1 August 2013

By email to: jim.harra@hmrc.gsi.gov.uk

Dear Jim,

Consultation on 'Strengthening the Code of Practice on Taxation for Banks'

Following HMRC's "Town Hall" meetings, we are writing to provide you with a number of preliminary comments in relation to the consultation. Each Association will make its own detailed comments in due course but, in the meantime, and as part of the ongoing dialogue, this letter is intended to provide you with some initial views that our Associations share.

Our starting point is that in recent years there has been a significant improvement in the dialogue between HMRC and the banking sector. This has enabled issues of particular importance to HMRC to be addressed earlier than otherwise would have been the case. Whilst this improvement pre-dates the introduction of the Code of Practice on Taxation for Banks (the Code), the Code in its present form will have helped to confirm standards in place.

We note HMRC's view that the Code is working well in its current form and for this reason we do not believe HMRC/HMG have made a convincing case for strengthening the Code as outlined in the consultation document. Whilst we acknowledge the Government's desire to ensure transparency around the operation of the Code, we have major reservations about whether the changes now proposed are the best way to achieve this. More importantly, we believe that these proposals are not aligned with one of the Code's principal objectives which is to improve the relationship between HMRC and taxpayers.

The proposed penalty of publicly naming a bank that HMRC considers to be non-compliant is a matter of serious concern to us and does not seem justified. We consider that aspect of the proposals should not be a feature of the current efforts to strengthen the Code and would urge you to reconsider the approach.

Currently the naming of taxpayers is reserved for those who are deliberate defaulters and those guilty of criminal tax evasion. In both cases, public naming occurs only following the conclusion of judicial proceedings (except in limited circumstances where a person has absconded after being charged or during criminal proceedings). Given that the Code covers subjective concepts such as 'spirit of the law' and 'intentions of Parliament', it is difficult to see how possible disagreements between HMRC and a bank about their interpretation can be subject to a regime with fewer safeguards than exist in these cases. Also, the regime proposed could inflict damaging penalties as a result of the reputational damage caused by "naming and shaming", and is thus conceptually inconsistent with a voluntary code and effectively renders it involuntary.
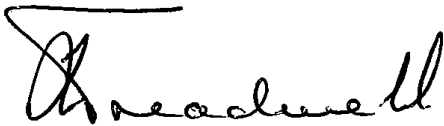
We are still assessing the proposal, but have identified further concerns, including some important legal aspects which are unclear:

- First, the proposal as it stands without an independent review process and the level of discretion about whether to act would give HMRC judicial powers;
- Second, the proposal conflicts with the long-standing principle within the tax administration of maintaining taxpayers' confidentiality;
- Third, there can be reasonable differences in opinion over the interpretation of subjective concepts such as 'spirit of the law' and 'intentions of Parliament'.

Furthermore we note that the current application of the Code towards smaller banks and building societies is both sensible and practical. It is unclear what HMRC would gain from altering this approach without imposing disproportionate compliance obligations on these institutions.

We intend to submit further comments on the consultation in due course, but wish to raise these important aspects now to enable HMRC to consider the position further. We would of course be happy to clarify any aspects of this letter with you or meet to discuss the Code of Practice proposals further.
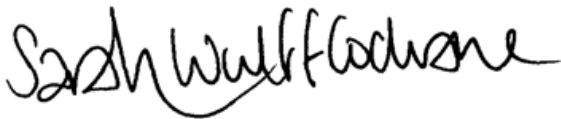
Yours sincerely,

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