Dear Sir/Madam

Tax Policy Making: a new approach
Representations from the Institute of Chartered Accountants of Scotland

The Tax Policy Making discussion document issued in June this year contained positive news in its attempt to address past criticisms of the legislative change process in tax, particularly when new tax laws were introduced without sufficient time for discussion or appropriate consideration of their effects. We welcome the commitment to the aims of increased predictability, stability and simplicity for the UK tax system and support the direction of travel towards an improved process for tax policy, from design to implementation. We firmly believe that tax practitioners dealing with the legislation on a day to day basis have an extremely valuable contribution to make on the design of workable, effective and ultimately successful legislation. Consultation which takes tax practitioners’ representations seriously would, we believe, enable the implementation of legislation which is “right first time” – the Government’s stated objective.

The discussion document introduces a number of areas on which we would make specific comments and these are set out below.

1. Clarity around expectations and measures of success
The measures of success of a change in approach need to be made clear to enable effective evaluation of the processes of change, as well as the evaluation of the resulting tax law change made. As the consultation process advances it will be important to ensure that there are specific and measurable objectives (or key performance indicators) for the new procedures adopted. These will ensure clarity of the expectations that professional advisers and taxpayers alike can have of HM Treasury and HM Revenue & Customs in the implementation of the new procedures and so contribute to the success of the new approach.

2. Consultations on policy development - external scrutiny process
The three stage approach and related process aims, as set out at paragraphs 2.7 and 2.8 will be welcome measures, however there should be external or independent scrutiny to prevent as far as possible, (or support as the case may be) any decision not to consult on a policy change. This will reduce any risk of the new approach being used only when convenient to HMRC or HM Treasury, which in turn could reduce the quality of contributions made to future consultation exercises or devalue the new process overall. It would also support the broader regulatory reform agenda by avoiding ill-considered changes which need ongoing amendments. This could be a specific role for the Tax Professionals Forum.
3. **Consultations on policy development – tailoring the approach**

Policy and legislative changes have a range of impacts and complexity and it would be appropriate to design consultation processes which recognised these, with say complex, moderate or straightforward levels. This would allow resources of all parties to be used most effectively. It would avoid time being spent unnecessarily on simple changes and insufficient time and effort being given to more complex or widespread changes. Experience suggests that HM RC and HM Treasury are not always best placed to appreciate the full business or behavioural changes envisaged by such changes, and there have also been cases where an apparently straightforward change in policy has led to more extensive than expected legislative changes being introduced. At an early stage and on a continuing basis the consultation process would clearly identify its level and it would be possible after appropriate engagement, to change that level if required.

4. **Policy and legislative developments – appreciating the impacts**

Future consultations are to include a new Tax Impact Assessment. We consider any such assessment should include tax and other financial costs and benefits but also needs to state clearly the basis of calculation and information sources on which the figures are based. This will assist with the credibility of the case for change and inform possible alternative options. We consider it should also be extended to include secondary or behavioural consequences; for example does a change to corporation tax lead to a significant increase in businesses incorporating? What happens when capital allowance changes are introduced? Such wider, practical impacts are vital to getting the legislation “right first time” and should also be part of the consultation agenda. Tax impact assessments should be subject to post implementation review to confirm the accuracy of forecasting or otherwise inform better preparation processes for the future.

5. **Legislative changes – timescales and forestalling exclusions**

We welcome the commitment to publish draft legislation in advance as part of the consultation process. As noted above under point 4, the exclusion of areas where forestalling might present a risk, is a behavioural consequence which should still be subject to consultation and/or external scrutiny (point 2 above). As an example, the recent experience on pension contribution anti-forestalling could have benefited from such a process.

6. **Risk of avoidance and a General Anti-Avoidance Rule (GAAR)**

The main concern we have on a GAAR is the uncertainty on tax treatments it might present for most commercial transactions unless it is properly targeted. Individuals and businesses alike need to know the financial outcomes of their decisions and tax is one of these. Transactions can be undertaken in a variety of ways, for a variety of reasons, particularly legal or financial restrictions or concerns. In order to achieve certainty of tax treatments and support a competitive commercial and business environment in the UK, any GAAR based on a motive or intention test, or around purpose, would need a fast advance clearance process. In addition, when there is dispute, such disputes need to be resolved quickly and effectively. There are existing models around, such as under section 701 ITA 2007 which could be used as a basis.

Unless there are sufficiently commercially aware senior technical resources available within HMRC to support the resolution of uncertainty, a GAAR could prove counterproductive. But, if a GAAR would mean that there could be wholesale elimination of existing anti-avoidance provisions and complexities within the legislation then there could be corresponding or offsetting savings. This would be welcome and the merits and demerits of introducing a GAAR deserve further detailed consideration in the future. Such massive changes to the structure of tax legislation at this time are of dubious benefit or efficiency in achieving their objective. They might also simply play into the hands of those who do not understand, nor wish to understand, the difference between avoidance and evasion. Tackling avoidance and improving certainty cannot be done on a piecemeal basis. But aiming for stability,
certainty and lower compliance costs for compliant business is an outcome to be encouraged.

We look forward to the outcome of the consultation process and will be pleased to elaborate on any of the points noted above if required.

Yours faithfully

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