

The Need For a Taxpayer's Charter

1. What is a Charter?

“Any formal writing in evidence of a grant, contract or other transactions conferring or confirming titles, rights, privileges or the like.”

“The formal need by which a sovereign guarantees the rights and privileges of his subjects.”

“Any instruments by which powers and privileges are conferred by the state on a body of persons for a special object.”

Chambers English Dictionary. “A grant made by the sovereign government either to the whole population or to a portion of it securing to them the enjoyment of certain rights.” Law Lexicon – Aiyar

2. Fiscal Law

Every fiscal enactment promulgates not only the obligations of a taxpayer, but also ensures his rights under the law. It would not be incorrect therefore, to assume that a Revenue law should be the most effective and eloquent instrument which secures the taxpayer the enjoyment of his legal rights under the statute which imposes the legal obligations on him as a tax payer. What then is the need for a special Taxpayer's charter?

I would answer this question with the following citation from the Report of the Taxation Commission 1990 (Sessional Paper No. 1 1991)

The Taxpayer and the Tax Administration

It is now universally recognised that taxpayer confidence, both in the tax laws as well as in the organization which administer them, is an essential element for the effective functioning of any tax system. The general trend of the evidence placed before the commission pointed to general breakdown of taxpayer confidence. The many complaints of inordinate delays, lack of courtesy and even of malpractice suffered by taxpayers which were received by the taxpayers which were received by the commission point to the fact that the relationships appear, over the years, to

have deteriorated. There were complaints of officers being discourteous, indifferent and overconscious of their own powers than of the rights of the taxpayers. Although this may be so only with respect, we hope, a relatively small number, such attitudes cannot help to achieve the desired degree of voluntary compliance.

It is essential for the smoother functioning of the tax system that the confrontational relationships which presently dominate should give to a relationship of mutual trust and confidence between the administration and the public. Whilst its discussions and recommendations, in later chapters, with regard to the administration of each of the departments should be specifically directed towards this end, at this point the Commission would point to three general matters.

The first of these is the need for an effective independent grievance machinery. The Commission is of the view that a major step towards the restoration of taxpayer confidence is the creation of an independent Revenue Ombudsman to whom taxpayers could have direct access for redress of their grievances in respect of all revenue departments. Such an Ombudsman appointed in terms of a specific ACT of Parliament, and removable only through impeachment by a two-thirds majority in parliament could play a significant role in reversing the present lack of confidence. We recommend that urgent attention be given for the appointment of such an Ombudsman.

The second is the enactment of a Taxpayer's Charter or a Taxpayer's Bill of Rights defining the taxpayer's rights as well as their obligations. The Commission finds that this has been done in many countries with considerable beneficial results correcting the attitudes of both tax officials and the taxpaying public and leading to better relationships. The Commission would refer to the 'The Taxpayer Bill of Rights' in the U.S.A., the 'Declaration of the Taxpayer Rights' in Canada, 'The Taxpayers' Charter' in the U.K. and the 'Statement of Purpose, Principles and Practice' in New Zealand as examples. We recommended that Sri Lanka also follow this modern trend.

The third is the establishment of an appropriate number of exclusive courts to deal with all judicial matters related to the administration of all taxes. The delays which occur today with regard to the judicial disposal of tax related cases is a major impediment to the smooth functioning of the revenue administration system. It adversely affects both revenue collection and compliance in filling returns, as well as the effective functioning of industry and commerce. The proposed Revenue

Courts should deal with all matters related to Income Taxes, Turnover Taxes, Custom Duties as well as Excises. The actual number to be established and their specific locations would depend on the geographical spread of revenue related cases and should be decided upon after study of the empirical data. The Commission strongly recommends the establishment of a system of such revenue courts.

It is regrettable that none of the above recommendations have received the attention of the government up to date. However, it is useful to examine in detail the need for a Taxpayers' Charter, if such a charter can be put into effect, "with the considerable beneficial results", the Taxation Commission anticipates. If the attitudes of Sri Lanka's tax officials can be corrected and better relationships with the taxpaying public could be one of the beneficial results, it is a useful exercise to examine the need for a Taxpayers' Charter.

It would be appropriate to highlight some of the rights declared in the British, Canadian and U.S. Charters as ensuring to the benefit of taxpayers in these tax jurisdictions and to suggest the adoption of the relevant features of these Charters in relation to the tax scenario in Sri Lanka.

The Taxpayers Bill of Rights (United States)

The most significant feature of the U.S. Charter is that the Taxpayer's Bill of Rights has been enacted as statute law in the Technical and Miscellaneous Revenue ACT of 1988 (TAMRA), with the intention of "strengthening and safeguarding the rights of taxpayers with respect to taxpayer interviews, audits and the tax collection process,

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The Declaration of Taxpayer Rights (Revenue Canada)

Although it does not appear that the Canadian Charter is a statutory enactment it

gives statutory recognition to the Declaration of Taxpayer Rights. The marginal note states as follows: -

"The Constitution and laws of Canada entitle you to many rights that protect you in matters of tax. You are entitled to know your rights. You are entitled to insist on them. You are entitled to be heard and dealt with fairly."

The U.K Taxpayer's Charter of July 1986 also does not appear to be a statutory enactment. However, the U.K. Charter, which was displayed in a British Tax Office is a reassuring statement of the rights of a Taxpayer under the U.K. Taxpayer's Charter.

It is submitted, that if the need for a Taxpayer's Charter is accepted and formulated as recommended by the Taxation Commission, the Charter should be a statutory enactment like the Bill of Rights of the United States, which will be a parliamentary confirmation of the statutory rights of a Taxpayer enforceable by law and not a mere pious expression of promises.

Basis for Evaluation of Internal Revenue Service Employees

(Section 6231 of the Bill of Rights of the United States TAMRA)

a) "In General, the Internal Revenue Service shall not use records of tax enforcement results:

1) to evaluate employees directly involved in collection activities and their immediate supervisors, or

2) to impose or suggest production quotas or goals with respect to individuals described in clause (1).

b) Application of Internal Revenue Service Policy Statement.

The I.R.S shall not be treated as failing to meet the requirements of sub-section (a) above, if the service follows the policy statement of the service regarding the employee evaluation in a manner which does not violate sub-section (a) above.

c) Certification

Each District Director shall certify quarterly by letter to the commissioner of Internal

Revenue that tax enforcement results are not used in a manner prohibited by sub-section (a).".

The above statement in the taxpayer Bill of Rights of the United States could be very use- fully adopted in any proposed Charter of Rights for Sri Lanka.

There is at present in operation in Sri Lanka a scheme of incentive payments to officers of the Inland Revenue Department of Sri Lanka which was sanctioned by the Parliament by section 30 of the Inland Revenue Amendment ACT No. 16 of 1985. This amendment (Section 158A of the Inland Revenue ACT) is provided as follows.

Inland Revenue Incentive Fund 158A

(1) There shall be established a fund called the Inland Revenue Incentive Fund (hereinafter in this section referred to as "the Fund").

(2) There shall be paid into the fund in respect of each year commencing on or after January 1, 1985, such sums as may be appropriated annually by Parliament for the purpose of the Fund.

(3) There shall be paid out of the fund:

a) all sums required for the welfare of officers of the Department of Inland Revenue in accordance with any scheme approved by the Minister; and

b) group incentive allowances to any class or category of officers of the Department of Inland Revenue in accordance with such schemes as maybe approved by the Minister to ensure efficiency in the administration of any ACT administered by the Commissioner General.

(4) The Commissioner-General or any officer of the Department of Inland Revenue specially authorized by him on his behalf shall ad- minister the Fund in accordance with the prescribed procedure.

It is submitted that target-oriented tax incentives have been re- sponsible for arbitrary, capricious, assessments, rampant lawlessness in tax collection and a cavalier interpretation of tax laws under the fiscal enactments of Sri Lanka. It is very important that as the Bill of Rights of the United States promulgates, the Revenue of Sri Lanka should not use records of tax enforcement results to evaluate the payment of tax incentives to officers of the Inland Revenue Department under

Section 158A of the Inland Revenue ACT. Under such a system taxation can result in oppression. (Vide pages 270 and 271 – Taxation Commission Report – 1990).

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Section 6229 of the United States Bill of Rights

Taxpayers may rely on written advice of the Internal Revenue Service.

“In general, the Secretary shall abate any portion of any penalty or addition to tax, attributable to erroneous advice furnished to the taxpayer in writing by an officer or employee of the Internal Revenue Service, acting in such officer’s or employee’s official capacity. This provision will apply only if: –

- (a) the written advice was reasonably relied upon by the tax- payer and was in response to a specific written request of the tax- payer, and
- b) the penalty of tax did not result from a failure by the taxpayer to provide adequate or accurate information.”

A provision such as this would be very necessary to protect the taxpayer’s rights in Sri Lanka in the context of recent official communications given to taxpayers on taxation of profits from employment. (Vide “Instructions to All Employees dated 9.5.94, and 19.5.94” issued by ‘Commissioner of Inland Revenue – P.A.Y.E’). In this connection, it would be useful for the Inland Revenue to pay heed to the decision in the following cases and the following articles of the Constitution. 4

1) I.R VS I.R.C. ex parte Pres- ton 1985 A.C. 835 2) Mackie and Co. Vs Molagoda

(S.C. – unreported)

3)Articles 148 and 152 of the Constitution of Sri Lanka

The Right of Independent Review

“Fair treatment of a complaint (against the Revenue) is one of your greatest rights” (Canadian Declaration of Rights).

It is submitted that the appellate rights of the taxpayer under the Inland Revenue ACT No. 28 of 1979 are nebulous and the procedural fairness required to be observed in the application of the appellate provisions are more honoured in their breach than in their observance.

It is also submitted that Revenue courts (to deal with all judicial matters related to the administration of all taxes as recommended by the Taxation Commission) be set up as expeditiously as possible.

An expeditious and effective remedy is also available to the tax-payer in Sri Lanka by way of,

a) Judicial Review and Fundamental Rights Action.

b) Representation to the Ombudsman under the recent amendment to the Parliamentary Commission for Administration ACT No. 17 of 1981 (Vide Section 7811 of the American Bill of Rights).

These statutory rights should be embodied in a Charter of Tax-payer’s Rights and guaranteed to the taxpayer.

“You can also expect your government to administer tax laws consistently” – Declaration

of Taxpayer Rights (Revenue Canada).

It is submitted that the Tax Administration of Sri Lanka has attempted to tinker with tax legislation for ad hoc purposes to the great detriment of taxpayers. A recent exercise in this type of “adhocracy” (as the Indian Courts have described such legislations) was the Inland Revenue Amendment Bill gazetted on 12th September and tabled in Parliament on 21st September 1994, and the proposed amendment to the law relating to taxation of Partnerships, seeking to tax income from Partnerships at 35%, treating partnerships as legal entities, an amendment which has been criticised by professional associations and other taxpayers as being legislative sanction for administrative incompetence.

A taxpayer's charter for Sri Lanka should ensure that the tax- paying community are given every opportunity to be informed of fiscal bills before they are enacted as law. Transparency in tax policy and tax administration demands that tax laws are enacted by Parliament only after it is made sure that it was a just law and it was fair to both the government and the taxpayer. The bureaucracy of the revenue is not the sole respository of the tax wisdom.

"Fair treatment under the Constitution and laws of Canada includes the right to communicate with and receive from National Revenue, Taxation in either official language."— Declaration of Taxpayer Rights (Revenue Canada).

A recent notification issued by the official languages Commission of Sri Lanka states, *inter alia*, as follows:-

1) It is a fundamental right under the constitution that no citizen shall be discriminated against on the grounds of race or language. 2) Sinhala and Tamil are the official languages of Sri Lanka. English shall be a link language, Sinhala and Tamil are the official languages of administration throughout Sri Lanka.

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3) All public institutions throughout Sri Lanka are under the legal obligation to reply to letters and other communications, in the same language in which such letters and other communications are received.

Public institution means a department or institution of the government, a Public Corporation or Statutory Institution.

4) Throughout Sri Lanka any person (other than any official acting in his official capacity) shall be entitled to receive communications from, and to communicate and transact business in Sinhala, Tamil or English.

The fundamental rights are more honored in their breach than in their observance by the tax administrations in Sri Lanka and this communication gap between the tax administration and the tax- payer has resulted in the loss of taxpayer confidence. There is also, from his/her view of the matter a need for a Taxpayer's Charter in Sri Lanka, which will ensure the above language rights enunciated by the Official

Languages Commission.

"You are entitled to expect the Inland Revenue to be accountable for what we do – By setting standards for ourselves and by publishing how well we live up to them."

The US Taxpayers Charter. It is generally agreed that Revenue officials are not mere bureaucrats. They perform multidisciplinary professional roles as lawyers and judges of fact and law, accountants, auditors, investigators and detectives. It is not sufficient that their official conduct be governed by rigid AR's and FR's. Like in every other profession the official conduct of taxmen must be governed by a Code of Conduct independent of AR's and FR's. Such a Code of Conduct should create professional standards which will be respected by the tax-payer. This Code of Conduct should be embodied in the Tax-payer's Charter. The taxpayer can then know how well the taxman lives up to these standards.