

# Seeking Tax Fairness for UK small business people

**How reforms to the US Internal Revenue Service from 1998 to 2019 offer a model for delivering tax fairness to self-employed, small business people in the UK.**

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## **Problem and solution**

### **The HMRC Problem**

Since the introduction of IR35 in 2000, HMRC have undertaken a relentless process of intimidation against self-employed people to force their view of the law upon them, even in the face of HMRC being consistently shown to be wrong.

But IR35 is just the most obvious example of HMRC's unfair treatment of small business people. HMRC's formal policy is to handle self-employed and small business tax disputes through exactly the same process that they apply to big business. This is where the unfairness starts.

Self-employed, small business people do not have the resources to defend their positions. The imbalance of power is obvious. HMRC can and do impose their view of the law (whether right or wrong) through intimidation. This must change.

### **A template for UK fairness**

This paper looks at the legislative changes required of the IRS by the US Congress from 1998 to 2019. It proposes that those US reforms offer a model for legislative reform of UK tax administration to deliver tax fairness for small business—particularly the self-employed in the UK.

The US administrative laws focus on *Taxpayer Rights* to create a fairer, just, transparent and accountable tax administration system that enhances voluntary compliance, efficiency and revenue collection.

This paper recommends that the US fairness model offers a template for small business tax administration fairness in the UK. Such fairness can only be delivered through legislation. Specific examples are provided of how the template can be modified to fit UK circumstances.

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## **1. Why is a fairer tax administration system needed in the UK?**

However defined, self-employed, independent contractor and small business people are a vital backbone of developed economies. It's where individual initiative at the broadest base of economic activity creates vitality. By definition, self-employed people earn their income by engaging in commercial contract activity.

How a country's tax system is administered is critical to the success of a country's economy.

- Where a tax system's administration is fair, transparent, predictable and consistent, people can engage in economic activity with confidence.
- Where a tax system's administration is unfair, opaque, uncertain and inconsistent, risk exists and people are wary of engaging in business.

This is particularly so with self-employed small business people because, as individuals, they are at the mercy of tax administrators.

This paper argues that the administration of self-employed UK tax by HMRC is patently unfair, opaque, uncertain and inconsistent. But more, HMRC are and have been engaged for more than 20 years in a deliberate campaign to suppress self-employment in the UK.

The damage that HMRC is doing to the UK economy is major. It must stop.

## **2. Can a fairer UK tax administration system be achieved?**

Some 30 years ago the US was faced with an unfair tax administration system. In 1998 the US created a fix. Some 25 years of experience later, that fix remains impressive.

- Why is it that, in the US, self-employed, independent contractors make up more than 30 per cent of the workforce and growing?
- Why is it that, in the UK, self-employed, independent contractors make up only 12 per cent of the workforce and declining?

Compare the respective tax administration systems. The US system is impressively fair. The UK system is glaringly unfair.

This paper:

- Sets out some of the evidence as to why the UK tax administration is so unfair, particularly for self-employed, small business people.
- Provides an overview and some of the detail of the US tax administration system. A read of Appendices A & C below provides evidence of the fairness of the US system.

For sufferers of the UK system, it's eye-opening to discover how common-sense and straightforward the rules are that govern the much fairer US tax administration system.

A fix for the UK is available through legislative means. The US provides a model.

### **3. The UK, IR35 problem – What drives HMRC to unfairness?**

#### *3.1 The core problem*

Nothing in statute gives HMRC the instruction to aggressively discriminate against self-employed small business people in the UK. It is instead a pursuit HMRC have taken on of their own volition and pursued for over two decades. HMRC care not for the damage they have done and continue to do to individuals and the UK economy.

#### *3.2 Explanation*

The most authoritative and comprehensive report on the IR35 ‘problem’ is from the House of Commons Committee of Public Accounts Committee, *Lessons from implementing IR35 reforms* (2022-23).

A most telling statement in the report is as follows:

*HMRC told us that it would be simpler and more straightforward to administer the tax system if tax liabilities of employed and self-employed were aligned, but that this is ultimately a matter for Ministers and Parliament.* (par 11)

This stated position combined with HMRC’s history of aggression towards self-employed people since the inception of IR35 in 2000, gives us a deeper understanding of the IR35 ‘problem’.

It is as follows:

#### *a) Stop revenue losses*

- HMRC’s view is that the differential in tax collected between the employed and self-employed creates a loss of revenue to the Exchequer, a loss attributable to the self-employed.
- As a consequence, HMRC decided that in order to stop or restrict that revenue loss they must suppress the numbers of self-employed in the UK. This is an unstated HMRC policy position, but it is evidenced by their behaviour over more than two decades.

#### *b) Common law*

- HMRC’s power to stop these revenue losses is exclusively tied to the determination of who is an employee and who is self-employed. This determination of status is entirely a common law process under UK tax law.
- HMRC has taken it upon themselves to be the determiner of status. But HMRC have neither the competence nor the jurisdiction to be the status determiner. Only the courts can decide such matters.

### c) *Intimidation*

- Because HMRC's attempts to determine status (through Check Employment Status for Tax (CEST) - their online tool) have so regularly proven to be wrong, HMRC have resorted to intimidation.
- *Intimidation 1*: Because HMRC exercise the power of the state, they possess comparatively unlimited resources in relation to self-employed people. This power imbalance means that the self-employed cannot afford to defend themselves and mostly concede—not because of the truth or the facts of their case, but because they are powerless.
- *Intimidation 2*: Not satisfied with their success under *Intimidation 1*, since 2017 HMRC have added a new focus of intimidation—namely, intimidation of the clients of the self-employed. That is, HMRC have made self-employed businesses' clients responsible for status determination, a task which clients are not equipped to do. Further HMRC have made the clients liable and punishable for incorrect status decisions ('incorrect' as determined by HMRC).

### d) *HMRC's view of status*

- The evidence of 20-plus years of HMRC status determination is that HMRC repeatedly breach common law and their own professed procedural standards. HMRC operates a process which is completely unfair. For example, when looking at individual self-employed circumstances, HMRC cherry-pick facts designed to give HMRC the outcome they want—notably the absence of self-employment. They should look at all the facts in such circumstances. They do not.

### 3.3 *Comment and summary*

- HMRC have a self-appointed and predetermined position on employed vs self-employed status.
- HMRC have a self-interested motivation to deny self-employment status for the purposes of raising additional tax revenue, whether the additional tax raised is lawful or not.
- For two decades, HMRC's discrimination against self-employment has been a powerful destroyer of self-employment in the UK. This has damaged the UK's economic growth and continues to do so.

## 4. Understanding HMRC's attitude to self-employed, small business people

The philosophy, approach and processes that HMRC use to manage and resolve tax disputes with self-employed and small business taxpayers is discoverable in HMRC's document **Resolving tax disputes: Commentary on the litigation and settlement strategy**

This is HMRC's policy statement about how it operates. It is instructive reading.

The policy states that HMRC's Litigation and Settlement Strategy (LSS):

“...applies to all tax disputes resolved through civil procedures and to all decisions taken by HMRC in relation to such disputes.” (ref 6)

This is the key document.

Significantly, **small business is treated the same as large business:**

“The LSS applies as much to the resolution of a dispute with a *small business customer* over their taxable profit or turnover as it does to the resolution of a dispute with a *multinational corporation or wealthy individual* involving a complex tax avoidance transaction” (Page 14)

That is, HMRC apply the same enforcement strategy to small business as they do to large. There is no recognition that small business people do not have the capacity to defend themselves in the way that big business can.

Small businesses suffer from a power imbalance when pitted against HMRC, which inevitably results in unfairness. Self-employed small business people must be treated differently from big business if fairness is to be achieved.

### 4.1 It's about revenue, cash flow and impacting taxpayer behaviour.

**It's not about collecting the correct amount of tax:**

HMRC says

- “HMRC seeks to secure the best practicable return for the Exchequer.” (8)
- “HMRC's objective of securing the best practicable return for the Exchequer will have regard to future as well as immediate revenue flows, costs and the deterrent effect on customer non-compliance” (17)
- “...the terms on which disputes are resolved will take into account their likely impact on customer behaviour both generally and in relation to the customer concerned...” (17)

In other sections of the document HMRC talk about collecting the correct tax. But it is 'correct tax' based on HMRC's view of 'correct'. Throughout the document, however, 'correct tax' is clearly trumped by HMRC's objective that they must maximise revenue. This is an attitude that creates HMRC's justification for unfairness.

## 4.2 It's about imposing HMRC's view of the law:

HMRC says

- "...HMRC will not compromise on **its view** of the law to secure agreement,..." (17)
- "Establishing what is the right amount of tax due in accordance with the law or when any tax is due may lead to disputes between HMRC and its customers..."
- "HMRC will not usually persist with a tax dispute unless it potentially secures the best practicable return for the Exchequer" (page 33)

where

- "For example, this might include a situation where a particular policy principle is at stake." (page 18)

That is, revenue (at all costs to the community) is HMRC's mantra with HMRC determined that their view prevails. This is particularly evident with IR35, where HMRC's view has proven repeatedly to be wrong. Nonetheless, HMRC persists.

HMRC says

- "... (where) a particularly important point of principle is involved here it is necessary to defend the integrity of the legislation, or where not defending the point could potentially lead to a distortion of competition between businesses." (page 34)

What on earth is HMRC doing concerning itself with 'competition between businesses'?

HMRC does not have a legislative, social or moral remit to concern themselves with 'competition'. HMRC have one remit only. To collect tax. And that should involve collecting the 'correct' amount of tax.

- "...where HMRC believes that it is unlikely to succeed in litigation it will, in the majority of cases, concede the issue." (Page 40)

This is not the two-decade experience of HMRC with IR35. Rather, where HMRC are unlikely to succeed they persist. Therein lies their intimidation tactic.

HMRC says

- "HMRC should establish the facts relevant to the tax risk in question, rather than looking for particular evidence that supports an initial assumption about a risk." (Page 24)

Again, this is not the two-decade experience of HMRC with IR35. Rather, the IR35 evidence is that HMRC start with the conclusion they seek (that is, not self-employment) and then look 'for particular evidence that supports an initial (HMRC) assumption.'



## 5. The US template ‘solution’. Applicable to the UK

In the 1980s and 1990s the US had similar problems with the Internal Revenue Service (IRS). The issues were different to those in the UK, but the commonality was that the IRS was acting with intimidation toward taxpayers, in an unfair manner. The IRS was damaging self-employment in particular and the economy more generally.

In 1996–97 an all-party Congressional review was undertaken with major reform recommended. In 1998 major legislative reform of the IRS passed Congress heralding a new era of taxpayer fairness. Further review with some reforms followed over the subsequent decades with a final further beefing-up of the reforms in 2019. (The Taxpayer First Act.)

The US reforms offer a template for the UK to bring legislative ‘fairness’ reform to the administration of tax by HMRC. Appendices A, B and C give details of the US reforms.

The broad template has the following main features directly applicable to the UK. The centrepiece is a focus on ‘*Taxpayer Rights*’

The template includes the following crucial features:

- ***Taxpayer Bill of Rights*** – 10 legislated principles – (see Appendix A).
- ***Taxpayer Rights Code*** – a list of legislated practical tax administration procedures. The US code lists over 70 procedures – (see Appendix C for selection).

Importantly, the tax authority must comply with the Bill of Rights and the Code.

- ***Taxpayer Advocate*** – assists taxpayers to pay the correct amount of tax. Oversees the tax authority’s compliance with the Bill of Rights and the Code. The Advocate can order the tax authority to do things or cease doing things – (see Appendix C, point4).
- ***Independent review*** process inside the tax authority.

With the template in place as a package, the specifics can be modified to suit UK circumstances.

Importantly, these changes must be implemented by legislation, not HMRC ‘policy’. Without legislation, no fairness can be guaranteed.

## 6. The things in HMRC’s LSS policy that could be put into law in specific ways.

In implementing a US tax fairness ‘template’ as explained earlier in this paper, we mention that details would, by necessity, be modified to fit the circumstances of the UK.

One way to do this is to take administrative processes which HMRC claim they use (in the Litigation and Settlement Strategy) and insert these into legislation. That is, where

appropriate, turn HMRC policy guidance into a legislative requirement. This was one process (among several) that was used in implementing the US tax reforms.

Here are some possible examples based on extracts from the LSS.

6.1: LSS says:

- “HMRC will seek, wherever possible, to handle disputes non-confrontationally and by working collaboratively with the customer.” (9)

Legislation could say:

- ‘HMRC will at all times handle disputes non-confrontationally and work collaboratively with the taxpayer.’

Yes, this is a statement of legislative principle, but such principles are important.

6.2 : LSS says;

- “HMRC will seek to work with the customer to understand fully the relevant facts and law, sharing and testing HMRC’s own arguments, and fully understanding and testing the customer’s arguments, before reaching a considered view on the strength of its case.” (13)

Legislation could say:

- ‘HMRC will gather all relevant facts and share and test HMRC’s own arguments with the taxpayer’. All facts provided by the taxpayer must be considered, and reasonably responded to, not ignored. At all times the parties must try and reach an agreed statement of facts, or provide reasons why they do not agree.

Essentially, this is about ensuring that taxpayers arguments are not dismissed without a duty of care.

6.3 :LSS says:

- “...in appropriate cases Alternative Dispute Resolution can help the resolution of disputes...” (16)

Legislation could say:

- ‘HMRC will make Alternative Dispute Resolution available to all taxpayers in dispute’.

6.4 :LSS says:

- “...establishing a decision tree, including agreeing the key questions which need to be answered in order to resolve a dispute.”

Legislation could say:

- ‘In managing a dispute with a taxpayer HMRC will, in conjunction with the taxpayer, establish a decision tree, which includes agreement on the key questions which need to be answered.’

6.5 :LSS says:

- “...Clearly setting out the point or points in dispute...”  
“...jointly agree preferred timescales or deadlines for next steps.” (Page 22)

Legislation could say:

- ‘HMRC will clearly set out the points of dispute and share these with the taxpayer’(and) ‘HMRC will jointly agree with the taxpayer on timescales and deadlines for next steps and HMRC must meet and achieve those timescales and deadlines.’

6.6 : LSS explains:

- “In the Supreme Court judgment in *HMRC versus Tower MCashback LLP 1*, Lord Walker citing Henderson J in the High Court, confirmed that:

‘There is no express requirement that the officer must set out or state the reasons which have led him to his conclusions, and in the absence of an express requirement I can see no basis for implying any obligation to give reasons in the closure notice. However, in the same judgment, Lord Hope stated *that it is “desirable” for HMRC’s conclusion in a closure notice to be “as informative as possible”*’.

The closure notice is one of the most important documents in tax litigation and it is vital that all relevant parties, including the customer and the tribunal, have the same understanding of what HMRC’s conclusions are. HMRC should always ensure that any conclusions set out in a closure notice are clear and unambiguous.” (Page 23)

Legislation could say:

- ‘HMRC must ensure that a Closure Notice sets out all the reasons that have led to the conclusions and that those conclusions are clear and unambiguous.’

6.7 :LSS says:

- “Where HMRC’s position on a tax dispute depends on the outcome of other disputes turning on the same issue, HMRC should bring this fact to the customer’s attention.” (Page 30)

Legislation could say:

- ‘Where HMRC’s position on a tax dispute depends on the outcome of other disputes turning on the same issue, HMRC must bring this fact to the taxpayer’s attention.’

## Appendix A

### Background to the US reforms

#### Overview

Some 22 years ago, US lawmakers moved with major reform to tax administration out of concern about mistreatment of taxpayers, particularly small business taxpayers, by the IRS.

This happened with full support across the political spectrum in Congress, and the US lawmakers put the ‘rights of taxpayers’ at the centre of their reforms.

This approach has transformed US tax administration according to official reports. Since 1998, additional reforms have been implemented, the most recent in 2019, being the *Taxpayer First Act* which built further on the 1998 Act.

#### Congress’s view 1997-98

In 1996, the US Congress commissioned an investigation into the IRS. The 1997 report of the *National Commission on Restructuring the Internal Revenue Service* recommended sweeping reforms based around the principal of Taxpayer Rights.

The Congressional report stated

- ...the perception is that the IRS is neither sensitive nor accountable to the American people.
- The goal of this Report is to recommend changes to the IRS that will help *restore the public’s faith in the American tax system*.
- ... there are no isolated solutions ... an integrated approach will set the stage for a more taxpayer friendly IRS and a tax system which Americans can believe in and trust.

In 1998, Congress passed a package of legislation. Several reviews with some additional reforms followed. In June 2019, Congress passed the latest legislative reforms. The *Taxpayer First Act*, further extended and consolidated the 1998 reforms.

**The reform vision**     *The IRS’s mission is “to collect the proper amount of taxes”.*

#### 1998 legislatively reforms – Taxpayer Rights

Key reforms included

- Required IRS compliance with a *Taxpayer Bill of Rights*.
- *Taxpayer Rights Code* is a list of legislated procedures the IRS must follow to comply with Taxpayer Rights. (Examples below)

- *Taxpayer Advocate*. Assists taxpayers to pay the correct amount of tax. Oversees IRS compliance with Tax Bill of Rights.
- *Independent review* process inside the IRS.

### **The 2019 Taxpayer First Act**

In July 2019, the *Taxpayer First Act* consolidated and expanded the reforms of 1998.

## **Appendix B - Specifics**

### **US: TAXPAYER BILL OF RIGHTS**

#### **The Right to be Informed**

Taxpayers have the right to know what they need to do to comply with the tax laws. They are entitled to clear explanations of the laws and IRS procedures in all tax forms, instructions, publications, notices, and correspondence. They have the right to be informed of IRS decisions about their tax accounts and to receive clear explanations of the outcomes.

#### **The Right to Quality Service**

Taxpayers have the right to receive prompt, courteous, and professional assistance in their dealings with the IRS, to be spoken to in a way they can easily understand, to receive clear and easily understandable communications from the IRS, and to speak to a supervisor about inadequate service.

#### **The Right to Pay No More than the Correct Amount of Tax**

Taxpayers have the right to pay only the amount of tax legally due, including interest and penalties, and to have the IRS apply all tax payments properly.

#### **The Right to Challenge the IRS's Position and Be Heard**

Taxpayers have the right to raise objections and provide additional documentation in response to formal IRS actions or proposed actions, to expect that the IRS will consider their timely objections and documentation promptly and fairly, and to receive a response if the IRS does not agree with their position.

#### **The Right to Appeal an IRS Decision in an Independent Forum**

Taxpayers are entitled to a fair and impartial administrative appeal of most IRS decisions, including many penalties, and have the right to receive a written response regarding the Office of Appeals' decision. Taxpayers generally have the right to take their cases to court.

#### **The Right to Finality**

Taxpayers have the right to know the maximum amount of time they have to challenge the IRS's position as well as the maximum amount of time the IRS has to audit a particular tax year or collect a tax debt. Taxpayers have the right to know when the IRS has finished an audit.

#### **The Right to Privacy**

Taxpayers have the right to expect that any IRS inquiry, examination, or enforcement action will comply with the law and be no more intrusive than necessary, and will respect all due process rights, including search and seizure protections and will provide, where applicable, a collection due process hearing.

#### **The Right to Confidentiality**

Taxpayers have the right to expect that any information they provide to the IRS will not be disclosed unless authorized by the taxpayer or by law. Taxpayers have the right to expect appropriate action will be taken against employees, return preparers, and others who wrongfully use or disclose taxpayer return information.

#### **The Right to Retain Representation**

Taxpayers have the right to retain an authorized representative of their choice to represent them in their dealings with the IRS. Taxpayers have the right to seek assistance from a Low Income Taxpayer Clinic if they cannot afford representation.

**The Right to a Fair and Just Tax System**

Taxpayers have the right to expect the tax system to consider facts and circumstances that might affect their underlying liabilities, ability to pay, or ability to provide information timely. **Taxpayers have the right to receive assistance from the Taxpayer Advocate Service if they are experiencing financial difficulty or if the IRS has not resolved their tax issues properly and timely through its normal channels. [Emphasis added.]**

## Appendix C

### Some specifics of the 1998 and 2019 IRS Reforms

#### 1998 Reforms

The following lists 31 of the approximately 70 specific 1998 reform items. Items from number 7 (below) are principally drawn from the *Taxpayer Rights Code* that puts practical expression to the *Taxpayer Bill of Rights*.

1. **IRS mission:** The IRS's mission statement was changed. It now required the IRS to place a greater emphasis on servicing taxpayers' needs.  
The IRS is directed to revise its mission statement to provide greater emphasis on serving the public and meeting the needs of taxpayers.
  2. **Internal appeals:** Introduction of an internal IRS independent appeals process.
    - No communication to occur between IRS appeals officers and other IRS employees that might compromise the appeals division's independence.
  3. **IRS oversight board:** An Independent 'Oversight Board' established inside Treasury, ...to oversee the IRS in the administration, management, conduct, direction, and supervision of the execution and application of the internal revenue laws.
  4. **Taxpayer Advocate:** Established in 1996. Operating within the IRS but independent of it (it had 1,600 staff in 2019).
    - Reports to the Commissioner but is independent.
    - Assists taxpayers to resolve IRS problems.
    - Identifies problem areas in tax administration.
    - Proposed changes to IRS administration.
    - Identifies legislative changes.
- 4.1 *Taxpayer Assistance Orders (TAO) (changes since 1998):*
- Taxpayer may request a TAO if suffering hardship resulting from IRS behaviour.
  - TAO can order the IRS to cease, refrain or initiate action.
  - Defines 'hardship' in a number of ways
    - (a) immediate threat of action;
    - (b) more than 30 days in resolving a problem;
    - (c) taxpayer will have significant costs;
    - (d) taxpayer will suffer damage; and
    - (e) defined under regulations.
  - Where the IRS has failed to follow published guidelines, the Advocate is to favour the taxpayer.

#### 4.2 *Reports*

- The Advocate reports directly to Congress annually. (Called the Purple Book)
- No prior review of reports allowed by the IRS, Treasury or other organisations.

#### 4.3 *Structure*



- Local offices reporting to the National Advocate.
- Staff are employees of the Advocate Office, not employees of the IRS.
- Independent from IRS examination, collection and appeals functions.

#### 4.3 Notices

The IRS must publish Advocate contact details on all 'notices of deficiency'.

The Congress believed that the Taxpayer Advocate serves an important role...of preserving taxpayer rights...

### 5. Treasury Inspector General (established 1988)

The IRS Office of the Chief Inspector (Inspection Service) was established in 1951 following widespread corruption in the IRS. The Service was 'beefed up' in 1998 to become the

#### 5.1 Treasury Inspector General for Tax Administration

- Audits the IRS (for example, audits 1 per cent of IRS refusals of FOI requests).
- Charged to detect/deter fraud/abuse in IRS operations.
- Protects against external attempts to corrupt the IRS.
- Investigates allegations of wrongdoing/taxpayer abuse by IRS officers. (For example, mandates publication of complaints phone number.)
- Investigates allegations of abuse of IRS officers by taxpayers.
- Refers suspected violations of criminal law to the Department of Justice including suspicion of IRS officers.

### 6. IRS officers

#### 6.1 Requires termination of IRS officers for

- Failing to obtain signatures on documents authorising seizure of taxpayer assets.
- Providing a false statement involving a taxpayer.
- Violating a taxpayer's Constitutional or other legislative rights.
- Falsifying/destroying/concealing taxpayer documents.
- Assaulting a taxpayer or IRS officer.
- Concealing data from a Congressional inquiry.
- Threatening to audit a taxpayer for personal gain.

#### 6.2 Performance measures

In assessing the performance of IRS staff, the IRS:

- must favour taxpayer service as its first priority; and
- must not use measures based on quotas, goals or statistics.

#### 6.3 Employee training

- Must be focused on customer service.
- Specifies requirements for training schedule, funding, customer service, etc.

## **Taxpayer Protection and Rights**

### **7. Burden of proof**

7.1 Under tax law before 1998 a ‘rebuttal presumption’ existed that ‘the Commissioner’s determination of a tax liability is correct’. In other words, the taxpayer had to ‘un-prove’ the IRS’s tax assessment.

7.2. The 1998 law was changed so that the burden of proof shifted to the IRS.

*“The Congress believed that shifting the burden of proof to the Secretary in such circumstances would create a better balance between the IRS and such taxpayers, without encouraging tax avoidance.”*

The IRS has the burden of proof in respect to factual issues. Taxpayer must meet conditions of record-keeping, etc.

*The Congress also believed that, in a court proceeding, the IRS should not be able to rest on its presumption of correctness if it does not provide any evidence whatsoever relating to penalties.*

7.3 Statistics and penalties:

- The burden of proof is on the IRS if they use statistical data to assess a taxpayer’s income.
- IRS must produce evidence to support a penalty before the court can impose the penalty.

### **8. Awarding costs**

Taxpayers can be awarded administrative costs from the time a ‘letter of proposed deficiency’ is issued. Includes costs associated with review by IRS Office of Appeals and use of *pro bono* legal services. And costs where IRS engages in unauthorised inspections or disclosure activity.

*The Congress believed that taxpayers should be allowed to recover the reasonable administrative costs they incur where the IRS takes a position against the taxpayer that is not substantially justified...*

### **9. Civil damages**

Taxpayers can recover economic costs where the IRS disregards the Tax Code or violates the Bankruptcy Code. Third parties can also recover costs for unauthorised collection activities. Damages to \$100,000 (1998) plus up to \$1 million in civil damages are allowed.

**10. Special small case procedures** apply in the Tax Court.

### **11. Civil action on erroneous lien**

Where the IRS has imposed a wrongful lien on a third party for a tax debt, the third party can recover damages.

### **12. Interest and penalties**

- Interest charged to taxpayers to be no greater than the interest the Federal Government pays.

- Where taxpayers are paying unpaid tax through an instalment agreement, they should not suffer the full penalty regime.

### **13. Suspension of interest and penalties if IRS fails to contact taxpayer**

If the IRS fails to notify a taxpayer of tax owed, penalties and interest are suspended after one year.

*...Congress was concerned that accrual of interest and penalties absent prompt resolution of tax deficiencies may lead to the perception that the IRS is more concerned about collecting revenue than in resolving taxpayer's problems.*

### **14. Procedures for imposing penalties**

*The Congress believed that penalties should only be imposed where appropriate and not as a bargaining chip.*

Requires that a penalty notice includes (a) name of the penalty (b) the penalty Code (c) the computation. Specific approvals process is required.

### **15. Notice of interest charges**

Requires that every IRS notice must include (a) interest charged (b) detailed computation (c) citation of the Code.

## **Protections for Taxpayers Subject to Audit or Collection Activities**

### **16. Due IRS collection actions (levy)**

The IRS can impose a 'levy' (authority to seize) against a taxpayer's property for unpaid tax. This includes seizure of wages, etc.

The 1998 law requires that:

- the IRS must provide the taxpayer a 'notice of intent to levy' before seizure.
- No levy can occur for 30 days following mailing of the notice.
- Within that 30 days the taxpayer may demand a hearing before an appeals officer who has not had prior involvement with the taxpayer's case.
- No levy can occur until the appeal is determined.

The notice must be delivered in person to the taxpayer or by certified or registered post.

The notice must show:

- Unpaid tax.
- Taxpayer's right to request a hearing within 30 days.
- Proposed IRS action.

At a hearing the IRS is required to verify that all statutory, regulatory and administrative requirements have been met. These are listed. The taxpayer may raise any relevant issue.

The IRS appeal decision is appealable to the Tax Court or Federal District Court.

Seizure of a principal place of residence is not allowed without judicial approval.

Communication between a taxpayer and IRS-authorized tax advisers, including lawyers, is privileged and confidential in non-criminal proceedings. That is, attorney–client privilege is extended to authorized tax advisers.

#### **17. Limitation on financial status audit techniques**

The IRS cannot use an ‘economic reality’ test to determine unreported income unless there is a reasonable indication of same.

#### **18. Approval process for liens, levies, seizures, etc.**

The Act imposes administrative processes—namely, approval by a supervisor who has reviewed information, verified debt and affirmed that lien and seizure are appropriate.

#### **19. Levy and the like prohibited during appeal**

Existing law prevented the IRS from making a tax assessment or collecting payment while a liability is being tested in the Tax Court. This was extended to taxpayer litigation over refunds.

#### **20. Assessment waiting period**

A 30-day ‘waiting period’ applies after tax assessments have been made, except where collection is at risk. Where ‘at risk’ exists, Counsel review is required before collection activity is allowed.

#### **21. Prohibition of sale of seized property at less than minimum bid**

The IRS cannot sell a seized property for less than the ‘minimum bid’ price (the minimum bid price formulae is stipulated). Forced sale below the minimum bid price would constitute an unauthorized collection action.

#### **22. Principal residence**

IRS must exhaust all other payment options before seizing business assets or a principal residence. (See also item 16 above: Seizure of a principal place of residence not allowed without judicial approval.)

#### **23. Codification of IRS seizure procedures**

The Act requires the IRS’s administrative procedures on seizure of a taxpayer’s property to be codified—that is, written into law.

#### **24. Extending statute of limitations by agreement**

Requires the IRS to fully inform taxpayers that they do not have to agree to an extension to the three-year statute of limitations on tax review. The three-year limit applies from the date a return is filed.

## **25. Offers in compromise**

Taxpayers can offer to settle a tax debt for less than the assessed liability (offer in compromise or OIC) The Tax Code permits the IRS to accept such offers.

*The Congress believed that the ability to compromise tax liability and to make payments of tax liability by instalment enhances taxpayer compliance.*

The Act prohibits the IRS from:

- rejecting an OIC from low-income taxpayers based solely on the amount;
- rejecting an OIC where the IRS has lost a taxpayer's file; and
- requesting a financial statement based solely on doubt as to liability;

The Act also requires the IRS to publish schedules and guidance for taxpayers on offers in compromise.

## **26. Enforcing payments while appealing**

The IRS cannot collect a deficiency while an appeal is pending at the Tax Court. A court can order a refund if tax is collected during an appeal period.

## **27. Codification of IRS appeals procedures**

The Act requires that IRS procedures in relation to appeals, mediation, binding arbitration and early appeals and other procedures be codified—that is, written into law.

## **28. Guaranteed availability of instalment agreements**

Requires the IRS to make it easier for taxpayers to enter instalment agreements. Stipulates five conditions.

## **29. Waiving rights to sue the government**

The IRS (government) may not request taxpayers waive their rights to sue the government in matters relating to tax issues, unless certain conditions are met.

## **30. Requirement to inform taxpayer of their appeal rights**

The IRS is required to provide a taxpayer with a full description of all appeal rights at the point of the first letter of proposed tax deficiency.

## **31. Disclosure of Chief Counsel advice**

Requires the public release of IRS Chief Counsel advice.

*The Congress believed that written documents issued by the National Office of Chief Counsel ... should be subject to public release ... all taxpayers can be assured of access to the “considered view of the Chief Counsel’s national office” on significant tax issues.*

## **2019 Taxpayer First Act**

There are twelve key reform points:

- 1) **Greater access to independent review:** Guarantees taxpayer access to an independent appeal on an audit decision. Before an appeal the IRS must hand over to the taxpayer the taxpayer's case file.
- 2) **Improved customer service:** The IRS is required to adopt best practice standards used by the private sector in customer service.
- 3) **Easier settlement procedures:** No fees imposed by the IRS if a settlement deal is done with the taxpayer.
- 4) **Limited seizure of property:** Property seizure is limited to illegal cash transactions or concealing criminal activity. Post-seizure and hearing requirements to protect taxpayers.
- 5) **Greater protection for innocent spouses:** Applies in cases where a spouse has innocently signed a tax return prepared by the partner and the tax return is wrong.
- 6) **Fewer 'John Doe' summonses:** This will limit the ability of the IRS to conduct unlawful 'fishing expeditions' of foreign bank accounts for specific tax violations.
- 7) **Curbed use of private tax collectors:** The IRS uses private companies to collect tax debts. This will now be limited.
- 8) **Earlier notice of third-party questioning:** The IRS must notify a taxpayer before it makes enquires of a third party about the person's tax—for example, enquiries of a customer.
- 9) **Limited access to taxpayer information:** This limits IRS 'contractors' access to taxpayer information.
- 10) **Listening to the Taxpayer Advocate.** The Taxpayer Advocate is given significant new powers to issue enforceable directives to the IRS on taxpayer cases.
- 11) **Greater identity theft protection:** This requires the IRS to apply increased measures to protect taxpayers from identify theft.
- 12) **Accepting credit and debit card payments:** The IRS must accept credit and debit cards for payments.

**END OF REPORT**