HM Revenue and Customs and the Taxpayer:

Tax Appeals against decisions made by HMRC

Consultation Document

October 2007
Foreword

The Tribunals, Courts and Enforcement Act, which received Royal Assent on 19 July, provides the legal framework for a new, two tier tribunal system.

Tribunal Reform, which is the responsibility of the Ministry of Justice, has far reaching implications for taxpayers and HMRC as all appeals against HMRC decisions will be considered within the same independent tribunal for the first time. This document has been prepared in consultation with the Ministry of Justice and complements a consultative document on Tribunal Reform they will be issuing later in the year.

Since its creation in 2005, HMRC has been striving to improve and align its procedures and to achieve better customer focus. Tribunal Reform presents a unique opportunity to streamline the complex patchwork of the legacy of legislation and practice HMRC has inherited about appeals.

In particular this document builds on the HMRC Review of Powers consultation ‘Modernising powers, deterrents and Safeguards; Safeguards for Taxpayers’ by exploring options for a more consistent framework for internal reviews.

Your views are welcomed, to help improve the way HMRC handles appeals and make it easier for taxpayers to resolve disputes with HMRC.
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Chapter 1

Introduction

1.1 This consultation looks at the administrative machinery that supports appeal rights against decisions by HMRC. It:

- summarises the historical background and context;
- builds on the feedback received from HMRC Review of Powers (‘Powers Review’) consultations by developing thinking about a more consistent framework for internal reviews;
- seeks views about the extent to which the different appeals procedures can and should be aligned;
- describes how HMRC tax appeals will be transferred to the new tribunal system; and
- shares early thinking on how this might be achieved legislatively in a way which will involve the least administrative burden.

1.2 The way HMRC deals with appeals reflects developments over some 200 years and the different approaches of the two former departments, the Inland Revenue and HM Customs and Excise. Since the merger of these departments to form HMRC in 2005, these differences have become anachronistic. So consideration has been given to aligning and modernising the administration of appeals.

1.3 The Powers Review has also been developing HMRC’s thinking on taxpayer1 safeguards. It is clear from successive consultations2 that when taxpayers dispute a decision by HMRC many are not seeking a hearing by tribunal. What they require is a simple, cheap and informal process for resolving their dispute or appeal including, particularly, the opportunity to have the decision reviewed by someone who is separate from case officers and their line management. This view also emerged strongly during consultative workshops held in September and October 2006.

1.4 The handling of appeals in HMRC needs to be considered alongside the welcome reform to the tribunals system now being taken forward by the Ministry of Justice (the MoJ) which will rationalise the arrangements for hearing tax appeals.

1.5 The MoJ will be consulting separately later this year on a range of matters in relation to the new Tribunal system, including panel composition, use of non-legal members, the award of costs in the new tribunal system and the operations of the First-Tier Tribunal and the Upper Tribunal.

1.6 HMRC are working with the MoJ and taxpayers to ensure a safe transition to the new system. This consultation document is mainly concerned with improving the internal handling of appeals from the point at which a taxpayer first disagrees with a decision to that at which the issue is either resolved or becomes the responsibility of the Tribunals Service.

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1 The term taxpayer is used throughout this document to mean business and individuals who may be liable to pay tax or duties or are entitled to make claims. It is also intended to cover charities and trusts.
1.7 Chapter 2 sets out the background. Chapter 3 explains what the new tribunal framework will look like and the implications for tax appeals. Chapter 4 discusses options for impartial internal review. Chapter 5 discusses administrative matters relating to appeals; Chapter 6 considers transitional arrangements; Chapter 7 gives a summary of the questions on which views are sought.

1.8 This document does not cover rights of appeal (some rights of appeal are being considered in the context of the Powers Review, and in the recent “Excise duty: rights to review and appeal” consultation.) Nor does it cover appeals to the Lands Tribunal or deal in detail with those appeals presently heard by the Social Security and Child Support Appeals Tribunal which hears child benefit, tax credits and non-tax Child Trust Fund (CTF) appeals. But cases which would be heard by that Tribunal are within the scope of the consideration of internal review arrangements.

How to comment

1.9 Comments on any aspect of this consultative document are welcome. Responses are requested by 31 December 2007.

1.10 Views are also sought on the costs and benefits of the options discussed to inform further development of the impact assessment (Annex B). This annex also sets out indicative data about the numbers of appeals and tribunal hearings.

1.11 Comments should be sent:

- By e-mail to: reform.appeals@hmrc.gsi.gov.uk

- Or by post to: HMRC, Appeals and Tribunal Reform, Central Policy, Room 1C/26 1st Floor, 100 Parliament Street, London SW1A 2BQ

- Or by fax to: 020 7147 2460

1.12 This document can be accessed from the HMRC Internet site: www.hmrc.gov.uk/consultations/index.htm

1.13 Hard copies are available on request from the above address.

1.14 For enquiries telephone David Croad: 020 7438 6136

Confidentiality

1.15 Information provided in response to this consultation, including personal information, may be published or disclosed in accordance with the access to information regimes (these are primarily the Freedom of Information Act 2000 (FOIA), the Data Protection Act 1998 (DPA) and the Environmental Information Regulations 2004).

1.16 If you want the information that you provide to be treated as confidential please be aware that, under the FOIA, there is a statutory Code of Practice with which public authorities must comply and which deals, amongst other things, with obligations of confidence. In view of this it would be helpful if you could explain to us why you regard the information you have provided as confidential. If we receive a request for disclosure of the information we will take full account of your explanation, but we cannot give an assurance that confidentiality can be maintained in all circumstances.
An automatic confidentiality disclaimer generated by your IT system will not, of itself, be regarded as binding on the Department. If you have any queries about the application of the FOIA please contact the Appeals and Tribunal Reform team (details above).

1.17 The Department will process your personal data in accordance with the DPA and, in the majority of circumstances, this will mean that your personal data will not be disclosed to third parties.
Chapter 2

Background

2.1 31 million persons in the UK have a tax liability or are in receipt of tax credits and there are nearly 2 million active VAT registrations. In 2006/07 HMRC collected £423 billion in tax and duties. The decisions HMRC makes affect vast numbers of individuals and businesses and range from automatically generated notices, such as coding notices, default surcharges or penalties for late filing of tax returns to complex assessments which might be made following detailed discussion.

2.2 The way HMRC deals with appeals reflects the different approaches of the former revenue departments, the requirements of particular taxes or schemes and the independent appeals bodies that hear appeals against HMRC decisions.

2.3 The relevant independent appeal bodies are:

- **The General Commissioners and the Special Commissioners** hear appeals on direct tax and NICs matters, formerly dealt with by the Inland Revenue.

  The General Commissioners are lay volunteers, with local and business knowledge, supported by a professional clerk. The General Commissioners hear the more straightforward appeals (around 8,000 each year). Onward appeals are made by requiring the Commissioners to state a case for the opinion of the High Court.

  The Special Commissioners are all legally qualified and usually hear the more complex tax appeals, although taxpayers can usually choose to have their case heard by the Special Commissioners. The Special Commissioners often sit alone but two may sit in complex cases. About 100 appeals were heard by the Special Commissioners in 2005-06. Onward appeals on a point of law are to the High Court or Court of Session (although some cases may ‘leapfrog’ the High Court to the Court of Appeal).

- **The VAT and Duties Tribunal** deals with appeals against decisions on indirect tax matters, formerly dealt with by HM Customs and Excise. The Chairman is always legally qualified and sits alone or with one or two other members selected for relevant business or accounting experience. In 2005-06 it heard about 600 appeals. Onward appeals on point of law are to the High Court or the Court of Session (though some VAT appeals may ‘leapfrog’ the High Court and apply straight to the Court of Appeal).

- **The Section 706 Tribunal** has two roles in connection with the anti-avoidance legislation at Sections 703-9 of the Income and Corporation Taxes Act 1998. First, it determines whether there is a prima facie case for HMRC to take further action. Second, it can re-hear an appeal following a decision by the Special Commissioners. Its chairman is legally qualified and other panel

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members are selected for their financial or commercial knowledge. In recent years it has made 5 determinations a year, and has not re-heard any appeals. Onward appeal is by requiring the tribunal to state a case for the opinion of the relevant higher court.

- **The Social Security and Child Support Appeals Tribunal** hears appeals against child benefit, non-tax CTF and, currently, tax credit decisions. In 2006/07 about 500 such appeals were heard. Onward appeals on a point of law are to the Social Security Commissioners.

2.4 Different administrative practices have evolved, leading to a complex, potentially confusing picture. These can be summarised as follows;

- Appeals to the General or Special Commissioners are physically lodged with HMRC. HMRC refers cases for listing and largely administers the appeal after that. For the General Commissioners, HMRC will usually produce the listings for case hearings. HMRC reviews its own decisions before and after they are made on an informal basis, but there is no systematic process for ensuring impartial review of the original HMRC decision prior to any hearing.

- Appeals to the VAT and Duties Tribunal are lodged with the Tribunal, which is responsible for case administration.

- With VAT there is an established process which enables taxpayers to request a local ‘reconsideration’ by HMRC before or at the same time as appealing to the Tribunal.

- With excise and customs duties, Insurance Premium Tax (IPT), the environmental taxes and money laundering penalties there is a mandatory formal review by HMRC before an appeal may be heard by the VAT and Duties Tribunal.

2.5 With tax credits and non-tax CTF there is no requirement or right for a taxpayer to request a review, but HMRC do review cases before any hearing. Child benefit customers can seek a reconsideration of HMRC’s decision. All such cases are reviewed by an officer who was not involved in the original decision.
Chapter 3

The New Tribunals System

Introduction

3.1 The handling of appeals in HMRC needs to be considered alongside reform to the tribunals system being taken forward by the MoJ. The MoJ will be consulting separately on the details of the new system. This material is included here as background information.

Background

3.2 Reform of the tribunals hearing tax appeals has been on the agenda for over ten years. In 1996 and 1999 the issue was raised by the Tax Law Review Committee, chaired by Lord Howe of Aberavon.

3.3 In March 2000, the (then) Lord Chancellor’s Department consulted on the subject and in May that year commissioned Sir Andrew Leggatt to undertake a review. His report ‘Tribunals for Users - One system, One Service’, published in August 2001, recommended sweeping changes to the Government tribunals in general and tax appeals system in particular. He also recommended that Government departments should consider the scope for internal review; that they should scrutinise decisions; and that they should put in place systems to make sure they learned lessons from this process to improve the quality of their decisions.

3.4 On 25 July 2004 The Department for Constitutional Affairs (now the MoJ) published its White Paper “Transforming Public Services: Complaints, Redress and Tribunals”. The White Paper proposed that the majority of government tribunals, including the tribunals hearing appeals against HMRC decisions, should be administered by one tribunal service and that there should be a single tribunal, made up of two tiers, organised into Chambers depending on the subject of the case.

3.5 In July 2006 the Department for Constitutional Affairs (now the MoJ) published their “Tribunals, Courts and Enforcement Bill” in draft. In November the Bill was introduced into the House of Lords, and on 19 July 2007 it received Royal Assent.

The Tribunals, Courts and Enforcement Act 2007

3.6 The Tribunals, Courts and Enforcement Act 2007 (TCEA) establishes the legal framework for a new two tier tribunal system.

3.7 TCEA creates a First-tier Tribunal into which most existing tribunal appeal functions will be transferred, including tax appeals. The new tribunal will be organised into chambers which will focus on different subject areas and ensure that the panels which hear appeals have the appropriate training and expertise. The Upper Tribunal will hear appeals against the decisions of the First-tier Tribunal (and may hear some first instance appeals in certain circumstances).

3.8 TCEA enables the MoJ to make regulations modifying existing legislation to give the new tribunal jurisdiction over appeals and to provide appropriate tribunal rules.
3.9 For appeals against decisions by HMRC this means that appeals which would now be heard by the General and Special Commissioners, the Section 706 Tribunal or the VAT and Duties Tribunal will in future be heard by the First-tier Tribunal within a chamber specialising in tax matters. It is the intention that tax appeals will be transferred to the new tribunal in April 2009.

3.10 Appeals against the decisions of the First-tier Tribunal, with permission and on point of law, will be to the Upper Tribunal. The High Court has the power to confer on the Upper Tribunal some Judicial Review functions. Appeals from the Upper Tribunal will be to the Court of Appeal or the Court of Session.

3.11 Child benefit, non-tax CTF and tax credit appeals will be transferred to the chamber of the First-tier Tribunal which will hear social security and child support appeals. It is expected that these appeals will be transferred by the end of 2008, before tax appeals, as this transfer will involve less of a change than for tax appeals. This consultation is focussed on tax appeals, although Tax Credits, non-tax CTF and Child Benefit could be within the scope of any more consistent internal review arrangements.

3.12 As well as transferring appeals to the new tribunals, regulations made by the MoJ under the TCEA will also remove or amend references to the existing tribunals from current legislation. HMRC is working closely with the MoJ to ensure timely and safe transition of all tax appeals to the new tribunal. HMRC is a stakeholder and is represented on the MoJ Tax Appeals Project Stakeholder Group.
Chapter 4
Impartial internal review

Introduction

4.1 This chapter considers the benefits of a more consistent impartial internal review framework in HMRC and, building on previous consultations, explores how it might best operate. HMRC’s aim is that this would be part of the package of changes to be introduced on transition to the new unified tax appeals jurisdiction.

4.2 HMRC would like to run a practical exercise in spring 2008 to explore the issues which would be involved in introducing such reviews into areas of HMRC’s business where these are not available at present. The purpose would be to ensure that the arrangements ultimately introduced work as smoothly as possible.

Background

4.3 In his report ‘Tribunals for Users - One system, One Service’, published in August 2001, Sir Andrew Leggatt recommended sweeping changes to the Government tribunals system. Among other things, he recommended that Government departments should consider the scope for internal review; that the review should be proportionate to the issues and that there should be a published time limit within which such reviews should be completed.

4.4 Following the merger of HMRC and the changes to the tribunal structure there is a new opportunity to consider how HMRC decisions are reviewed prior to formal hearing at a tribunal, and offer to all taxpayers a common framework for dispute resolution including an impartial review of the relevant decision.

4.5 Reviews and reconsiderations are an important safeguard for taxpayers. This was recognised in the May 2007 consultation “Modernising Powers, Deterrent and Safeguards: Safeguards for Taxpayers”. Responses to that consultation overwhelmingly support the idea of review. This consultation builds on that feedback to explore the issues in more detail.

The current position

4.6 Across the wide range of taxes and other business managed by HMRC there are currently different ways of reviewing our actions before decisions which are the subject of an appeal reach a tribunal hearing. Reviews can help resolve disputes without recourse to a tribunal, and so minimise the cost and burden of cases going to tribunal unnecessarily. But whether a review is carried out, and the way in which reviews are carried out, varies for several reasons:

- any review process needs to be appropriate for the tax or issue under consideration,
- historical differences in practice both within and between former Customs and Excise and Inland Revenue,
- prior to the creation of HMRC there were no strong drivers for harmonisation of review processes.
Direct taxes

4.7 For direct taxes (including income tax, corporation tax and capital gains tax with associated self assessment, PAYE and NICs rules) HMRC and taxpayers discuss issues, sometimes extensively, before or after a decision is made. Negotiations will continue, often involving officers other than the case officer, until matters are resolved or it is clear that agreement is not possible. Only a small minority of appeals are listed for hearing. However, there is no common framework for the review or reconsideration of decisions which are challenged by taxpayers.

VAT

4.8 VAT decisions by HMRC (for example a VAT assessment) may also follow discussions with the taxpayer. In addition, a taxpayer may request a local internal reconsideration of the decision, as set out in The VAT Guide, Notice 700 at paragraph 28.3. It is not a statutory requirement that reconsiderations must precede a tribunal hearing, and the taxpayer can appeal to the tribunal at any time within 30 days of the appealable decision. The Tribunal Rules provide that HMRC can extend the time limit for appeal while the reconsideration is carried out. If the reconsideration upholds the decision, the taxpayer is given a date from which he has 21 days to appeal to the VAT and Duties Tribunals. If a new decision is made the taxpayer will have 30 days within which to appeal that decision to the tribunal.

Excise and customs duties

4.9 In the case of excise and customs duties, environmental taxes, insurance premium tax and appeals against money laundering penalties, appeals against HMRC decisions cannot be heard before a review required by statute has taken place. The review has to be requested within 45 days of the decision, HMRC has 45 days to complete it and following the end of the review there are 30 days in which to appeal to the tribunal (if the decision is upheld). If the review is not completed in 45 days the original decision is deemed to have been upheld, triggering a right to appeal. This is a safeguard for the appellant against delay by HMRC.

Tax credits, Child benefit and non-tax Child Trust Fund

4.10 In relation to tax credits and non-tax CTF appeals, there is currently no statutory requirement for a review of HMRC decisions but HMRC does review all decisions which are challenged. With child benefit, claimants may ask for a decision to be changed, and in these cases a review is always conducted by an officer who was not involved in the original decision.

Reviews in HMRC and the new tribunal system

4.11 It is considered that adopting a common policy on review across all our business would provide better quality safeguards and help ensure the tribunal is not burdened by cases which could have been resolved by review. Important benefits include:

- making what HMRC does in reviewing decisions more transparent for taxpayers;
- helping assure quality and consistency in HMRC decision making;
• helping ensure that as many disputes as possible are resolved informally, without the expense or anxiety of a hearing;
• making it easier to deal with related appeals involving different taxes;
• responding to the recommendation of the Leggatt report that departments should review their decisions before a case goes to tribunal;
• supporting HMRC’s approach to litigation and settlement, as set out in the recently published Litigation and Settlements Strategy4; and
• helping achieve HMRC’s aspiration to improve communication and to be more open in its dealings with taxpayers.

4.12 Responses to the May 2007 consultation on Safeguards strongly support the availability of reviews in areas where they are currently available, such as VAT.

4.13 However, some respondents said the process did not always work well in practice, particularly where the only review was by a line manager. There was wide support for extending a review process to direct taxes. Opinions varied on whether reviews should be carried out internally or whether they should be undertaken by an external body, or independent person.

4.14 Review by an external body would be costly, and would to some extent duplicate the work of the tribunal. However, it is recognised that there is a risk of internal reviews not being regarded as sufficiently impartial. For this reason the intention is that reviews would be conducted by someone other than the immediate line manager and who was not involved in the original decision.

4.15 Initial thinking is that reviews would consider whether the decision was made correctly and that procedure had been followed (for example whether assessing time limits had been met). They would also ensure that appropriate technical or legal advice had been sought and the key facts and issues had been taken into account. This thinking will, in particular, be developed further in the context of the practical exploration of these issues proposed in paragraph 4.2.

Question 1: What factors would be most important in ensuring that an internal review was regarded as impartial?

Statutory or non-statutory reviews

4.16 Were HMRC to adopt a consistent policy of impartial reviews, there are different ways to provide for them. For example:

• the review could be non-statutory, with the way in which it would be conducted set out in a code of practice that could be subject to further ongoing consultation;

• there could be a statutory requirement for HMRC to offer a review but without this restricting the taxpayer’s right to appeal to the tribunal. Time limits could be extended if a review was requested as is currently done for VAT cases;

4 The Litigation and Settlements Strategy sets the principles by which HMRC aims to bring disputes with taxpayers to a conclusion.
• the review could be provided for in statute and be a mandatory pre-condition of any tribunal hearing.

4.17 These three approaches would have different benefits and disadvantages and while there are advantages in a consistent approach, one size may not fit all. Non-statutory reviews would maximise flexibility, while either of the statutory routes might give additional assurance that reviews would be routinely available and carried out to the required standard.

4.18 Setting time limits in legislation might give additional protection against HMRC delay. But there is currently a lack of consistency about the time limits within which reviews should be conducted. In the mandatory system HMRC have 45 days within which to complete a review and, if it is not completed the original decision is deemed to be upheld and may be appealed to tribunal. In VAT the aim is to complete reviews within 45 days but there are no statutory provisions to ensure that, and no requirement to wait for completion before appealing. A common time limit for any new review process might be simpler and more transparent.

Question 2: What factors are important in determining the most effective way of providing for any review process?

Question 3: What advantages or disadvantages would there be in consistency across the taxes about whether reviews were non-statutory, statutory or mandatory, or about the time limits concerned? Can the costs or benefits be quantified?
Chapter 5

Administrative matters relating to appeals

5.1 This chapter looks at issues around HMRC’s administration of appeals to ensure a clear separation of responsibility between HMRC and the Tribunal; time limits; extension of time limits; late appeals; applications to defer payment of disputed tax; and interest.

Administrative handling of appeals

5.2 With indirect tax, appeals are made to the tribunal, which administers the case. Prior to hearing, issues can be resolved by a combination of exchanges with the HMRC case officer, informal reconsiderations and statutory, mandatory reviews. HMRC decisions can, in general, be changed within prescribed time limits without the need for an appeal.

HMRC received over 7,000 VAT appeals in 2005/06. Of these the great majority (6,250) were settled without the need for a hearing by a tribunal. Comparable figures for appeals about excise and customs duties are 6,600 and 6,050 respectively.

5.3 With direct tax, appeals (although made to the tribunal) are currently sent to HMRC5, which also administer the cases, including listing General Commissioner cases for hearing and removing cases from the hearing list. The taxpayer may approach the Clerk to the Commissioners and ask for the appeal to be set down for hearing, but this right is rarely exercised. Decisions may generally only be amended after the submission of an appeal (or on discovery of new facts), and are usually settled by negotiation with HMRC case officers and their line managers.

HMRC received over 210,000 direct tax appeals in 2005/066. The vast majority of these were settled by discussion; only 4.2% (8,800) requiring a hearing.

5.4 Under the new appeal arrangements HMRC will no longer manage case listing procedures for any tribunal. This work will be undertaken by the tribunal’s own administrative staff, ensuring that the tribunal is manifestly independent of HMRC.

5.5 It is, of course, in the interests of all concerned to continue to allow disputes to be resolved without recourse to the tribunal wherever possible. It seems desirable to do this in a way that minimises the impact on the existing working practices of taxpayers, agents and HMRC.

5.6 The outcome we want to achieve is that, when a taxpayer objects to an HMRC decision, there is a period for discussion and negotiation in which agreement could be reached and, after that, the opportunity for any review (rather than there being any need for the taxpayer to exercise a right to appeal to the tribunal at this stage). Only when it is clear that the dispute cannot be resolved by these means would the taxpayer need to take the matter to the tribunal. The Tribunals Service would administer cases from that point, as they do now for indirect tax appeals. This may involve amendment of the legislation providing for settlement of appeals by

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5 For example, Section 31A TMA 70
6 Excluding PAYE Coding adjustments
agreement⁷, for example, to enable direct tax issues to be resolved without the need for appeals to come to attention of a tribunal.

**Question 4: Do you have any comments on the principle that legislation should enable decisions to be revisited without the tribunal being involved?**

*Time limits*

5.7 There is already a large degree of consistency in the time limits within which to appeal to an independent tribunal. Almost without exception the current time limit is 30 days from the date of the decision. In some specific and exceptional cases, such as appeals against decisions contained in claims closure notices involving non-residents, or in Petroleum Revenue Tax for claims against refusal of expenditure claims, longer time periods may be provided for. HMRC does not envisage further alignment in this area.

**Question 5: Are there any areas where further alignment of time limits would be helpful?**

5.8 It is recognised that resolving matters by discussion with the case officer, or through an impartial internal review system, will often take longer than the period within which a taxpayer may currently appeal to the tribunal. So it would be necessary to ensure that the appeal time limit may be extended in such cases.

5.9 There are currently different rules and time limits relating to reviews. For example, for excise and customs duties there are 45 days to ask for formal departmental review, 45 days to conduct a review and then 30 days to appeal to the tribunal. In VAT there are 30 days to appeal but if the option of review is taken there are then a further 21 days in which to appeal to the tribunal if the decision is upheld or 30 days if the decision is changed.

5.10 There is scope for simplifying these rules so that, provided the taxpayer contacts HMRC within the period allowed for making an appeal, there should be a standard additional period from the date of the revised or upheld decision within which to appeal to a tribunal.

**Question 6: What extension to the time limits for appeals should there be for taxpayers who have told HMRC that they disagree with their decision?**

*Late appeals*

5.11 Rules relating to late appeals vary. With direct taxes HMRC may allow a late appeal if satisfied that the taxpayer had a reasonable excuse for missing the time limit and made the late appeal application without unreasonable delay thereafter. If HMRC are not satisfied, HMRC must refer the application to the tribunal. For indirect tax appeals, the taxpayer has to apply to the tribunal for an extension of time⁸.

5.12 It is proposed that applications for an extension of time within which to appeal to the tribunal would initially be sent to and considered by HMRC. If HMRC do not agree that an extension of time should be allowed, there would then be a right of

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⁷ For example, Section 54 TMA 70
⁸ SI 1986/590 para 19(1)
appeal to the tribunal. This would mean that tribunal would only consider cases where there was a dispute, which would be a better use of the tribunal’s time.

**Applying to defer payment of disputed tax**

5.13 There are currently different rules about deferring payment of tax in dispute in different taxes. Disputed tax may be deferred or ‘postponed’ for income tax and corporation tax purposes, where the tax is charged on a person’s income over a period. But this is not possible for matters appealable to the VAT and Duties Tribunal (subject to rules about hardship and, in relation to customs and excise duties, security), where tax is charged on specific transactions and where, for example, VAT is often collected from the taxpayer’s customer. In addition, EU law on customs duties, which would not accommodate postponement of disputed amounts on a general basis, is directly applicable in UK law. No changes are proposed in this area.

5.14 With direct taxes postponement applications are handled by HMRC and go to the General and Special Commissioners only where there is a dispute about whether tax should be postponed or the amount that should properly be postponed. In VAT and Duties Tribunal appeals, the disputed tax must be paid prior to the tribunal hearing unless there are grounds for hardship. Applications for hardship may be made to HMRC or to the VAT and Duties Tribunals.

5.15 It is proposed that applications to postpone disputed tax should continue to be sent to and considered by HMRC. If a postponement or hardship application was refused, or there was a dispute about the amount of tax that should be postponed, there would be a right of appeal to the tribunal. This would ensure taxpayers were protected, while ensuring that the tribunal need only consider contentious cases, thus making most effective use of the tribunal’s time.

**Award of interest**

5.16 The general rule across HMRC business is that interest, whether paid by taxpayers on tax paid late or paid by HMRC on tax refunds, is paid at rates set by statutory formulae by reference to current market rates. Essentially, interest is intended as restitution for the use of money. In direct tax interest is automatically due to HMRC if a taxpayer pays late, and is paid by HMRC where payment to the taxpayer is delayed. With VAT the position is different. Interest is paid by the taxpayer on late paid tax but is due to the taxpayer only where HMRC is at fault and in circumstances where the taxpayer was not entitled to repayment supplement.

5.17 The wider issues around payment of interest are being considered by the review of interest mentioned in the Powers Review consultation on Payments, Repayments and Debt (25 June 2007). But, uniquely among the tribunals which currently hear tax appeals, the VAT and Duties Tribunal has a power to award interest, and to determine the rate at which it is to be paid to or by the taxpayer, in certain cases. So it is necessary to consider what should happen once all tax appeals move to the same Tribunal.

5.18 It is considered that the circumstances in which interest should be paid and the rate at which it should be paid should be laid down by Parliament rather than determined at the discretion of the Tribunal. In particular, it is inequitable that the rate of interest awarded to a taxpayer who has appealed to the Tribunal may be different from the rate provided for in existing statutory rules in parallel cases involving the same tax where no such appeal has been made.
Payment and repayment of tax following decisions

5.19 For direct tax appeals sections 56(9) and 56A(8) and (9) of TMA provide that when a tribunal or a higher Court has decided an appeal, tax is to be paid or repaid in line with that decision whether or not it is the subject on onward appeal. There is no such provision for the indirect taxes. It is proposed to extend this provision across other taxes and duties for which HMRC is responsible.

Restrictions on making an appeal

5.20 VATA s 84(2) and other indirect tax provisions say that an appeal shall not be heard unless the taxpayer has made all returns and paid all outstanding tax. HMRC accept that requiring all returns to be made and tax paid is not proportionate and announced in Business Brief 23/99 that HMRC would not apply for appeals to be struck out solely because returns or payments are outstanding for periods which are not in dispute. It is proposed to repeal these provisions.

Administrative decisions related to an appeal

5.21 The VAT and Duties tribunal, when considering a VAT appeal, is also able to consider related administrative decisions which HMRC has made and which affect the liability in question (section 84(10) of the VATA). This reflects the nature of VAT, where there are a variety of such decisions which cannot themselves be appealed (such as a decision to refuse the use of special accounting schemes). Representations have been made to HMRC that there would be advantages in extending this to tax appeals more widely and views would be welcome on whether this is desirable.

Question 7: Are there situations in relation to taxes other than VAT where it would desirable for tribunals to be able to consider administrative decisions related to appeals?

Question 8: Do you have any other comments about administrative matters relating to appeals?
Chapter 6

Transitional arrangements

6.1 The TCEA enables the functions of the relevant tribunals to be transferred to the new tribunal by statutory instrument. For tax appeals the intention is that the MoJ will transfer the functions in April 2009. TCEA also enables the order to make provision for the purpose of giving full effect to the transfer: the existing tribunals may be abolished at the time the transfer takes place and the relevant tribunal rules may be modified to give effect to the transfer.

6.2 These powers may be used only for the purpose of the transfer of functions. So other changes to streamline or improve appeals handling would need Finance Bill legislation.

6.3 The intention is that any changes to tax legislation would come into effect at the same time as the transfer of functions takes place, and that it could apply to appeals which are in existence on the date of transfer.

6.4 It is expected that most taxpayers who are in the process of discussing issues with HMRC will want to continue to do so, until the matter is resolved or it becomes clear that they cannot reach agreement with the HMRC case officer. It would in any case be impractical to list all outstanding appeals for hearing on the transfer to the new system since it would swamp the new tribunal.

6.5 It is proposed that existing direct tax appeals against HMRC decisions would continue to be administered by HMRC in the first instance, but that:

- while discussions are on-going - the taxpayer may, as now, apply to the tribunal for a hearing at any time, and
- if it becomes clear that agreement cannot be reached, the matter would be brought to the attention of the tribunal, either by the taxpayer or by HMRC.

New impartial internal reviews would apply only to decisions arising after the transfer of functions had taken place.

6.6 A similar approach would be taken in relation to other taxes. Where a taxpayer has objected to a decision but discussion continues with HMRC, those processes (including existing review processes) would continue. Any changes to the review processes would, as with direct taxes, apply in relation to decisions made after the transfer of functions had taken place.

Question 9: Do you have any comments on these proposals on transitional issues?

Question 10: Are there any other transitional issues to address?

---

9 Ss 30, 31 and 38 enable amendments to legislation (including tribunal rules) when tribunals are transferred into the new structure.
Chapter 7

Summary of Questions

7.1 This chapter summarises the specific questions asked in this document. But comments will be welcomed on any aspect of the proposals.

7.2 Comments would be particularly welcome from those who have experience of appeals, or from representing taxpayers involved in appeals. In particular, agents play an important and integral role in many appeals (especially those that go to tribunal) and their comments on the issues raised would be very welcome.

7.3 The specific questions asked in this document are as follows:

Chapter 4: Impartial internal review

| Question 1: What factors would be important in ensuring that an internal review was regarded as impartial? |
| Question 2: What factors are important in determining the most effective way of providing for any review process? |
| Question 3: What advantages or disadvantages would there be in consistency across the taxes about whether reviews were non-statutory, statutory or mandatory, or about the time limits concerned? Can the costs or benefits be quantified? |

Chapter 5: Administrative matters relating to appeals

| Question 4: Do you have any comments on the principle that legislation should enable decisions to be revisited without the tribunal being involved? |
| Question 5: Are there any areas where further alignment of time limits would be helpful? |
| Question 6: What extension to the time limits for appeals should there be for taxpayers who have told HMRC that they disagree with their decision? |
| Question 7: Are there situations in relation to taxes other than VAT where it would desirable for tribunals to be able to consider administrative decisions related to appeals? |
| Question 8: Do you have any other comments about administrative matters relating to appeals? |

Chapter 6: Transitional Issues

| Question 9: Do you have any comments on these proposals on transitional issues? |
| Question 10: Are there any other transitional issues to address? |

Annex B: Impact Assessment
Question 11: Do you have any comments on the assumptions made or any views on the likely costs and benefits of the different proposals?
Annex A
Cabinet Office Code of Practice on written consultations

This consultation is being conducted in accordance with the code, which sets down the following criteria:

- Consult widely throughout the process, allowing a minimum of 12 weeks for written consultation at least once during the development of the policy.
- Be clear about what your proposals are, who may be affected, what questions are being asked and the timescale for responses.
- Ensure that your consultation is clear, concise and widely accessible.
- Give feedback regarding the responses received and how the consultation process influenced the policy.
- Monitor your Department’s effectiveness at consultation, including through the use of a designated consultation co-ordinator.
- Ensure your consultation follows better regulation best practice, including carrying out a Regulatory Impact Assessment if appropriate.

You can see the full Cabinet Office Code of Practice on consultation on the internet, at the following address:


Complaints
If you have any comments or complaints about the consultation process, please contact:
Duncan Calloway,
Room 3/37,
100 Parliament Street,
London SW1A 2BQ
Email: duncan.calloway1@hmrc.gsi.gov.uk
Tel. 020 7147 2389
Details of how to respond to the consultation itself can be found within the consultation document.
Annex B: Impact Assessment: Summary: Intervention & Options

<table>
<thead>
<tr>
<th>Department /Agency:</th>
<th>Title:</th>
</tr>
</thead>
<tbody>
<tr>
<td>HMRC</td>
<td>Impact Assessment of possible changes to the handling of appeals in the context of tribunal reform</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Stage:</th>
<th>Version:</th>
<th>Date:</th>
</tr>
</thead>
<tbody>
<tr>
<td>Consultation</td>
<td>1</td>
<td>October 2007</td>
</tr>
</tbody>
</table>

**Available to view or download at:**
http://www.hmrc.gov.uk/consultations/index.htm

**Contact for enquiries:** Andrew Jackson
**Telephone:** 0207 147 0331

What is the problem under consideration? Why is government intervention necessary?
The Tribunals, Courts and Enforcement Act 2007 will bring tribunals across Government within a common framework and will affect tax appeals presently heard by the General and Special Commissioners and the VAT and Duties Tribunals.
Different appeal rules and procedures apply across different taxes administered by what is now one Department. Intervention is necessary to bring these together, in particular to provide a process for resolving disputes which meets customer needs in the context of the reformed tribunal system.

What are the policy objectives and the intended effects?
These are to:
- ensure a smooth transition to minimise disruption;
- introduce explicit pre-tribunal reviews of all HMRC appealable decisions, to give assurance to customers and improve HMRC consistency, limiting the need for recourse to tribunals
- align as far as possible the rules governing the handling of appeals across the range of HMRC business to make the review and appeals process clear and accessible for all our customers.

What policy options have been considered? Please justify any preferred option.
In the context of creating a manifestly independent tribunal, maintain a system which allows customers the opportunity to settle disputes by negotiation without recourse to the tribunal service.
A more consistent approach using a review which is statutory, or non-statutory (but governed by a code of practice) which could, in either case, be made a pre-condition of an appeal to tribunal.
Alignment of other matters concerned with the administration of appeals, for example time limits or the award of interest, set out in the Condoc, will bring greater consistency across HMRC business.

When will the policy be reviewed to establish the actual costs and benefits and the achievement of the desired effects?
Expected 2 years after the launch of the new tax tribunal.

Ministerial Sign-off For consultation stage Impact Assessments:

I have read the Impact Assessment and I am satisfied that, given the available evidence, it represents a reasonable view of the likely costs, benefits and impact of the leading options.

Signed by the responsible Minister:
Jane Kennedy

Date: 30 September 2007
### Summary: Analysis & Evidence

#### Policy Option: 1  Description: Settlement by negotiation

<table>
<thead>
<tr>
<th>ANNUAL COSTS</th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>One-off</strong> (Transition) Yrs</td>
<td>£ TBC</td>
</tr>
<tr>
<td><strong>Average Annual Cost</strong> (excluding one-off)</td>
<td>£ TBC</td>
</tr>
<tr>
<td><strong>Total Cost</strong> (PV)</td>
<td>£</td>
</tr>
</tbody>
</table>

**Other key non-monetised costs** by ‘main affected groups’

<table>
<thead>
<tr>
<th>ANNUAL BENEFITS</th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>One-off</strong> Yrs</td>
<td>£ TBC</td>
</tr>
<tr>
<td><strong>Average Annual Benefit</strong> (excluding one-off)</td>
<td>£ TBC</td>
</tr>
<tr>
<td><strong>Total Benefit</strong> (PV)</td>
<td>£</td>
</tr>
</tbody>
</table>

**Other key non-monetised benefits** by ‘main affected groups’

#### Key Assumptions/Sensitivities/Risks

Risk: Little information with which to quantify costs and benefits at this stage.

#### Price Base

<table>
<thead>
<tr>
<th>Year</th>
<th>Time Period</th>
<th>Net Benefit Range (NPV)</th>
<th>Net Benefit (NPV Best estimate)</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>Years</td>
<td>£</td>
<td>£</td>
</tr>
</tbody>
</table>

#### What is the geographic coverage of the policy/option?
United Kingdom

#### On what date will the policy be implemented?
April 2009

#### Which organisation(s) will enforce the policy?
HMRC

#### What is the total annual cost of enforcement for these organisations?
£

#### Does enforcement comply with Hampton principles?
Yes/No

#### Will implementation go beyond minimum EU requirements?
No

#### What is the value of the proposed offsetting measure per year?
£ n/a

#### What is the value of changes in greenhouse gas emissions?
£ 0

#### Will the proposal have a significant impact on competition?
No

#### Annual cost (£-£) per organisation (excluding one-off)

<table>
<thead>
<tr>
<th>Micro</th>
<th>Small</th>
<th>Medium</th>
<th>Large</th>
</tr>
</thead>
</table>

#### Are any of these organisations exempt?
No | No | N/A | N/A

#### Impact on Admin Burdens Baseline (2005 Prices)

<table>
<thead>
<tr>
<th>Increase of</th>
<th>£ negligible</th>
<th>Decrease of</th>
<th>£ negligible</th>
<th>Net Impact</th>
<th>£ negligible</th>
</tr>
</thead>
</table>

**Key:** Annual costs and benefits: Constant Prices
## Summary: Analysis & Evidence

**Policy Option:** 2  
**Description:** Pre-tribunal review

### ANNUAL COSTS

<table>
<thead>
<tr>
<th>Description and scale of key monetised costs by ‘main affected groups’</th>
<th>Minimal for customers, as any action by them will be no more than that normally associated with negotiation with HMRC. The reviews would be carried out by HMRC. It is not yet possible to estimate HMRC’s net additional costs, but at this stage these are not considered to be significant.</th>
</tr>
</thead>
<tbody>
<tr>
<td>One-off (Transition) Yrs</td>
<td>£ TBC</td>
</tr>
<tr>
<td>Average Annual Cost (excluding one-off)</td>
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### ANNUAL BENEFITS

<table>
<thead>
<tr>
<th>Description and scale of key monetised benefits by ‘main affected groups’</th>
<th>There should be some savings both for HMRC and its customers, in cases where the enhanced review process resolves cases which would otherwise have progressed to progress to a tribunal hearing. But it is not possible to quantify these at this stage.</th>
</tr>
</thead>
<tbody>
<tr>
<td>One-off Yrs</td>
<td>£ TBC</td>
</tr>
<tr>
<td>Average Annual Benefit (excluding one-off)</td>
<td>£ TBC</td>
</tr>
</tbody>
</table>

### Key Assumptions/Sensitivities/Risks

**Risk:** Little information with which to quantify costs and benefits at this stage.

### Price Base Year

<table>
<thead>
<tr>
<th>Time Period Years</th>
<th>Net Benefit Range (NPV)</th>
<th>NET BENEFIT (NPV Best estimate)</th>
</tr>
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<tr>
<td>What is the geographic coverage of the policy/option?</td>
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<td></td>
</tr>
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</tr>
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</tr>
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<td></td>
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<td>What is the value of changes in greenhouse gas emissions?</td>
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<td></td>
</tr>
<tr>
<td>Annual cost (£-£) per organisation (excluding one-off)</td>
<td>Micro</td>
<td>Small</td>
</tr>
<tr>
<td>Are any of these organisations exempt?</td>
<td>No</td>
<td>No</td>
</tr>
</tbody>
</table>

### Impact on Admin Burdens Baseline (2005 Prices)

| Increase of | £ negligible |
| Decrease of | £ negligible |
| Net Impact | £ negligible |

**Key:** Annual costs and benefits: (Net) Present
### Summary: Analysis & Evidence

**Policy Option:** 3  
**Description:** Alignment of rules and procedures

<table>
<thead>
<tr>
<th><strong>ANNUAL COSTS</strong></th>
<th>Description and scale of key monetised costs by ‘main affected groups’ The changes proposed would have minimal cost, as they help to ensure that potential disputes are settled without recourse to a tribunal. Ensuring that interest rates applying to underpaid VAT follow a statutory rule, rather than tribunal’s discretion could have a small cost to those winning a VAT appeal.</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>One-off (Transition)</strong></td>
<td>£ negligible</td>
</tr>
<tr>
<td><strong>Yrs</strong></td>
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</tr>
<tr>
<td><strong>Total Benefit (PV)</strong></td>
<td>£</td>
</tr>
<tr>
<td>Other key non-monetised benefits by ‘main affected groups’ Greater consistency of rules and procedures will make it easier for taxpayers to understand and deal with the tax appeal system.</td>
<td></td>
</tr>
</tbody>
</table>

**Key Assumptions/Sensitivities/Risks**  
Risk: Little information with which to quantify costs and benefits at this stage.

<table>
<thead>
<tr>
<th><strong>Price Base Year</strong></th>
<th><strong>Time Period Years</strong></th>
<th><strong>Net Benefit Range (NPV)</strong></th>
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<td></td>
</tr>
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<td>Will implementation go beyond minimum EU requirements?</td>
<td>No</td>
<td></td>
<td></td>
</tr>
<tr>
<td>What is the value of the proposed offsetting measure per year?</td>
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<td></td>
<td></td>
</tr>
<tr>
<td>What is the value of changes in greenhouse gas emissions?</td>
<td>£ 0</td>
<td></td>
<td></td>
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<tr>
<td>Will the proposal have a significant impact on competition?</td>
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<td></td>
<td></td>
</tr>
<tr>
<td>Annual cost (£-£) per organisation (excluding one-off)</td>
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</tr>
<tr>
<td>Are any of these organisations exempt?</td>
<td>No</td>
<td>No</td>
<td>N/A</td>
</tr>
</tbody>
</table>

**Impact on Admin Burdens Baseline (2005 Prices)**  
(Increase - Decrease)  

<table>
<thead>
<tr>
<th>Increase of</th>
<th>£ negligible</th>
<th>Decrease of</th>
<th>£ negligible</th>
<th><strong>Net Impact</strong></th>
<th>£ negligible</th>
</tr>
</thead>
</table>

Key:  
Annual costs and benefits: Constant Prices  
(Net) Present Value
Evidence Base (for summary sheet)

[Use this space (with a recommended maximum of 30 pages) to set out the evidence, analysis and detailed narrative from which you have generated your policy options or proposal. Ensure that the information is organised in such a way as to explain clearly the summary information on the preceding pages of this form.]

Background

The tribunal reforms embodied in the Tribunals, Courts and Enforcement Act 2007 envisage that the administration of tax appeals which are to be heard by a tribunal should be wholly in the hands of the tribunal service, rather than HMRC, who are a party to those proceedings.

At the same time, it is important to ensure that the new tribunal is not overwhelmed by large numbers of cases which could quite easily settled by dialogue between the parties, saving time, money and long periods of uncertainty.

Further explanation of options

Policy option 1:

The vast majority of disputes between taxpayers and HMRC can be resolved amicably between the parties without the need for a tribunal hearing.

In indirect tax cases, decisions can be challenged without the need for a formal appeal. Following reconsideration, or on receipt of new information, the original decision can be varied, with, for example, the assessment being reduced or withdrawn, thus bringing the matter to a conclusion.

The situation with direct tax is different as, in most cases, a decision cannot be challenged or varied unless an appeal has been made. Although, technically, the appeal is made to the General or Special Commissioners, it is sent to HMRC rather than to the Tribunals Service. HMRC then has a key role in arranging appeal hearings before the General Commissioners when these are needed. In keeping with the tribunal reforms, and to bring consistency across the range of HMRC responsibilities, this needs to change.

However, it would be in no-one’s interests for every dispute about direct tax to involve the tribunal merely because the mechanism for resolving disputes is presently cast in terms of appeals. We want to give every opportunity, as in other areas of HMRC’s business, to enable direct tax disputes to be resolved without the need for the tribunal to be involved.

In administrative burden terms, we have said this is likely to be cost neutral. Continuing the ability to resolve disputes by agreement should not change current information obligations nor require any more correspondence or other activity than at present.

Policy option 2:

Greater and more consistent use of pre-tribunal review procedures has had consistent support from a variety of sources in recent years, as set out in the Consultative document. Most recently, the responses to the 17 May 2007 Powers review consultation “Safeguards for Taxpayers”, indicated support for taking this work further.

The current arrangements are as follows:

- VAT – A reconsideration by someone not involved in the original decision is offered. The taxpayer can appeal immediately whether or not the offer is taken up or can wait for the outcome.
• Excise and customs – A taxpayer cannot appeal to tribunal without having first gone through a review process.
• Direct taxes – As explained under option 1, an appeal will have been lodged at a relatively early stage in the dispute. There are no formal arrangements for offering a review or reconsideration but it is most unlikely that any case would get as far as a Commissioners’ hearing without it having been subject to some kind of review.

It might be thought desirable to have a more consistent review procedure be introduced across all regimes administered by HMRC and we seek comments on the importance of consistency. It is possible that there are some areas of dispute where different arrangements will be needed. A widely available, consistent review procedure may reduce the need for formal tribunal appeals saving money for customers.

Here again we are suggesting the option will be cost neutral as the introduction of a review stage within HMRC should not require appellants or their representatives to argue their case to any greater extent than they do now.

Policy option 3:
Bringing greater consistency to the administration of appeals processes more generally fits with the introduction of a single tax tribunal and the merger of the two former departments. Customers are entitled to expect that, if they are in dispute with HMRC over an appealable matter, the procedures involved will, so far as possible, be the same whatever the subject matter.

In some circumstances the VAT and Duties Tribunal is presently empowered to award interest, either to the taxpayer or to HMRC, at rates which lie within its own discretion. This creates unfairness as between different taxpayers in comparable situations and it is unnecessary as interest at statutory rates is already provided for. HMRC proposes to remove the ability of the tribunal to set discretionary interest rates.

To date, few appellants have benefited from this discretionary power so this proposal will have little financial effect against a baseline of current practice. However, it does remove the potential for future awards of interest above statutory rates. This means there is a protective effect on future Exchequer revenues and a negative impact on potential awards of interest to appellants.

Volume of appeals
The following table sets out some indicative data about the annual number of appeals in different HMRC business areas and the ways in which these feed through to tribunal hearings.

<table>
<thead>
<tr>
<th>Business Area</th>
<th>Number of Appeals (1)</th>
<th>General Commissioners</th>
<th>Special Commissioners</th>
<th>VAT and Duties Tribunal</th>
<th>Section 706 tribunal</th>
<th>Social Security Tribunal</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>Received</td>
<td>Heard</td>
<td>Heard</td>
<td>Received</td>
<td>Heard</td>
<td>Received</td>
</tr>
<tr>
<td>Income tax (late filing penalties)</td>
<td>140,000</td>
<td>20,000</td>
<td>8,000</td>
<td>50</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Income tax (other)</td>
<td>43,000</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Corporation tax</td>
<td>29,000</td>
<td>750</td>
<td>Not available</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>VAT</td>
<td>7,300</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Customs and Excise Duties</td>
<td>3,800</td>
<td>270</td>
<td>100</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Tax credits and Child Benefit</td>
<td>23,000</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

28
We are working on the assumption that the options outlined above will result in no major change in the number of appeals and we welcome comments on this assumption, both in general and in relation to specific taxes. We will be talking to stakeholders directly about this and the validity of the figures we have already included.

**Business costs of appeals**

The Standard Cost Model (SCM) provides a useful indication of the costs imposed on businesses by the requirement to provide core information to HMRC in connection with taxpayer appeals. It will be seen from the options above, that we see the greatest impact of reform being on the internal handling of appeals by HMRC. We believe that the cost to taxpayers and agents will be little changed.

We expect a broadly similar pattern of disagreements with customers and for similar proportions of cases to progress to First-tier tribunals and higher courts. We therefore do not expect much change in the volumes and costs within the SCM.

The SCM estimates that the total cost to businesses of complaints and appeals information obligations is around £16 million per annum across all taxes and duties included within it. However, this figure is a very broad illustration only. It includes the cost of complaints (not relevant to this impact assessment), does not include the effects on individuals with appeals, and only deals with costs arising from information obligations (i.e. it omits wider costs such as those arising from legal advice).

The SCM also only focuses on compliant businesses. While it cannot be said that mere involvement in an appeal is any indication of non-compliance, it is possible that the non-compliant have different and higher costs because their choice not to comply leads to a greater number of investigations and subsequent disputes.
Specific Impact Tests: Checklist

Use the table below to demonstrate how broadly you have considered the potential impacts of your policy options.

Ensure that the results of any tests that impact on the cost-benefit analysis are contained within the main evidence base; other results may be annexed.

<table>
<thead>
<tr>
<th>Type of testing undertaken</th>
<th>Results in Evidence Base?</th>
<th>Results annexed?</th>
</tr>
</thead>
<tbody>
<tr>
<td>Competition Assessment</td>
<td>Yes/No</td>
<td>Yes/No</td>
</tr>
<tr>
<td>Small Firms Impact Test</td>
<td>Yes/No</td>
<td>Yes/No</td>
</tr>
<tr>
<td>Legal Aid</td>
<td>Yes/No</td>
<td>Yes/No</td>
</tr>
<tr>
<td>Sustainable Development</td>
<td>Yes/No</td>
<td>Yes/No</td>
</tr>
<tr>
<td>Carbon Assessment</td>
<td>Yes/No</td>
<td>Yes/No</td>
</tr>
<tr>
<td>Other Environment</td>
<td>Yes/No</td>
<td>Yes/No</td>
</tr>
<tr>
<td>Health Impact Assessment</td>
<td>Yes/No</td>
<td>Yes/No</td>
</tr>
<tr>
<td>Race Equality</td>
<td>Yes/No</td>
<td>Yes/No</td>
</tr>
<tr>
<td>Disability Equality</td>
<td>Yes/No</td>
<td>Yes/No</td>
</tr>
<tr>
<td>Gender Equality</td>
<td>Yes/No</td>
<td>Yes/No</td>
</tr>
<tr>
<td>Human Rights</td>
<td>Yes/No</td>
<td>Yes/No</td>
</tr>
<tr>
<td>Rural Proofing</td>
<td>Yes/No</td>
<td>Yes/No</td>
</tr>
</tbody>
</table>
Annex C: Stakeholders

This consultation document has benefited from previous consultation, in particular the May 2007 consultation “Modernising Powers, Deterrents and Safeguards: Safeguards for Taxpayers” (see paragraph 4.5).

It is intended to arrange a number of meetings with stakeholders during the course of this consultation. Any organisation wishing to be involved in such a meeting is invited to be in contact with HMRC. This consultation document is being sent to a range of organisations in the private and public sectors, including the ones listed below.

Adjudicator’s Office*
Association of British Chambers of Commerce
Association of Chartered Certified Accountants
Association of Clerks to the Commissioners
Association of Tax Agents
Association of Taxation Technicians
Bar Council
British Bankers Association
Business in the Community
Charity Tax Group
Chartered Institute of Management Accountants
Chartered Institute of Taxation
Child Poverty Action Group
Citizens Advice
Confederation of British Industry
Council for Ethnic Minority Voluntary Organisations
Council on Tribunals*
Department for Work and Pensions*
Faculty of Advocates
Federation of Small Businesses
Federation of Tax Advisers
Forum of Private Business
HM Courts Service*
HM Treasury*
Insolvency Practitioners Association
Institute of Chartered Accountants of England and Wales
Institute of Chartered Accountants of Scotland
Institute of Chartered Accountants in Ireland
Institute of Directors
Institute for Fiscal Studies (Tax Law Review Committee)
Institute of Indirect Taxation
Law Society of England and Wales
Law Society of Scotland
Law Society of Northern Ireland
Low Income Tax Reform Group
Ministry of Justice*
National Assembly for Wales*
National Association of General Commissioners
National Audit Office*
National Consumer Council
Northern Ireland Assembly*
One Hundred Group
One Parent Families
Parliamentary & Health Ombudsman*
Professional Contractors Group
Revenue Bar Association
Scottish Executive*
Special Commissioners*
Taxaid
Tribunals Service*
VAT & Duties Tribunal*
VAT in Industry Group
VAT Practitioners Group
Worshipful Company of Tax Advisers

* Government and other public bodies
Annex D: Some relevant legislation


Other direct and indirect tax regimes cross-refer to these provisions or model themselves on them, with amendments reflecting the needs of the particular regime.

Sections 44 to 59 of TMA 1970 give rules on jurisdiction, some procedural points including payment of disputed tax, settlement by agreement, and rules for appeals against decisions by the General and Special Commissioners.

Sections 84 to 86 of VATA 1994 contain provisions including rules on jurisdiction, conditions for an appeal to be heard, and payment of tax following tribunal decisions.

Provisions relating to the structure and composition of tribunals are found in TMA sections 2 to 6 of, and Part 1 of Schedule 1 to TMA 1970, section 706 of ICTA 1998 and section 704 of ITA 1997; and in section 82 of, and Schedule 12 to, VATA 1994.

Procedural rules including those about preparation for, and conduct of, hearings and provision for decisions and onward appeals are found in:
• SI 1994/1811 (Special Commissioners (Jurisdiction & Procedure) Regs),
• SI 1994/1812 (General Commissioners (Jurisdiction & Procedure) Regs, and
• SI 1986/590 (The VAT Tribunals Rules 1986).

The VAT Tribunals Rules also contain provisions setting out how an appeal is to be made, including time limits and information requirements.

For direct taxes, each right of appeal contains rules on time limits and how the appeal is to be made (see TMA section 31A for an example).