

LOW INCOMES TAX REFORM GROUP

HM Revenue and Customs and the Taxpayer: Modernising Powers, Deterrents and Safeguards

A new approach to compliance checks

Response by the Low Incomes Tax Reform Group to the Consultation Document 10 January 2008

1. Executive Summary

- 1.1. We are pleased to note that some of our comments on earlier consultations have been incorporated in the current document. However, we still have concerns regarding the application of many of the procedures and requirements to those on low incomes who cannot afford professional representation, and who are therefore reliant on HMRC for their total knowledge of the tax code and their rights and obligations.
- 1.2. We are also concerned that in many instances a right of appeal will not exist. In particular we would draw your attention to issues raised at points 3.6, 5.1.2, 5.2.1, 5.3.1, 12.2.5 and 12.2.8
- 1.3. We find it unlikely that this work will not have an impact on disabled people, as indicated in the Impact Assessment. Any exercise that involves meetings, visits, rights of appeal etc and the provision of information to customers does need to be accessible and available to disabled people and appropriately assessed.
- 1.4. There is however much more work to be done on the guidance notes to ensure that the detailed requirements are able to be appropriately adjusted to the size and nature of the business or non business activity. Whilst it is acknowledged that the guidance is aimed at all taxpayers it will be the main source of reference for unrepresented taxpayers. Use of plain language and avoidance of jargon is therefore essential.
- 1.5. **We recommend that where the power to obtain information from third parties is being used to obtain bulk data with a view to launching a compliance initiative, a separate Code of Practice should exist to ensure that the effects of using this data, particularly where low income or disabled customers are involved, are considered both before and during the initiative. LITRG would be happy to assist in drawing up such a code.**
- 1.6. We welcome the extended formulation to allow HMRC to correct 'obvious' errors, with its safeguard against inappropriate use, and see this as an important part of HMRC's stated

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aims of offering support, in a non-threatening way, to taxpayers, particularly those who are unrepresented.

- 1.7. Whilst we agree in principle that there is a case to show that access to the business area of a private residence should be allowed, we believe further consideration should be given to the definition of an office in the home to determine when it would be appropriate to visit a private residence. **Looking at the non-domestic rate criteria for a comparison would suggest that further qualification such as frequency and intensity of use of accommodation would be appropriate and we would recommend HMRC's review and consideration of those criteria.**
- 1.8. The contrasting styles of the draft Codes of Practice A & B in terms of the detail given, even on similar topics, is regrettable, particularly as it is Code A, for non-business taxpayers, which often has the poorest and least informative explanations.
- 1.9. Wherever help and guidance from HMRC is mentioned in the Codes of Practice, contact details – including a textphone number – should be included. In particular a person with special needs should be invited to contact HMRC at the beginning of any compliance check so that those needs can be taken into account.
- 1.10. An unrepresented taxpayer should have the right to bring someone to any meeting or arrange for them to be present at a visit in the same way that a represented taxpayer may bring their tax adviser. The position of a voluntary service adviser should also be covered in the Codes of Practice.

2. Introduction

- 2.1. The Low Incomes Tax Reform Group (LITRG) is pleased to have this opportunity of commenting on HM Revenue & Customs (HMRC) further consultative document under the theme of *Modernising Powers, Deterrents and Safeguards: A new approach to compliance checks*.
- 2.2. LITRG is an initiative of the Chartered Institute of Taxation to give a voice to the unrepresented in the tax system. As such, we approach this consultation from the perspective of the unrepresented individual taxpayer on a low income. Our focus is on the tax and tax credits systems as they affect the needs of disabled and vulnerable individuals.
- 2.3. We note that this consultation document builds on the responses to the May consultation document and the subsequent workshops which LITRG participated in.

3. General comments

- 3.1. We are pleased to note that some of our comments on earlier consultations have been incorporated in the current document. However, we still have concerns regarding the application of many of the procedures and requirements to those on low incomes who cannot afford professional representation, and who are therefore reliant on HMRC for their total knowledge of the tax code and their rights and obligations.
- 3.2. We are looking, within the consultation document and the Annexes and Draft Legislation, for an approach to compliance checks for this group that gives some assurance that those who try to comply will be dealt with more sympathetically than others who do not.

- 3.3. We would therefore need to be assured that the information and inspection powers would only be invoked once HMRC had considered all the information in their possession and where informal approaches for further information and explanation had received no response, or an insufficient response, which follow up had not resolved satisfactorily.
- 3.4. We note that this approach is referred to in Annex A (A1) and in the commentary on the draft legislation at 6.5 but there is no indication that this will be done ahead of any formal check in the Codes of Practice.
- 3.5. In addition, given a mission statement that indicates support for helping customers to meet their obligations, it is unfortunate that in the area of pre-return checks (5.29) the emphasis is still based on the assumption that something is wrong.
- 3.6. We are also concerned that in many instances a right of appeal will not exist. HMRC indicates that there is no need for a right of appeal against a notice to produce records that are required by statute. But the extent of the statutory records required will vary according to the nature and size of the business. The taxpayer, where he believes that it can be demonstrated that the records he has are sufficient for the purpose, should be able to challenge a requirement to provide additional information.
- 3.7. Overall there is still a general perception that a compliance check means going in to put right failures and wrongs, not to check to see if a taxpayer, especially a new one, needs help and certainly no aim of confirming that the taxpayer will, in the end, only pay the right amount of tax by being assisted in making claims or elections to their advantage.
- 3.8. Finally we find it unlikely that this work will not have an impact on disabled people, as indicated in the Impact Assessment. Any exercise that involves meetings, visits, rights of appeal etc and the provision of information to customers does need to be accessible and available to disabled people and assessed for this. How precisely does HMRC propose to manage the special needs of the 10.5million disabled people in the UK within the scope of these powers? Has there been a disability equality assessment of any new elements of the compliance policy, as required by the Disability Discrimination Act 2005?

4. Record-keeping (Chapter 4)

4.1. *Suggested Approach*

- 4.1.1. We are happy in principle with the suggested option of having a generic requirement in primary legislation with secondary legislation and published non-statutory guidance.
- 4.1.2. We are therefore happy to see an alignment across IT, CGT, CT and VAT with regards to the basic requirement that the records kept must enable a correct and complete return to be made.
- 4.1.3. There is, however, much more work to be done on the guidance notes to ensure that the detailed requirements are able to be appropriately adjusted to the size and nature of the business or non-business activity. Whilst it is acknowledged that the guidance is aimed at all taxpayers it will be the main source of reference for unrepresented taxpayers.

4.2. *Administrative burdens*

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- 4.2.1. We welcome HMRC's view that no penalty should apply where evidence equivalent to the records can be provided.
- 4.2.2. We would welcome clarification from HMRC that they would not impose a higher record-keeping requirement where the taxpayer is able to meet their statutory obligation using existing records.
- 4.2.3. Whilst the greatest cost is likely to be the creation of the record, significant retention costs do arise and therefore allowing taxpayers to receive an early clearance will enable these retained records to be dispensed with.

4.3. *Time limits for keeping records*

- 4.3.1. In cases where HMRC files will be closed, e.g. following the death of the taxpayer or cessation of the business, a facility to request the shortening of a time limit would in the former case enable personal representatives and beneficiaries of an estate to have closure confirmed and enable in the latter records to be dispensed with.
- 4.3.2. If a procedure exists to apply for a shortening of a time limit then generally reducing the retention period for tax records is unlikely to have significant administrative savings.
- 4.3.3. The six years in which personal representatives are required to keep records does not square with TMA 1970, s 40 which precludes issuing an assessment on personal representatives in respect of tax owed by the deceased more than three years after their death.

4.4. *Format of records*

- 4.4.1. When discussing the point raised under 4.30 a question was posed at a workshop as to whether records are required to be maintained in English. This has not been addressed either in this document or in the guidance notes. LITRG would strongly oppose any such requirement.
- 4.4.2. Under a similar point, looking at many whom LITRG represent, we would not consider that maintaining a full, contemporaneously written record is a necessity to give validity or otherwise to the eventual submission of a correct and complete return.

5. **Information Powers (Chapter 5)**

5.1. *Suggested approach*

- 5.1.1. There should be no approach to non-SA taxpayers and no power to require records unless an informal approach has been made and consideration given to what confirmation can be obtained from information already in HMRC's possession.
- 5.1.2. We welcome the legislative proposal that HMRC must be 'reasonable' in its requirements. However, it should be necessary for HMRC to demonstrate that the request is reasonable and relevant to the matter under enquiry, and that due consideration has been given to any special needs the taxpayer might have. The taxpayer should also have the right of appeal against the issue of any notice. We appreciate that appeal lies against the imposition of a penalty for non-production, but where is the defence against an ultra vires (as opposed to an unreasonable) requirement to produce a document?

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- 5.1.3. It is also important for HMRC to understand that many taxpayers fail to appreciate why HMRC should be entitled to request information from them that they already have access to from other sources within 'government' in general.
- 5.2. *Non-business tax records*
 - 5.2.1. Whilst we agree that the power should only be available after the end of the tax year, we are not convinced with the argument regarding the denial of a right of appeal against a request for the information.
 - 5.2.2. Although the keeping of statutory records is a requirement under primary legislation and the guidance is intended to amplify the non-business documents to be obtained or retained, there may be good reason why these are not readily available, and taxpayers should have an opportunity to present their case or require HMRC to show that it is reasonable and relevant.
- 5.3. *A power to see business records, premises and assets*
 - 5.3.1. The counter-argument to a right of appeal against this power is even less compelling than for non-business records. The size of a business may well mean that it does not keep many of the records set out in the current draft guidance notes. A small employer might maintain little more than PAYE deduction cards for PAYE/NIC. It should in these circumstances be possible for the taxpayer to require HMRC to show why a notice to produce the full range of statutory records is reasonable and relevant.
- 5.4. *When the power could be exercised pre-return*
 - 5.4.1. The emphasis here is still based on the assumption that errors are occurring. 5.29 in particular suggests that advice and education might be given where appropriate – this should be the other way round and the main purpose for any visit to an unrepresented taxpayer should be to give advice and education whilst also identifying possible shortcomings in the record keeping etc.
 - 5.4.2. Also, pre-inspection should be confined to a general, objective assessment of the records or to informing HMRC's own compliance risk assessment procedures. It should not make assumptions about the treatment of specific items that have yet to be included in a return.
- 5.5. *A power to obtain information from third parties*
 - 5.5.1. It is right that powers should exist to obtain both first party and third party information. However in the case of the latter the power should only be used where it is necessary and then in a proportionate way. A code of conduct would seem appropriate with industries such as banking and insurance.
 - 5.5.2. **We recommend that where this power is being used to obtain bulk data with a view to launching a compliance initiative, a separate Code of Practice should exist to ensure that the effects of using this data, particularly where low income or disabled customers are involved, are considered both before and during the initiative. LITRG would be happy to assist in drawing up such a code.**

6. Time Limits for Compliance Checks (Chapter 6)

6.1. *Options for reforms to Enquiry structures*

- 6.1.1. We welcome the extended formulation to allow HMRC to correct 'obvious' errors, with its safeguard against inappropriate use, and see this as an important part of HMRC's stated aims of offering support, in a non-threatening way, to taxpayers, particularly those who are unrepresented.
- 6.1.2. We are pleased that HMRC are to undertake further work as to the careful phrasing of opening letters, especially where these will go to unrepresented customers. We trust that an opportunity will be given to representative bodies and voluntary sector organisations to review and comment on these.
- 6.1.3. We note that the provision for a taxpayer to apply to the Appeal Commissioners for a direction to HMRC to issue a closure notice is to be retained but transferred to the new appeal tribunal and welcome HMRC's statement that they plan to better publicise the purpose and direction of this procedure.

7. **Safeguards (Chapter 7)**

7.1. *Visits to taxpayers' business premises*

- 7.1.1. Whilst we agree in principle that there is a case to show that access to the business area of a private residence should be allowed, we note that the draft guidance notes and legislation uses the word 'solely as a dwelling' to define where a private residence cannot be visited.
- 7.1.2. In 7.15 the phrase 'office at the home' is used to determine when it would be appropriate to visit a private residence. A room used as an office depending on the size and nature of the business may have a dual purpose and may contain little more than a desk and writing materials, files or computer. **Looking at the non-domestic rate criteria for a comparison would suggest that further qualifications such as frequency and intensity of use of accommodation would be appropriate and we would recommend HMRC's review and consideration of those criteria.**

7.2. *Visits to premises without advance warning*

- 7.2.1. Under 7.21, where taxpayers have special needs that should in itself be a reasonable excuse to refuse access if a visit is carried out without prior warning.

8. Annex A: How a New Framework might be implemented

8.1. *Before the check – Risk Assessment Process*

8.1.1. A1. We welcome the statement that even random checks are to be reviewed and a risk analysis undertaken.

8.1.2. A3. Any visit should be preceded by a telephone call or letter in these circumstances.

8.2. *Pre-Return Checks: Non-Business taxpayers*

8.2.1. A6. It may be wrong to assume that HMRC would be contacting a taxpayer i.e. someone with a tax record; in many cases it will be non-taxpayers who may not have understood that they were liable for tax e.g. the recently widowed. A more gentle approach via a letter would be more appropriate.

8.2.2. A7–A8. There appears to be a big leap here to asking for copies of records or information in the opening contact – a pre-return check particularly should initially only be for explanations or clarification of the position. Thinking again of the case of the recently widowed, who may well have new sources of non-business income, being sent an initial letter asking for records and information would be very distressing.

8.3. *Pre-Return Checks: Business taxpayers*

8.3.1. A13. It would be helpful if an indication of what ‘issues’ HMRC envisage could be tackled in this way.

8.3.2. A14. There may not be any written ‘records’ as such and may not need to be at this stage for a small business with few sales or invoices and no employees.

8.3.3. A19. There should be more emphasis here on establishing the facts before a visit becomes necessary.

8.4. *Ending the check*

8.4.1. A28. The taxpayer should also be told of what actions can be taken if he/she does not agree with those findings. HMRC should also be prepared to offer an unrepresented taxpayer support and advice as to avoiding problems in the future

9. Annex B: Visits without prior arrangement

- 9.1. There are very few occasions where LITRG would consider that a visit without prior arrangement should be conducted and certainly strong independent evidence should be available before any application is made for such a visit. Such tactics would in our view only be justifiable where there is a strong likelihood that giving notice would result in greater risk to the Exchequer, for example the taxpayer would abscond if given notice of a visit by HMRC.

10. **Annex D: Draft record-keeping guidance**

10.1. *General comments*

- 10.1.1. In their present format these notes are obviously intended to be used as website material, relying heavily on hyperlinks for navigation. Many low-income unrepresented taxpayers, particularly if not in business, may well not have access to the internet and would need a paper version.
- 10.1.2. In addition, other formats would need to be available to meet the needs of disabled people wishing to access this information. We would also like to see more evidence that the content has been checked for relevant disability issues; e.g. to rectify the omission, in the definition of business miles, of journeys between your home and work if you are a disabled person.
- 10.1.3. Whatever the format, a clear signpost to accessing appropriate additional help and support from HMRC needs to be given.
- 10.1.4. Any guidance of this nature needs to be free from confusing statements or inadequate explanations which could cause misunderstandings. As it is guidance the use of the word 'may' can be unhelpful unless the circumstances are fully explained.
- 10.1.5. An instance of possible confusion is where at various points 'records' can be taken to mean actual documents or written up records and further clarification is needed of when retaining the documents or being able to retrieve them is acceptable and when a written record is required.
- 10.1.6. It is also important to use consistent descriptions to avoid misunderstandings. 1.2 is a good example of an inconsistent description, where 'business' in the first two bullet points means an activity other than a non business one, but then in the third bullet point becomes only part of the description of business activities.
- 10.1.7. Further clarification is also needed as to HMRC's position on the time records should have been kept where there had never previously been a notice issued for a tax return.
- 10.1.8. Bearing in mind that unrepresented taxpayers will be reading and relying on these notes, there are many areas where a 'plain-English' explanation is necessary, having regard for the literacy level of this target audience and their likely understanding of accountancy jargon.
- 10.1.9. As it appears that considerable more work needs to be undertaken on this document, LITRG would be pleased to work on it with HMRC.

10.2. *Some specific comments*

- 10.2.1. Examples of where a plain-English explanation indicated at 10.1.8 above arise at:
- 1.2 - for types of taxable income someone who is not in business may receive;
 - 2.2 - there are other types of pension a person may be in receipt of than a state or occupational pension;
 - 2.2 - a claim may also be made for other deduction or reliefs as well as personal allowances;
 - 2.2 - Income from Property and Trust Income should be given separate headings and explanations.

10.3. *Section 2. People who are not in business*

- 10.3.1. It is misleading at 2.2 – *Employment Income* to suggest that P2 and P2K are ‘usually’ sent out every year; as LITRG has previously indicated, where they are they can often be largely incomprehensible to many. The P2 and other forms such as a P60 or P45 are, however, useful in so far as they contain details of the tax office and reference number for the employer or pension provider and this should be pointed out.
- 10.3.2. We would like to see more detail regarding the State Pension, confirming that it is taxable although paid gross, but that the statement sent by the DWP may contain amounts that are not taxable. Also a signpost to the reader should be given as to where to get advice.
- 10.3.3. Similarly the guidance on State Benefits should either indicate all taxable social security benefits or signpost to where further information can be found.
- 10.3.4. The explanation of non-residency or non-domicile in the UK assumes only an employment position and signposts to a department within HMRC that no longer exists.
- 10.3.5. Both in this section and under Businesses, current HMRC guidelines for business use of a private home, as set out in Manuals, has not been followed in that the allowable proportion can also be based on floor area or any other reasonable basis.

10.4. *Section 3. Businesses*

- 10.4.1. In 3.4, as HMRC have initially indicated that the records would be determined by the nature and size of the business, the list should reflect those records that ‘may’ be included.
- 10.4.2. Where as in 3.5 HMRC indicate exceptions for very small amounts, some guidance on the amount considered to be very small should be offered.
- 10.4.3. In the same section, the expectation of what some small businesses can or would be able to do ‘as they come in’ or ‘regularly/frequently’ is probably too high. We would suggest that the guidance should allow for some relaxing of expectations where a taxpayer has maintained their records sufficiently for an accurate return to be made from a compilation of the documents retained during the year, given the size and scope of their business. In particular this could apply to those who are required only to submit a 3-line account in their self assessment return.
- 10.4.4. At 3.12, apart from suggesting that only companies and not businesses would operate PAYE/NIC, it should be appreciated that people who are not in business also operate PAYE/NIC; e.g. those in receipt of Direct Payments for their care, employers of domestic workers, etc.

10.5. *Section 4. Employers and Contractors*

- 10.5.1. As indicated in 10.4.4 above there are non-business employers who operate PAYE/NIC who would not keep or be expected to keep records such as those included at 4.3. In fact the guidance here is likely to conflict with what they would be told by the HMRC employer helpline.

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10.6. *Section 6. Records on computer and other formats*

- 10.6.1. At the workshop the question was posed as to whether the records needed to be kept in English if this was not a first language. This has not been addressed and LITRG would strongly oppose any move to make this a requirement.
- 10.6.2. The list at 6.1 needs expanding so as to identify all certificates and other forms mentioned throughout these notes. Care should be taken when using the phrase 'tax credits' without also clarifying that it relates to dividend income.
- 10.6.3. We would question what power HMRC has to request access to a computer as opposed to sight of the relevant records kept on that computer?

11. Annex E: draft Codes of Practice

11.1. *General comments*

- 11.1.1. The contrasting styles of drafts A & B in terms of the detail given, even on similar topics, is regrettable, particularly as it is Code A, for non-business taxpayers, which often has the poorest and least informative explanations.
- 11.1.2. Again we believe that much more work needs to be done in these codes to ensure that all taxpayers, but particularly those who are unrepresented, understand HMRC actions and procedures in compliance checks and their own rights, obligations and safeguards.
- 11.1.3. There is little evidence that any special needs of disabled people have been considered when preparing these Codes of Practice. A disability impact assessment should therefore be undertaken.
- 11.1.4. Wherever help and guidance from HMRC is mentioned, contact details, including a textphone number, should be included. In particular a person with special needs should be invited to contact HMRC at the beginning of any compliance check so that those needs can be taken into account.
- 11.1.5. All forms of communication should be permitted and not limited, as in 4.2, to a written application.
- 11.1.6. An unrepresented taxpayer should have the right to bring someone to any meeting or arrange for them to be present at a visit in the same way that a represented taxpayer may bring their tax adviser. The position of a voluntary service adviser should also be covered in the Codes of Practice.
- 11.1.7. Where website links are given to additional information then a means of accessing other formats should also be signposted.
- 11.1.8. When a check ends a letter should always be sent to the taxpayer confirming the position. If tax adjustments are to be made then the taxpayer, if he/she is in receipt of tax credits, should be advised that notification of the adjustments should be made to the tax credits office.

11.2. *Draft Code of Practice A: Non-business taxpayers*

- 11.2.1. In a document aimed at non-business taxpayers and likely to be read by unrepresented taxpayers it is important that the language is clear. Phrases like 'we will share with you the risks' is unlikely to be readily understood.
- 11.2.2. 3.5 is an example of lack of clear explanation of procedures and where the wording in 7.2 in draft B is more informative.
- 11.2.3. Where it is indicated that a review will be made, such as in 4.3, details of who will undertake the review should be given. Likewise exactly how 'independent' a person will be should be explained.
- 11.2.4. Again, at 4.5 the procedure as to how to complain is far less informative in draft A than in B and omits important details.

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11.2.5. The procedures at the end of the check, 5.1 and 5.2, are also far less informative than in draft B at 9.1 – 9.4 and 10.1.

11.3. *Draft Code of Practice B: Businesses*

11.3.1. As indicated at 10.5.1 it is not only those in business who operate PAYE/NIC and it should be clearly indicated that this Code of Practice does not apply to them.

11.3.2. It is not clear what benefit there is to HMRC in a random check before a return or claim is submitted as there is no information to analyse (3.1).

11.3.3. 4.3 is not replicated in draft A but the consultation document envisages obtaining third party information for both business and non business taxpayers.

11.3.4. For both 5.3 and 5.4 the possibility of the person having special needs - e.g. carer with them, mobility problems, hearing or sight impairment needs to be addressed.

11.3.5. After any meeting a written record of the meeting should be offered as a matter of course.

11.3.6. In 6.2 it is implied that HMRC have a right to take records to their office to examine them. At this stage of the enquiry no such right would exist although the taxpayer might consent for the records to be removed. A receipt should be given for any records so removed.

11.3.7. Similarly at 6.9 the implication is that a right exists to borrow records with or without the taxpayer's consent.

12. Draft Legislation and commentary

12.1. General Comments

12.1.1. Record-keeping

12.1.2. HMRC is substituting a clear and accessible set of precepts subject to Parliamentary scrutiny (TMA 1970, s 12B) with a set of sub-precepts to be made by regulation, barely accessible to the public and passed with a minimum of Parliamentary scrutiny, which may 'make different provisions for different purposes' – a recipe for confusion, particularly for the unrepresented. How will HMRC disseminate the more complex requirements and how rigid will compliance officers on the ground be in enforcing them? We appreciate that HMRC wishes to be able to legislate quickly to keep up to date with technology, but since what is required is that information and records should be (a) proper evidence, (b) retrievable, is a generic provision in primary legislation (such as section 12B) not sufficient?

12.1.3. We see a big drawback from the taxpayer's point of view in that, with regulations and tertiary legislation, the goalposts can shift without warning.

12.1.4. Penalty

12.1.5. We note that the maximum penalty of £3,000 is to be retained. This strikes us as excessive having regard to the additional burdens that could be imposed if the whole thing were left to secondary legislation. How will HMRC ensure that there is no double-counting – i.e. penalties for absence of certain records plus any loss of tax, or failure to notify, or incorrect return, which may stem from the same taxpayer failing?

12.2. Specific comments

12.2.1. Sch 2, para 3(3), (4) – First-tier tribunal should have the power to call for a taxpayer to appear or be represented if necessary to satisfy itself that the officer is justified in giving notice.

12.2.2. Para 6 – 'reasonably specified' – there should be a guide time-limit, perhaps 30 days.

12.2.3. Para 10 (2) – as mentioned at 7.1.1 and 7.1.2 we have concerns about the use of the word 'solely' without some clear definition of what constitutes an office at home.

12.2.4. Para 11 (2) – wherever documents are removed or borrowed a receipt should automatically be given.

12.2.5. Para 13 – we believe that an appeal should be able to be made to the Tribunal against a notice to produce document more than 6 years old issued by or with agreement of authorised officer'.

12.2.6. Para 16 – The six-years limit does not square with TMA 1970, s 40 which precludes issuing an assessment on personal representatives in respect of tax owed by the deceased more than three years after the death. The usual enquiry window period would be better in these circumstances.

12.2.7. Para 24 – the same point applies here as at Sch 2, para (3), (4) above.

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- 12.2.8. Para 29 – we are concerned that apparently no right of appeal by the taxpayer is to be given. We also would seek reassurance that 24 hours notice would only be used in exceptional cases where there is a serious risk of loss of tax otherwise.
- 12.2.9. Para 42 (1) (c) – a clear direction needs to be given as to HMRC's definition of 'significantly'.
- 12.2.10. P 46 - we welcome HMRC's statement at 6.5 as to where they see the power being formally exercised but this needs to be set out clearly in the guidance and training given to officers.
- 12.2.11. P 47 – Given HMRC's desire for openness and dialogue we believe the withdrawal (6.8) of any requirement to provide to the taxpayer a written summary of reasons for issuing the notice does disadvantage un-represented taxpayers who might hesitate to go through the appeal route at this stage.
- 12.2.12. We are content with the phrase 'Tax position' on the basis that HMRC officers will also use this extended definition to help taxpayers recover unclaimed allowances, reliefs, losses etc.
- 12.2.13. P 49 – at 6.11 the Tribunal should have the power to call for the taxpayer, in appropriate cases, to appear or be represented.

LITRG
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