



**HM Revenue & Customs Charter
Consultation Document published 3 February 2009
Response by the Chartered Institute of Taxation**

1. This document contains the immediate comments of the Chartered Institute of Taxation (CIOT) on the above consultation document (condoc) from HM Revenue & Customs (HMRC).

Executive summary

2. The CIOT has been very active in calling for a Taxpayers' (or HMRC) Charter, including developing our own example of how a Charter might look. We participated very fully in the discussions on a Charter during 2008 and had high hopes for a useful and constructive document.
3. In the event, we find the condoc and draft Charter within it extremely disappointing. We had been led to believe that HMRC were committed to a Charter which would be meaningful and useful; the condoc gives the impression that this resolve has disappeared. The current draft is simply inadequate.
4. The draft Charter looks as if it has been produced by editing the recent 'HMRC Vision'. In doing so, it has largely missed the key objective of producing something aimed at the average taxpayer/claimant. Instead, it seems more geared towards HMRC staff. The rights identified in the draft Charter seem to be the minimum possible; there is no explanation why the further rights listed in Appendix B of the condoc have not been included; the cryptic references to 'complaints procedure' and 'appeals procedure' seem particularly odd.

General comments

5. We think that the drafting of the Charter has misunderstood or confused the nature of a Taxpayers' Charter. A Charter sets out the rights (and obligations) that taxpayers (or 'customers') enjoy (or owe) in their relationship with HMRC. The drafting seems to have confused this with the idea of a mission statement for HMRC. The opening paragraph of the draft Charter belongs in the mission statement, not in a Charter.
6. Similarly, HMRC's current mantra about 'pursuing relentlessly those that break or bend the rules' can hardly be seen to be a right or obligation which individual taxpayers enjoy or owe with respect to HMRC. If such a statement is really necessary in what is primarily a statement of rights, it should, at a minimum, refer to people who fraudulently abuse or break the rules, not give the impression that anyone who makes a mistake will be pursued relentlessly. The statement sits oddly with the ethos of the HMRC Powers review, to amend behaviors constructively.
7. We can completely understand that the Charter should have regard to the 'HMRC Vision' and that the Charter should work for HMRC staff as well as for their customers. However, its main orientation must be for users of HMRC's services; it seems to us that the current draft has lost sight of this aim.
8. We think that a Charter needs to be seen by HMRC as an opportunity to restore confidence in the department and its operations. In our view, it is an important complement to the ongoing review of HMRC's powers, and needs to show that the department has a proper sense of taxpayers' rights and is prepared to set out safeguards that balance its new powers.
9. The department needs the confidence of taxpayers and agents and their co-operation. The Charter could be used effectively to restore confidence and improve this relationship; it could demonstrate a commitment to taxpayers' rights, and to a co-operative (and non antagonistic) relationship. Instead, the draft Charter seems almost antagonistic in parts.
10. The aim must be to have a Charter that will be long-lasting, although that is not to say that version first published will not be altered as time goes on. Indeed, we think it is important that the Charter (together with supporting documents that expand or support its principles) is seen as dynamic and developing in response to changing legislation and practice, probably monitored by an oversight group drawn from all interested parties. But the main principles must be seen as timeless; we think that would be in accordance with Parliament's likely stance on the subject.

Title of the document

11. During the discussions on the Charter last year, there was much debate on the title of the document. The main contenders were (or were variants of):

- Taxpayers' Charter
- HMRC Customers' Charter
- HMRC Charter.

None of these options is perfect, but we think it is very important to select the best title, to set the right tone for the Charter

12. The condoc has decided on 'HMRC Charter'. We think this is wrong. It orientates the document too much towards HMRC and their staff. That, as we have discussed above, seems to result in users' rights taking second place to HMRC's own vision.

13. We do not think 'Customers' Charter' is right. The term grates with too many people as implying a choice that taxpayers patently do not have, although we can see that it does say something about the customer focus HMRC are, to their credit, aiming for.

14. We continue to prefer 'Taxpayers' Charter' as the right title. We understand the reservations over benefits claimants seemingly being outside this term. However, that ignores the fact that every person in the UK pays taxes (VAT and other indirect taxes at least), and is within the ambit of direct taxes and has rights and responsibilities in that regard (for example, the right to reclaim tax deducted on bank interest if they are not liable to income tax). The term also reminds users that HMRC are responsible for most taxes operated within the UK.

Format

15. We support the approach that the basic Charter document should be relatively short and accessible. However, the draft Charter seems to take this to extremes. If one ignores the mission statement elements and the 'relentlessly pursuing' mantra, the actual rights set out in this Charter occupy five short bullet points.

16. There is no indication that a decision has been taken to back up each of these statements with more detail. One of the most attractive patterns for a Charter is that adopted in Australia and other countries, where the basic Charter document represents an entry porthole for more detailed information and guidance about what taxpayers and other customers of the tax authority can expect from the department, and what the department can expect from them. The Charter can represent an accessible 'homepage' for people who want to know their rights and obligations.

Contents

17. We are disappointed with the paucity of taxpayers' rights in the draft Charter, and the brevity of some of the statements. It is surely valid to identify the rights set out in various other countries' Charters and ask why the HMRC draft does not include those in its draft. Here are three examples:

(1) *OECD Example Taxpayers' Charter (this is attached to the Practice Notes on 'Taxpayers' Rights and Obligations' published by the OECD in 2003)*¹

It should be noted that the OECD has recommended that member countries adopt taxpayers' charters, and has published an example of the contents of the charter. The example includes:

- Your right to pay no more than the correct amount of tax;
- Your right to certainty; and
- Your right to privacy (the draft charter refers to HMRC protecting the information that they hold about you, but the right to privacy is wider than this).

Note: the OECD Example Charter contains some of the rights set out in the draft Charter in the condoc, but they are then elaborated significantly more than in the draft Charter.

¹ <http://www.oecd.org/dataoecd/24/52/17851176.pdf>

(2) *The Australian Taxpayers' Charter*²

Many of the OECD's examples of rights are echoed in the Australian Charter. In addition, it includes the following:

- "Offers you professional service and assistance to help you understand and meet your tax obligations;
- Respects your privacy;
- Gives you access to information we hold about you in accordance with the law;
- Gives you advice and information you can rely on;
- Explains to you the decisions they make about your tax affairs;
- Respects your right to a review;
- Administers the tax system in a way which minimises your costs of compliance; and
- Being accountable for what we do."

(3) *The Irish Tax and Customer Charter*³

- "Revenue will administer the law fairly, reasonable and consistently and will seek to collect no more than the correct amount of tax or duty.
- You can expect ... to be treated courteously, with consideration and in a non-discriminatory way in your dealings with Revenue."

18. The CIOT's own policy paper on 'A Taxpayers' Charter for the United Kingdom', published in early 2008 and made available to the HMRC Charter team from the outset, included a range of rights (and obligations). We still believe all the following should feature in a proper Charter:

² <http://www.ato.gov.au/corporate/content.asp?doc=/content/25824.htm>

³ <http://www.revenue.ie/en/about/custservice/customer-charter.html>

- The right to be treated fairly, to human rights and European community freedoms (the point may be made that the draft Charter makes no reference to someone being treated fairly by HMRC and in a non-discriminatory fashion);
- Rights to professional service and assistance (the draft Charter simply refers to HMRC providing accurate information, but taxpayers and other customers have a right to a professional service and to assistance);
- The right to access information (kept about the taxpayer). This is a right under the Freedom of Information Act, but there is no reason why it should not be referred to in the draft Charter;
- The right to appeal or review (the reference in the draft Charter to 'appeals process' gives little clue as to what would be covered here);
- The right to complain (similarly, the reference to 'complaints process' gives little clarification);
- The right to an effective remedy and compensation (these are clearly rights which exist under general law, but there is no reason why they should not be referred to in the Charter);
- The right to minimise compliance costs (this is extremely important, and there is no reference in the draft Charter to a right to have the tax system administered in a way that seeks to minimise compliance costs);
- The right to pay only the tax that is due under the law, ie the correct tax (the clear implication needs to be that the taxpayer is allowed to take advantage of planning opportunities; this may be rather more contentious, but the courts in the United Kingdom have recognised that a taxpayer has a right lawfully to minimise his tax liability, and it seems pointless ignoring that in the Charter);
- The right not to be subject to retrospective taxation (taxpayers' actions should be taxed in accordance with the tax laws that are operational at the time); and
- The right to request a payment plan (there is nothing in the draft Charter about the rights of taxpayers who are in difficulty in paying their taxes. In the current economic climate, it would be extremely helpful in terms of restoring a better relationship with HMRC if the Charter made some reference to this topic).

19. We appreciate that some of the rights that we think should be enshrined in a Charter are statutory matters (and so strictly the preserve of Parliament); some are operational matters (thus within the compass of HMRC). As far as this proposed Charter is concerned, we see no real distinction; they all relate to the way taxpayers interact with the tax system.

Conclusion

19. The CIOT remains supportive of the development of a proper HMRC Charter. We do not, however, believe that this current draft is the way forward.

20. We are pleased that the draft reiterates the commitment to a legislative foundation for the Charter. We look forward to seeing the draft clause in advance of the Finance Bill. We trust that the clause will say more than simply that there shall be a Charter; we think that the clause needs to say that the Charter should focus on rights and service standards, commit to its keeping up to date and set up a proper steering group to be responsible for its long term oversight.

The Chartered Institute of Taxation

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The Chartered Institute of Taxation

The Chartered Institute of Taxation (CIOT) is a charity and the leading professional body in the United Kingdom concerned solely with taxation. The CIOT's primary purpose is to promote education and study of the administration and practice of taxation. One of the key aims is to achieve a better, more efficient, tax system for all affected by it – taxpayers, advisers and the authorities.

The CIOT's comments and recommendations on tax issues are made solely in order to achieve its primary purpose: it is politically neutral in its work. The CIOT will seek to draw on its members' experience in private practice, Government, commerce and industry and academia to argue and explain how public policy objectives (to the extent that these are clearly stated or can be discerned) can most effectively be achieved.

The CIOT's 14,000 members have the practising title of 'Chartered Tax Adviser'.