



DAO(GEN)6/00

22 May 2000

Dear Accounting Officer,

USE OF EXTERNAL TAX ADVICE BY GOVERNMENT DEPARTMENTS

Purpose of this DAO

To ensure government departments and the bodies for which they are responsible are clear on the policy relating to the use of external tax advice.

Policy

2. The policy is that it is inappropriate for departments to use tax advisers, or use schemes marketed by such advisers, to reduce their tax liabilities. External tax advice is a cost to the public purse when it is used to increase departmental resources by circumventing the normal PES process to obtain a short term gain. It reduces the Exchequer's tax receipts at a cost to the Public Sector net cash requirement (PSNCR).

3. Aggressive tax management by departments does not accord with continuing attempts to prevent tax avoidance and evasion in the private sector. It is, of course, accepted that external advice on complying with the law may be necessary, where an organisation does not have sufficient in-house expertise. For instance, all public employers have to comply with statutory PAYE requirements, and sometimes this requires professional advice. In addition, where a department carries on taxable activities, either itself or through associated bodies or enters into arrangements with taxable bodies it may wish to consider seeking professional advice from outside the department. Before employing tax advisers, departments should rigorously apply the test of comparing their cost with the likely benefits to the public sector *as a whole* by means of a properly costed appraisal. Such analysis should be carried out as a matter of course when considering the purchase of tax advice. Departments must also be prepared to defend the use of external tax advice to the National Audit Office and/or the Public Accounts Committee (PAC) etc if called upon to do so.



Private Finance Initiative (PFI)

4. External tax advice may have a role to play in PFI schemes because of the complexity of the deals, and the nature of the related companies who are to provide the service over a long period. Customs and Excise can, however, advise departments on the VAT implications for them. Tax advisers often prepare cases for PFI schemes for companies in the private sector for consideration by their Customs Business Advice Centres, which is an entirely different arrangement.

New Legislation

5. New legislation sponsored by a department, for example in relation to public private partnerships, may have tax implications because the legislation will create taxable bodies, transfer assets to new bodies or make changes to other legislation which affect tax treatment. In such cases the Bill sponsoring department is responsible for instructing Parliamentary Counsel on the legislation required. Departments may require external advice for this purpose. In such cases, Departments may find it helpful to refer to the attached note by the Cabinet Office on tax implications of Bills.

Role of Customs & Excise (C&E) and Inland Revenue (IR)

6. The relationship between C&E and IR and other Government Departments (and associated bodies for which they are responsible), which are liable to pay direct or indirect taxes or have obligations as employers or contractors is broadly speaking the same as that with other taxpayers. Departments and their advisers are responsible for meeting their legal obligations with regard to tax.

7. Both Customs & Excise and the Inland Revenue will of course provide general help for Departments and their associates. In addition, Customs will provide specific advice for Departments (not associated bodies or suppliers) on the VAT liability of the sales they make and the refunds they can claim on their contracted out services.

8. The Inland Revenue will provide help under its published Code of Practice (COP 10) on Information and Advice. That will include guidance on Inland Revenue interpretation of the law on matters of major public interest, such as public private partnerships, if full details including planned documentation are provided. But, under its Code, the Inland Revenue will not advise any taxpayer on transactions designed to avoid or reduce the tax charge which might otherwise be expected to arise.

Action

9. Departments should draw this letter and attached annex to the attention of relevant staff and ensure that it is sent to any executive agencies, NDPBs and other bodies for which they are responsible.

Enquiries

10. Enquiries about refunds of VAT to Government Departments may be referred to HM Customs and Excise, Government & Education Branch, VAT Policy Directorate, 4th Floor, New Kings Beam House, 22 Upper Ground, London SE1 9PJ who provide tax advice without charge to all departments on their internal tax affairs. Requests for

advice under the Inland Revenue's Code of Practice should be addressed to the Compliance Division (information and Advice), Inland Revenue, Room 431, 22 Kingsway, London WC2 6NR (Telephone: 020 7438 6223).

Yours sincerely,

Brian Glicksman

BRIAN GLICKSMAN

TAX IMPLICATIONS OF BILLS

The Paymaster General is responsible for tax policy and should be consulted on all tax proposals at the earliest possible stage. This will help to ensure that all tax matters are resolved before the Bill starts its Parliamentary process and will minimise delays. In addition, the Financial Secretary has responsibility for environmental taxes and excise duties and the Economic Secretary for banking and financial services and they should be consulted on their respective matters.

2. In some cases the need for special tax provisions in a Bill will be obvious, for example to ensure that the creation of a new vehicle for holding assets or carrying out activities does not trigger a tax charge. But many Bills have tax implications which are difficult to identify at the outset. Careful thought should be given to potential tax implications of the creation of new activities or bodies which may require either exemption or bringing into the tax net, and of changes to legislation which is itself referred to in tax law.

3. The control of drugs, betting and gaming duties, road fuel duties and “green” taxes are the responsibility of Customs and Excise. Departments should consider whether social, transport or environmental legislation could affect any of these areas.

4. Where Departments consider that the Bill may impact on any of these areas it is essential to obtain the agreement of the relevant Treasury minister to the tax or duty proposals. This process is quite separate from the approval of the Bill by LEGIS and HS Committees and consent to the tax or duty proposals should be obtained before the Bill is presented to those Committees. The same procedures should be followed for Treasury Bills other than Finance Bills, Consolidation Bills or Tax law Rewrite Bills. Departments should note that working with Treasury officials on other aspects of the Bill does not constitute tax policy consultation and that it is the responsibility of the sponsoring Department to obtain the necessary consent from Treasury Ministers.

5. Departments should notify the Policy Support Unit of the Inland Revenue (direct taxes) and the Budget and Central Unit in Customs & Excise (VAT) at the start of the Bill process. Inland Revenue and Customs & Excise officials will assist the Bill team to determine the tax or duty provisions which may be required and provide tax advice to the relevant Treasury Minister in line with the Government’s tax and environmental policies.

6. Arrangements for consultation with the devolved administrations on tax provisions in Bills should also be agreed with the Revenue Departments.