One option would be to seek improvements through process change alone, without rewriting legislation. But within those constraints the scope for improvement would be limited.
28. Simply modernising the way the legislation is expressed would produce benefits comparable to those for HMRC's Tax Law Rewrite by making the legislation clearer and easier to use. Taxpayers would benefit

directly from simpler guidance and software based on rewritten legislation and indirectly from the benefits to tax professionals most business taxpayers employ.

29. To realise the greatest gains from this review, however, requires more than just a consolidation and rewrite of the current legislation. Changes are needed to deliver improvements, closer alignment and consistency.

### **A generic approach**

30. We are looking horizontally across the five schemes rather than at each in isolation, identifying the common elements which offer the greatest opportunity for alignment. These common elements include:

- notification and registration;
- returns and self assessment;
- assessments;
- claims;
- payment and repayment; and
- appeals.

31. We are also looking at time limits and other miscellaneous administrative provisions.

32. This document consults on draft clauses covering notification and registration, returns and assessments. Draft clauses on claims, payment and repayment, appeals, and the remaining areas will be published for consultation at a later date.

### **Consultation**

33. These draft clauses are the next stage in the consultation process. We are publishing them as work in progress to illustrate the structure and approach we are adopting in developing the new act, and to seek feedback on those aspects as well as on the individual clauses. We are keen to hear your views, which will inform our work going forward and be reflected in clauses published later for consultation.

34. We will continue to develop draft clauses throughout the coming months, with a view to having a Bill ready for introduction to Parliament in the 2007-8 Parliamentary session.

35. For more information on the project, including Q&As and the outcome from the workshops, please visit our website at <http://www.hmrc.gov.uk/nma/index.htm>

## **Part 2: General issues on which we are seeking views.**

### **Introduction**

36. This Part provides the context in which the draft clauses are being published, and identifies the general issues on which we are seeking views.
37. The draft clauses rewrite the legislation telling taxpayers when they need to notify HMRC of chargeability to income tax and corporation tax, and when they must register for VAT. They set out rules requiring them to make the appropriate returns, and what those returns must include. They enable HMRC to make assessments to collect tax.
38. The clauses rationalise and clarify existing statute without making substantive changes. Statutory provisions have been aligned where it seems to make sense to do so. Where the structure of the relevant regime does not allow for alignment the legislation has been restated in a clearer manner. So, for example, a common approach has been applied for assessments to recover repayments across ITSA, CTSA and VAT (clause 66). But when rewriting the rules for notification, the differences between ITSA and CTSA on the one hand and VAT on the other (Part 1 Chapters 1 and 2) have been recognised and retained.
39. These first clauses suggest some changes to current rules, on which we seek views. These include minor relaxations in favour of the taxpayer, and in places match the law to current practice. They are identified in boxes within the commentary against each clause, and discussed in more detail in Part 4.
40. Later publications will identify further areas where common elements could be aligned across the core schemes and will incorporate a number of proposals designed to improve tax administration.

### **Status of these clauses**

41. We are publishing these draft clauses as work in progress in order to invite views both on the specific provisions and on the structure and style of the new legislation as it develops. It follows that not every clause is fully developed. In places we have put down markers so that the reader can see the emerging framework even where a particular clause is likely to change. Where this applies we highlight the fact in the commentary accompanying the clause

### **Five core schemes**

42. We are looking at five core schemes. These draft clauses relate to ITSA, CTSA and VAT. They do not address PAYE and NICs (other than Class 4 contributions which are covered by the normal self

assessment rules) because the majority of the administrative provisions covering notification, returns and assessments are contained in secondary rather than primary legislation. For PAYE, the regulations have been recently rewritten and modernised. As work progresses we will examine the case for aligning labels and concepts across all five core schemes. **We welcome views on where the balance of advantage to the user might lie.**

### **Interaction with other reviews and initiatives**

43. The development of some of these draft clauses depends on work being taken forward through other HMRC reviews. Where this is the case, relevant provisions have been rewritten to reflect the current state of the law, even though this may change. We hope this will give a clearer picture of the new provisions. In each case the explanatory material details what has been done and why.

44. The main interactions are:

- *The Review of Powers, Deterrents and Safeguards* is working to design a coherent framework of law and practice for HMRC in support of the Government's objectives of a tax system that is fair and better adapted to the needs of customers. The Powers Review is committed to wide consultation – details of recent consultations and responses can be found on our website. Any new management bill will not generally enact legislation that is within the scope of this review (penalties, enquiry and intervention processes, for example). Such proposals will be brought forward in Finance Bills. However, in some draft clauses we have shown the current minor penalties where they form an intrinsic part of the provision and where we think it would be helpful to the reader to see that there is a sanction, even if the form of that sanction might change. Where this applies details are given in the explanatory material.
- *Carter*. Lord Carter's Review of HMRC Online Services was published at Budget 2006 and the Government announced that they accepted his recommendations. A revised recommendation relating to ITSA time limits was accepted in July 2006. HMRC is currently working with representative bodies, software developers and other stakeholders on the detailed implementation of the recommendations. It is expected that legislation will be included in Finance Bill 2007. These draft clauses reflect the existing time limits for filing ITSA returns; changes arising out of the recommendations of Lord Carter will be included in later work.
- *Alignment of Corporation Tax and Companies House filing dates*. HMRC and Companies House jointly published a consultation document in November 2005, proposing to align the filing date for the company tax return with that for submitting accounts to Companies House for the public record. This would facilitate the

introduction of a single joint filing service, allowing both transactions to be completed in a single electronic filing. Discussion of the proposals, and the range of responses to the consultation, has continued through this year. HMRC will publish a summary and policy response at the time of the Pre-Budget Report. These draft clauses reflect the existing time limits for filing CTSA returns.

- The *Integrated Customer Management Programme* is continuing the work started by the Whole Customer View looking at a single process by which businesses can manage all of their registrations with HMRC.
- *Review of Administrative Burdens*. On 20 March 2006, HMRC published the review of the administration burdens on businesses carried out by KPMG. The targets announced by HMRC are to reduce by at least 10% the burden of dealing with HMRC forms and returns over a 5 year period; and to reduce the burden of dealing with HMRC audits and inspections by 10% over 3 years, and at least 15% over 5 years. Work on this is being taken forward through the Administrative Burdens Advisory Board. The results of this work have informed consideration of new legislation and policy changes.

### **Streamlined Parliamentary Procedures**

45. HMRC have been advised that a new bill may be suitable for enactment under a parliamentary procedure similar to that used for Tax Law Rewrite Bills. Under those procedures, Bills are first examined by a joint committee drawn from both Houses of Parliament before completing their Parliamentary progress. The use of such a procedure depends on there being full consultation on the content of the Bill before it is introduced, and broad consensus on the contents. Until a draft Bill exists it is not possible to say whether these procedures will be suitable. Any such decision will be taken not by HMRC but rather by both Houses on the advice of the House Authorities.

### **Partial Regulatory Impact Assessment**

46. Annex A contains a Partial Regulatory Impact Assessment. This discusses the options considered for the scope of the review. It also gives some of the costs and benefits associated with each.

47. In time a series of annexes will be added to this initial assessment to show the cost and benefits for any changes which go beyond alignment and labelling. We have not done so for the changes shown in these draft clauses and discussed in Parts 3 and 4, but will do so as work develops further.

## Transposition Notes

48. Since November 2001 UK legislation enacting European legislation must be accompanied by a Transposition Note which explains how the Government has, or will, transpose the main elements of the relevant European Directive into UK law. We will consider this further as the clauses develop.

## Title of the Bill

49. We refer in places in the clauses and commentary to the working title for the Bill, which is the Administration of Taxes Act. No final decision has been taken on this.

## Views sought

50. **Comments are welcome on all or any of these rewritten clauses.** But there are some questions on which we should be particularly glad to receive views.

- We are interested in **views on the style and the structure** of the draft clauses. These have been written in a straightforward style, designed to be simpler for the reader to understand and interpret. This style is intended to improve on existing legislation by incorporating a more logical ordering of the material and other structural improvements. Plain language is used wherever possible. Examples of this can be found in clauses 1, 2 and 4, where we express the requirement to notify chargeability to tax as an obligation on someone who is “likely to be liable” to pay tax. A further example can be found in clause 62(1)(a), where the term “thinks” is used to encapsulate existing concepts of “discovers”, “best judgement” and “best of belief”. A fuller explanation can be found in the commentary accompanying these clauses.
- We **ask specific questions** on the clauses. These are numbered and shown in bold in the accompanying text in Part 3.
- We **welcome views on possible changes to the law**, which are numbered and highlighted in boxes in the accompanying text in Part 3 and summarised and discussed in Part 4.
- **We also welcome feedback** on the partial Regulatory Impact Assessment and in particular additional information on the cost and benefits to taxpayers of rewriting administrative legislation.
- Finally, HMRC, taxpayers and tax professionals have a common interest in making the administration of the tax system as simple, modern and efficient as possible. Law which is easier to understand is easier for taxpayers to comply with and for HMRC to administer. **So we not only welcome views on these clauses**

**but also any suggestions for further improvements to the administrative law governing the core tax regimes that this work may have triggered.**

### **Consultation Timetable**

**Please see page 3 of this document for details of how to comment.**

51. The consultation period will run for 12 weeks and the deadline for comments is Tuesday 20 February 2007. We will take all views received into account in the further development of a Bill. However our timetable and the need to continue progress on other areas means that early views, particularly on style and structure, would be extremely helpful.

## Part 3: Commentary on draft clauses

*Overview of Administration of Taxes draft clauses.*

Part 3 contains explanation and commentary on the draft clauses. The clauses published at this time are in five parts:

- Part 1: Notification and Registration (pages 13-29 below)
- Part 2: Returns to HMRC (pages 30-43)
- Part 3: Assessments by HMRC (pages 43-57)
- Part 4: Miscellaneous Procedural Matters (pages 57-58)
- Part 5: General (pages 58-59)

HMRC are reviewing the administrative provisions for ITSA, CTSA, VAT, PAYE & NICS. The current clauses focus on ITSA, CTSA & VAT – later consultations will contain more material relating to PAYE & NICS, and will cover claims, payment and repayment of tax, appeals, and other administrative matters.

These clauses aim to simplify and clarify current legislation, and align administrative provisions across the different taxes where this is possible. The draft clauses will be developed further, both in the light of comments received in response to this consultation and our ongoing internal work. Revised clauses will be published for further consultation.

We welcome comments on the draft clauses in general, and suggestions for further improvement and alignment. We have highlighted in bold minor drafting changes intended to reflect current practice and a series of numbered questions on which we particularly welcome views.

More significant changes to practice or policy are numbered and highlighted in boxed text. Each change is listed and discussed in Part 4.

### **Part 1 – NOTIFICATION AND REGISTRATION**

*Overview of Part 1*

1. This Part sets out the requirement on persons to notify HMRC when they are liable to income tax, capital gains tax or corporation tax, or liable to be registered for VAT, and the relevant time limits. Chapter 2 also sets out HMRC's obligations when persons are liable or eligible to be registered for VAT.

#### **CHAPTER 1: DIRECT TAX: NOTIFICATION**

*Overview of Chapter 1*

2. This Chapter relates to direct tax and contains the requirement to notify HMRC of liability to income tax, capital gains tax or corporation tax. There are separate clauses for each tax which re-write the current legislation in section 7 TMA, paragraph 2 of Schedule 18 FA 1998 and section 55 FA 2004.

3. The existing legislation covers both income tax and capital gains tax. The new clauses deal with each tax separately and this approach continues in the other Parts of the Act. We hope that this will improve clarity – there is no intention to move away from the current single return of income and gains to a system of separate returns (and self assessment) machinery for IT and CGT. So taxpayers should not see any difference in practice. And looking ahead, the Integrated Customer Management programme is developing a process for unified registration.
4. The current provisions impose penalties if the notification is not given. Penalties are within the remit of the Review of Powers, Deterrents and Safeguards but some of the existing penalties have been included here to give an indication of a possible structure. The current penalty regime may change, depending on the outcome of the Powers Review.

### **Clause 1: Income Tax**

*Origin: section 7(1)(3)(4)(5)(6)(7)(8) (part) TMA*

5. This clause contains the general obligation on a person to notify HMRC if they think they are likely to be liable to income tax. As now, a person does not need to notify if tax will be accounted for via PAYE, deduction at source etc.
6. *Subsection (1)* requires anyone who is likely to be liable to income tax for a tax year to notify HMRC. “Tax year” is defined in clause 90. It is the term used by Income Tax (Earnings and Pensions) Act 2003 and Income Tax (Trading and Other Income) Act 2005 to describe what TMA 1970 calls “the year of assessment”. “Likely to be liable” is a new formulation which expresses the existing obligation to notify chargeability in plain English: this phrase also brings the terminology into line with language used in ITEPA and ITTOIA. ITEPA and ITTOIA were prepared by the Tax Law Rewrite project<sup>3</sup>.

#### **Q1: We would be interested in views on the use of this phrase.**

7. *Subsection (2)* sets out the time limit for notifying HMRC.
8. *Subsection (3)* provides that anyone who has received a notice to file an income tax return before the time limit expires does not have to notify. Those already within ITSA do not need to notify for each tax year.
9. *Subsections (4)-(7)* set out further exceptions to the obligation to notify.
10. *Subsection (4)(a)* makes a minor change– see box below. This provides that where income has already been subject to deductions through PAYE, or where income is subject to deduction at source – for example, where a bank deducts income tax on interest payments – a person does not have an obligation to notify on account of that income as long as income tax liability has been met in full.

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<sup>3</sup> The Tax Law Rewrite project was set up in 1996 to rewrite UK direct tax legislation in clearer, simpler language.

### Change 1

**This change replaces the objective test in section 7(4) and (5) of TMA. Under section 7(4) and (5) of TMA a person is excepted from notifying chargeability where a benefit or expense “has been or will be” taken into account through PAYE. The new clause replaces this rule with a subjective test meaning that it would be sufficient for the taxpayer to have a “reasonable belief” that a benefit or expense has been or will be taken into account. This change reflects current practice but legislation will provide more certainty. See Part 4 for more detail.**

**We welcome comments on this change.**

11. *Subsection (5)* provides that where a person has sufficient personal allowances to reduce his income tax liability to nil there is no need to notify chargeability.
12. *Subsection (6)* provides that there is no need to notify where the income will not give rise to an income tax liability. Examples are compensation awards made under the Criminal Injuries Compensation Scheme or scholarship income.
13. *Subsection (7)* says that a person who has given notice for capital gains tax in relation to a tax year is not required to notify HMRC of chargeability to income tax. This is because both taxes are generally collected together.
14. *Subsection (8)* sets out the penalty for failure to notify.
15. *Subsection (9)* amplifies the meaning of “liable to income tax” in subsection (1).

### **Clause 2: Capital gains tax**

*Origin: section 7(1)(3)(4)(5)(6)(7)(8) (part) TMA*

16. This clause contains the general obligation on a person to notify HMRC if they think they are likely to be chargeable to capital gains tax.
17. *Subsection (1)* contains the general obligation on any person likely to be chargeable to capital gains tax to notify HMRC.
18. *Subsection (2)* sets out the time limit for notifying HMRC.
19. *Subsections (3) and (4)* provide that anyone who has received a notice to file a return for that tax year does not have to notify HMRC, whether the notice is in respect of capital gains tax or more generally. This means that people already within ITSA do not have to notify again each tax year.
20. *Subsection (5)* says that a person who has notified for income tax in relation to a tax year is not required to notify HMRC in respect of capital gains tax.

21. *Subsection (6)* sets out the penalty that applies when a person fails to notify.

**Q2: The phrase “likely to be” chargeable to capital gains tax is a new formulation. It largely aligns the language for capital gains tax notifications with income tax in clause 1 above, and corporation tax in clause 4 below. We consider that it has the same effect as existing legislation. We welcome comments on this phrase.**

***Clause 3: Corporation tax: first accounting period***

*Origin: section 55(1)(a)(b), (2)(e), (5)(b), FA 2004*

22. This clause requires a company to notify HMRC of their first accounting period.
23. *Subsection (1)* provides that when a company begins its first accounting period it must notify HMRC. Companies make a self assessment for an accounting period (rather than a tax year).
24. *Subsection (2)* provides that when a company comes back into the charge to corporation tax it must notify HMRC. This is designed to address less common circumstances such as when a company ceases trading but is not wound up. If, at some later date, the company is “revived” and starts in business again, there would be a requirement to notify under this subsection.
25. *Subsection (3)* sets out the time limit for notification.
26. *Subsection (4)* excludes unincorporated associations from the notification requirement because the obligation could be disproportionate in the case of clubs or similar bodies with small amounts of income.
27. *Subsection (5)* makes clear how the time limit in subsection (3) applies where the accounting period is less than 3 months.
28. *Subsection (6)* provides for a penalty to be applied when a company fails to notify. This will be linked to an eventual replacement for section 98 TMA (subject to the Powers Review conclusions) which has not yet been drafted.

***Clause 4: Corporation tax: periodic notice***

*Origin: paragraph 2 of Schedule 18, FA 1998*

29. This clause requires a company to notify HMRC when it is likely to be liable to corporation tax.

**Q3: “Likely to be liable” is a new formulation which is designed to express the existing obligation in plain English. As before, we would be interested in views on this phrase.**

30. *Subsection (1)* provides that a company must notify HMRC for each accounting period in which it is likely to be liable to corporation tax.

31. *Subsection (2)* sets out the time limit for notifying HMRC.
32. *Subsection (3)* provides that a company which has received a notice to file a company tax return does not have to notify HMRC. Therefore companies already within CTSA do not have to notify for each accounting period.
33. *Subsection (4)* sets out the penalty for failing to notify and how it is calculated.
34. *Subsection (5)* says that, when calculating the penalty, no account is taken of relief given where loans or advances are made to a participator in the company.
35. *Subsection (6)* is a minor change to the law that makes clear that a company which has given notice under Clause 3 does not also have to give notice under this clause for the same accounting period.

**Q4: This brings statute in line with existing operational practice. As such it is not expected to have any practical impact on taxpayers.**

36. *Subsection (7)* amplifies the meaning of being liable to corporation tax for the purposes of subsection (1).

#### **Clause 5: Trustees**

*Origin: section 7(2), TMA*

37. This clause sets out the notification requirement in relation to trustees.
38. *Subsection (1)* explains that the requirement to notify chargeability to income tax and capital gains tax in clauses 1 and 2 apply to a person who is liable as a trustee.
39. *Subsection (2)* will, when complete, cross refer to a requirement that the trustees of a trust or settlement file a return.

## CHAPTER 2: VAT REGISTRATION

### *Overview of Chapter 2*

40. This Chapter relates to VAT. These clauses rewrite the rules for VAT registration in respect of taxable supplies (Schedule 1 VATA), distance sales (Schedule 2) and intra EU acquisitions (Schedule 3).
41. As yet, the remaining Schedules 3A (Registration in respect of disposals of assets for which a VAT repayment is claimed) and 3B (Supply of electronic services in member states: special accounting scheme) have not been rewritten - the views received during consultation will help inform our consideration of this point.
42. These clauses restate the current provisions without changing their effect. They are differently arranged from the current law. Where VATA deals

with each particular sort of registration in a discrete schedule, these draft clauses focus on fundamental principles and key decision points. This cuts down on duplication. So the clauses start with the person's liability to be registered, then HMRC's obligations and powers with respect to registration, (including voluntary registration) and then cover cancellation, exemption, and notifying end of liability or eligibility.

43. If a person is liable to register under more than one provision, registration in respect of domestic taxable supplies takes precedence. A person who ceases to be liable under one provision may still have a liability under another provision. Much of the existing legislation deals with the interrelationship between the various types of registration and we think the new structure enables us to deal with this point in a more direct way. The clauses do not yet fully address all interaction points.

**Q5: We welcome comments on the approach adopted.**

*Liability to register: taxable supplies*

44. This is the first of three sections which set out the taxpayer's obligations in respect of VAT registration. This section covers taxable supplies, and is followed by sections covering EU supplies and acquisitions. The structure of each section is similar, setting out first when persons are liable to be registered, then the duration of that liability and finally the requirement to notify liability.

**Clause 6: Past taxable supplies**

*Origin: paragraphs 1(1)(2)(a)(3)(4)(7)(8)(9) of Schedule 1, VATA*

45. This clause sets out the liability to be registered when a person has made taxable supplies over the course of the last year which exceed the threshold or where there is the transfer of a going concern.
46. *Subsection (1)* says that a person who makes taxable supplies becomes liable to be registered for VAT at the end of a month if the value of those taxable supplies exceeds the threshold (£61,000<sup>4</sup>) in the year ending with that month (Year 1). This is what is generally known as the "backward look".
47. *Subsection (2)* says that there is no liability under subsection (1) if HMRC are satisfied that the values of the taxable supplies in the next year will not exceed the threshold (£59,000).
48. *Subsection (3)* provides for some taxable supplies to be ignored in working out the threshold in subsection (1) in certain circumstances. This will be where the taxable supplies in question were made when the person was VAT registered, the registration was cancelled (other than for non-registrability) and HMRC receive all the necessary information before cancellation.

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<sup>4</sup> All the monetary values used in this Chapter are based on the law as at November 2006.

49. *Subsection (4)* defines cancellation on grounds of non registrability for subsection (3). The effect of this is that taxable supplies do not count towards the threshold if they were made under a valid VAT registration. “Non registrability” is a new phrase here but the intention is to rewrite the current law without change.
50. *Subsection (5)* specifies certain supplies that are to be ignored when evaluating a person’s taxable supplies for the purposes of subsection (1).
51. *Subsection (6)* sets out how the test in subsection (1) is to be applied in the case of the transfer of a going concern to an unregistered person.

**Clause 7: Future taxable supplies**

*Origin: paragraphs 1(1)(b)(7)(8)(9) of Schedule 1, VATA*

52. This clause states that a person becomes liable to be registered if they expect to make taxable supplies over the next 30 days which will exceed the threshold.
53. *Subsection (1)* says that a person who makes taxable supplies become liable for registration if it appears that the taxable supplies in the next 30 days will exceed the threshold. This is what is known as the “forward look”.
54. *Subsection (2)* applies so that the types of supply which are not counted for the backward look are not counted here either.

**Clause 8: Artificial separation of business**

*Origin: paragraphs 1A(1)(2), 2(1)(2)(3)(4)(7)(8) of Schedule 1, VATA.*

55. This clause sets out an anti-avoidance measure which prevents persons splitting up their business to avoid VAT registration.
56. *Subsection (1)* allows the Commissioners to make a direction in order to prevent an artificial separation of business activities leading to VAT avoidance. They may direct that two or more specified persons are to be treated as a single taxable person and are registrable as such.
57. *Subsection (2)* sets out that the Commissioners must be satisfied on several matters before making a direction.
58. *Subsection (3)* says that financial, economic and organisational links must be considered in order to decide whether a separation of business activities is artificial.
59. *Subsection (4)* says that the Commissioners must give notice of the direction to those affected and *subsection (5)(a)-(f)* sets out the effects of a direction.
60. *Subsections (6) and (7)* allow the Commissioners to make supplementary directions where appropriate or to amend a direction to remove a person.

### **Clause 9: Duration of liability**

*Origin: paragraphs 1(6), 2(5), 3, 4(1)(2)(3)(4) of Schedule 1, VATA*

61. This clause sets out when persons who registered on the basis of their taxable supplies stop being liable to be registered.
62. *Subsection (1)* says that a person who was liable to register on the basis of past or future taxable supplies remains liable unless this section applies.
63. *Subsection (2)* says that persons cease to be liable if HMRC are satisfied that they have stopped making taxable supplies and are not liable to be registered on the basis of past or future taxable supplies.
64. *Subsection (3)* says that a person ceases to be liable if HMRC are satisfied that the value of taxable supplies made in the year coming will not exceed the threshold. But, under *subsection (4)*, subsection (3) does not apply if the drop in taxable supplies is due to a temporary or permanent cessation in trading.
65. *Subsection (5)* says that certain supplies are disregarded in working out the taxable supplies.
66. *Subsection (6)* says that a person who is both specified in a direction and registered in respect of supplies covered by that direction ceases to be liable to be registered once the direction takes effect. In such circumstances the supplies made by this person will be part of the new single taxable person's registration.

### **Clause 10: Notifying HMRC of new liability**

*Origin: paragraphs 5(1), 6(1), 7(1), Schedule 1, VATA*

67. This clause sets out the requirement to notify liability to register on the basis of taxable supplies or the transfer of a business and the time limits which apply.
68. *Subsection (1)–(3)* cover respectively a person who becomes liable to be registered in respect of past taxable supplies, the transfer of a business or future taxable supplies.

*Liability to register: EU supplies*

### **Clause 11: Interpretation: EU supplies**

*Origin: paragraph 10 of Schedule 2, VATA*

69. This clause defines "EU supplies" for the purposes of working out whether a person is required to register.
70. *Subsection (1)* defines "EU supply" as a supply of goods which satisfies the conditions set out in subsections (2)-(7). "EU supplies" is a new phrase in this context– the current legislation refers to a "relevant supply".

### **Clause 12: Past EU supplies**

*Origin: paragraph 1(1)(7) of Schedule 2, VATA*

71. This clause sets out the liability to be registered for a person making EU supplies which exceed the threshold in the course of a calendar year.
72. *Subsection (1)* says that a person who makes EU supplies becomes liable to be registered for VAT if the value of the supplies made in a year exceeds a threshold. This is a calendar year by virtue of *subsection (2)*.
73. *Subsection (3)* says that in working out a person's taxable supplies in *subsection (1)*, fiscal warehousing supplies under section 18 VATA are disregarded.

### **Clause 13: Supply treated as outside member State**

*Origin: paragraph 1(2)(7) of Schedule 2, VATA*

74. This clause sets out the requirement to register if a person makes supplies which are covered by a deemed location option which has altered the place of supply.
75. *Subsection (1)* says that a person who makes an EU supply which is subject to a deemed location option becomes liable to register. "Deemed location option" is a new phrase and *subsection (2)* defines "deemed location option" and "subject to" for this Chapter.
76. *Subsection (3)* qualifies when liability to register under *subsection (1)* applies.
77. *Subsection (4)* says that fiscal warehousing supplies are ignored in *subsection (1)*.

### **Clause 14: Dutiable supply**

*Origin: paragraph 1(3) of Schedule 2, VATA*

78. This clause sets out the requirement that a person who makes a supply involving excise goods and meets other conditions becomes liable to be registered.
79. *Subsection (1)* says that a person who makes a supply of goods becomes liable to register if the supply satisfies the conditions set out in *subsections (2)-(5)*.

### **Clause 15: Duration of liability**

*Origin: paragraph 2(1)(2) of Schedule 2, VATA*

80. This clause sets out when persons who registered on the basis of their EU supplies, supplies treated as outside a member state or dutiable supplies stop being liable to be registered.

81. *Subsection (1)* says that a person who becomes liable to register in respect of past EU supplies, supplies treated as outside member state and dutiable supplies) remains liable unless subsection (2) applies.
82. *Subsection (2)* says that a person ceases to be liable if the EU supplies made in the previous year did not exceed the threshold and HMRC are satisfied that the supplies made in the present year will not exceed the threshold. *Subsection (4)* defines “year” here as a calendar year.
83. *Subsection (3)* provides that a person remains liable to register while a deemed location option is still in force.

#### **Clause 16: Notifying HMRC of new liability**

*Origin: paragraph 3(1) of Schedule 3, VATA*

84. This clause requires persons who become liable to register on the basis of clauses 12-14 to notify HMRC within 30 days of the liability arising.

#### *Liability to register: EU acquisitions*

#### **Clause 17: Interpretation: EU acquisitions**

*Origin: paragraphs 3(1), 11 of Schedule 3, VATA*

85. This clause defines “EU acquisition” for the purposes of working out whether a person is required to register.
86. *Subsection (1)* defines “EU acquisition” for this chapter as an acquisition of goods from another member State which satisfies the condition set out in *subsections (2)-(5)*. EU acquisition is a new phrase designed to be more meaningful to the reader- the current law uses “relevant acquisition”.

#### **Clause 18: Past acquisitions**

*Origin: paragraph 1(1) of Schedule 3, VATA*

87. This clause sets out the liability to be registered if a person has made EU acquisitions which exceed a threshold during a calendar year
88. *Subsection (1)* says that a person who makes EU acquisitions becomes liable to register at the end of a month if the value of acquisitions in that year exceeds the threshold. *Subsection (2)* defines “year” in subsection (1) as a calendar year.
89. *Subsection (3)* says that in working out a person’s taxable supplies in subsection (1), fiscal warehousing supply under section 18 VATA are disregarded

#### **Clause 19: Future acquisitions**

*Origin: paragraph 1(2)(6) of Schedule 3, VATA*

90. This clause sets out the liability to be registered when a person expects to make EU acquisitions which exceed the threshold in the next 30 days.
91. *Subsection (1)* says that a person who makes EU acquisitions becomes liable to be registered for VAT on any day if there are reasonable grounds to believe that the acquisition in the next 30 days will exceed the threshold.
92. *Subsection (2)* says that in working out a person's taxable supplies in subsection (1), fiscal warehousing supplies are disregarded.

### **Clause 20: Duration of liability**

*Origin: paragraph 2(1) of Schedule 3, VATA*

93. This clause sets out when persons who registered on the basis of their EU acquisitions stop being liable to be registered.
94. *Subsection (1)* provides that a person who becomes liable to be registered on the basis of past or future acquisitions remains liable unless subsection (2) applies. Under *subsection (3)*, year here means a calendar year.
95. *Subsection (2)* says that a person ceases to be liable to be registered if EU acquisitions in the previous year did not exceed the threshold and HMRC are satisfied that EU acquisitions in the present year will not exceed the threshold.

### **Clause 21: Notifying HMRC of new liability**

*Origin: paragraph 3 of Schedule 3, VATA*

96. This clause sets out the requirements for a person who becomes liable to be registered on the basis of their EU acquisitions to notify HMRC and the time limits which apply.
97. *Subsection (1)* says that a person who becomes liable to be registered at the end of a month in respect of past acquisitions shall notify HMC within 30 days of the end of the month.
98. *Subsection (2)* says that a person who becomes liable to register in respect of future acquisitions following a transfer of a business shall notify HMRC within the 30 day period in which the liability arose.

## *Registration*

### **Clause 22: Compulsory registration**

*Origin: paragraphs 5(2), 6(2), 7(2) of Schedule 1, VATA*

99. This clause sets out the dates from which HMRC will register persons who are liable to be registered on the basis of their taxable supplies.

100. *Subsections (1)-(6)* set out the effective date of registration for persons liable to register under each of the various grounds for registration. This applies even if HMRC were not notified of liability to register. *Subsection (3)* contains a minor change. The present law, paragraph 6(2) Schedule 1, does not specifically mention the option to agree an early registration, unlike paragraph 5(2) of that schedule.

**Q6: This facility can only be to the taxpayer's advantage, so for consistency, these two positions have now been aligned. We welcome views.**

***Clause 23: Voluntary registration: taxable supplies***

*Origin: paragraphs 9, 10(1)(2)(3)(4) of Schedule 1, VATA*

101. This clause sets out how HMRC will act when a person requests voluntary registration in respect of taxable supplies and the date from which any such registration will be effective.
102. *Subsection (1)* says that this section applies where a person who is not liable to be registered requests to be registered by notice in writing to HMRC.
103. *Subsection (2)* says HMRC shall register the person if satisfied as to eligibility.
104. *Subsection (3)* specifies when the registration is treated as having effect.
105. *Subsection (4) and (5)* together allow for certain supplies by persons who belong in the UK to be treated as if they were taxable supplies. The effect is that persons who make those supplies and who belong in the UK can voluntarily register.

***Clause 24: Voluntary registration: EU supplies***

*Origin: paragraph 4(1)(2) of Schedule 2, VATA*

106. This clause sets how HMRC will consider a request for voluntary registration in respect of EU supplies and the date from which such registrations will be effective.
107. *Subsection (1)* says that this section applies where a person who is not liable to be registered applies for voluntary registration in writing to HMRC.
108. *Subsection (2)* says that HMRC may register the person if satisfied as to eligibility and *subsection (4)* sets out when registration is treated as taking effect.
109. *Subsection (3)* requires that a request must specify a date before which persons intend to begin making supplies.
110. *Subsection (5)* allows HMRC to impose conditions on registration and *subsection (6)* sets out the things that may be covered by conditions.

**Clause 25: Voluntary registration: EU acquisitions**

*Origin: paragraph 4(1)(2)(3), 5(2) of Schedule 3, VATA*

- 111. This clause sets out how HMRC may register persons who apply for voluntary registration in respect of EU acquisitions and the date from which such registrations will be effective.
- 112. *Subsection (1)* says that this section applies where a person who is not liable to be registered applies for voluntary registration in writing to HMRC.
- 113. *Subsection (2)* says that HMRC shall register the person if satisfied that the person makes EU acquisitions and *subsection (4)* says when the registration takes effect.
- 114. *Subsection (3)* says that HMRC may register the person if satisfied that the person intends to make EU acquisitions before the date given in the request
- 115. *Subsection (5)* says that registration under subsection (3) is treated as taking effect on an agreed day and may be subject to conditions imposed by HMRC. *Subsection (6)* sets out the things that may be covered by conditions
- 116. *Subsection (7)* requires a person registered under subsection (3) to notify HMRC of the date on which the first EU acquisition is made after registration and *subsection (8)* specifies the time limit for such notice.

**Clause 26: The register**

*Origin: section 3(4), (5), VATA*

- 117. This clause describes the VAT register and allows HMRC to make regulations about its contents.
- 118. *Subsection (1)* requires HMRC to keep a single register of VAT registrations.
- 119. *Subsection (2)* allows the Commissioners to make regulations about the information on the register and correction of information in it (currently in Part II VAT Regulations 1995 SI 1995/2518).

*Cancellation*

**Clause 27: Voluntary cancellation**

*Origin: paragraphs 13(1)(2) of Schedule 1, VATA*

- 120. This clause sets out how HMRC will act when taxpayers ask to have a VAT registration cancelled and the date from which cancellation will be effective.

121. *Subsection (1)* says that this clause applies where a registered person asks HMRC for cancellation and satisfies them that there is no liability to register.
122. *Subsection (2)* says that HMRC shall cancel the registration and *subsection (3)* specifies when the cancellation is effective.

**Clause 28: Compulsory cancellation**

*Origin: paragraphs 13(3)(8) of Schedule 1, 6(1)(2)(3) of Schedule 2, 7(3) of Schedule 3, VATA*

123. This clause sets out when HMRC will cancel a VAT registration cancelled and the date from which cancellation will be effective.
124. *Subsection (1)* says that this section applies where HMRC are satisfied that a registered person is no longer liable or entitled to be registered or was not liable or entitled to be registered at registration.
125. *Subsection (2)* says that HMRC shall cancel the registration and *subsections (3) and (4)* set out the effect of cancellations under *subsection (1)*.
126. *Subsection (5)* is a marker in due course to consider paragraph 18 Schedule 3B VATA.
127. *Subsection (6) and (7)* set out HMRC's powers of cancellation in respect of voluntary registration in respect of EU supplies or EU acquisitions in the case of non-compliance.
128. *Subsection (8)* specifies the date on which the cancellation will take effect and *subsection (9)* extends the period of registration where the cancellation involves a person who has made a deemed location option.

*Exemption*

**Clause 29: Request**

*Origin: paragraphs 14(1) of Schedule 1, 8(1) Schedule 3 VATA*

129. This clause allows the Commissioners to exempt a person from registration if certain conditions are met.
130. *Subsection (1)* says that the Commissioners may exempt a person in certain circumstances.
131. *Subsection (2)* allows the Commissioners to exempt a person who makes or intends to make EU acquisitions in certain circumstances.

**Clause 30: Duration**

*Origin: paragraph 14(1) of Schedule 1, VATA*

132. This clause provides that an exemption from registration continues until the request is withdrawn or the Commissioners revoke the exemption.

**Clause 31: Change of circumstance: taxable supplies**

*Origin: paragraph 14(2)(3) of Schedule 1, VATA*

133. This clause provides that a person must notify HMRC of certain changes in taxable supplies.
134. *Subsection (1)* requires an exempted person to notify HMRC of changes in supplies and *subsections (2) and (3)* specify when such notice must be given.

**Clause 32: Change of circumstance: EU acquisition**

*Origin: paragraph 8(2) of Schedule 3, VATA*

135. This clause sets out that a person must notify HMRC of certain EU acquisitions.
136. *Subsection (1)* requires an exempted person to notify HMRC of an EU acquisition which, if it were a taxable supply, would be chargeable to VAT and would not be zero-rated. *Subsection (2)* sets out the time limit for notification.

*Notifying end of liability or eligibility*

**Clause 33: Taxable supplies**

*Origin: paragraphs 11, 12, (part) of Schedule 1, VATA*

137. This clause sets out that a person must notify HMRC of an intention to stop making taxable supplies and when they must notify.
138. *Subsection (1)* says that a registered person who stops making taxable supplies or intending to do so must notify HMRC within 30 days of that date.
139. *Subsection (2)* says that subsection (1) does not apply to a person who remains liable or entitled to be registered.
140. *Subsection (3)* gives a special meaning to taxable supplies in subsection (1) for a person who has voluntarily registered.
141. *Subsection (4)* allows that a person who ceases to be liable to be registered may notify HMRC.

**Clause 34: EU supplies and acquisitions**

*Origin: paragraphs 5 of Schedule 2, and 5 of Schedule 3, VATA*

142. This clause sets out that a person must notify HMRC of ceasing to be liable to register in respect of EU supplies or acquisitions when they must notify.
143. *Subsection (1) and (3)* sets out the time limits within which for a registered person who stops being liable to be registered in respect of EU supplies or acquisitions, or whose deemed location option ceases to have effect must notify HMRC.
144. *Subsection (2)* does not apply to a person who remains liable or entitled to be registered for VAT under this Chapter.

**Clause 35: Eligibility**

*Origin paragraphs 11, 12 (part) of Schedule 1, VATA*

145. This clause provides that a person who ceases to be eligible to be registered may notify HMRC.

*General*

**Clause 36: Supply**

*Origin: paragraphs 19 of Schedule 1, 1(6) of Schedule 2, 1(5) of Schedule 3, VATA*

146. This clause defines “supply” in this Chapter.

**Clause 37: Value of supply or acquisition**

*Origin: paragraph 16 of Schedule 1, VATA*

147. This clause says that when determining the value of a supply for the purposes of the various thresholds in Chapter 2 it should be assumed that VAT is chargeable either in the UK or another member State.

**Clause 38: Monetary amounts**

*Origin: paragraph 15 of Schedule 1, paragraph 8 of Schedule 2, paragraph 9 of Schedule 3, VATA*

148. This clause allows the Treasury to increase the amounts specified in this Chapter by means of an order. This allows for the Statutory instruments which are used to increase the VAT threshold e.g. SI 2006/876.

## CHAPTER 3: PROCEDURE, ETC

### *Overview of Chapter 3*

149. This Chapter covers procedural matters relating to registration and notification. It contains a unified regulation-making power which allows HMRC to specify the form and manner in which notification of chargeability or liability to registration is made, and the information that HMRC can require a taxpayer to provide when they notify.
150. This brings together and clarifies a number of individual powers contained in direct and indirect tax legislation. It gives HMRC the ability to specify the forms of notification that are currently issued by HMRC, such as VAT registration forms, but will also enable a future move to a unified registration system which would allow taxpayers to manage multiple registrations for different HMRC taxes and duties through a single portal.

### **Clause 39: Notices**

*Origin: section 55(2)(3)(part), FA 2004, section 113(1) TMA, paragraph 17 of Schedule 1, paragraph 9 of Schedule 2, paragraph 10 of Schedule 3 (part), VATA.*

151. This clause provides generic powers to make regulations about notices of chargeability or registration forms and their content.
152. *Subsection (1)* gives the Commissioners of Revenue & Customs a regulation-making power in relation to notices for both direct tax and VAT.
153. *Subsection (2)* limits the information that a notice can require to that which is necessary or useful for specified purposes.
154. *Subsection (3)* makes clear that this provision relates only to notices or notifications under Chapters 1 & 2.

### **Change 2**

**This change brings together and clarifies existing statutory powers (for income tax, capital gains tax and corporation tax) that allow HMRC to lay regulations specifying the form of notices. The new provision makes explicit that a notice can require certain information to be provided. This was explicit in Schedule 1 of VATA and for corporation tax notifications under section 55 of FA 2004 but not in section 113(1) of TMA. There is more detail on this change below in Part 4.**

**We welcome comments on this change.**

## Part 2 – Returns to HMRC

### Overview of Part 2

155. This Part rewrites the statutory provisions relating to returns and self assessments for income tax, capital gains tax, corporation tax and VAT.
156. The clauses in this Part define:
- the nature of returns and self assessment;
  - the scope and content of a return;
  - a deficient return for the purpose of this Act.
157. The clauses include the powers for HMRC to:
- amend and correct a return in certain circumstances;
  - allow the use of provisional figures in a return.

### **Clause 40: Nature of returns**

*Origin: sections 8(1), 12AA(1) TMA, paragraph 1, 3(a) & (b), 4 of Schedule 18 FA 1998, section 25 (part) VATA, new drafting.*

158. This clause introduces the term ‘direct tax’ and a definition of a ‘return’. There are two definitions of a return, one for ‘direct tax’ and one for VAT. This provision attempts to frame a definition for clarity and consistency but in either case presents no change to the policy or form of a return.
159. We aim to refine the structure of the provision to take into account section 8A TMA (trustees, beneficiaries, settlors). This will be dealt with in a later tranche of draft clauses.
160. A direct tax return is a statement of information for use by HMRC to determine:
- whether the person is liable to tax (subsection 2(a));
  - the amount of any liability to tax in respect of the person or in respect of anything done wholly or partly by the person (2(b));
  - the amount payable in respect of a liability specified in paragraph (b) (2(c)), or
  - whether an amount paid in respect of a liability specified in paragraph (b) is repayable by HMRC (2(d)).
161. The reference in subsection (2)(b) to ‘anything owned or done wholly or partly by a person’ covers partners, who are treated under self assessment as if their share of the partnership income, losses, and consideration for property disposals are carried on as a sole trader.
162. Information in this context includes ‘documents’ (see clause 93 and clause 94).
163. *Subsection (3)* states that ‘tax’ in subsection (2) includes income tax, corporation tax, and capital gains tax.

164. *Subsection (4)* specifies that the reference to corporation tax in subsection (3) includes amounts, which are assessable or chargeable as if they were corporation tax:
- tax due on a loan or advance made to participators (tax on company loans) (S419(1) ICTA 1988);
  - Supplementary charges in respect of ring fence trades (s501A(1) ICTA 1988); and
  - tax due under the controlled foreign company rules (S747(4)(a) ICTA 1988).
165. *Subsection (5)* defines a VAT return.

**Q7: This provision introduces a generic definition of a direct tax return (for income tax and capital gains tax and corporation tax) and of a VAT return. We welcome views on this approach and whether the definitions achieve the aim of providing clarity.**

***Clause 41: Notice***

*Origin: sections 8(1), 12AA (1) TMA, paragraph 3 of Schedule 18 of FA 1998, paragraph 2 of Schedule 11, VATA.*

166. This clause sets out the requirement for HMRC to issue a notice requiring a person to make a return. The clause separates the different taxes for clarity but retains the current law approach for notification of the requirement to complete returns. A single notice would be issued in respect of income tax and capital gains tax. A single notice would be issued in respect of corporation tax.
167. *Subsection (1)* provides that HMRC may give notice requiring a person to deliver a return in connection with income tax, capital gains tax and corporation tax.
168. *Subsection (2)* provides that an income or capital gains tax notice must specify a tax year to which it relates.
169. *Subsection (3)* provides that a notice requiring a corporation tax return must specify the period to which it relates.
170. *Subsection (4)* is a marker power replicating paragraph 2 of Schedule 11 VATA 1994 which provides that HMRC may make regulations under which returns are required to be made.

**This brings together and clarifies the existing statutory powers that allow HMRC to give notice requiring a return in connection with income tax and capital gains tax, corporation tax and VAT. It is a consolidation of existing provisions and imposes no new obligation on taxpayers.**

***Clause 42: Form and content***

*Origin: sections 8(1)(3)(4), 12AA (1)(6)(7)(8)(9)(10) TMA, paragraph 3 of Schedule 18 FA 1998. VAT: New drafting*

171. This clause provides for HMRC to determine the scope and content of the return, either in regulations or in return notices, or both.
172. *Subsection (1)* grants the Commissioners of Revenue and Customs a regulation making power allowing them to specify:
- the form a return should take,
  - the content of a return, and
  - the manner in which a return may be issued.
173. *Subsection (2)* provides that a notice under clause 41 may prescribe the form and content of the required return. Requirements set out in a return notice may refer to regulations or may supplement them.
174. *Subsection (3)* provides that regulations and a notice issued under clause 41 may require a return to include specified information. This enables HMRC to require information such as accounts, statements, documents and reports relating to information contained in the return and relevant to the person's tax liability. References to information in this Act include 'documents' - see clauses 93 and 94
175. *Subsection (4)* provides that a single document may contain both capital gains tax and income tax information. The reference to information in this context refers back to the definition of a return in clause 40(2).

**Q8: This brings together and clarifies the existing statutory powers (in sections 8, 12AA TMA 1970 and paragraph 3 of Schedule 18 FA 1998 for income tax and capital gains tax, and corporation tax) and introduces a new provision for VAT that allows HMRC to lay regulations specifying the form of notices. The new provision makes explicit that a notice can require certain information to be provided. We welcome views on this approach.**

***Clause 43: Period covered by return***

*Origin: section 8(1) part, 12AA (1) part TMA, paragraph 5 of Schedule 18 FA 1998*

176. The period for which a return is required is different for ITSA, CTSA and VAT. For direct taxes the differences are a result of the different basis periods. This clause sets out scheme-specific requirements for income tax and capital gains tax and corporation tax. VAT return periods will be dealt with in a later tranche of clauses.
177. *Subsection (1)* provides that an income tax return made in response to a notice under clause 41(1)(a) must deal with matters relating to the tax year specified in the notice.
178. *Subsection (2)* mirrors the provision in subsection (1) for capital gains tax for clarity.
179. *Subsection (3)* provides for corporation tax returns. Where HMRC has issued a notice under clause 41(1)(c) specifying a period which will be covered by the return, subsections (3)(a) and (3)(b) clarify how the rules

are to be applied when the return period spans more than one accounting period and when an accounting period begins during the return period. Subsection (3)(c) states that a company which was not liable to corporation tax at any time in the period (for example, because it was dormant) must file a return for the period. Subsection (3)(d) covers cases where a company accounting period begins before, or ends during or at the same time as, the period shown on the return. In such cases, no return is required for that period.

180. *Subsection (4)* provides that a company is within the charge to corporation tax in respect of a chargeable period if, at any time in the period, it owns an asset on which a chargeable gain could arise, or the company receives or becomes entitled to income, or it incurs an expense, or does anything else, with a view to producing income or capital gains.
181. **This brings together and clarifies existing statutory provisions governing the period covered by a return. It is a consolidation of existing provisions and imposes no new obligation on taxpayers.**

***Clause 44: Declaration of accuracy***

*Origin: sections 8(2), 12AA(6) TMA, paragraph 3(3) of Schedule 18 FA 1998, Regulation 25(1) SI 1995/2518, new drafting.*

182. This clause sets out the requirement for every return to include a declaration of accuracy by the person making the return. It aligns the existing direct tax and VAT declarations that returns are 'correct and complete' and 'true and complete' respectively. It introduces the ability for a third party to agree with the taxpayer to whom the return relates that they may sign the declaration.
183. *Subsection (1)* requires that a return must include a declaration, by the person to whom the return relates, that to the best of their knowledge the information provided is complete and accurate.
184. *Subsection (2)* recognises that the person completing the declaration does not have to be the taxpayer but may be a third party who has the consent of the person to whom the return relates, to complete the declaration.
185. *Subsection (2)(a)* provides that the third party must make a declaration that the information given is complete and accurate.
186. *Subsection (2)(b)* provides that the third party must also make a declaration that the person to whom the return relates reasonably believes that it is complete and accurate.
187. *Subsection (3)* provides that the person to whom the return relates shall be taken to have agreed to the third party providing a declaration under subsection (2)(b) unless the contrary can be proved. This means that in the event of a dispute, the burden of proof will rest with the taxpayer to show that the return was sent without his knowledge or agreement.

### Change 3

This change brings statute in line with operational practice and aims to reflect a pragmatic approach to the submission of a return. It allows an authorised third party to complete a declaration on a return on behalf of the person to whom the return relates. This change retains the present law that the responsibility for a return being complete and accurate rests with the taxpayer even if it is signed off by a third party.

We would welcome views on the change to the declaration provision.

### *Timing*

#### **Clause 45: Income tax**

*Origin: section 8(1)(a), 8(1A), TMA 1970*

188. This clause provides the time limits for filing an income tax return. These are either 31 January following the tax year to which the return relates or, if the notice is issued late (after 31 October following the tax year to which the return relates) three months from the day on which the notice is given. Partnerships are highlighted separately at clause 61.

#### **Clause 46: Capital gains tax**

*Origin: section 8(1)(a), 8(1A), TMA*

189. This clause mirrors the income tax time limits in clause 45.

#### **Clause 47: Corporation tax**

*Origin: paragraph 14 of Schedule 18 FA 1998*

190. This clause provides that the company tax return must be delivered by the latest of the following dates-

- (1a) three months from the date on which the notice was issued;
- (1b) twelve months from the end of the period for which the return is made; and
- (1c)(i) where the company makes up its accounts for a period not exceeding eighteen months, twelve months from the end of that period;
- (1c)(ii) If the company makes up its accounts for a period exceeding eighteen months, thirty months from the beginning of that period.

191. *Subsection (2)* defines 'relevant period of account' in subsection (1)(c) as the period for which the company makes up its accounts (subsection (2)(a) and during which the last day of the accounting period to which the return relates falls (subsection (2)(b)).

### **Clause 48: VAT**

*Origin: paragraph 2(part) of Schedule 11 VATA*

192. This provides for continuation of the regulation-making power in Schedule 11 VATA to set out time limits for delivering returns.

### **Clause 49: Filing date**

*Origin: sections 8(1A), 12(AA)(5) TMA, paragraph 5 of Schedule 18 FA 1998.*

*VAT: new drafting*

193. The last date on which a return may be delivered in accordance with clauses 45-48 is referred to as the 'filing date' for the return.

### **Clause 50: Duty to make a self-assessment**

*Origin: sections 9(1)(a)(b)(2) TMA, paragraph 7 of Schedule 18 FA 1998*

194. The concept of self-assessment within direct tax requires that most returns must include a self-assessment of personal and or company liability. This clause sets out the obligation on taxpayers to provide a self-assessment and the exceptions to this obligation.
195. *Subsection (1)* provides that a return made in response to a notice under clause 41 must include a self assessment.
196. *Subsection (2)* provides that a taxpayer need not complete a self-assessment if the return in connection with income tax or capital gains tax, is delivered to HMRC before 30 September following the tax year to which the return relates (subsection (2)(a)) or, where the notice is given after 31 July following the tax year to which the return relates, within two months of the date on which the notice is issued (subsection (2)(b)).
197. **This brings together and clarifies existing statutory provisions governing the requirement for an income and capital gains tax return and company tax return to include a self assessment. It is a consolidation of existing provisions and imposes no new obligation on taxpayers.**

### **Clause 51: Nature of self assessment**

*Origin: sections 9(1)(a)(b) (1A) TMA, paragraph 7(1) (a)(b) of Schedule 18 FA 1998.*

198. This clause defines a self-assessment for direct tax and sets out what must be included in the self-assessment.
199. *Subsection (1)* provides the meaning of a self-assessment as an assessment by a person in response to a notice under clause 41. The assessment must include amounts for which the person is liable to tax (1(a)) and the amounts payable in respect of that liability (1(b)).
200. *Subsection (2)* clarifies that, for the purposes of subsection (1), liability is determined after relevant reliefs and allowances ((2)(a)) and amounts

payable are determined having regard to any income tax deducted at source, payments on account, and any tax credits on company distributions ((2)(b)).

201. *Subsection (2)(c)* provides that 'tax' means the tax in connection with which the return was originally issued (income tax and capital gains tax, or corporation tax).
202. *Subsection (3)(a)* specifies that the figures and calculations required to be shown for an income tax return are those set out in clause 52, and *(3)(b)* states that the company tax return must include the figures and calculations listed in clause 53.
203. *Subsection (4)(a)* provides that the reference to an 'amount' in subsection (1) includes nil and a negative figure. *Subsection (4)(b)* makes explicit that liability to tax includes entitlement to a repayment and amount payable includes an amount to be repaid or credited.
204. **This provision, and those immediately following, clarify existing statutory provisions defining a direct tax self assessment. These provisions will not impose new obligations on taxpayers. Clause 53 below restates paragraph 8 to Schedule 18, FA 1998. Clause 52 below builds on section 9 TMA 1970 and is intended to clarify the principal steps of an income tax self assessment calculation in tabular form. We shall consider developing Clause 52 further to take into account Capital Gains computations informed by views on the usefulness of this table.**

**Q9: The purpose of these revisions is to set out clearly the principles underpinning the completion of a self-assessment return. We welcome views.**

### ***Clause 52: Income tax calculations***

*Origin: New drafting*

205. This clause seeks to make clear the basis on which information is required in a return. It follows the steps in the calculation of income tax liability as set out in clause 23 of the draft Income Tax Bill. The draft Income Tax Bill has been prepared by the Tax Law Rewrite Project. A copy is available on the HMRC website at <http://www.hmrc.gov.uk/rewrite/index.htm> under the heading Bill 4. Subject to parliamentary approval the draft Income Tax Bill will come into force on 6 April 2007 and have effect for the tax year 2007-08. The draft Bill will, upon enactment, be known as the Income Tax Act 2007. This timetable means it will be the substantive law when the Administration of Taxes Bill comes into effect.
206. Clause 51(1) provides that a self assessment must include amounts for which a person is liable to tax and the amounts payable in respect of that liability. Rows 1 to 3 of the table break down the components in relation to the liability to tax. Rows 4 to 8 of the table breakdown the components in relation to the calculation of the amounts payable.
207. Row 1 requires the total income for the tax year and row 2 the result of deducting the allowable reliefs from total income. Row 3 requires the net

income (which is the total income less allowable deductions.). Row 4 requires a subtotal of the net income less personal allowances relievable under Chapter 2, Part 3 of the draft Bill. Row 5 requires identification of the tax chargeable at each applicable rate. Row 6 requires a total of the tax chargeable at step 5. Row 7 requires the difference between the amount of row 6 less any relevant income tax reducing reliefs. Row 8 requires the amount of row 7 plus any additional amounts of tax.

208. Some of these steps are explicit in SA return forms. For example trading losses set against other income (Box 3.85 of the self-employment pages) is reflected in step 2. There are however, other amounts that are implicit in the return, for example 'the sum of' step would be implicit in an online filing application. This clause seeks to make clear the basis on which information is required in a return following on from the calculation of income tax liability as set out in draft Income Tax Bill clause 23.
209. Subsection (2) defines the meaning of terms in the table with reference to clause 23 of the draft Income Tax Bill.

#### **Change 4**

**This change introduces a table showing the figures and steps required by clause 51. It is intended to be an aid in completing the tax return setting out the principal steps to be included by reference to clause 23 of the draft Income Tax Bill.**

**We shall consider developing Clause 52 further to take into account Capital Gains computations informed by views on the usefulness of this table. We will develop this clause in parallel with the programme of work proposed to improve the main self assessment tax return and associated guides, announced in HMRC's publication '*Delivering a new relationship with business*'. This aims to produce a main tax return which will be simpler and more streamlined than at present, with fewer questions overall and a reduced number of self employed pages for those with an annual turnover below £40,000. Clause 52 states the steps required in arriving at the self assessment but the tax calculation guide will provide the necessary detailed calculation.**

#### ***Clause 53: Corporation tax calculations***

*Origins: paragraph 8 of Schedule 18 FA 1998*

210. This clause provides the rules for calculating the tax payable for an accounting period for the purpose of self assessment: the resulting amount is the amount payable for that accounting period.
211. Rows 1 & 2 Take the profit chargeable to Corporation tax and apply the appropriate rates of tax. 'The company's profits' means the company's income and chargeable gains. The figure provides the corporation tax chargeable.
212. Rows 3, 4, 5, 6, 7. Deduct from the figure of corporation tax chargeable at row 2: any reduction due for small companies relief, any investment relief under the corporate venturing scheme, any community investment tax

relief, any double taxation relief, any Advance Corporation Tax<sup>5</sup> (ACT) due for set off. Each of these steps requires a sub total: these are totalled and deducted as a single figure.

213. Rows 8, 9, 10, 11. Add any amounts assessable or chargeable - tax due on a loan by a close company to a participator, any supplementary charge in respect of ring fence trades, tax on profits of a controlled foreign company. The result of rows 8, 9 and 10 is then added to the single figure of row 7 to produce a single figure for row 11.
214. Rows 12, 13, 14. Deduct amounts to be set off against the company's overall tax liability for that period – any income tax deducted at source from income included in the computation, any ACT paid in respect of foreign income dividends paid before April 1999. The sub total of rows 12 and 13 are totalled and deducted from the single figure in row 11.
215. **This clause rewrites the existing statutory provisions in paragraph 8 of Schedule 18 FA 1998. It imposes no new obligations on taxpayers.**

***Clause 54: Tax charged on scheme administrator***

*Origin: section 9(1A) TMA*

216. This clause applies only to income tax and excludes from the self-assessment calculation specific tax charges which arise on the administrator of a pension scheme. These are detailed in subsections (a),(b) and (c).

***Clause 55: Tax treated as paid***

*Origin: section 9(1) TMA*

217. This clause applies only to income tax and rewrites section 9 (1) TMA 1970 which provides that tax treated as deducted or paid in respect of certain specified provisions will not be repayable as a consequence of the self-assessment provisions:
- Foreign income dividends (55(a))
  - Non qualifying distributions (55(b))
  - Stock dividends from UK resident companies (55(c))
  - Release of a close company loan (55(d))
  - Certain gains on insurance policies (55(e))

***Clause 56: Correction by HMRC: direct tax***

*Origin: sections 9ZB, 12ABB TMA, paragraph 16 of Schedule 18 FA 1998, new drafting.*

218. This clause sets out the powers available for HMRC to correct direct tax returns in respect of certain errors. VAT regulations dealing with correction of errors in a return will form part of a later tranche of draft clauses.

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<sup>5</sup> Abolished in FA 1998

219. *Subsection (1)* provides that this provision applies only to income and capital gains tax and corporation tax.
220. *Subsection (2)* enables HMRC to correct errors in personal, partnership and company tax returns.
221. *Subsection (3)* introduces a definition of ‘error’. Errors can be ‘typographical’ or ‘mathematical’.
222. *Subsection (3)(c)* provides that HMRC may correct information that because of other information in their possession is recorded erroneously.
223. *Subsection (4)* provides that HMRC may make a correction within 9 months of the delivery of a return ((4)(a)) or where the return has been amended by the taxpayer within 9 months of that amendment ((4)(b)).
224. *Subsection (5)* provides that where HMRC correct a return they will notify the person who made it. Partners’ correction notices are dealt with in clause 61(10).
225. *Subsection (6)* provides that a person has the right to reject the correction by giving notice within 30 days for income and capital gains tax and 3 months for corporation tax, of the issue of the correction notice.

**Q10: We would welcome views on whether there is scope for greater alignment of time limits for return corrections by HMRC across income and capital gains tax and corporation tax.**

226. *Subsection (7)* provides that a rejected correction shall be treated as never having had effect.

#### **Change 5**

**This change brings together existing statutory provisions and introduces a definition of ‘error’ for income tax and capital gains tax and corporation tax. Subsection (3)(c) is a new provision which brings statute into line with existing operational practice in correcting minor errors without the need for formal enquiry procedures. This is intended to reduce administrative costs for both taxpayers and HMRC.**

**We welcome views on this change.**

#### **Clause 57: Amendment**

*Origin: sections 9ZA, 12ABA TMA 1970, paragraph 15 of Schedule 18 FA 1998*

227. This clause provides for returns to be amended by taxpayers. It also provides that a person may act on behalf of another person in relation to the submission of returns.
228. *Subsection (2)* provides that an amendment must be made by notice. The clause provides prescription powers for information in support of an amendment should it be required.

229. *Subsection (3)(a)* provides that an amendment must be made within 12 months of the filing date. The time limit in this and preceding sections applies to direct tax return amendments only.
230. *Subsection (3)(b)* provides that a return can be amended while an enquiry into that return is in progress. As regards scope of the enquiry, these will be included in clauses concerning enquiry procedures.
231. *Subsection (4)* provides that if a return is made by a company for a period which subsequently proves not to be an accounting period, the amendment can be made within 12 months after what would have been the filing date on the basis of the dates the company had wrongly assumed for its accounting period.

## Change 6

**This change brings together existing provisions. It brings statute into line with existing operational practice by allowing a third party to make an amendment to a return. This is intended to reduce administrative costs for both taxpayers and HMRC.**

**We welcome views on this change.**

### ***Clause 58: Deficient returns***

*Origin: New drafting*

232. This clause introduces the term 'deficient' to describe a return that does not satisfy provisions set out in this Part. This provision does not apply to incorrect or unsatisfactory returns. A deficient return is, for example a return form that is unsigned and will therefore be returned to the taxpayer to rectify. It may also be a return form with empty box entries which make calculation of the tax liability impossible. The aim is to allow for a more pragmatic approach to the delivery of returns.
233. This clause currently applies to VAT but may be affected by the development of the correction or error regulations referred to at paragraph 223. This clause will be subject to change and the revised provision will be published in a later tranche of clauses.
234. *Subsection (1)* provides that if a return does not satisfy a requirement of this Part it shall not be treated as a return.
235. *Subsection (2)* provides that subsection (1) does not apply if the 'deficiency' is removed by way of a correction as provided by clause 56.
236. *Subsection (3)* provides that subsection (1) does not apply if the 'deficiency' is removed by way of an amendment as provided by clause 57. If an amendment removes a deficiency then the return is treated as having been delivered when the amendment is made.

## Change 7

**This introduces a new provision that a return which does not satisfy requirements in Part 2 of the Bill shall not be treated as a return. It is aimed at building on the clarification provided by the introduction of a definition of a return and the meaning of self assessment. The clause seeks to provide a pragmatic approach to the delivery of returns. We do not expect more returns to be sent back than under the existing practice.**

**We welcome comments on this change.**

### **Clause 59: Provisional figures**

*Origin: New drafting, Regulations 28/29(3) SI 1995/2518*

237. This is a new provision for income tax and capital gains tax, and corporation tax. It largely restates the existing legal provisions for VAT.
238. This clause allows the use of provisional figures in a return. This recognises and reflects commercial reality when there will be occasions when some information cannot be finalised or is not available in advance of the filing date.
239. For direct tax HMRC guidance states that a return containing a provisional figure will be accepted, provided that the figure is reasonable, taking account of all available information, and is identified as provisional. In practice an explanation is required as to why the final figure is not available, that all reasonable steps have been taken to obtain it and an approximate date on which it is expected to be available.
240. VAT has 'estimation' provisions (Regs 28/29(3) SI 1995/2518) in that a business may estimate a part of the output or input tax if they can satisfy HMRC that they are unable to account for correct amounts in the current VAT period (because for example due to the loss or destruction of records).
241. *Subsection (1)* provides that where an amount is not known when a return is made, provisional figures may be used provided that conditions 1 to 5 are complied with. Provisional figure here means a best estimate having regard to data available (*subsection (2)*).
242. The first condition is that all reasonable steps have been taken to obtain final figures (*subsection (3)*). The second condition is that an explanation of why the final figures are not available is submitted with the return (*subsection (4)*). The third condition requires that an estimate of when the final figure will be available (*subsection (5)*). The fourth condition requires that the provisional figure is based on all information available and is reasonable (*subsection (6)*). Condition 5 only applies to VAT returns and requires that agreement for estimated figures and the method of calculation is obtained before making the return.
243. *Subsection (8)* provides that where a provisional figure is used in a return, the actual figure or any change in the return required to reflect the actual

figure must be supplied to HMRC as soon as practicable. This will need to incorporate a VAT variation as the current conditions require that the correct figures are brought to account in the next or next but one prescribed accounting period.

### **Change 8**

**This change introduces a new provision which provides for the use of provisional figures in a return for income tax and capital gains tax and corporation tax. It sets out the conditions necessary to comply with the provision and clarifies the existing VAT estimation provisions. The change brings statute into line with existing operational practice and seeks to reflect a pragmatic approach to the completion of returns.**

**We welcome comments on this change, and also views on the scope for further alignment.**

#### **Clause 60: Agents**

*Origin: New drafting*

244. This is a new provision which provides that a return may be made by the person to whom it relates or a person authorised to act on behalf of the person to whom the return relates. Further consideration is being given to having propositions about agency for the whole Bill. This will be published in a later tranche of draft clauses.

#### **Clause 61: Partnerships**

*Origin: sections 12AA (1)(2)(3)(5)(11)(12)(13), 12AB, 12ABB (5) (6) TMA*

245. This clause sets out the returns requirements relating to direct tax partnerships. It provides that a notice under clause 41 may be issued to a partnership carrying on a business (*subsection (1)*).

246. *Subsection (2)* provides that any partner approved for the purpose by HMRC may respond to the notice.

247. *Subsection (3)* provides that if a notice is issued to a partnership the following provisions apply.

248. *Subsection (4)* provides that a partnership return must not include a self assessment in accordance with clause 50.

249. *Subsection (5)* requires that the figures shown in the return as the individual partners' share of partnership profits, assets, liabilities or anything else must be included in the partners' own tax returns. This clause is not comprehensive yet - the reference to shares of 'profits, assets and liabilities' should specify income and losses, consideration for disposals of property, income tax which is to be treated as deducted, amounts of tax credit and charges on income. This will be developed further and informed by consultation views.

250. *Subsection (6)* provides that the notice may include provision about the calculations to be shown in the return.
251. *Subsection (7)* specifies the filing date for partnership tax returns according to the accounting date.
252. *Subsection (8)* defines a mixed partnership as a partnership which includes as partners, one or more companies and one or more individuals.
253. *Subsection (9)* provides that where the accounting date of a mixed partnership falls on or between 1 February and 5 April in any tax year a partner may be required to deliver a personal tax return before the partnership return is required. In this case the partner will be permitted to include an estimate of partnership profits in the tax return and condition 1 of clause 59 will have been satisfied.
254. Subsection (10) provides that any correction notice under clause 56 will be notified to each partner.
255. **This rewrites and clarifies existing statutory provisions for direct tax partnerships. It imposes no new obligation on taxpayers**

### **PART 3 – ASSESSMENTS**

#### *Overview*

256. This Part brings together and rewrites provisions relating to HMRC assessments of a person's liability to VAT, income tax, capital gains tax, or corporation tax.
257. The clauses in this Part enable HMRC to make assessments where -
- tax has been under-declared as the result of an incorrect return or self-assessment;
  - a return or self assessment is outstanding for the period concerned, either because of a failure to comply with an obligation requiring the making of the return/self assessment, or otherwise, or
  - it is necessary to recover tax which has been wrongly paid, repaid or credited by HMRC.
  - A return does not include a self-assessment by the taxpayer.
258. The clauses set out the various circumstances in which HMRC may not make such assessments and make provision to preserve the existing rights of taxpayers in relation to the certainty they enjoy as to the time a return or self assessment for a given period is treated as being final.
259. The clauses also set out the procedures for making assessments and the time limits within which HMRC may make them.

260. The current draft does not cover certain types of VAT assessments made under the following existing provisions in VATA –

- Section 73(3) – De-registered persons
- Section 73(7) – Failure to account for goods
- Section 73(7A) & (7B) – warehousing regimes
- Section 73(8) – Inflated assessments
- Section 75 – Goods acquired by a non-taxable person
- Section 76 – Penalty, surcharge, interest assessments
- Schedule 9A Paragraph 6 assessments (anti-avoidance: groups)

261. With the exception of Schedule 9A Paragraph 6 assessments, provision will be made for the above assessments in a later draft of Part 3. It is not currently our intention to rewrite Paragraph 6 of Schedule 9A but rather to leave it as part of the self contained provisions in Schedule 9A.

#### *Time limits*

262. The draft clauses in this Part setting out the time limits for making assessments rewrite and bring together existing provisions and are intended, for the purposes of this consultation, to replicate the effects of existing law.

263. We are still in the process of considering whether there is any scope for proposing substantive change to time limits relating to both the making of assessments and claims and the clauses, as drafted, are included for completeness.

#### **Clause 62: Correction assessment**

*Origin: section 29(1) TMA, paragraph 42(1) of Schedule 18 to FA 1998, section 73(1)(part) VATA.*

264. This clause enables HMRC to make a “correction” assessment where they think a person has understated their liability to tax in a return for the year or period in question.

265. *Subsection (1)* sets out the circumstances in which HMRC may make an assessment where a person has made a return and HMRC **thinks** that tax has been understated as a consequence of:-

- the return being incorrect,
- a retroactive event (other than a retrospective change in legislation) occurring which affects the amount of tax payable for an earlier period for which a return has been submitted (for example where entitlement to a relief for the period concerned is conditional upon subsequent events/actions)
- in the case of a VAT assessment, a trader failing to keep any documents or afford the facilities necessary to verify a return.

### Change 9

**This clause (and clauses 63, 64 and 65) introduces a new expression (“where HMRC thinks”) for the judgement which may be exercised by HMRC in making an assessment. The “thinks” approach covers the whole subjective process by which it may be necessary for HMRC to exercise an element of judgement in making an assessment. For example in this subsection “thinks” applies to both the discovery of the cause of insufficiency giving rise to the assessment and in arriving at the quantum to be assessed. The new term replaces the current subjective tests expressed in existing assessing provisions including “discover”, “where it appears”, “best of their judgement”, “best of his information and belief” and “in his opinion”. The “thinks” approach is now commonly used in modern drafting and, in the context of providing a replacement subjective test, it enshrines the principles of administrative law which require HMRC to act in a reasonable manner, thus preventing the making of any assessment on a mere unfounded suspicion or irrational conviction.**

**We welcome views on this change.**

266. *Subsection (2)* provides that the ability to make an assessment under subsection (1) is subject to restrictions set out in clauses 68 and 69.

### Change 10

**The approach suggested at subsection (2) represents a change from the approach used in existing law. Section 29(2) and (3) TMA and paragraph 42(1)(a) of Schedule 18 provide that, in cases where a return has been made for the relevant period, certain conditions/restrictions apply to the making of a discovery assessment. Section 29(4) TMA and paragraph 43 of Schedule 18 provide that one of those conditions is that the loss of tax in question is attributable to the fraudulent or negligent conduct of the taxpayer. Subsection (2), instead of replicating existing law by setting out a combination of conditions and restrictions, simply provides that the making of an assessment is subject to the restrictions in clauses 68 and 69. By explicitly stating the restrictions that apply to the making of an assessment under clauses 62, 63 and 66 we do not think it is necessary to explicitly provide that fraud/negligence is a condition for making an assessment. The restrictions as set out in clauses 68 and 69 are intended to provide taxpayers with the same degree of protection and certainty as that provided in existing law. We are simply proposing the change as a more logical way of expressing those protections.**

**We welcome views on this change of emphasis.**

267. *Subsection (3)* qualifies the relationship between a correction assessment made under subsection (1) and any self assessment made in the return for the same period. The combined effects of paragraphs (a) and (b) provide that such an assessment stands in addition to a self assessment it is correcting.

### **Clause 63: Errors affecting other returns**

*Origin: paragraph 41(2) of Schedule 18, FA1998*

268. This clause rewrites paragraph 41(2) of Schedule 18, FA1998 which enables HMRC to make a “discovery determination” where HMRC discover that a corporation tax return includes an incorrect amount which affects, or may affect, the amount of tax payable by the company in another accounting period, or the amount of tax payable by another company.
269. *Subsection (1)* sets out the circumstances in which the clause applies. Those circumstances are where HMRC think (see change 9) that a return made by a company incorrectly states an amount which affects or may affect the tax liability of the company or another company.
270. *Subsection (2)* enables HMRC to make an assessment (currently known as a determination) of the amount that ought to have been included in the company’s return in circumstances to which subsection (1) applies.
271. *Subsection (3)* applies the restrictions in clauses 68 and 69 to the ability of HMRC to make an assessment under subsection (2).

### **Clause 64: Default assessment**

*Origin: section 28C(1) (1A) TMA, paragraphs 36(1)(2), 37(1) of Schedule 18, FA1998, section 73(1), part VATA, New drafting.*

272. This clause enables HMRC to make a non-appealable assessment where a person has failed to comply with a requirement to make a return. The clause brings together and rewrites section 28C TMA, paragraphs 36(1) and 37(1) of Schedule 18 FA 1998 and part of section 73(1) VATA. For direct tax purposes the use of the term “assessment” in this clause replaces the term “determination” currently present in section 28C TMA and paragraphs 36 and 37 of Schedule 18, FA 1998.
273. *Subsection (1)* enables HMRC to make an assessment where a taxpayer has failed to make a return in response to a requirement and HMRC think tax is due.
274. *Subsection (2)* qualifies the meaning of “tax” in subsection (1).
275. *Subsection (3)* provides that the power to make an assessment under subsection (1) arises on the day after the filing date for the return.
276. *Subsection (4)* sets out the rules for determining the date on which the power to make an assessment under subsection (1) first arises where, in relation to a company tax return, the filing date for the return cannot be ascertained before a return is made.
277. *Subsection (5)* makes it clear that for the purposes of subsection (1) where a company fails to make a return for part of the period specified in the notice requiring a return it has failed to make a return for that part period.

### **Clause 65: Free-standing assessment**

*Origin: section 29(1)(part) TMA, paragraph 41(1)(part) of Schedule 18, FA1998*

278. This clause rewrites and brings together part of section 29(1) TMA and paragraph 41(1), enabling HMRC to make an “discovery” assessment of income tax, capital gains tax or corporation tax in circumstances where no return has been made for the period concerned but a notice requiring such a return has not been issued. This clause does not relate to VAT assessments.
279. *Subsection (1)* enables HMRC to make an assessment in circumstances where a person has not been required under section 41 to make a return, the person has not otherwise done so, but HMRC think tax may be payable by the person.
280. *Subsection (2)* qualifies the meaning of “direct tax” in subsection (1).
281. Note: The draft clause does not apply to the making of an appealable assessment in circumstances where a taxpayer has failed to comply with a notice under section 41 and HMRC think tax is payable. The ability of HMRC to make such a ‘discovery’ assessment is currently provided by section 29(1) TMA and paragraph 41(1) of Schedule 18, FA1998. This will be addressed in a later draft of Part 3.

### **Clause 66: Recovery assessment**

*Origin: section 30(1)(1A)(1B)(2)(3)(7) TMA, paragraph 52(1)(2)(3) of Schedule 18, FA1998, sections 73(1)(part)(2), 78A(1)(2), 80(4A) VATA*

282. This clause enables HMRC to make an assessment to recover an amount they have paid, repaid or credited in error. The clause rewrites and bring together the provisions in section 30(1) TMA, paragraph 52(2), sections 73(1)(part) (2) VATA, section 80(4A) VATA and section 78A(VATA) which currently enable HMRC to make recovery assessments.
283. *Subsection (1)* sets out the circumstances in which the clause applies, namely circumstances where HMRC have repaid tax in error, or a repayment has ceased to be correct because of a later event affecting the person’s liability to tax for the period in relation to which the repayment was made.
284. *Subsection (2)* enables HMRC to make an assessment where the circumstances described in subsection (1) are in point.
285. *Subsection (3)* applies the restrictions in clauses 68 and 69 to the making of an assessment under subsection (2).
286. *Subsection (4)* disapplies subsection (2) where the ‘repayment’ under subsection (1) has been assessed under another provision in the Tax Acts.
287. *Subsection (5)* provides that for the purposes of subsection (1)(b) it does not matter whether HMRC’s action in making the repayment in question was correct at the time of making it.

288. *Subsection (6)* defines the meaning of ‘repayment’ for the purposes of this clause.

**Clause 67: Assessment where self-assessment omitted**

*Origin: section 9 TMA 1970*

289. This clause sets out when HMRC can make an assessment in respect of income tax and capital gains tax in cases where a self-assessment has been omitted from a return. This provision does not apply to VAT or corporation tax.
290. *Subsection (1)* provides that if a taxpayer makes the tax return before the 30 September following the tax year to which the return relates, or (if the notice is given after 31 July following the tax year to which the return relates) within the period of two months beginning with the day on which the notice is issued, HMRC will provide a calculation of tax due (*subsection (1(a))*) and amounts payable (*subsection (1(b))*).
291. *Subsection (2)* provides that if a taxpayer makes a return without a self assessment post the 30 September following the tax year to which the return relates, HMRC will provide a calculation of tax due (*subsection (2a)*) and amounts payable (*subsection (2b)*).
292. *Subsection (3)* provides that in either case if a self assessment is not included in a return HMRC will send the taxpayer a copy of the assessment made.
293. *Subsection (4)* provides that an assessment under *subsection (1)* and *(2)* is treated for the purposes of this Act as a self-assessment (*subsection 4(a)*) and included in the return (*subsection 4(b)*).

**Clause 68: Generally prevailing practice**

*Origin: section 29(2) TMA paragraph 45 of Schedule 18 FA 1998*

294. This clause rewrites the “Practice Generally Prevailing” condition at section 29(2) TMA1970 and paragraph 45 of Schedule 18, FA1998 which applies to the making of discovery assessments.
295. *Subsection (1)* provides the meaning of “assessment” for the purpose of the clause.
296. *Subsection (2)* provides that a correction assessment, an assessment under clause 63 (Errors affecting other returns), or a recovery assessment in respect of income tax, capital gains tax or corporation tax may not be made if the return for the period concerned was completed in accordance with generally prevailing practice at the time it was made.

### **Clause 69: failure to act on information**

*Origin: section 29(5)(6)(7) TMA, paragraph 44 of Schedule 18 of FA 1998*

297. This clause rewrites section 29(5) TMA and paragraph 44 of Schedule 18 which provide the “incomplete disclosure” condition for making a discovery assessment.
298. *Subsection (1)* provides the meaning of “assessment” for the purpose of the clause.
299. *Subsection (2)* provides that a correction assessment, an assessment under clause 63 (Errors affecting other returns), or a recovery assessment in respect of income tax, capital gains tax or corporation may not be made after the window for making an enquiry has closed if, during that period, the taxpayer made information available which was sufficient to make HMRC aware of the cause for assessment. This represents a change of emphasis from existing law (see Change 10 above). Rather than stating the “incomplete disclosure” of information by the taxpayer as one of two conditions, of which one must be met in order to allow the making an assessment, it provides for a “failure (by HMRC) to act upon information” to be an explicit restriction to making such an assessment. This change of emphasis is not intended to alter the circumstances in which the taxpayer is regarded as having made an “incomplete disclosure” and as such the principles outlined in Statement of Practice SP01/06 will continue to be relevant.
300. *Subsection (3)* preserves the existing rules in relation to what constitutes “information made available” for the purpose of the “failure to act upon information” restriction at subsection (2).

### **Clause 70: Combined assessments**

*Origin: sections 113(2) (part) TMA, 73(4), 76(5) and (6,) VATA, New drafting*

301. This clause allows an assessment for a specified period to include a combination of different types of tax, penalties, surcharge and interest.

#### **Change 11**

**Current law (section 113(2) TMA) allows a direct tax assessment to be made up of a combination of income tax and capital gains tax. And section 30A(2) allows income tax which falls to be charged by an assessment (which is not a self-assessment) under more than one Part or Chapter of an Act to be included in a single assessment. For VAT, section 73(4) allows combined assessments to be made where a person is assessed under different subsections of that section for the same period. And section 76(5) and (6) allows assessments of a penalty, surcharge, or interest to be combined with other assessments and notified as a single assessment. This change would extend HMRC’s ability to make combined assessments so that they may include any combination of different types of tax (including combinations of direct tax and VAT), penalties, surcharge and interest. At present there are no specific plans to use this provision to make combined assessments other than those already permitted by current law. We have included this to provide HMRC with more flexibility to make**

**combined assessments should there be a clear benefit to taxpayers and HMRC for doing so in future.**

**We welcome views on this change.**

302. *Subsection (1)* is new drafting incorporating a rewrite of section 30A(2) TMA, part of section 113(2), section 73(4) and section 76(5) and (6)(part) VATA. The subsection provides for combination assessments to be made for a specified period and sets out the things which may be combined.
303. *Subsection (2)* is new drafting incorporating part of VATA section 76(5) and (6) and provides that a combined assessment which includes a penalty must separately identify the amount of the penalty.
304. *Subsection (3)* is new drafting incorporating part of VATA section 76(5) and provides that a combined assessment which includes interest must separately identify the amount of the interest.
305. *Subsection (4)* defines the meaning of “repayment” in subsection (1).
306. *Subsection (5)* defines the meaning of “penalty” in this clause as including a surcharge.

#### **Clause 71: Period of assessment**

*Origin: section 29(1)(part) TMA, paragraphs 36(3), 41(1)(part), 52(5) of Schedule 18, FA1998, section 73(1) and (2) VATA, New drafting*

307. This clause provides that assessments made under the powers in Part 3 must relate to a specific period, and sets out what, for each type of tax, those periods must be.

#### **Change 12**

**Currently the relevant period to which the assessment or determination must relate is either explicit or implicit in the provisions which enable HMRC to make assessments or determinations. This change provides in one place: provisions which set out the relevant period for assessments under Part 3; and the special rules for determining a period of assessment in relation to certain types of assessment. We think this approach provides greater clarity as to what the relevant period of assessment should be.**

**We welcome views on this approach.**

308. *Subsection (1)* provides for the period of assessment for an assessment of income tax.
309. *Subsection (2)* provides for the period of assessment for an assessment of capital gains tax.
310. *Subsection (3)* provides for the period of assessment for an assessment of corporation tax.

311. *Subsection (4)* rewrites the provision at paragraph 36(3) of Schedule 18, FA1998 and provides the rules for determining the relevant period of assessment in relation to a default assessment in respect of corporation tax following a failure to comply with a notice under clause 41.
312. *Subsection (4)(a)* applies where the clause 41 notice covers a single accounting period.
313. *Subsection (4)(b)* applies where the clause 41 notice covers more than one accounting period.
314. *Subsection (4)(c)* applies where HMRC are unable to establish the accounting period or periods covered by the clause 41 notice and allows HMRC to specify a period for the purposes of making an assessment.
315. *Subsection (5)* provides for the period of assessment in respect of VAT.
316. *Subsection (6)* provides for the determination of the period of assessment for recovery assessments of VAT.
317. *Subsection (6)(a)* makes it clear that the period of assessment in relation to a recovery assessment made as a result of an incorrect return or voluntary disclosure is the period in which the erroneous repayment occurred.
318. *Subsection (6)(b)* provides that subsection (5) does not apply to recovery assessments in relation to section 80 VATA claims and interest paid under section 78 VATA.

**Clause 72: Notice**

*Origins: sections 28C(2) 30A(3) TMA, paragraphs 36(4) 37(3) 47(1) of Schedule 18, FA1998, sections 73(1) (part) (2) (part) 78(1) (part) 80(4A) (part) VATA*

319. This clause provides that any assessment made under Part 3 must be notified.
320. *Subsection (1)* provides that an assessment made under a power in Part 3 must be notified to the person in respect of whom the assessment is made. It brings together provisions in section 30A(3) TMA, Paragraphs 36(4), 37(3) and 47(1) of Schedule 18 and the parts of existing powers for making VAT assessments requiring that an assessment must be notified.
321. *Subsection (2)* sets out information which must be specified in a notice.
322. *Subsection (3)* provides that a notice may relate to more than one assessment subject to certain conditions. Those conditions are that:
- a notice may not relate to more than one taxpayer;
  - where a notice relates to more than one assessment it must include separate provision for each tax and period.

### Change 13

**Subsection (3) introduces a new provision allowing HMRC to notify more than one assessment in a single notification. It is current HMRC practice to do this in relation to VAT assessments, but not for direct tax assessments. There are currently no specific plans to issue notices covering more than one assessment for direct tax but the new provision provides HMRC with the flexibility to do so in the future.**

**We welcome views on this change.**

#### **Clause 73: Effect of default assessment**

*Origins: section 28C(3) TMA, paragraph 36(6), 37(5) and 39(1) and (2) of Schedule 18, FA 1998, section 73(9) (part) VATA*

323. This clause makes provision for the effect of a default assessment.
324. *Subsection (1)* defines the term 'amount payable' for the purposes of the section.
325. *Subsection (2)* provides that an amount of income tax, capital gains tax or corporation tax payable specified in a default assessment is treated as if it formed part of a self-assessment by the person assessed.
326. *Subsection (3)* rewrites part of Paragraphs 36(6) and 37(5) of Schedule 18, FA1998 and provides that a default assessment has no effect if there is no accounting period ending in the period specified in the notice.
327. *Subsection (4)* rewrites section 73(9) VATA (as it relates to assessments of VAT due in the absence of a return for the prescribed accounting period) and provides that an amount of VAT payable, as specified in a default assessment under clause 64, is treated for the purposes of any Tax Act as an amount of VAT due and payable by the person assessed.

#### **Clause 74: Default assessment superseded by a self-assessment**

*Origin: section 28C(3)(4)(5)(part) TMA, paragraphs 36(6), 37(5), 40(1)(2)(part) (3)(4) Schedule 18, FA1998*

328. This clause provides for a self-assessment under clause 50 to supersede a default assessment under clause 64 if made within certain time limits.
329. *Subsection (1)* rewrites and brings together section 28C(3), Paragraphs 36(6)(b), 37(1)(a) and 40(1) and (2)(part) of Schedule 18, FA1998 and provides that a default assessment shall have no effect if superseded by a self-assessment under clause 50.
330. *Subsection (2)* rewrites and brings together section 28C(5)(b) TMA and paragraph 40(3) of Schedule 18, FA1998 and sets out the time limits within which a self-assessment must be made in order to supersede a default assessment.

331. *Subsection (3)* rewrites and brings together section 28C(4) TMA and paragraph 40(4) of Schedule 18, FA1998 and provides for the continuation of recovery proceedings where a default assessment has been superseded by a self-assessment.

**Clause 75: Supplementary assessment**

*Origin: section 77(6)(part) VATA*

332. This clause permits HMRC to make a supplementary assessment of VAT in circumstances where HMRC thinks the amount of VAT which ought to have been assessed exceeds the amount of the original assessment owing to a mistake by HMRC.

**Change 14**

**The existing provision at section 77(6) VATA allows for the making of a supplementary assessment where, upon re-examination of the evidence on which the original assessment was based, it emerges that the amount assessed was too low. As a matter of policy this provision is only used to make supplementary assessments where the under-assessment resulted from clerical or arithmetical errors. Clause 75 gives this policy intention greater emphasis by use of the words “mistakenly specified too small a sum”.**

**We welcome views on this clarification of HMRC practice**

**Clause 76: Additional assessment**

*Origin: section 73(6) VATA (part)*

333. This clause rewrites part of the provision at section 73(6) VATA and permits HMRC to make an additional assessment provided that it relies on new evidence available since the making of the earlier assessment.

*Timing: direct tax*

**Clause 77: Normal rule**

*Origins: section 34(1) TMA, paragraph 46(1) of Schedule 18, FA 1998*

334. This clause provides the normal time limits for making income tax, capital gains tax and corporation tax assessments.
335. *Subsection (1)* rewrites section 34(1) TMA (as it relates to assessments to income tax) and provides that the normal time limit for making an income tax assessment is before the end of the fifth year following the tax year to which the assessment relates. This is a Plain English approach to expressing the time limit currently expressed in section 34(1) as “an assessment [to income tax] may be made at any time not later than five years after the 31 January next following the year of assessment to which it relates”. The meaning of “year” (in “fifth year”) in this subsection is amplified in subsection (3). “Tax year” is used in place of “year of

assessment” and reflects the changes made to the income tax codes by Tax Law Rewrite. “Tax Year” is defined in clause 90. We welcome views on this approach.

336. *Subsection (2)* rewrites section 34(1) TMA (as it relates to assessments to capital gains tax) and provides the normal time limit for making an assessment in respect of capital gains tax which is the same as that applicable to the making of an income tax assessment. Subsection (2) therefore uses the formulation of words in subsection (1).
337. *Subsection (3)* amplifies the meaning of “year” (as in “fifth year”) in subsections (1) and (2).
338. *Subsection (4)* rewrites paragraph 46(1) of Schedule 18, FA 1998 and provides that the normal time limit for making an assessment in respect of corporation tax is before the end of the period of six years beginning with the end of the accounting period to which the assessment relates. For the purposes of this new formulation “beginning with the end of the accounting period” means the day after the last day of the accounting period.
339. *Subsection (5)* provides that this clause is subject to clauses 78 to 80 and any other provisions of a Tax Act allowing a longer time limit.

**Clause 78: Default assessment**

*Origins: section 28C(5) TMA, Paragraphs 36(5), 37(4) of Schedule 18, FA 1998*

340. This clause provides the time limit for making a default assessment under clause 64.
341. *Subsection (1)* provides that a default assessment under clause 64 must be made within five years beginning with the day after the filing date for the return.
342. *Subsection (2)* provides that clause 64(4) has effect so that where the filing date cannot be ascertained the “filing date” for the purpose of this clause is the date on which the power to make an assessment first arises in accordance with clause 64(4).

**Clause 79: Recovery assessment**

*Origins: section 30(5) TMA, paragraph 53 of Schedule 18, FA 1998*

343. This clause provides an extended time limit for making direct tax recovery assessments in certain cases.
344. *Subsection (1)* provides that a recovery assessment under clause 66 in respect of income tax and capital gains tax may be made at any time during the tax year after that in which the repayment was made, or while an enquiry into a return made by the taxpayer is in progress.
345. *Subsection (2)* provides that a recovery assessment under clause 66 in respect of corporation tax may be made at any time during the accounting period after the period in which the repayment was made, or before the

end of the three month period starting on the day on which an enquiry into a return by the taxpayer is completed.

- 346. *Subsection (3)* defines the meaning of “repayment” in this clause as having the same meaning as in clause 66.
- 347. *Subsection (4)* provides that where this clause applies the normal time limits in clause 77 do not apply to the making of recovery assessments.

### **Clause 80: Fraud and negligence**

*Origins: section 36(1) TMA, paragraph 46(2) of Schedule 18, FA 1998*

- 348. This clause provides the time limits for making an assessment in respect of income tax, capital gains tax or corporation tax in cases involving fraud or negligence.
- 349. *Subsection (1)* sets out the circumstances in which this clause applies, namely where an assessment is made to make good a loss of tax attributable to the fraudulent or negligent conduct of the taxpayer or a person acting on behalf of the taxpayer. In this context “a person acting on behalf of the taxpayer” includes a partner of the taxpayer where the taxpayer is carrying on a business in partnership.
- 350. *Subsection (2)* rewrites part of section 36(1) TMA (as it relates to assessments to income tax) and provides that the extended time limit for making an income tax assessment where subsection (1) is in point is before the end of the 20th year following the tax year to which the assessment relates. This follows the drafting approach in clause 77(1) expressing the time limit currently in section 36(1) TMA in plain English. The meaning of “year” (in “20th year”) in this subsection is amplified in subsection (4).
- 351. *Subsection (3)* rewrites part of section 36(1) TMA (as it relates to assessments to capital gains tax) and provides the extended time limit for making assessments in respect of capital gains tax where subsection (1) is in point, which is the same as the extended time limit under subsection (2).
- 352. *Subsection (4)* amplifies the meaning of “year” (as in “20<sup>th</sup> year”) in subsections (2) and (3).
- 353. *Subsection (5)* provides that the extended time limit for making an assessment in respect of corporation tax where subsection (1) is in point is the end of the period of 20 years beginning with the end of the accounting period to which the assessment relates. For the purposes of this new formulation “beginning with the end of the accounting period” means the day after the last day of the accounting period.

## Timing: VAT

### **Clause 81: Normal rule**

*Origins: section 73(6) (part), section 77(1)(a) VATA*

354. This clause provides the normal time limits for making assessments in respect of VAT.
355. *Subsection (1)* provides that an assessment in respect of VAT must be made within 3 years from either the end of the prescribed accounting period, or the importation or acquisition to which the assessment relates. For the purposes of paragraph (1)(a) the formulation of words “beginning with the end of” means the day after the date on which the relevant prescribed accounting period ends.
356. *Subsection (2)* provides that a correction assessment under clause 62 and a default assessment under clause 64 must be made within two years from the end of the prescribed accounting period to which the assessment relates or, if later, within one year of HMRC being aware of the facts upon which the assessment relies.

**Q11: The formulation “being aware of the facts on which the assessment relies” replaces the existing “evidence of facts, sufficient in the opinion of the Commissioners to justify the making of the assessment comes to their knowledge”. The new wording is intended to express the current formulation in Plain English but to have the same meaning as the wording it replaces. We welcome views on the new formulation.**

357. The subsection does not apply to assessments currently made under section 73(7), (7A) or (7B) of VATA.
358. *Subsection (3)* provides that clause 81 is subject to clauses 83 and 84 and any other provisions of a Tax Act.

### **Clause 82: Recovery assessment**

*Origins: section 78A(2), section 80(4C) VATA*

359. This clause provides the time limit for making recovery assessments under clause 66.
360. *Subsection (1)* provides that the time limit for making an assessment to recover an amount of interest wrongly paid under section 78(1) VATA or an amount incorrectly credited following a claim under section 80(1) or (1A) VATA must be made within a period of two years of HMRC being aware of the facts upon which the assessment relies.
361. *Subsection (2)* provides that clause 81 does not apply to the making of recovery assessments.
- 362. Note: The clause does not yet take into account the time limits for making recovery assessments in relation to an incorrect return**

**(currently made under section 73(2) VATA). This will be addressed in a later draft of the clause.**

***Clause 83: Fraud, &c.***

*Origins: section 77(1)(part) and (4) VATA*

363. This clause provides the extended time limit for making an assessment in respect of VAT lost as a result of conduct involving dishonest evasion, fraud etc.
364. *Subsection (1)* sets out the circumstances in which the clause applies.
365. *Subsection (2)* provides that an assessment made in any of the circumstances mentioned in *subsection (1)* must be made within 20 years from the end of the prescribed accounting period, or the importation or acquisition to which the assessment relates. For the purposes of paragraph (2)(a) the formulation of words “beginning with the end of” means the day after the date on which the relevant prescribed accounting period ends.
366. *Subsection (3)* provides that this clause is subject to clause 84 (Posthumous assessment).

***Clause 84: Posthumous assessment***

*Origin: section 77(5)(a) VATA*

367. This clause rewrites section 77(5)(a) and provides that an assessment in respect of VAT due as a result of anything done by a person who has died may not be made more than 3 years after the date of death.
- 368. Note: Clause 84 does not yet make provision for the extended time limit in section 77(5)(b) VATA which apply to deceased persons in cases of fraud etc. This will be included in a later draft of this clause.**

***Clause 85: Supplementary assessments***

*Origin: section 77(6)(b) VATA*

369. This clause provides that a supplementary assessment of VAT under clause 75 must be made within the time limits applying to the original assessment it supplements.

***Clause 86: Additional assessments***

*Origin: section 73(6)(part) VATA*

370. This clause provides that the rules about time limits for making an additional assessment under clause 76 are the same as those relating to the earlier assessment (as referred to in clause 76(a)).

## **PART 4 - MISCELLANEOUS PROCEDURAL MATTERS**

371. Parts 4 (Miscellaneous Procedural matters) and 5 (General) are incomplete since they are based on the clauses produced so far. These contain provisions about interpretation and secondary legislation, commencement, consequential amendments and repeals.

### ***Clause 87: Clerical error &c.***

372. This clause provides that an assessment, notice or other document issued by HMRC shall have effect even it contains minor mistakes as long as the purpose is still clear.

373. This rewrites section 114 TMA and will now also apply to VAT.

### ***Clause 88: Service of documents by HMRC***

374. This clause will eventually provide a generic provision for serving documents on persons to replace the various current provisions e.g. section 115 TMA, section 98 VATA.

## **PART 5 – GENERAL INTERPRETATION**

### ***Clause 89: HMRC***

375. This clause defines HMRC, the Commissioners of HMRC and an Officer of HMRC.

### ***Clause 90: Tax year***

376. This clause defines tax year for this Act.

### ***Clause 91: Business***

377. This clause describes business as including trade or profession.

### ***Clause 92: Failure***

378. This clause states that a person who is required or permitted to do something with a specified time period or before a certain time is treated as having failed to do the thing only if it is not done within that time period or before the time.

### ***Clause 93: Information and Clause 94: Inclusion in document***

379. These clauses provide that information in this Act include documents and references to anything being included in a document includes accompanying a document.

### ***Clause 95: UK***

380. This clause defines the UK as the United Kingdom.

**Clause 96: Timing “on” a date**

381. This clause explains that reference to anything occurring on a date mean occurring at the beginning of a date.

**Clause 97: Act**

382. This clause lists the abbreviations for Acts referred to in this Act

**Clause 98: ICTA definitions and Clause 99 VATA definitions**

383. These clauses provide that the specified expressions have the same meaning in this Act as in ICTA or VATA

**Clause 100: Index of defined terms**

384. This clause sets out expression defined in this Act and says where they are defined.

**Clause 101: Subordinate legislation**

385. This clause sets out rules for regulations, rules and orders made under the Act. It covers their scope and how they are to be made. There are existing comparable provisions at section 828 ICTA and section 97 VATA

**Clause 102: Amendments and repeals**

386. This clause introduces Schedule 1 which will eventually list all the amendments required as a result of this Act and Schedule 2 which will show the repeals needed. These Schedules are shown in outline.

## Part 4: Possible changes

We summarise in this part of the document all the areas we have identified where changes to the present law may be of benefit.

### Part 1 Notification and Registration

#### **Change 1: New subjective test of “reasonably believing” that tax will be collected**

1. This change replaces the previous objective test of whether a benefit or expense “has been or will be” taken into account for PAYE with a subjective test where it is sufficient for the taxpayer to have a “reasonable belief” that a benefit or expense has been or will be taken into account in order to be excepted from notifying on that account alone.
2. Following the introduction of section 7 of TMA in Finance Act 1994, HMRC issued a statement of practice (SP 1/96, later replaced by HMRC guidance EM4551) setting out a relaxation of the requirement in section 7(5) of TMA 1970, which excepted a person from notifying chargeability where income from a source “will be” taxed through PAYE.
3. The guidance recognised that it would not always be possible for a person to be sure that information about new expenses or benefits for the previous tax year have been or will be taken into account by HMRC for PAYE purposes. It said that in practice, HMRC would not require a person to notify chargeability on this account alone where the taxpayer had seen a copy of the relevant HMRC form (the P11D) from their employer detailing these expenses and benefits, were satisfied that the information it contained was complete and had no reason to believe that it had not been sent to HMRC.
4. New subsection (3) reflects this approach by excepting a person from notifying where he has a reasonable belief that liability to income tax will be met through PAYE deductions.
5. This change brings statute in line with existing operational practice. As such, it is not expected to have any practical impact on taxpayers.

#### **Change 2: Form of notices -new generic provision**

6. In these clauses we also explore the option of a generic capability to prescribe the form and nature of notifications and returns in primary legislation, moving detailed rules for direct tax into secondary legislation (mirroring the way this is done for VAT). These legislative changes will facilitate future improvements to documentation.

### Part 2 Returns

#### **Change 3: Declaration of accuracy**

7. This change brings statute in line with operational practice and aims to reflect a pragmatic approach to the submission of a return. It allows an authorised third party to complete a declaration on a return on behalf of the person to

whom the return relates. This change retains the present law that the responsibility for a return being complete and accurate rests with the taxpayer even if it is signed off by a third party.

#### **Change 4: Income tax calculations**

8. This change introduces a table showing the figures and steps required by clause 51. It is intended to be an aid in completing the tax return setting out the principal steps to be included by reference to clause 23 of the draft Income Tax Bill. We shall consider developing Clause 52 further to take into account Capital Gains computations informed by views on the usefulness of this table. We will develop this clause in parallel with the programme of work proposed to improve the main self assessment tax return and associated guides, announced in HMRC's November 2006 publication '*Delivering a new relationship with business*'. This aims to produce a main tax return which will be simpler and more streamlined than at present, with fewer questions overall and a reduced number of self employed pages for those with an annual turnover below £40,000. Clause 52 states the steps required in arriving at the self assessment but the tax calculation guide will provide the necessary detailed calculation.

#### **Change 5: Correction by HMRC: direct tax**

9. This change brings together existing statutory provisions and introduces a definition of 'error' for income tax and capital gains tax and corporation tax. The new provision brings statute into line with existing operational practice in correcting minor errors without the need for formal enquiry procedures. This is intended to reduce administrative costs for both taxpayers and HMRC.

#### **Change 6: Amendments**

10. This change brings together existing statutory provisions. This brings statute into line with existing operational practice by allowing a third party to make an amendment to a return. This is intended to reduce administrative burdens for both taxpayers and HMRC.

#### **Change 7: Deficient returns**

11. This introduces a new provision that a return which does not satisfy requirements in Part 2 of the Bill shall not be treated as a return. It is aimed at building on the clarification provided by the introduction of a definition of a return and the meaning of self assessment. This change seeks to provide a pragmatic approach to the delivery of returns. We do not expect more returns to be sent back than under the existing practice.

#### **Change 8: Provisional figures**

12. This change introduces a new provision which provides for the use of provisional figures in a return for income tax and capital gains tax and corporation tax. It sets out the conditions necessary to comply with the provision and clarifies the existing VAT estimation provisions. The change brings statute into line with existing operational practice and seeks to reflect a pragmatic approach to the completion of returns.

## **Part 3 Assessments**

### **Change 9: Assessment: HMRC judgement**

13. This subsection introduces a new expression (“where HMRC thinks”) for the judgement which may be exercised by HMRC in making an assessment. The “thinks” approach covers the whole subjective process by which it may be necessary for HMRC to exercise an element of judgement in making an assessment. For example in this subsection “thinks” applies to both the discovery of the cause of insufficiency giving rise to the assessment and in arriving at the quantum to be assessed. The new term replaces the current subjective tests expressed in existing assessing provisions including “discover”, “where it appears”, “best of their judgement”, “best of his information and belief” and “in his opinion”. The “thinks” approach is now commonly used in modern drafting and, in the context of providing a replacement subjective test, it is predicated on the principles of administrative law which require HMRC to act in a reasonable manner, thus preventing the making of any assessment on a mere unfounded suspicion or irrational conviction.

### **Change 10: Assessment: restrictions v conditions**

14. The approach suggested at clause 62(2) represents a change from the approach used in existing law. Section 29(2) and (3) TMA and paragraph 42(1)(a) of Schedule 18 provide that, in cases where a return has been made for the relevant period, certain conditions/restrictions apply to the making of a discovery assessment. Section 29(4) TMA and paragraph 43 of Schedule 18 provide that one of those conditions is that the loss of tax in question is attributable to the fraudulent or negligent conduct of the taxpayer. Subsection (2), instead of replicating existing law by setting out a combination of conditions and restrictions, simply provides that the making of an assessment is subject to the restrictions in clauses 68 and 69. By explicitly stating the restrictions that apply to clause 62 we do not think it is necessary to explicitly provide that fraud/negligence is a condition for making an assessment. The restrictions as set out in clause 68 and 69 are intended to provide taxpayers with the same degree of protection and certainty as that provided in existing law. We are simply proposing the change as a more logical way of expressing those protections.

### **Change 11: Combined assessments**

15. Current law (section 30A(2) TMA) allows a direct tax assessment to be made up of a combination of income tax and capital gains tax. For VAT, section 73(4) allows combined assessments to be made where a person is assessed under different subsections of that section for the same period. And, section 76(5) and (6) allows assessments of a penalty surcharge or interest to be combined with other assessments and notified as a single assessment. This change would extend HMRC’s ability to make combined assessments so that they may include any combination of different types of tax (including combinations of direct tax and VAT), penalties surcharge and interest. At present there are no specific plans to use this provision to make combined assessments other than those already permitted by current law. We have included this possible change to provide HMRC with more flexibility in the

future should a suitable case be made for extending the ability to make combined assessments.

#### **Change 12: Period of assessment**

16. Currently the relevant period to which the assessment or determination must relate is either explicit or implicit in the provisions which enable HMRC to make assessments or determinations. This change provides for the relevant period of assessment for the different types of tax which may be assessed under the powers in Part 3, and the special rules for determining a period of assessment in relation to certain types of assessment, in a single place. We think this approach provides greater clarity as to what the relevant period of assessment should be.

#### **Change 13: Notice of assessment**

17. Subsection (3) introduces a new provision allowing HMRC to notify more than one assessment in a single notification. It is current HMRC practice to do this in relation to VAT assessments, but not for direct tax assessment. There are currently no specific plans to issue notices covering more than one assessment for direct tax but the new provision provides HMRC with the flexibility to do so in the future.

#### **Change 14: Supplementary assessments**

18. The existing provision at section 77(6) VATA allows the making a supplementary assessment where, upon re-examination of the evidence on which the original assessment was based, it emerges that the amount assessed was too low. As a matter of policy this provision is only used to make supplementary assessments where the under-assessment resulted from clerical or arithmetical errors. Clause 75 gives this policy intention greater emphasis by use of the words "mistakenly specified too small a sum".

## **Annex A: Partial Regulatory Impact Assessment**

### **PARTIAL REGULATORY IMPACT ASSESSMENT (RIA)**

#### **Administration of Taxes Bill (New Management Act)**

This partial RIA sets out the options considered and the overall costs and benefits of developing a new management act. Some options envisage making changes to the legislation where there will be clear benefits from alignment and simplification across the main HMRC taxes. The overall aim of these changes would be to simplify and improve the management provisions from the taxpayer's perspective and views on the costs and benefits will be sought through future versions of the partial RIA.

In time we intend to add a series of annexes to this partial RIA. These will show the costs and benefits for proposed changes which go beyond alignment and consistent terminology.

#### **PURPOSE AND INTENDED EFFECT**

##### **Policy Objective**

1. The aim of a new management act is to develop so far as possible a modern, simpler and more consistent legislative framework for the administration of taxes which is easier for taxpayers to understand and comply with and for HM Revenue and Customs (HMRC) to operate.
2. The Bill will aim to simplify and deregulate wherever possible so that burdens on taxpayers are minimised by:
  - improving the transparency and understanding of administrative legislation
  - removing obsolete legislation
  - aligning and rationalising legislation where it makes sense to do so.
3. The aim is to introduce an Administration of Taxes Bill in the 2007-8 parliamentary session.

##### **Background**

4. The creation of HMRC generated the opportunity to review the scope for integrating the administrative legislation for direct and indirect taxes. At the moment this is scattered through a number of Acts, sometimes inconsistent and arguably out of date.
5. HMRC are carrying out the review and developing proposals for new administrative legislation.

## Rationale for government Intervention

6. Administrative legislation is the fundamental building block of tax compliance, setting out the management provisions relating to the rights and obligations of taxpayers and HMRC. It needs to be easy for taxpayers to understand and for HMRC to operate. The current situation is that much of our administrative legislation is old (25 –35 years), complex, scattered through a number of Acts and includes provisions expressed in language that is difficult to understand.
7. The creation of HMRC was a recommendation of the O'Donnell Review<sup>6</sup>, which identified that small business would gain significantly from dealing with a single department for all their tax affairs.
8. To realise these gains we need to do more than just consolidate and rewrite the current legislation. We need to consider where policy changes would allow for closer alignment and consistency between schemes where these make sense. We will do this by looking at common elements of administrative legislation across schemes as follows:
  - Registration and notification
  - Returns and self-assessment
  - Payment and repayment
  - Claims
  - Assessments
  - Time-limits
  - Appeals
  - Miscellaneous administrative provisions
9. This partial RIA sets out the options and overall costs and benefits for developing a new management act. Proposals to substantively change the law will be discussed in separate annexes to later versions of this partial RIA accompanying draft clauses published for consultation.

## CONSULTATION

10. Full and open consultation is key to the development of this legislation.

### Within government

11. HMRC have consulted within Government. These are the principal interactions:
  - The Department for Constitutional Affairs (DCA) are considering the reform of all government tribunals, including tax tribunals. The draft Tribunals, Courts and Enforcement Bill was published on 25 July 2006. HMRC is working closely with DCA to ensure a smooth transition to the new structure, and to make necessary enabling changes to the legislation.

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<sup>6 6</sup> *Review of the Revenue Departments* published 17 March 2004

- The DTI/Small Business Service will help HMRC engage business directly for their views. Early soundings with business on proposed policy changes will be included in the annexes to accompany later versions of this partial RIA.
  - The Department for Work and Pensions (DWP) have agreed to review any proposed policy changes, assess their impact and work jointly on implementation and delivery issues.
  - Discussions with the Better Regulation Executive (Cabinet Office) have been held and they are supportive, seeing the work as deregulatory and a contributor to simplification.
12. HMRC will consult the devolved administrations and territorial offices for Scotland, Wales and Northern Ireland.

### **Public consultation**

13. Consultation began in February/March 2006. Nineteen representative bodies were invited to send delegates with practical experience of tax administration and from a range of backgrounds to a series of four workshops and fourteen did so. The purpose of the workshops was to invite views on the existing administrative procedures and the scope for closer alignment and consistency, without seeking to influence them.
14. HMRC gathered a wealth of information to inform our work and it was encouraging to find there was strong support for greater harmonisation and simplicity across the schemes. A detailed summary of the outcomes from the workshops was published on the HMRC Internet site on 5 June 2006 at [www.hmrc.gov.uk/nma/index](http://www.hmrc.gov.uk/nma/index).
15. KPMG undertook research for HMRC in 2006 to measure the Administrative Burden of the tax and duty system on UK businesses. Targets for reducing this burden were announced at the Budget in March 2006, and an external Advisory Board established to identify the principal irritants. This work will be taken into account when developing the new legislation.
16. The work also reflects responses to other consultations, including:
- HMRC and the taxpayer: Modernising powers, deterrents and safeguards.
  - Increasing use of online services.
  - Aligning company filing dates.
  - Working towards a new relationship: small business.
  - Review of medium sized businesses
17. As new legislation is developed HMRC will publish draft clauses for consultation. The first tranche is published with this partial RIA, together with explanatory material that gives:
- a clause by clause summary of what the legislation seeks to achieve, questions on which we are seeking views, and
  - a marker identifying and explaining every change we are making.

## **OPTIONS**

### **A: Do Nothing**

18. Option A is to do nothing. If nothing is done HMRC would have to make improvements to the administration of our main taxes through process change alone. There is a risk that doing nothing to modernise, consolidate and improve the legislation will limit the scope for HMRC to reduce administrative burden costs.

### **B: A single management act covering all HMRC taxes, duties and credits**

19. Option B is to develop new administrative legislation for all HMRC taxes, duties and credits (for example Capital Gains Tax; Corporation Tax; Income Tax; Inheritance Tax; National Insurance Contributions; Excise duties; Insurance Premium Tax; Stamp Duty Land Tax; VAT; Child Benefit; Child Trust Fund; Tax Credits; Border and frontier protection; Environmental taxes; National Minimum wage enforcement; Recovery of student loan).
20. Due to the diversity of HMRC activity a single management act would produce a lengthy, unwieldy and complex piece of legislation. The risk is that there would be little scope for realising sufficient benefits because of the lack of common ground, except at the highest level.

### **C: Two separate management acts for direct and indirect taxes.**

21. Option C is to consolidate administrative legislation along the existing lines for direct and indirect taxes and develop two separate management acts. The amount of work involved and the resulting length of legislation would not be much less than for option B. It would also do nothing to help HMRC offer a more joined-up service to business across direct and indirect taxes.

### **D: A new Management Act for 5 core schemes**

22. Option D is to develop a new management act for five core schemes covering the main taxes:
  - Value Added Tax (VAT)
  - Income Tax Self Assessment (ITSA) – (including capital gains tax – CGT)
  - Corporation Tax Self Assessment (CTSA)
  - Pay As You Earn (PAYE) and National Insurance Contributions (NICs) as operated by employers
  - National Insurance Contributions paid by the self-employed (Class 2 and 4 contributions)
23. These five core schemes together cover over 11 million taxpayers, of which over half have income from businesses, many of which have multiple contacts with HMRC in relation to two or more of the schemes. These taxpayers are most likely to have encountered differences and inconsistencies between the administrative rules. Rewriting, consolidating and improving the legislation while aligning rules across schemes where it makes sense is likely to deliver the largest benefit to taxpayers, business

and advisors.

### **E: A new management act for 5 core schemes (consolidation and rewrite only)**

24. Option E would be to modernise and consolidate the management provisions for the core schemes selected for option E without changing the underlying tax policy. The risk here is that we would miss an opportunity to improve the legislation and realise benefits that contribute to the reduction in the administrative burden on over 11 million taxpayers.

#### **Preferred option**

25. Our preferred option is Option D because of the degree of customer overlap and the opportunity to improve the legislation. However HMRC recognises that the five core schemes are distinct and we are not assuming that they should be shoehorned into a single administrative scheme where it makes no sense to do so. HMRC will also consider the scope for modernising and simplifying the administrative provisions for other taxes and duties. If the existing taxes management or VAT administration provisions are substantially changed, parallel amendments to other regimes that are modelled on these will be considered.

## **COSTS AND BENEFITS**

### **Sectors and Groups affected**

26. When analysing the costs and benefits of the five options for the overall development of a new management act, HMRC considered the impact on the following main groups/sectors:

#### **a) Taxpayers**

27. Individuals and business who deal with taxes administered by HMRC.

#### **b) Tax professionals**

28. These are people who use tax administration legislation in the course of their work. They include:
- Tax advisors: this is the main group of people affected and includes advisors within the legal or accountancy professions and tax managers working in house for companies and organisations.
  - Legal and accountancy publishers, both in the context of printed material and software
  - Academics and teachers.

#### **c) The judiciary**

29. Tribunals and the Courts will apply the rewritten legislation to settle disputes.

## **d) Public Sector**

30. The main groups are HM Revenue and Customs and the Treasury. Impacts on other sectors will be identified through consultation within government.

### **Benefits**

#### **Benefits to taxpayers of rewriting legislation in a modern, simpler style**

**The following paragraphs (32 – 36) set out the benefits of rewriting and consolidating legislation and so are relevant to each of options B to E. Options B to D also allow HMRC to make more substantive changes to the administrative provisions for the main HMRC taxes. The additional benefits from any proposed changes will be included in later versions of the partial RIA and discussed in detail in supporting annexes.**

31. Business interviews undertaken for the administrative burdens project found that many new businesses seek advice or assistance from an accountant or tax adviser. Rewriting legislation in a modern, simpler style will allow more taxpayers to consult it directly. In general, large businesses are more likely to refer to legislation than small or medium businesses. But simpler legislation feeds through to simpler systems and clearer guidance and so benefits all.

#### **Benefits to tax professionals, the judiciary and the public sector of rewriting legislation in a modern, simpler style**

32. A modern drafting style would improve the transparency and understanding of the administrative legislation, leading to the following main benefits:
- less time spent construing legislation and fewer errors caused by misunderstanding of the law
  - fewer issues on which time needs to be spent on obtaining specialist advice
  - less resource expended in interpretation-type queries
  - fewer disputes with HMRC about the meaning of legislation
  - training and guidance material easier to use and more straight forward
33. One indication of the benefits of rewriting and consolidating legislation to tax professionals is the support they have already given to the Tax Law Re-write project since it was set up in 1996. It is very difficult to quantify the benefits to users of a particular body of rewritten legislation, even after it has been in force for some time. Questions about benefits were put to users of the rewritten TLR legislation by consultants who carried out post-implementation reviews of the Capital Allowances Act (CAA) and the Income Tax, Employment and Pensions Act (ITEPA).
34. Users agreed there was a time saving when using the new provisions but were unable to quantify it at all precisely. Points made included:
- The rewrite had been very positively received
  - The ease of familiarisation for new staff and the ease of navigation were cited as definite benefits

- There was fairly universal acceptance that the change would save time, but that there was a transitional phase during which some extra time had been required to become familiar with the new legislation and for case law to become established.

The conclusion from this feedback is that the benefits of rewriting the legislation will be worthwhile.

35. The benefit of redrafting on its own is difficult to quantify, but there are around 120,000 active tax professionals who deal with HMRC on a regular basis. Most, if not all, will benefit in some respect from the rewritten legislation. One hour of time saved, per professional, per year, would (at an assumed rate of £50 per hour) save the industry £6m in compliance costs.

#### **A: Do Nothing**

36. If we do nothing, the sectors and groups identified will not need to spend time to become familiar with new legislation. There will also be no costs associated with the updating of guidance, training, systems and software. There would be no benefits from rewritten legislation as described in paragraph 32 – 36.

#### **B: A single management act covering all HMRC taxes, duties and credits**

37. Option B would deliver benefits of rewriting legislation as described in paras 32 – 36. The extent of the benefits would depend on the age of the current legislation, its language and complexity and the extent to which it has been amended. Some of the legislation is relatively recent and there would be little additional benefit from re-writing this again so soon.
38. The diversity of the subject matter would make it difficult to realise additional benefits from aligning and rationalising the legislation except at the very highest level. Even where the high level rules could be integrated and aligned across such diversity, the benefits would be relatively small due to the infrequent contact with HMRC for many of the relevant taxpayers. Benefits of alignment are greatest where taxpayers have frequent, multiple contacts with HMRC across a number of schemes.
39. Many of the taxes, duties and schemes applicable to particular business areas have relatively small populations. Including all of these in a single administrative act would not proportionately increase the scope to reduce administrative burden on business.

#### **C: Two separate management acts for direct and indirect taxes**

40. As for option B the level of benefit from rewriting the legislation would depend on the age, complexity and history of the current legislation.
41. It is likely that there would be more benefits to be found through alignment and rationalisation of the legislation than for Option B. However there would be no opportunity to realise benefits from offering a more joined-up service to business across direct and indirect taxes.

#### **D: A new management act for 5 core schemes**

42. Much of the present administrative legislation for the 5 core schemes derives from elderly law and rewriting would deliver the greatest level of benefits as described in paragraph 32- 36 compared to the length of resulting legislation.
43. Focussing on 5 core schemes where taxpayers have frequent, multiple contacts with HMRC in a variety of different contexts gives HMRC the greatest opportunity to integrate and align the administrative rules across the schemes to make it easier for taxpayers to understand and comply with and for HMRC to operate. The benefits of proposed substantive changes to the law will be detailed in separate annexes to later versions of this RIA.
44. The scope for the closer alignment of the administrative rules for VAT with those for direct taxes gives HMRC the potential to reduce the administrative burden on over 1 million businesses, registered for VAT and having to deal with HMRC in relation to at least one other scheme.

#### **E: A new management act for 5 core schemes (consolidation and re-write only)**

45. This option would deliver the same benefits of rewriting as identified for option D. But would miss the opportunity to benefit from alignment and consistency across the schemes.

### **Costs**

#### **A: Do Nothing**

46. By doing nothing to modernise, consolidate and improve the legislation the scope for HMRC to reduce administrative burden costs will be limited to process change alone.

#### **B: A single management act covering all HMRC taxes, duties and credits**

47. Rewriting and consolidating the administrative legislation for all HMRC taxes, duties and credits would incur fairly considerable costs. There will be one-off retraining costs for HMRC, tax professionals and the judiciary to enable them to become familiar with the new structure, references and language. Due to the disparate nature of many of the schemes there would be little scope to align and rationalise the legislation and to gain from a reduction in training costs in the long-term.
48. For those taxpayers who consult the legislation there will probably be some costs incurred with familiarising themselves with the new legislation. For some schemes the vast majority of taxpayers do not employ a tax advisor.

### **C: Two separate management acts for direct and indirect taxes**

49. Costs for option C are likely to be similar to those for option B, although there would be more scope to off-set these in the long term with the benefits of alignment and more consistent administrative provisions.

### **D: A new management act for 5 core schemes**

50. Although there will be training costs as described in paragraph 47 these are expected to be modest as option D only affects the administrative legislation for the 5 core schemes with more scope to offset these by lower training costs in the long term due to the scope for alignment and consistency across the schemes.

51. There will be a cost to HMRC in updating the relevant internal and external guidance.

52. A large proportion of taxpayers affected by the 5 core schemes employ tax advisors, so they are unlikely to incur costs in familiarising themselves with the new legislation.

### **E: A new management act for 5 core schemes (consolidation and re-write only)**

53. Costs for option E will be similar to Option D, without the long-term cost savings to be made by aligning the administrative legislation across the 5 core schemes.

## **Small Firms Impact Test**

54. Consolidating and rewriting legislation is unlikely to put extra demands on small business. The costs and benefits for the small business sector will be the same as for taxpayers generally. HMRC will take soundings from small business alongside formal consultation when considering the effect of proposed changes to the law.

## **Competition assessment**

55. The standard competition filter test has been applied and does not indicate any significant potential for the rewrite to distort competition. The test will be reapplied when substantive changes to the legislation are proposed at a later date.

56. The direct effect of the rewrite is primarily on tax accountancy and legal firms, and the impact on them will depend on the number of staff needing retraining and the breadth of the legislation they need to be familiar with. As such, the total costs and benefits are likely to increase in proportion to the size of each accountancy firm, but will be fairly constant on a per person or per unit of market share, basis. There may be slight economies of scale for larger firms (for example through being able to organise

training in-house) but this is expected to be marginal.

57. The simplified legislation may enable some businesses to complete more of their own tax affairs, with a reduced requirement for specialist accountancy advice. This might reduce the barriers to entry in the market slightly (making a positive impact on competition) but would only affect the smallest businesses and is also expected to be marginal.

### **Enforcement, sanctions and monitoring**

58. Since this first partial RIA covers the costs and benefits of re-write and consolidation, enforcement or securing compliance will be largely unaffected and no new sanctions are needed. However, legislation that is clearer and easier to use should lead to greater voluntary compliance.
59. A plan to monitor and evaluate the new legislation is currently being developed but this task cannot be undertaken until the provisions have been in force for a number of years.

## **Annex B**

### **Cabinet Office Code of Practice on written consultations**

This consultation is being conducted in accordance with the code, which sets down the following criteria:

- Consult widely throughout the process, allowing a minimum of 12 weeks for written consultation at least once during the development of the policy.
- Be clear about what your proposals are, who may be affected, what questions are being asked and the timescale for responses.
- Ensure that your consultation is clear, concise and widely accessible.
- Give feedback regarding the responses received and how the consultation process influenced the policy.
- Monitor your department's effectiveness at consultation, including through the use of a designated consultation co-ordinator.
- Ensure your consultation follows better regulation best practice, including carrying out a Regulatory Impact Assessment if appropriate.

You can see the full Cabinet Office Code of Practice on consultation on the internet, at the following address:

[www.cabinet-office.gov.uk/regulation/Consultation/Code.htm](http://www.cabinet-office.gov.uk/regulation/Consultation/Code.htm)

### **Complaints**

If you have any comments or complaints about the consultation process, please contact:

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