

MALTA INSTITUTE OF TAXATION

A TAXPAYERS' CHARTER

The Malta Institute of Taxation welcomes the announcement in the 2010 Budget speech that Government will be introducing a Taxpayers' Charter.

Bearing in mind the well established rule that “*An unlimited power to tax involves necessarily a power to destroy: because there is a limit beyond which no citizen, no institution and no property can bear taxation (1)*”, the introduction of a Taxpayers' Charter has been on the Institute's agenda for at least five years. A draft was prepared for consideration by the authorities, but the stock response was invariably that though a Charter would be welcome, the Revenue Departments were not equipped, and did not have sufficient resources, to implement it meaningfully. Direct recourse to Government in 2006 was not even considered worth an acknowledgement.

The duties and responsibilities falling on Revenue Departments on one side, and on taxpaying citizens, on the other, are laid down in massive and complicated legislation. How this legislation is to be interpreted and made to work in practice, however, is nowhere set out. The result has unfortunately been that while the tax authorities are equipped to make full use of the draconian powers vested in them by the law, there is no authority to ascertain that these powers are exercised reasonably and in conformity with expectations in a modern, transparent and democratic state. This supervision lies beyond the normal functions of the Courts, who can usually only consider such matters as infringement of the principles of natural justice or of constitutional rights, though it must be noted that in recent years the Courts have felt themselves free to intervene in certain matters which could, perhaps, be deemed to lie outside their proper functions. This intervention has afforded some welcome relief, but it falls far short of what is required to enable citizens to feel that, although they might not agree with the end result of what is admittedly an unwelcome process, they have at least been given a fair hearing, that their submissions have been fully considered, that the smallest error on their part has not been unduly magnified and used to levy undue taxation, that they have not fallen victim to convoluted argumentation and that, in general, they have been dealt with as reasonable and honest citizens on whom the state depends for its means.

A look at the published decisions shows that the way in which taxation is being levied falls short of these standards. This is what a Taxpayers' Charter is all about, the removal of hoary old methods, principles and impositions which today have no place in our society, and their replacement by today's norms.

(1) *McCulloch v Maryland*, 17 US 316 (1819).

The Institute is proud that it raised the question of taxpayers' charters in the Confederation Fiscale Europeenne of which it is a member. The end result of its efforts in this respect can be seen in the CFE's publication celebrating its fiftieth anniversary. Two-thirds of the book, which is over three hundred pages long, is devoted to a study of taxpayers' charters all over the world: ranging from Austria to Sweden, by way of Australia and the United States of America. The CFE has also dealt with the subject in its technical committees and in its seminars. There now appears to be a general consensus that steps next need to be taken to prepare a model for use throughout the E.U.

In the meantime, one can perhaps have a look at the charters in place in Italy and in Australia when considering what is to be introduced in Malta. As may be expected, the Italian arrangements were enacted by statute: law 212 of 2000. Australia prefers the traditional method whereby the authorities set out the rules by which they bind themselves to act in implementing the law. Both systems have their merits and both could be useful for us in Malta. Perhaps as a start the Australian method would be better as it allows for flexibility in the initial years. As emerges below, the Australian method is also more familiar to us in Malta than the Italian law which appears to be too much tied up with pure Civil Law principles and practices.

The Italian legislation of 2000 was implemented after a series of quasi-amnesties had paved the way for the law named 'Statuto dei diritti del contribuente'. It provides, inter alia, for customer service offices to be set up, and lays down that if its rules and regulations are not observed in a proper manner, disciplinary sanctions may be applied. The rules are extensive and wide ranging: prohibiting retroactivity of tax legislation, insisting upon clarity, granting rights of information, transparency and motivation, providing for rights for non-resident taxpayers, spelling out detailed rights regarding payment and deadlines (linked with the Italian Civil Code), assuring legal certainty and giving citizens almost unlimited rights of obtaining advance tax rulings. The law limits rights of inspection, and sets up the office of "Garante del contribuente" which functions as an ad hoc ombudsman for tax purposes.

The introduction of the taxpayers' charter in Australia was the result of an embarrassingly public series of hearings before the Joint Committee on Public Accounts of the Australian Commonwealth Parliament. Not all that was said was shown to be right or correct, but obviously the JCPA felt that something had to be done. The resulting charter may be found on the web-site of the Australian Taxation Office, where the basic points made are summarised as follows:-

Your rights: You can expect us to:

1. treat you fairly and reasonably
2. treat you as being honest in your tax affairs unless you act otherwise

3. offer you professional service and assistance to help you understand your rights and obligations
4. accept you can be represented by a person of your choice and get advice freely on your tax affairs
5. respect your privacy
6. keep the information we hold about you confidential and in accordance with the law
7. give you access to information we have about you in accordance with the law
8. give you advice and information you can rely on
9. explain to you the decisions we make about your tax affairs
10. respect your right to a review
11. respect your right to make a complaint
12. administering the tax system in a way that minimises your costs of compliance
13. be accountable for what we do.

Your taxation obligations. We expect you to:

1. be truthful in your dealings with us
2. keep records in accordance with the law
3. take reasonable care in preparing your tax returns and other documents and records
4. lodge tax returns and other required documents or information by the due dates
5. pay your taxes and other amounts by the due date
6. be cooperative in your dealings with us.

Each point is then expanded upon and explained in greater detail. The CFE review states that the Australian charter overlays what are essentially ordinary legal rights and obligations with the manner in which these rights and obligations are to be observed. The charter rounds out the expectations which the parties have of each other, taking them away from the bare statement of essentially legal obligations. It has the effect of providing the parties with a standard for their own behaviour. The Tax Ombudsman has stated that: *“The taxpayer charter has established an agency standard for ATO officers and a reference point for external complainants.....Good behaviour, whether at a personal or a corporate level, is more a reflection of how we choose to behave than how others tell us to behave. Charters are necessary for that reason, to build integrity and a public service orientation from the inside”*.

The CFE concludes that by ‘owning’ their charter, the Australian Tax Office has gone a long way to demonstrate that they choose to behave well.

The Malta Institute of Taxation is convinced that what has been achieved all over the world is not beyond our capabilities. It wishes to emphasise, however, that a Charter must not remain just a document: there has to be a means of enforcement, perhaps an ad hoc ombudsman or the Italian Garante del Contribuente. In any case, the Institute pledges its full cooperation in the process of compiling Malta's own Taxpayers' Charter, and wishes every success to this new venture in the field of taxation.