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Modernising the Correction of Errors - Draft Legislation

Response by the Chartered Institute of Taxation

1. Executive Summary

1.1. The Chartered Institute of Taxation (CIOT) is the leading professional body in the UK for advisers dealing with all aspects of taxation. We are a charity and our primary purpose is to promote education in taxation with a key aim of achieving a more efficient and less complex tax system for all. We draw on the experience of our 20,000 members, and extensive volunteer network, in providing our response.

1.2. We support the objective of modernising rules for correcting errors and encouraging taxpayers to put mistakes right promptly. However, the new obligations must be proportionate and include appropriate safeguards. As currently drafted, we are concerned that aspects of the legislation could create uncertainty for taxpayers and lead to unintended consequences. We are also concerned that the legislation as written will not work as intended and may mean that deliberate errors are out of scope.

1.3. Greater clarity is needed around when a taxpayer becomes deemed to be aware of an inaccuracy and the degree of certainty required before the duty to correct arises. Awareness of a potential issue should not necessarily amount to knowledge that an error has been made especially in cases where there is genuine technical uncertainty.

1.4. HMRC will also need to clarify what constitutes taking reasonable steps, including the expected timescale and process for notifying and correcting errors. Further consideration needs to be given to how the new rules will interact with assessment time limits and record keeping requirements.

1.5. In view of the fact that a failure by a taxpayer to correct an error of which they become aware will mean that the inaccuracy will be treated as deliberate for error penalty purposes, regardless of the actual behaviour which caused the inaccuracy in the first place, we think there should be some safeguards built into the legislation. For example, easements for those taxpayers who reasonably consider that they have no duty to correct because they believe HMRC are out of time to assess, and HMRC subsequently look into it and disagree.

1.6. An error originally made despite reasonable care being taken could attract not only a deliberate behaviour penalty but also mean a 20-year assessment time limit. There should be some protection for taxpayers who have taken reasonable positions that the extended time limits will not be in scope. Otherwise, the proposals may lead to taxpayers making protective disclosures, possibly at significant cost to themselves. HMRC must ensure they have the resources in place to respond to these situations if they arise.

1.7. We have some concerns about the proposed Customer Correction Notices (CCN). These could result in taxpayers being required to dedicate a disproportionate amount of time and expense reviewing their historic affairs. The notices should therefore be used proportionately. Notices should clearly outline the suspected inaccuracy rather than including speculative information. HMRC should consider implementing a minimum threshold requirement to issue a CCN and clarify the expected deadlines to respond to the notices. We recommend a de minimis threshold so that taxpayers and HMRC are not required to incur disproportionate costs dealing with immaterial errors.

1.8. The commencement provisions should make clear whether the new duty to correct can apply to historic errors that are still in time for HMRC to assess and how this will interact with existing compliance checks. Taxpayers and advisers will need adequate notice and comprehensive guidance before this is implemented.

1.9. Finally, HMRC should consider the interaction of the proposals with existing tax regulatory legislation. The consequences of a failure to correct may extend beyond the taxpayer to their adviser. The government should ensure that advisers are not exposed to disproportionate regulatory consequences.

2. About us

2.1. The CIOT is an educational charity, promoting education and study of the administration and practice of taxation. One of our key aims is to work for a better, more efficient, tax system for all affected by it – taxpayers, their advisers and the authorities. Our comments and recommendations on tax issues are made solely in order to achieve this aim; we are a non-party-political organisation.

2.2. The CIOT's work covers all aspects of taxation, including direct and indirect taxes and duties. Through our Low Incomes Tax Reform Group (LITRG), the CIOT has a particular focus on improving the tax system, including tax credits and benefits, for the unrepresented taxpayer.

2.3. The CIOT draws on our members' experience in private practice, commerce and industry, government and academia to improve tax administration and propose and explain how tax policy objectives can most effectively be achieved. We also link to, and draw on, similar leading professional tax bodies in other countries.

2.4. Our members have the practising title of 'Chartered Tax Adviser' and the designatory letters 'CTA', to represent the leading tax qualification.

2.5. Our stated objectives for the tax systems include:

- A legislative process that translates policy intentions into statute accurately and effectively, without unintended consequences.
- Greater simplicity and clarity, so people can understand how much tax they should be paying and why.
- Greater certainty, so businesses and individuals can plan ahead with confidence.
- A fair balance between the powers of tax collectors and the rights of taxpayers (both represented and unrepresented).
- Responsive and competent tax administration, with a minimum of bureaucracy.

3. Introduction

3.1. We have previously submitted comments on possible improvements to the correction rules in our responses on the Tax Administration Framework Review: enquiry and assessment powers, penalties, safeguards[1], and Tax Administration Framework Review: new ways to tackle non-compliance[2].

3.2. We welcome the opportunity to comment on the draft legislation to modernise the correction of errors. We understand the proposals introduce a new obligation on taxpayers to take reasonable steps to correct inaccuracies in returns and other documents provided to HMRC once they become aware of them. They also introduce a new power for HMRC to issue Customer Correction Notices (CCNs), requiring a taxpayer to review their tax position and either correct the identified inaccuracy or explain to HMRC why no correction is required.

3.3. We understand the proposals are intended to encourage taxpayers to identify and correct errors promptly to strengthen HMRC's ability to address non-compliance. We recognise the importance of an effective framework for correcting errors. However, given the potentially significant consequences of failing to comply with the new requirements, it is important that taxpayers can understand when the duty arises and what action they are expected to take.

3.4. As advised in our previous responses, we continue to support fundamental reform of the UK Tax's Administration Framework. Whilst we welcome HMRC's focus on the modernising of the correction of errors, in particular the introduction of a statutory duty to correct errors, this must be considered within the wider structural problem. The existing compliance framework was designed for a different era where far fewer taxpayers interacted with the system directly. The current system is no longer fit for the demands of a 21st century tax system. A piecemeal approach risks prolonging existing problems and fundamental reform should therefore remain a priority within HMRC's wider tax administration programme. It is disappointing that this measure is being introduced before first aligning assessment periods and enquiry timeframes across the different taxes.

4. Commencement date of legislation

4.1. We understand that the duty to correct and CCN power are expected to be included in the next Finance Act and are to take effect from a future appointed date. The legislation must clarify whether the new rules apply only to errors arising after commencement or also to earlier tax years that remain within assessment time limits. If the latter, that would give the rules retroactive effect which would be unusual for penalty legislation due to Human Rights laws. We suggest that the legislation should say something to the effect of:

'This applies to errors that occur on or after [a future appointed date]'.

4.2. Otherwise, the commencement rules will need to be carefully drafted to clarify the position where a taxpayer becomes aware of an error before the appointed day, including whether an existing error becomes subject to the duty to correct from the appointed date. We recommend that these points are addressed when the legislation is introduced to Parliament in the Finance Bill to allow Parliament to scrutinise the commencement clauses.

4.3. HMRC must also raise awareness of the new duty ahead of implementation to ensure taxpayers and their advisers are prepared.

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[1] Tax Administration Framework Review: enquiry and assessment powers, penalties, safeguards: https://www.tax.org.uk/ref1295

[2] Tax Administration Framework Review: New ways to tackle non-compliance: https://www.tax.org.uk/ref1405

4.4. If the Government intends to introduce a similar correction obligation for National Insurance contributions and customs duties (as we understand is the intention), further legislative changes will be required to the legislation governing those areas.

5. Amendment to s118(6) TMA 1970

5.1. The new wording in s118(6) clearly fits with that of the draft legislation for the new obligation to correct. A failure to correct where a person becomes aware of an error and fails to take reasonable steps to notify HMRC will mean that the inaccuracy will be treated as having been brought about deliberately rather than carelessly. However, the amendment to s118(6) will only affect a few taxes, many fewer than the intended scope of the legislation given the cross reference to Para 1(4) Sch 24 FA 2007. HMRC should consider if similar modifications are needed to equivalent legislation e.g. in Sch 18 FA 1998 for corporation tax and IHT time limits in IHTA 1984, so that a failure to correct has the same consequences across all taxes, which would appear to be the policy intent.

5.2. The new wording in s118(6) fits less well with that for the CCNs. Do HMRC intend that a failure to correct following receipt of a CCN will invoke the new version of s118(6), and if so, when and how? It is unclear how it will work with the proposal in new Para 2(3) Sch 24A which treats a failure to comply with a CCN as careless, unless it was deliberate (including by virtue of s118(6)). We consider this point further in the section below about penalties. Also a failure to comply with a CCN may not always mean that tax was not declared – as the taxpayer may just have failed to reply to explain no correction was needed.

6. 'Becomes aware' of the inaccuracy

6.1. The concept of 'becoming aware' of an inaccuracy should be made clearer. HMRC need to outline what degree of certainty is required and at what point awareness arises and the taxpayer is required to notify HMRC. Has the threshold for awareness been met when an issue is first identified, when it is confirmed to be an error or once the error amount has been quantified? It would be helpful if HMRC's guidance contains examples of how HMRC see the obligation working in practice, bearing in mind that it is likely that errors will range from the simple to the extremely complicated depending on the type and size of the taxpayer concerned.

6.2. The phrase 'P becomes aware of the inaccuracy at some later time'" in Para 1(1)(c) Sch 24A seems to suggest that deliberate errors are excluded from this measure, since a taxpayer who has deliberately made an error will first become aware of it at the time they make it (e.g. when their return is submitted), not later. We assume this is not the intention, but as worded that does appear to be the result. Whilst we acknowledge that a person who made a deliberate error and failed to correct it could not be in a worse position (in terms of assessment time limits and penalty behavioural category) than someone who made a deliberate error only, the omission of this type of behaviour from the duty to correct gives the impression that HMRC do not want to encourage such taxpayers to voluntarily rectify their mistakes. This may detrimentally affect the willingness of such taxpayers to make voluntary disclosures and put tax advisers in a difficult position. Advisers will want to tell prospective clients that they have an obligation to correct their past mistakes but will be unable to do so where those mistakes were deliberate from the start, based on this legislation, although they could refer potential clients to HMRC's criminal investigation power.

6.3. A taxpayer's adviser may realise that a new judicial decision could affect their clients historic tax affairs. In those circumstances, the taxpayer and their adviser may need to consider carefully whether the decision applies to the taxpayer's particular facts, potentially obtaining Counsel's opinion before reaching a conclusion. The proposed duty to correct should therefore be clear as to the degree of certainty required in these circumstances. Consideration should be given to whether the Guidelines for Compliance (GfC) 13 concept of 'most likely to succeed' is relevant i.e. are taxpayers required to correct at the point HMRC's view is most likely to succeed., and what the position would be if HMRC's preferred view is considered incorrect by the taxpayer's counsel. Both sides could think their view is correct. HMRC should provide clarity on how genuine technical uncertainty, rather than an error or failure to take reasonable care, is to interact with the new obligation to correct.

6.4. Consideration needs to be given to the interaction with statutory assessment time limits. Where a potential error is discovered, the taxpayer and their adviser may need to review a significant amount of historic data to establish if there is a genuine error and the type of behaviour that caused the error. In many cases it may take some time to establish what behaviour caused the mistake given the sheer weight of case law and the need to locate and review all relevant documentation and correspondence. If the person needs to be sure what assessment time limits are in point before they approach HMRC then the disclosure will be delayed compared to at present (when advisers tend to notify an intent to disclose quickly to 'bank' the unprompted disclosure discount and then work out how many years are in point when they do the investigative work). The guidance should clarify how time limits apply in these circumstances and at what point HMRC expect the taxpayer to notify the error.

6.5. As outlined in our previous representations and discussions with HMRC, it is essential that there is an 'intention to disclose' step built into the disclosure process, following which the taxpayer must then complete the disclosure process (as there is currently with the Digital Disclosure Service (DDS) and via COP9 via form CDF1). Taxpayers may need professional advice to identify whether an error has occurred, and if so, the cause of the error, when it occurred, which tax years or accounting periods are affected and the amount(s) involved. This could take some time particularly if it is complicated or they need a second opinion. This is why a notification step is essential. Any deadline to complete the process must also allow plenty of time for the taxpayer to find and appoint a new adviser (as necessary) and for that adviser to consider the case.

6.6. For corporate taxpayers, the guidance should clearly explain whose knowledge within the company is relevant and whether this depends on an individual's level of seniority or responsibility. It should also explain how to deal with situations where individuals within the organisation have different views on the tax treatment and also those where those responsible (e.g. the Finance Director) for the original mistake are no longer with the company when the duty to correct arises or when the correction notice is issued (so the current responsible persons/directors do not know the behaviour that gave rise to the original mistake).

6.7. The guidance should set out the appropriate process for a taxpayer already undergoing a compliance check, advising on what to do when an error is identified that is not related to the matters being considered by HMRC. We recommend that notification to the officer dealing with the check should be sufficient. HMRC should also consider highlighting the duty to correct when opening enquiry cases to raise awareness and encourage transparency.

6.8. We also need to understand what happens where a mistake is identified during an enquiry and is relevant to other (non-enquiry) years (e.g. as the returns for those periods were prepared on the same basis). Does the HMRC officer then issue a CCN or should the taxpayer do a correction themselves for the year(s) not under statutory enquiry? At what point is this obligation triggered? During correspondence or discussions when HMRC say they think an error was made or just when the taxpayer accepts HMRC's view (they may not accept it initially) or when the closure notice (partial or final) is issued closing off the issue formally (assuming no appeal)? The appropriate process in situations like this will need to be explained in guidance.

6.9. HMRC should clarify whether awareness of a potential issue, without knowledge that an error has definitely been made, gives rise to any obligation on the taxpayer to investigate the position.

6.10. The duty to correct under new schedule 24A applies only where, at the time the taxpayer becomes aware of the inaccuracy, 'the inaccuracy may be corrected (by an assessment to tax or otherwise)'. Our reading of the legislation is therefore that a taxpayer is not required to inform HMRC of an error that has already fallen outside HMRC's time limits for assessment (and this appears to be in line with the policy intent as we understand it). Where, for example, a taxpayer discovers a careless non-offshore error seven years after filing, HMRC would ordinarily be out of time to assess and the duty to correct would therefore not apply. On that reading, failure to disclose in those circumstances would not cause the error to be treated as deliberate and the extended 20-year time limit would not apply. It would be helpful for this to be made clear in guidance and any future statements or policy documents that are issued regarding this measure.

6.11. However, there are points around this interpretation that we believe warrant clarification. First, the amended s118(6) TMA 1970 provides that, where a taxpayer becomes aware of an inaccuracy and fails to take reasonable steps to inform HMRC, the inaccuracy is to be treated as having been brought about deliberately for the purposes of that act. This poses the question, does 'reasonable steps to inform' simply include making HMRC aware when HMRC are still in time to correct, or would this require the taxpayer to inform HMRC even when the taxpayer considers that HMRC are out of time to assess? If the latter, failing to inform would effectively deem the assessment time limit within TMA to apply on a deliberate basis and give a 20-year time limit from filing for any error that a taxpayer discovers. We assume the former is the policy intent but believe this point warrants clarification. Taxpayers want certainty so unless the legislation includes protection for them (so that HMRC cannot use the 20 year assessment time limit when the taxpayer believes that the correct assessment time limit position on the facts, evidence and case law is that HMRC are out of time) then they will make protective disclosures.

6.12. Second, in the phrase 'may be corrected (by an assessment to tax or otherwise)', the meaning of 'or otherwise' is not defined. It is not clear whether this refers only to HMRC's ability to make an assessment or determination within the statutory timeframes or whether it could be construed as extending to *any* mechanism by which the position could in theory be corrected, such as a voluntary restitution. Read broadly, the obligation on the taxpayer to take 'reasonable steps' to secure that an inaccuracy is corrected could extend to tax only collectable via voluntary restitution due to expired time limits. We do not believe this is the intent of the policy but, again, believe this could be clarified.

6.13. Third, even if the drafting is intended to be limited to cases where HMRC are in time to assess, there is a further question as to what happens where circumstances change later. For example, if HMRC clarify or change their view, or a return is filed based on what is believed to be correct and/or in line with prevailing practice, but a different interpretation is upheld at the Tax Tribunal, does the requirement to correct then apply? Might this answer be different if the case is heard at the non-binding First-tier Tribunal rather than a higher tribunal or court?

7. Meaning of "reasonable steps"

7.1. The legislation does not specify a deadline for taking reasonable steps to correct a mistake or inform HMRC. This appears reasonable given taxpayers may need time to obtain specialist advice, obtain records that they may not have (e.g. from an offshore bank or trustees) etc. However, the absence of a deadline creates uncertainty and may result in a lack of a sense of urgency. HMRC guidance should explain what is expected from a taxpayer and allow sufficient flexibility to reflect individual circumstances. If HMRC think that there will be a point in time beyond which, even if the taxpayer proactively comes forward to correct their position, HMRC would regard it as too late, then this should be clearly stated, ideally in legislation but at least in guidance.

7.2. The draft legislation uses the words 'to secure' in several places in the context of imposing a duty on the taxpayer to take reasonable steps. 'To secure' suggests there is a responsibility on the taxpayer for matters outside of their control, i.e. whether / how HMRC choose to respond or not respond to disclosure of the error. It would be better for the legislation to simply state 'to correct errors'. We are aware of cases where an error has been discovered and disclosed to HMRC, but HMRC have subsequently failed to take appropriate action to correct the mistake in the taxpayer's record. Indeed, our members tell us of situations where it is practically very difficult to engage with HMRC and resolve even straightforward points. The legislation or guidance should clarify if taxpayers are required to repeatedly pursue HMRC where they have taken reasonable steps to notify and correct the position.

7.3. There needs to be clear and obvious routes provided by HMRC to disclose errors across all taxes which has a first stage of the taxpayer notifying their intent to disclose. We note that currently the DDS does not cater for all taxes, in particular VAT. Guidance should explain how HMRC will expect taxpayers to correct different sorts of errors, and that they should be done in writing so there is a written record.

7.4. Guidance should explain whether there are some errors which HMRC would not expect a taxpayer to correct, for example because they are very small in value. The time and resource involved in reporting and processing the correction (both for the taxpayer and HMRC) could be disproportionate compared to the amount of tax at stake.

8. Customer Correction Notices (CCN)

8.1. CCNs should only be used in clearly defined circumstances and where HMRC are completely confident in the accuracy of the data on which the CCN is based and have matched it to the correct taxpayer. The success or failure will depend heavily on the quality of the data used and the accuracy of HMRC's analysis of it.

8.2. HMRC's belief that a return contains an error must be testable to a sufficiently high standard before a CCN can be issued. It should be to the same standard as if HMRC were issuing a discovery assessment (as that is what HMRC will need to do if the taxpayer fails to correct fully), on the balance of probabilities (the civil standard of proof).

8.3. Therefore, there must be a strict governance process around them before they are issued. There must be accountability for the decisions that are made, particularly as some taxpayers (particularly individuals and small businesses) will be unable to afford professional advice and may be inclined simply to accept HMRC's assertion even if they do not understand it or think it is incorrect.

8.4. CCNs should be appropriate in cases of obvious error – i.e. where a source of PAYE employment income or a pension has been omitted from a return – but not in situations which are potentially technically and factually complex, such as whether a taxpayer is resident or non-resident or whether a company has undertaken R&D. Standard compliance check processes should apply to those sorts of queries.

8.5. HMRC must carefully consider the proposed use of CCNs as there is a risk that such notices could be used too readily or in circumstances where they are not proportionate to the error identified. This could result in unnecessary additional work and costs for taxpayers and their advisers, particularly where the amounts involved are immaterial. We recommend HMRC outline their minimum threshold requirements for issuing a CCN to ensure that the notices target errors of sufficient significance to justify the administrative burden they may impose.

8.6. The CIOT noted in their previous representations on this matter that PCRT guidance on Dealing with errors[3] states that "In the opinion of the professional bodies it is reasonable for a member to take no steps to advise HMRC of isolated errors where the tax effect is no more than minimal, say up to £200, as these will probably cost HMRC and the client more to process than they are worth to the Exchequer". HMRC should consider adopting a similar approach within the draft legislation by including a de minimis threshold for errors identified by either HMRC or the taxpayer.

8.7. It needs to be clear and understandable in which circumstances HMRC would use a CCN and when they would use another compliance tool, such as a One to Many letter, a Revenue Correction Notice (RCN) (e.g. under s9ZB TMA 1970), a statutory enquiry or their discovery powers.

8.8. It is concerning that the notice may refer not just to an 'inaccuracy' but also to a 'kind of inaccuracy' (rather than a specific inaccuracy). This may not provide a taxpayer with enough information to establish the error and therefore what reasonable steps are required to be taken. HMRC should be required to describe the inaccuracy in sufficient detail so that the taxpayer has a reasonable chance of understanding what it is that HMRC are concerned about. Ideally HMRC should identify the source of the income, gains or profits which they consider taxable, given that results of exercises conducted in relation to some One to Many nudge letters showed that taxpayers were better able to respond where the bank interest details were disclosed to them.

8.9. The draft legislation provides that a CCN will set a deadline for the taxpayer to make the correction or explain why none is required. However, it is unclear what the standard deadline will be or whether it can be extended. We would suggest a reasonable timeframe for the taxpayer to respond would be 60 or 90 days, and it should be the same for both the taxpayer and for HMRC (to respond to the taxpayer's correction).

8.10. We recommend that the legislation allows a reasonable extension to be agreed where necessary. Taxpayers may need additional time to obtain records from third parties or seek specialist advice. Providing flexibility to agree an amended deadline will ensure taxpayers have sufficient time to provide a complete response. Leeway should also be allowed if the taxpayer is ill, in the same way as it is for reasonable excuse situations.

8.11. It will be important for HMRC to ensure they confirm that the correction process is complete as taxpayers need certainty in their tax affairs. If HMRC do not confirm the process is complete (including where the taxpayer is explaining that the correction is unnecessary) in a timely fashion and in writing, then it may result in taxpayers ignoring future CCNs and damage trust in the tax system.

8.12. The draft legislation does not address how CCNs will interact with existing compliance processes, including statutory enquiries and discovery assessments. For example, it is unclear whether HMRC could issue a CCN in relation to a return already under enquiry or subsequently make a discovery assessment where the taxpayer does not make the requested correction. The power to issue a CCN is very broad, suggesting they could be issued during a statutory enquiry or other intervention, and that they could be issued following

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[3] https://www.tax.org.uk/professional-conduct-in-relation-to-taxation-pcrt

a closure notice or discovery assessment. We need to understand exactly how HMRC intend to use them, as we are concerned that currently this is not at all clear or transparent.

8.13. Likewise, the draft legislation does not address how CCNs will interact with statutory deadlines to amend tax returns (e.g. in s9ZA TMA 1970 and Para 15 Sch 18 FA 2008). If a taxpayer becomes aware of an inaccuracy in their personal tax return, say, three months after they have submitted it to HMRC, but waits until close to the end of the 12-month amendment window to correct it, does that mean they have failed to take 'reasonable steps to secure that the inaccuracy is corrected' and therefore that the inaccuracy will be treated as deliberate for error penalty purposes? The taxpayer may have reasonably delayed notifying HMRC because there are also provisional figures that need to be updated, and in order to minimise adviser's fees they want all the amendments dealt with at the same time within the statutory timeframe. Currently, HMRC rarely penalise corrections made during the statutory amendment window, so it would be surprising if this draft legislation changed that approach. HMRC's guidance should clarify how these measures will interact with each other.

8.14. In our view there is a real risk that CCNs could lead to incomplete disclosures. This situation could occur if the taxpayer just reacts to the error that HMRC indicate should be corrected and does not, for example, consider if the same mistake occurred in other tax years which remain in date for assessment or consider if there are other mistakes that also need to be rectified. The wording on the CCN should explain this and the consequences of not making a full disclosure. In those circumstances it would be more efficient for the taxpayer (and for HMRC and their agent, if they have one) to make a disclosure covering all the affected years and all issues.

8.15. HMRC are consulting on a proposed recklessness offence. If a taxpayer, incorrectly and recklessly, responds to a CCN to say that they do not think a correction is necessary, this could potentially fall in scope of the proposed offence. HMRC's guidance should explain the interaction between these measures, should the recklessness offence be introduced.

9. Overpayment and consequential claims

9.1. It would perhaps encourage taxpayers to disclose inaccuracies which result in more tax being payable if they are given an equivalent ability to disclose inaccuracies which result in a reduction in their tax liability. At the moment, the ability to get a tax refund where there has been a mistake once the window has passed for amending a return is generally quite limited. One suggestion might be to give taxpayers, say, six years to amend their returns.

9.2. A situation could arise where an overpayment of tax is identified by the taxpayer at the same time as the taxpayer becomes aware of an error that requires reporting to HMRC and/or HMRC issue a CCN to collect an underpayment, perhaps in a different tax year and potentially out of time. In our view overpayment claims should be allowed in these types of scenarios. The CCN process should ensure that all related underpayments and overpayments are taken into account so that the taxpayer is placed in the same overall tax position as if their return had been correct when originally submitted. It should be the same process across as many taxes as possible. Reform to the rules around consequential claims should go hand in hand with the introduction of the new customer correction measure, otherwise there is a real risk that taxpayer trust and confidence in the tax system will be undermined.

10. Record Keeping Requirements

10.1. The proposed duty to correct and CCNs will require taxpayers to identify and correct errors which remain in time for assessment. However, existing record-keeping requirements may expire well before the applicable time limits. Taxpayers may therefore no longer hold the information needed to identify or correct an error.

10.2. HMRC should consider adding wording to the draft legislation that revises the record keeping requirements to require taxpayers to retain their records until the expiry of the relevant tax assessment time limit that applies to mistakes despite taking reasonable care.

10.3. HMRC could reasonably extend record keeping time limits to six years (unless the 12-year time limit for taxes involving offshore matters applies) to cover off situations of carelessness (which seem relatively common given the tax gap behavioural analysis). This will affect both unrepresented and represented taxpayers. There are no legislative requirements specifying the length of time for which agents should retain records, so the agent may not have the information either (depending on how they set their internal policies given there is no legislation on this apart from GDPR with its presumption of deletion).

10.4. Alongside this, HMRC should improve its guidance for taxpayers on the records that they should retain, particularly for more complex matters such as personal tax residence.

11. Penalties

11.1. In view of the fact that a failure by a taxpayer to correct will mean that the inaccuracy will be treated as deliberate for error penalty purposes, regardless of the actual behaviour which caused the inaccuracy in the first place, we think there should be some safeguards built into the legislation, for example easements for those taxpayers who reasonably consider that they have no duty to correct and HMRC subsequently disagree.

11.2. New Para 3D Sch 24 sets out that there is no carelessness penalty for errors subject to correction notices if a taxpayer has taken reasonable steps to secure that the inaccuracy is corrected before the deadline specified in the notice and the taxpayer has not been issued with a correction notice in the preceding six years.

11.3. The reference in para 3D(a) to not having previously been issued with a correction notice is confusing, as a taxpayer cannot, of course, comply with a correction notice if they have not been issued with one. Presumably, the situation HMRC have in mind is that they issue a correction notice which is ignored and then issue a second correction notice which the taxpayer complies with. In these circumstances, paragraph 3D would not apply and the taxpayer could still be liable to a penalty for a careless inaccuracy. It would be helpful if this could be clarified.

11.4. It should also be clarified that if a correction notice has been issued in the preceding six years but, in fact, no inaccuracy existed, this should be disregarded for this purpose. HMRC will need to carefully explain in guidance how the six-year look back provision will work in practice, with examples. HMRC must also consider how this interacts with the commencement rules and whether these rules will apply to compliance checks already ongoing which remain unresolved on the ‘appointed day’.

11.5. New Para 2(3) Sch 24A states that a failure to respond to the correction notice will result in the mistake being deemed to be caused by careless behaviour for error penalty purposes unless it was caused by the taxpayer’s deliberate behaviour or the taxpayer persuades HMRC that they took reasonable care. This means that the behaviour for discovery assessment and penalty purposes for the same mistake could be different. This adds complexity and could cause confusion for taxpayers.

11.6. As noted above the draft legislation provides that, where a taxpayer fails to comply with a correction notice, the relevant inaccuracy is presumed to be careless in the first instance. However, this does not make sense when read in conjunction with Part 1 of new Sch 24A. Para 1(1(c) states that if P becomes aware of an inaccuracy by virtue of receiving a CCN from HMRC and does not correct it, the inaccuracy is to be treated as deliberate on P's part - not careless. We would welcome clarification as to how these provisions are intended to operate together.

11.7. If a taxpayer receives a correction notice and amends their return as a result, there is no penalty (their behaviour is not presumed to be careless). This appears to put them in a better position than someone who voluntarily discloses an error, but then potentially has to demonstrate that they took reasonable care in the first place. If so, the person who is unaware they have made an error until HMRC spot it is in a better position than someone who spots it and discloses it themselves. This seems unfair. Is this how the legislation is intended to work?

11.8. It should be noted that delaying telling HMRC about a mistake already causes Sch 24 FA 2007 penalties to increase and opens the possibility of the taxpayer's name being published if their behaviour was deliberate (s94 FA 2009). Also, if the behaviour is upgraded to 'deliberate' as a result of a failure to correct then this could mean that the taxpayer is exposed to other penalties like offshore asset moves and asset-based penalties, which would significantly detrimentally affect their finances (probably unexpectedly). There is the potential for multiple consequences to apply for those who fail to comply. It will be important for HMRC to publicise the new regime, to allow taxpayers to make informed decisions about correcting their mistakes on a timely basis.

11.9. As noted above, we are concerned that treating a failure to correct as deliberate could have unintended consequences. An error originally made despite reasonable care being taken could attract not only a deliberate behaviour penalty but also mean a 20-year assessment time limit. There is no protection for the taxpayer if they quite reasonably fail to disclose because they believe HMRC are out of time to assess, but HMRC later look into it and disagree. There should be some protection for taxpayers who have taken reasonable positions that the extended time limits will not be in scope. Otherwise, the proposals may lead to taxpayers making protective disclosures, possibly at significant cost to themselves. HMRC must ensure they have the resources in place to respond to these situations if they arise.

12. Interaction with existing tax regulatory legislation

12.1. We believe that further consideration should be given to how the proposed duty to correct will interact with existing tax regulatory legislation, particularly where the consequences of failure to correct may extend beyond the taxpayer to their professional adviser.

- **Enablers of offshore non-compliance –** Under the existing enablers of offshore non-compliance regime in Schedule 20 Finance Act 2016, where a taxpayer is penalised for a careless or deliberate inaccuracy relating to an offshore matter or offshore transfer, HMRC consider whether that non-compliance was enabled by another person, and, where the relevant conditions are satisfied, impose a penalty on the enabler. If a person's behaviour is deemed deliberate as they failed to correct (so they are charged a Sch 24 FA 2007 deliberate behaviour penalty) then does that trigger the potential for the other person to be penalised for being an enabler? What if the 'other person' is not involved and/or unaware of the issue, the duty to correct and/or the taxpayer's decision not to correct? The mistake may have arisen despite the agent and taxpayer taking reasonable care but then be in time to assess if the taxpayer fails to correct for some reason. The filing agent may not even be the taxpayer's agent by the time the mistake comes to light. The enablers' legislation may need to be revised so that professionals cannot be sanctioned where the taxpayer fails to correct a mistake that arose despite reasonable care being taken.

- **Sanctionable Conduct –** Acts and omissions may constitute sanctionable conduct where the relevant statutory conditions are satisfied. The introduction of a requirement to correct raises questions about the extent of an adviser's obligations when identifying or suspecting errors in a client's tax affairs. We recommend HMRC review and, where appropriate, update the guidance on sanctionable conduct. The guidance should make clear the extent to which advisers are expected to investigate possible errors and the circumstances in which an omission to identify or pursue a potential correction could amount to sanctionable conduct.

- **Mandatory Registration of tax advisers –** There is a risk that conduct associated with a failure to correct could be regarded as falling below the standards expected of a registered tax adviser. The proposed duty to correct could therefore have wider regulatory consequences for advisers. We advise HMRC to clarify how failures connected with the duty to correct will be taken into account when potentially suspending agent registration. It is important that advisers are not exposed to disproportionate regulatory consequences where the underlying error arose despite reasonable care being taken.

13. Acknowledgement of submission

13.1. We would be grateful if you could acknowledge safe receipt of this submission, and ensure that the Chartered Institute of Taxation is included in the List of Respondents when any outcome of the consultation is published.

The Chartered Institute of Taxation
7 September 2026