Response from ICAS to the Ministry of Justice consultation

‘Court and Tribunal Fees
The Government response to consultation on enhanced fees for divorce proceedings, possession claims, and general applications in civil proceedings and consultation on further fees proposals’

14 September 2015
Consultation on further fees proposals

First-tier Tax Chamber and Upper Tribunal (Tax and Chancery)

About ICAS

1. The Institute of Chartered Accountants of Scotland (ICAS) is the oldest professional body of accountants. We represent over 20,000 members who advise and lead businesses. Around half our members are based in Scotland, the other half work in the rest of the UK and in almost 100 countries around the world. Nearly two thirds of our members work in business, whilst a third work in accountancy practices. ICAS members play leading roles in around 80% of FTSE 100 companies. ICAS is also a public interest body.

Introduction

2. ICAS welcomes the opportunity to comment on the consultation on further fees proposals, Question 16 and Question 17 of the document ‘Court and Tribunal Fees: The Government response to consultation on enhanced fees for divorce proceedings, possession claims, and general applications in civil proceedings and consultation on further fees proposals’, issued in August 2015.

3. Our evidence is restricted to ICAS areas of specific expertise, which in relation to this consultation is in taxation and the Tax Tribunals.

Comments in relation to questions 16 and 17

Question 16: Do you agree with the proposed fee structures that we are proposing in the First-tier Tribunal (Tax Chamber) and the Upper Tribunal (Tax and Chancery)?

Question 17: Are there any types of applications or cases which you feel should be exempt from the fees?

4. ICAS members have grave reservations about these proposals to introduce fees for the First-tier Tax Tribunal Chamber and Upper Tribunal (Tax and Chancery), as detailed in paragraphs 128 – 133 of the consultation.

5. ICAS does not agree with the proposal to charge issue fees, or hearing fees, of any amount. This is wrong in any case where the citizen is contesting a decision of the state, either in relation to the charge to tax or its quantum, or to penalties in relation to tax and particularly so in the First-tier Tax Tribunal where many of the cases are from unrepresented taxpayers.

6. Paragraph 128 of the consultation paper states that the cost of running the First and Upper tiers of the Tax Tribunal is £8.7million and that the proposed fees should recoup 26% of this amount. Paragraph 129 also notes that a significant proportion of the cases heard by the First-tier Tax Tribunal is in relation to penalties for relatively small amounts.

7. It is right to question the costs of running a First-tier Tribunal for adjudicating over, say, a £100 penalty when the costs will clearly outweigh the penalty. However, perhaps one should ask why there are a significant number of low value cases coming before the tribunal. Are they frivolous and issue and hearing fees will address this? Or are cases brought due to a sense of grievance and it is this that should be addressed?

8. In the view of ICAS members the root cause of the problem is that significant numbers of taxpayers feel aggrieved at the state charging them late filing or late payment penalties when, invariably, any non-compliance has been due to an innocent mistake or cash flow problems and, also, often the taxpayer feels the penalty is disproportionate to the offence. Hopefully, this issue will be addressed by the outcome of the review of penalties that is
currently being undertaken by HMRC and, if so, there should be far fewer penalty cases before the tribunal.

9. It is not appropriate for tax disputes between citizens and the state to be resolved by a pricing decision being forced upon the appellant.