Revenue Scotland
Charter of Standards and Values – A Consultation Paper
Response by the Chartered Institute of Taxation

1 Introduction

1.1 The Chartered Institute of Taxation (CIOT) is pleased to submit comments on the above consultation paper, issued by Revenue Scotland in late January 2015. We note that the public consultation period is relatively short (six weeks), no doubt due to the desire to have in place a final Charter of Standards and Values (Charter) by 1 April 2015, when Revenue Scotland will commence the administration of Land and Buildings Transaction Tax and Scottish Landfill Tax. Although we normally always call for a full 12-week consultation period, we think a shorter period is acceptable here, given the extensive discussions that have already taken place in framing the Revenue Scotland and Tax Powers Act 2014 provisions concerning the Charter. We particularly value the opportunity we had to contribute thoughts on an informal basis at an earlier stage of the draft Charter’s development. We are pleased to note that many of the comments we have previously made to Revenue Scotland in relation to a Charter have been taken on board.

1.2 As Revenue Scotland are aware, HM Revenue & Customs (HMRC) consulted on a Taxpayers’ Charter in 2008 and 2009. In 2008, the CIOT issued a policy paper including a draft Taxpayers’ Charter, with the aim of opening a debate about the legal status and content of a Charter. This may be of interest to Revenue Scotland as part of the consultation on a Charter of Standards and Values.

2 General comments

2.1 We reiterate the point that it is very welcome that the Scottish Government decided to give the Charter a statutory basis. This is an important decision, as the statutory basis strengthens

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the Charter as a safeguard for the taxpayer – it cannot simply be removed or side-lined due to a policy change.

2.2 It is good to see that Revenue Scotland recognise that the Charter is also of assistance to them, in developing a co-operative relationship with taxpayers. Properly framed and managed, it will also do a great deal to help taxpayers appreciate their responsibilities. In this regard, we welcome the decision to frame the Charter as a principles document.

2.3 Since Revenue Scotland will delegate some of their duties to the Scottish Environment Protection Agency (SEPA) and Registers of Scotland (RoS), and since some taxpayers rely on agents or representatives to deal with their tax affairs, the Charter needs to take into account all of these persons. We welcome the mention of SEPA and RoS in the introductory text of the draft Charter and the clear explanation of when the Charter will apply to their staff. Equally, we welcome the explicit mention that the Charter applies to agents and representatives in the same paragraph.

2.4 In the consultation paper, under the heading ‘Purpose of the Charter’, it explains clearly that the Charter will not apply to taxpayers in Scotland in relation to the Scottish Rate of Income Tax and other taxes dealt with by HMRC. Although we accept that it is reasonable for such information not to appear in the Charter itself, we think it would be useful for such a clarification paragraph to appear on Revenue Scotland’s website – perhaps on the landing page for the Charter. It is almost inevitable that some taxpayers will be confused as to whether to contact HMRC or Revenue Scotland once Revenue Scotland have a higher profile.

2.5 In order for the Charter to be meaningful, Revenue Scotland must adhere to it. In addition, the Charter must be capable of being enforced. We welcome the fact that there will be a framework for handling complaints raised under the Charter, and that the final recourse will be to the Scottish Public Services Ombudsman (SPSO). It is particularly welcome that the draft Charter itself includes reference to the SPSO and contact details.

2.6 We note that Revenue Scotland intend to review and revise the Charter in the future ‘as appropriate’, to fulfil the requirements in section 10 of the Revenue Scotland and Tax Powers Act 2014 (RSTPA 2014). By way of example, Revenue Scotland suggest they might do this if additional taxes are devolved to Scotland. We suggest that it would be worthwhile Revenue Scotland thinking now about what other events or circumstances might trigger review and/or revision of the Charter, in order to ensure they are well-prepared. Another trigger might be the delegation of duties to another third party, in addition to SEPA and RoS.

2.7 We think that a Charter should be accessible to all – this means that it must be:

- easy to read and understand;
- available in a variety of formats and through different channels; and
- well-publicised by Revenue Scotland.

We are pleased to note that the draft Charter is on the whole easy to read and understand. In addition, we welcome the fact that the responsibilities of Revenue Scotland are set out separately from those of the taxpayer. This minimises the opportunity for confusion and will hopefully prevent the misconception arising that the two sets of responsibilities are conditional on one another.

2.8 We think that the main area of omission in the draft Charter is the lack of a commitment by Revenue Scotland to set measurable and meaningful standards of service, to monitor them,
and to publish reports on their performance against them.

3 Expectations of Standards and Values on the Tax Authority

Q1 Do you think the obligations and responsibilities on Revenue Scotland (and SEPA and RoS in relation to the functions delegated to them by Revenue Scotland), as set out in the draft, are appropriate?

3.1 The principal function of Revenue Scotland will be to ensure efficient and effective care and management of devolved taxes. Provided the Charter is properly formulated, it should help to improve the working relationship between Revenue Scotland and taxpayers and their agents.

3.2 The obligations and responsibilities on the tax authority as set out in the draft Charter are, on the whole, those that we would like to see. We have a few specific comments to make. Where we make no comment about a particular obligation, we think that the obligation is appropriate and should be included in the Charter.

3.3 We think that the first obligation should be to treat the taxpayer as both honest and compliant. We recognise the importance of including a caveat in the statement that Revenue Scotland will treat the taxpayer as honest. We would prefer the caveat to read ‘unless the taxpayer gives Revenue Scotland reason to doubt this’. This is subtly different, suggesting that the reason for the change in belief must be due to something the taxpayer has or has not done, rather than a third party. Alternatively, we think there needs to be an expansion of the concept of ‘reason to believe’, to ensure that unfounded suspicions cannot be used as a basis for treating the taxpayer as dishonest.

3.4 The fifth obligation could perhaps be strengthened, to ensure it is more meaningful. We would suggest ‘Revenue Scotland will treat taxpayers in similar circumstances consistently; and when considering what is reasonable, take into account a taxpayer’s particular circumstances and abilities.’

3.5 In the sixth obligation, in addition to making it easy for taxpayers to claim reliefs, we think there should be reference to deductions and allowances.

3.6 In the final obligation, we suggest that this should say ‘represented and advised’. In addition, we think it would be useful to indicate that the agent or representative may be paid or unpaid.

3.7 We think the obligations could be usefully expanded. We suggest they should include that Revenue Scotland will:

- tell the taxpayer in full about relevant rights, and safeguards and limitations on Revenue Scotland powers, in particular when Revenue Scotland are seeking to exercise their powers, for example to require documentation or to inspect premises;
- develop guidelines for when taxpayers in financial difficulties can request consideration of a ‘time to pay’ arrangement;
- maintain a secure digital system.

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3 In the draft Charter, the fifth obligation reads ‘Revenue Scotland will use our powers reasonably and consistently.’
4 Expectations on the Taxpayer

Q2 Do you think the obligations and responsibilities on taxpayers and their agents and representatives, as set out in the draft, are appropriate?

4.1 The obligations and responsibilities on the taxpayer as set out in the draft Charter are also, largely, as we would wish. It is important that taxpayers take personal responsibility for their tax obligations, and the Charter therefore needs to encourage that.

4.2 Nevertheless, we welcome that the Charter makes clear that these obligations also apply to the taxpayer’s agents and representatives, since if an agent is appointed, they should adhere to similar principles to those expected of the taxpayer. The fact that an agent is in place cannot absolve the taxpayer of the need to continue to adhere to the principles, but naturally some of their duties will in effect be towards their agent rather than Revenue Scotland.

4.3 Again, we have a few specific comments to make. Where we make no comment about a particular obligation, we think that the obligation is appropriate and should be included in the Charter.

4.4 The first obligation states that taxpayers will be ‘honest and open’. Certain documents and information may be privileged or indeed irrelevant to a taxpayer’s tax position. Although this obligation goes on to mention ‘relevant information’ specifically, use of the term ‘open’ may foster an expectation from Revenue Scotland staff or indeed a misconception by taxpayers that they should simply hand over all information or documents requested, without considering their legal status or relevance to the tax position. We would prefer this obligation to omit ‘and open’.

4.5 Also in respect of the first obligation, we think the phrase ‘take care’ should be expanded to ‘take reasonable care’. In addition, we think the phrase ‘all relevant information’ should be expanded to ‘all relevant, non-privileged information’.

4.6 The third obligation requires the taxpayer to keep ‘records of all activities that may be taxable.’ This seems too broad an obligation, as potentially all activities are taxable, depending on what laws are enacted in future. The use of the modal verb ‘may’ is particularly problematic, as it automatically leads to thoughts of possible future taxes and uncertainty. One solution might be to add a defining clause such as, ‘to the best of your ability, knowledge and belief’, or to change the requirement to keep ‘records of all activities that you can reasonably foresee may be taxable.’ We think there should be further clarification of this obligation in respect of time limits, to ensure that taxpayers realise they are not expected to retain records outside the statutory periods. An additional clause for this purpose could be, ‘within the time limits required by the law’.

4.7 We welcome the inclusion of the fifth obligation. We suggest the following minor alterations. Firstly, we think the word ‘promptly’ would be better than ‘quickly’. The adverb ‘promptly’ better suggests the idea of letting Revenue Scotland know soon after you realise the error. ‘Quickly’ by contrast does not imply any connection with the idea of the taxpayer discovering or realising the error. Secondly, we think that the point about ‘making payments’ should be split out into a separate obligation,4 as there is a danger it might be overlooked in this position. It is also a rather different issue to the other two contained in that obligation.

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4 Suggested wording could be: Taxpayers (their agents and representatives) will let us know promptly if you are having difficulty making payments.
4.8 We think that the list of obligations could be expanded slightly. In particular, while we would prefer the omission of ‘and open’ from the first obligation, we think that an effective replacement would be to include a separate responsibility along these lines: taxpayers (their agents and representatives) will co-operate fully.

4.9 We think there should be an additional obligation on taxpayers to notify Revenue Scotland of relevant changes in circumstances. It may be thought that this is either obvious to all or included in the first obligation. However, this additional responsibility would essentially serve to remind taxpayers that they need to let Revenue Scotland know about changes in address, for example.

5 **Awareness**

**Q3 Do you have any suggestions about how Revenue Scotland should raise awareness of the Charter and encourage its use by Revenue Scotland staff, taxpayers, their agents and representatives?**

5.1 We think the measures to raise awareness and ensure accessibility noted in the consultation document are good. Additional steps could be taken: for example, particularly in correspondence with taxpayers that do not file returns digitally, they could not only draw attention to the Charter in correspondence, but also include a hard copy of the Charter. Circumstances when we would expect Revenue Scotland to include a hard copy of the Charter for such a taxpayer would include when they have already suggested that they are unhappy with some aspect of Revenue Scotland’s behaviour.

5.2 In addition to making the Charter easily available on the Revenue Scotland website, there are other steps Revenue Scotland could take to raise awareness: the professional tax, legal and accounting bodies, trade associations and tax charities would probably be willing to publicise the Charter on their websites and in their journals. This is certainly something that the CIOT will do.

5.3 There should be more than one route available for requesting the Charter in a different format or language – and neither route should take an excessively long time to process such a request. As a minimum, we would expect there to be a free telephone number (or cheap and the cost of a call published) and an online or email facility. There should perhaps also be an address to which a written request can be sent.

5.4 We agree with Revenue Scotland that the Charter should be included within Revenue Scotland staff guidance and also think it should be considered as a matter of course when staff deal with any correspondence. Learning about the Charter, for example its role and how to apply it, could usefully form part of staff induction courses and staff refresher courses. This might involve role play or case study scenarios, rather than simply being provided with a copy of the Charter. In addition, to reinforce this, staff appraisals could include an element concerning performance in relation to adhering to the Charter.

5.5 Revenue Scotland could specifically comment in their annual report on what they are doing to ensure people are aware of it and discuss evidence of their success. This in itself would raise the profile of the Charter somewhat and hopefully ensure its importance in the culture of Revenue Scotland.
6 Any Other Comments

Q4 Do you have any other comments you would like to make?

6.1 We welcome the inclusion of an introductory section in the draft Charter, explaining the Scottish approach to tax. This should be useful for Revenue Scotland staff and taxpayers in understanding the reason for their particular obligations and responsibilities. It is also useful for the taxpayer to see a brief explanation of the purpose of taxes.

6.2 In order for the Charter to be meaningful, not only must it be obeyed, but it must be capable of being enforced. There must also be provision for effective remedy. We welcome the inclusion of the statement that the Charter can be referred to in all tax dealings, including correspondence, review, appeal, tribunal and court proceedings. It is important that this is stated clearly, to ensure that all users of the Charter are aware of this.

6.3 We note the intention for Revenue Scotland to publish the complaints procedure on their website and to refer to this in the Charter. We welcome this – it is important that firstly, there is a route of redress, and secondly that it is clear to the taxpayer how to access it and what the process is. In the paragraph referring to the ability of the taxpayer to make a complaint, we think it would be helpful to provide a link to the complaints procedure on the Revenue Scotland website. Ideally we think such a link should come before the information on the SPSO.

6.4 Revenue Scotland’s main duty and function will be the collection and management of devolved taxes. Although we recognise that Revenue Scotland will have to operate within parameters set by the Scottish Parliament, we think that the Charter could usefully contain a commitment by Revenue Scotland to set measurable service standards, against which they report their performance.

6.5 Revenue Scotland will have to review the Charter from time to time, but there is no obligation on the tax authority to report on performance against the Charter. We think there should be a duty placed on the Members of Revenue Scotland to report annually on the Charter, its use and impact. HMRC established a Charter Advisory Committee to provide independent oversight.\(^5\) The objective of reporting on performance is to try to ensure that the Charter is applied fairly and consistently. It could also help to assess whether or not Revenue Scotland staff are receiving guidance and support in achieving this and whether Revenue Scotland are promoting the Charter among taxpayers and agents.

7 The Chartered Institute of Taxation

7.1 The Chartered Institute of Taxation (CIOT) is the leading professional body in the United Kingdom concerned solely with taxation. The CIOT is an educational charity, promoting education and study of the administration and practice of taxation. One of our key aims is to work for a better, more efficient, tax system for all affected by it – taxpayers, their advisers and the authorities. The CIOT’s work covers all aspects of taxation, including direct and indirect taxes and duties. Through our Low Incomes Tax Reform Group (LITRG), the CIOT has a particular focus on improving the tax system, including tax credits and benefits, for the unrepresented taxpayer.

\(^5\) The Charter Advisory Committee is tasked with checking how HMRC performs in relation to ‘Your Charter’. It monitors all aspects of use of ‘Your Charter’, with the aim of making sure taxpayers can access their rights under it.
The CIOT draws on our members’ experience in private practice, commerce and industry, government and academia to improve tax administration and propose and explain how tax policy objectives can most effectively be achieved. We also link to, and draw on, similar leading professional tax bodies in other countries. The CIOT’s comments and recommendations on tax issues are made in line with our charitable objectives: we are politically neutral in our work.

The CIOT’s 17,000 members have the practising title of ‘Chartered Tax Adviser’ and the designatory letters ‘CTA’, to represent the leading tax qualification.