



The Law Society

Tax policy making: Draft tax consultation framework

Comments of the Tax Law Committee of the Law Society of England and Wales

Introduction

1. The Law Society is the representative body for over 140,000 solicitors in England and Wales. It negotiates on behalf of the profession and lobbies regulators, the Government and others.
2. This response has been prepared on behalf of the Law Society by the members of the Tax Law Committee. The Committee is made up of senior and specialist tax lawyers from across the country.

General comments

1. We welcome the publication of the Consultation Framework which is intended to compliment the Government's existing Code of Practice on Consultation and govern both formal and informal consultation with interested parties.
2. We support the Government's undertaking that, in all areas of major change, HMRC will undertake formal UK public consultation following the Code of Practice and that in areas of significant change, public written consultation will be considered in preference to less formal routes. It would be helpful if the Consultation Framework could give some indication of the factors to be taken into account in deciding where the dividing line is to be drawn. This is because in some cases issues of some significance may not be addressed if only the most apparently interested parties are consulted informally.
3. We welcome the general presumption in favour of public consultation whenever legislative change is contemplated. We understand that Government will sometimes want to consult on a confidential basis with small groups but we consider that this option should be used sparingly. In our experience, tensions can arise between representative bodies and advisers when consultation takes place on an invitation only basis. The excluded can perceive themselves to be at a competitive disadvantage to those invited.
4. We have previously emphasized that consultation process will only be successful where there is meaningful engagement by HM Treasury and HMRC with taxpayers and their representative bodies¹. This will require a number of things:

¹ Comments of the Law Society of England and Wales "Tax Policy Making: A New Approach", 22 September 2010

- Adequate resources so that HM Treasury and HMRC officials can be actively involved in all the consultation processes that are running at any one time.
- An openness and willingness on the part of HM Treasury and HMRC to listen to the views of those participating in the consultation process. This may include revising or reviewing the underlying policy, changing its implementation or re-visiting the drafting.
- A greater involvement by Parliamentary Counsel in the consultation process. An opportunity for tax payers and their representatives to comment on and review instructions to and responses from Parliamentary Counsel on the structure, style and format of any draft legislation would assist.
- Careful consideration of the point at which consultation is initiated- early enough to be meaningful, but at the point when policy has been sufficiently developed to enable taxpayers and their advisers to respond. We have previously supported the proposed new Convention that the majority of changes to tax law will be confirmed no later than three months before the tax year in which they come into effect or the publication of the Finance Bill². We would hope that it would be possible to build in time for consultation before this three month period begins. Fixed Budget dates, for which we have previously argued, would be helpful in managing these timetables.³

Specific comments

5. We consider that the Consultation Framework document should specify the Government's policy on the publication of information given by respondents during the consultation process clarifying when information will be treated as confidential and when it may be published or disclosed.
6. Finally, we welcome the commitment in the Consultation Framework to prompt and full feedback, although we are unclear how this is to be managed. The Consultation Framework reads as though feedback will be given to the participants on an individual basis. We assume that what the Government intends to produce is a summary of its responses to consultation which will be made available to all the participants. We should like to see a presumption in favour of publication of these responses on a public forum such as the HM Treasury or HMRC's website wherever possible.

Contact details:

If you have any questions concerning these representations or would like to discuss anything contained in them, please contact the Chair of the Tax Law Committee Tel: 020 7849 2512 Email: ashley.greenbank@macfarlanes.com).

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² Paragraph 2.10 of the Discussion Document "Tax Policy Making: a new approach", June 2010

³ The Law Society Manifesto "Tax Good Governance and Better Law Making", March 2010