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The Tax Administration Framework Review: enquiry and assessment powers, penalties, safeguards

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 are pleased to see that this call for evidence is taking place at stage one of the tax consultation process. Adherence to the full tax policy making process is vital in ensuring that tax policy changes meet their objectives and can be implemented effectively. While we make several suggestions in our response, further consultation and adequate testing is needed before any firm decisions can be made.

1.3 **Enquiries and assessments**

In principle we support greater consistency and alignment of powers across all tax regimes, preferably with any deviations kept to a minimum and only for clearly defined reasons. There seems no reason in principle why the process should be different depending on the tax or the taxpayer involved. Greater consistency and alignment would reduce complexity and help improve trust in the system and taxpayers' understanding of HMRC's compliance powers.

A key area of focus should be whether HMRC's enquiry powers in taxes such as Income Tax Self Assessment (ITSA) and Corporation Tax Self Assessment (CTSA) should be retained and extended to VAT and PAYE, or whether these powers should be removed in favour of assessment powers that are subject to a statutory time limit based on something akin to VAT's 'evidence of facts'. On balance, we would favour the removal, not the extension of enquiry powers. This also has the benefit of bringing certainty to a taxpayer's position more quickly than the current regime. We suggest that consultation on potential reform in this area should be prioritised by HMRC.

Shorter assessment time limits for cases involving non-deliberate behaviour, as compared to those for deliberate failures and errors, should be preserved. These time limits should be simplified and applied consistently across all taxes and National Insurance Contributions (NIC) too. The disparate time limits currently applying across different tax regimes creates confusion and increases complexity.

In the interests of fairness, and engendering trust in the tax system, the time limits and processes for consequential claims needs reviewing, so that the final tax liability is that which would have arisen if a correct return had originally been submitted on time. Similarly, we do not support a time-unlimited amendment power for HMRC.

1.4 Penalties

In principle, we support alignment of penalties across all the tax regimes. While there are variations in the number and frequencies of returns depending on the tax regime concerned, the common factor across the different regimes is the requirement to submit a complete and accurate return, and pay any tax due, by a certain date. So, there seems no reason why the late filing, late payment, failure to notify and error penalty regimes should be markedly different.

There is currently a proliferation of different penalties, and a simpler overall penalties regime, with fewer different types of penalties, could have many advantages such as ease of administration and increased deterrent effect.

We support retaining the distinction between deliberate and non-deliberate behaviour, and the penalty consequences of deliberate behaviour should be greater. Where the behaviour is non-deliberate, the suspension regime could be replaced with a policy not to penalise the first error, and no penalty should ever arise where a taxpayer has taken reasonable care.

1.5 Safeguards

It is crucial that taxpayers and the public have trust in the tax system when it comes to how HMRC exercise their powers and impose sanctions, and how taxpayer protections and safeguards operate. The way HMRC use their powers and operate safeguards should be effectively monitored and subjected to appropriate oversight.

Where possible, we support the aligning of appeals processes to help mitigate the confusion and misunderstandings that different rules, terminology and procedures currently create. This would be of particular benefit in multi-tax disputes. We also support alignment of payment requirements across regimes, based on the existing direct tax rules.

We support an approach which allows adequate time for disputes to be settled by agreement. This saves time and costs for all parties and can help bring disputes to an earlier resolution.

1.6 A new Taxes Management Act

The existing tax administration legislation is spread over several Finance Acts and other Acts including the Taxes Management Act (TMA) 1970. The outcome of this review should result in the replacement of all existing legislation by a new Taxes Management Act. Future legislative changes can then be made to the new Act, ensuring that all administration legislation is kept together and is easier to find and follow for HMRC, taxpayers and professional tax advisers. Once the revised processes are enacted the Government needs to resist making further changes to them for several years to give them time to bed in.

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.

3 Introduction

3.1 The call for evidence explores a range of topics within tax administration relating to HMRC's enquiry and assessment powers, penalties, and safeguards, and invites views of how certain aspects could be reformed.

3.2 The CIOT's stated objectives for the tax system relevant to the topics discussed in this call for evidence 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.

3.3 We are pleased to see that this call for evidence is taking place at stage one of the tax consultation process, and we have welcomed the opportunity to participate in the five workshops. It is vital that this collaborative approach continues, and the full tax policy making process is adhered to, ensuring that tax policy changes have the greatest chance of meeting their objectives and being implemented effectively. While we make several suggestions in our response, further consultation and adequate testing is needed before any firm decisions can be made.

Enquiry and assessment powers

4 Question 1: What are the potential opportunities, benefits, and risks of moving to a single set of powers across all taxes?

4.1 In principle we support greater consistency and alignment of powers across all tax regimes, preferably with any deviations kept to a minimum and only for clearly defined reasons. A compliance check is simply a process whereby HMRC can ask questions about a return, or a failure to submit one, consider any technical matters and charge the tax which is legally due. There seems no reason in principle why the process should be different depending on the tax or the taxpayer involved (individual, company, trustee, personal representative etc). Greater consistency and alignment would reduce complexity and help improve trust in the system and taxpayers' understanding of HMRC's compliance powers.

4.2 Taxpayers find it difficult to comprehend the different avenues HMRC have to challenge tax returns, which differ depending on the tax in question, and cause confusion where compliance checks are opened into more than one tax at the same time. Therefore, greater consistency would especially help in multi-tax compliance checks where the rules for the various taxes that may be the subject of the check – such as VAT, Corporation Tax (CT), Pay as you Earn (PAYE) and NIC - are currently different. Similar issues arise for trusts in relation to multi-tax compliance checks across income tax, Capital Gains Tax (CGT) and Inheritance Tax (IHT).

4.3 The UK has one of the most complex tax systems in the world which is perceived as a barrier internationally to investing in the UK. Alignment will help address these barriers and increase certainty for businesses looking to invest in this country.

4.4 Simplification and harmonisation of the rules should also lead to simpler legislation which should help reduce the time currently lost to disputes as to the meaning of legislative wording. For example, the ITSA discovery rules have been actively litigated in recent years. We note that the call for evidence appears to identify procedural challenges by some taxpayers as a problem to be removed, but it is important to say that not all these challenges will be unmeritorious[1].

4.5 We would be concerned if harmonisation prioritises preserving or enhancing HMRC's powers at the expense of taxpayer safeguards. The focus of alignment should be simplification; revenue raising should not be the objective.

5 Question 2: What are the potential opportunities, benefits, and risks of moving to a model that gives greater consistency and alignment to the key assessment and enquiry provisions?

5.1 Different assessment and enquiry processes currently apply to different taxes. A key area of focus should be whether HMRC's enquiry powers in taxes such as ITSA and CTSA should be retained and extended to VAT and PAYE, or whether these powers should be removed in favour of assessment powers that are subject to a statutory time limit based on something akin to VAT's 'evidence of facts'. On balance, for the reasons explained below, we would favour the removal, not the extension of enquiry powers, and we would support the alignment of processes using assessment-based powers underpinned by existing information and

[1] Birmingham City Council v Abdulla [2012] UKSC 47 where the Supreme Court provided a reminder of the validity of such procedural arguments (para 41).
https://www.supremecourt.uk/cases/docs/uksc-2012-0008-judgment.pdf

inspection powers (which already apply across all taxes[2]). We suggest that consultation on potential reform in this area should be prioritised by HMRC.

5.2 If an assessment-based process is introduced across tax regimes, then it will be important for periods to be closed, based on time limits, to provide taxpayers with certainty over historic tax positions. Legislation to support new processes should seek to avoid the existing difficulties with the current enquiry and assessment framework which create a lack of certainty for taxpayers that a tax year or period of account can confidently be treated as closed. If retaining the current time limits, perhaps HMRC should be required to assess within (say) a year of having the data (see below).

5.3 The existing enquiry framework for ITSA does not work well, in the sense that it is difficult, if not impossible, for a taxpayer to obtain certainty on their tax affairs by putting enough information and disclosures on their tax return to be sure that the tax year is closed after the end of the normal statutory enquiry period. The inability to include 'white space' disclosures on many types of return should be reviewed, as there is limited or no opportunity on most returns to enable the taxpayer to highlight to HMRC areas of uncertainty or evidence the treatment they have adopted[3].

5.4 The enquiry regime was originally established when self-assessment was introduced in the late 1990s to give taxpayers some assurance that they would only face one enquiry per tax year with a deadline of one year for HMRC to open the enquiry. But, whilst HMRC still use statutory enquiries, they have in general moved a long way from this practice now, through the use of One to Many (OTM) 'nudge' letters and informal compliance checks which sit outside the statutory enquiry framework and are instead predicated on their discovery powers[4]. Once fuller functionality is added to online tax accounts, fewer taxpayers with simple affairs will need to file ITSA returns so they will fall outside the enquiry regime in any case.

5.5 In addition, whilst assessment time limits set some time-based parameters for decisions to be made, once a statutory enquiry is open there is no time limit on how long it will remain open (unless the Tribunal directs HMRC to close it, which is rare). This means that some enquiries last for many years, at great cost to both HMRC and the taxpayer, which is inefficient. Any move to an assessment-based process should build into it a mechanism for avoiding protracted long-drawn out disputes whilst ensuring appropriate taxpayer safeguards are in place.

5.6 For these reasons, we would support consultation on aligning processes across all taxes using assessment-based powers. The use of assessments, combined with a time limit based on evidence of facts as currently exists for VAT, would require HMRC to raise an assessment if they considered that there was a sufficient basis to do so within certain time limits, while providing safeguards and certainty for taxpayers.

5.7 Assessments should accelerate HMRC's processes and should not preclude continuance of discussions – any final decision could either be appealed or a contract settlement entered into. The possibility of introducing contract settlements to the VAT regime should be considered.

5.8 Shorter assessment time limits for cases involving reasonable care/reasonable excuse and carelessness compared to those for deliberate failures and errors should be preserved. These time limits should be simplified and applied consistently across all taxes and NICs too. Several different time limits currently apply across different tax regimes, which creates confusion and increases complexity. There is a case for simplifying

[2] eg FA 2008 Sch 36

[3] For example, the problem of adequate disclosure to avoid discovery applies to Stamp Duty Land Tax (SDLT) as well. There is no white space in the SDLT return so it has to be done by letter that goes to Birmingham Stamp Office.

[4] TMA 1970 s29

time limits, for example by reducing the number of different time limits that apply to different taxes and different types of non-compliance, and this should be explored during the consultation process. Other benefits of alignment are set out in our response to the next question.

5.9 Greater alignment should encompass all taxes, NICs and duties. For example, we should avoid greater alignment of VAT assessment powers with direct taxes and PAYE causing less alignment between VAT and other indirect taxes (eg Insurance Premium Tax (IPT), Excise Duties where the regimes are currently quite similar) because these taxes are not brought within the scope of the review.

6 Question 3: What are your views on any potential costs of changes to assessment and enquiry powers?

6.1 Whilst greater harmonisation could cause temporary problems as new systems are designed and introduced and people familiar with the current rules are trained on and become familiar with the new rules, in the long term it should be beneficial for both HMRC and taxpayers/their advisers. This is because if the rules are the same across all the taxes training needs would be reduced once initial training has been provided. When HMRC staff move from one area of tax to another, they would not need to be retrained in a new process. This should save time and money, and also reduce the risk of mistakes. More consistent processes should therefore make compliance checks easier and more cost effective for HMRC to administer and for taxpayers and their advisers to deal with. It should also help reduce mistakes on all sides leading to better outcomes and greater trust in the process.

6.2 Any changes to the rules should be prospective not retrospective with adequate lead-in time, thereby giving HMRC, taxpayers and their agents time to prepare for them. Transitional rules would also need to be considered, balancing safeguards for taxpayers, with the requirement to protect the revenue.

7 Question 4: Are there any circumstances or taxes where specific enquiry and assessment powers may be necessary?

7.1 As set out above, we consider that assessment powers should be aligned across all taxes. However, some specific provisions may be needed to accommodate certain situations. Examples might include:

- Provisions enabling group relief surrenders and claims to be amended to enable a group's corporation tax position to be fully updated to reflect compliance check conclusions.

- Partnership discoveries (TMA 1970 s30B) are subtly different from other assessment provisions as they allow HMRC to issue assessments to the partnership's representative partner (who then decides whether to appeal), with copies to the partners (who lack the right to appeal). This delineation needs to remain for assessments of partnership profits.

- In the context of Business Property Relief claims for Inheritance Tax, there are often genuine questions to be resolved when identifying the amount of cash required for business purposes so that it does not constitute an 'excepted asset'.

8 Question 5: What would be the impact of greater alignment in the examples mentioned?

8.1 Consequential amendment provisions - in the absence of a legislative equivalent for IT/CGT, HMRC can deal with this situation by issuing discovery assessments and making use of the 'presumption of continuity'.

8.2 Discovery determination provision – we do not agree with the call for evidence where it says that there is an absence of a discovery determination provision (to remove overstated) losses for ITSA compared to CTSA. FA 1998 Paras 41-45 Sch 18 are already very similar to the provisions of TMA 1970 s29.

FA 1998 Paras 52-53 Sch 18 empower HMRC to claw back excess repayments (by issuing an assessment) and there is a similar rule for IT/CGT at TMA 1970 s30 so something similar could be introduced and applied across all taxes.

8.3 Joint and several liability of directors - we agree that this could be aligned across NIC/PAYE.

9 Question 6: Are there other potential gaps or mismatches that you think it would be beneficial to address?

9.1 The call for evidence does not mention consequential claims, but there are problems with the current rules which we think need to be addressed through this review as consequential claims are an essential part of the discovery assessment provisions.

9.2 Firstly, when a taxpayer is bringing their tax affairs up to date (eg via compliance check involving discovery assessments or contract settlements or on conclusion of an enquiry) then the tax they end up paying can be more than they would have paid for a specific year than if they had submitted a correct return in the first place. This is due to the limitations on consequential claims and elections (eg the narrow scope of TMA 1970 s36(3) compared to that of TMA 1970 s43A), time limits for notifying capital losses and the time limit for overpayment relief. Similar issues exist for other taxes eg corporation tax. The legislation should ensure that whenever a liability is finally determined the tax liability is that which would be charged if a correct return had originally been submitted on time.

9.3 Secondly, the legislation relating to the deadline for consequential claims also needs to be revisited. It is relatively common now for discovery assessments to be issued during a compliance check, but the dispute remains unresolved for more than 12 months after the assessment is issued (either because the parties continue discussing the issue and/or due to the appeal process). The legislation currently places a fixed deadline of 12 months after an assessment is issued for the taxpayer to submit consequential claims, irrespective of unresolved appeals. We consider that this deadline should be moved to be a specific period after the appeal is resolved. This would save the taxpayer needing to waste time and money considering hypothetical claims without being in possession of the facts as to the basis on which their case will be resolved and will save HMRC time in reviewing and responding to the claims submitted. The process would be simpler and more efficient as a result.

9.4 Issues can also currently arise where there is an interaction between two individuals' tax positions. For example, joint accounts which are not owned 50:50 but the taxpayers were unaware of the form 17 procedure, or foreign assets where local countries' rules might deem all matrimonial property is treated as joint property. The points above regarding consequential claims should not be limited to an individual taxpayer.

9.5 The inconsistencies and uncertainties in the Corporation Tax loss relief carry back claim rules that were considered by the Court of Appeal in *Civic Environmental Systems Limited v HMRC* [2023] EWCA Civ 722 should be addressed and corrected.

9.6 There are several old and arguably outdated provisions which could usefully be evaluated as part of this review, such as the concept and application of secondary liability for someone else's tax. For example, TCGA 1992 s282, whereby HMRC may assess the donee of a gift where insufficient tax has been paid by the donor, are perceived to operate poorly and unfairly.[5]

10 Question 7: What are the merits and risks of HMRC introducing a consequential amendment power across periods and tax regimes?

10.1 We do not support a time-unlimited amendment power. Overall, removing assessment time limits by introducing a time-unlimited amendment power across tax regimes could increase perceptions of unfairness and create uncertainty.

10.2 Consider the example of a taxpayer who submits a tax return for nine years believing it to be prepared on the correct basis and HMRC only query it in year ten. The taxpayer is likely to feel surprised and aggrieved if HMRC then assess all ten years despite not querying the returns previously. If any additional tax is due, they may have difficulty paying it because they would not have anticipated owing it and would not have budgeted for it. Assessment time limits based on behaviours should be retained so there is some limit on HMRC's powers, and to ensure that the system is fair. As noted above, consequential claims on all years assessed should be permitted so the taxpayer pays what is owed as if they had submitted a correct return in the first place.

10.3 It should be noted that HMRC already have some powers to correct errors and assess additional tax across periods and taxes, for example provisions for overpayment relief (OPR) allow HMRC to assess additional tax without restriction by any discovery assessment criteria including assessment time limits where an OPR claim is made[6].

11 Question 8: What are your views on the opportunities and merits of reform in this area?

11.1 As set out above, we would favour an assessment-based system across all the taxes, but it must be supported by clear and consistent time limits to provide taxpayers with certainty over their historic tax positions. The rules regarding whether the criteria for an assessment have been met within those time limits need to be well-designed and unambiguous.

11.2 The ability to test whether the statutory criteria for an assessment are met is an important taxpayer safeguard. But whilst procedural challenges are not necessarily unmeritorious, a system where such challenges are pervasive is not good for the tax system. This is an aspect of any new process that would benefit from detailed consultation. One piece of legislation that would need to be examined in detail is TMA 1970 s29 (discovery). However, if enquiries are repealed then some more litigious aspects of discovery such as the test in s29(5),

[5] See, for example, the case of *Hamar v Revenue & Customs*, https://www.bailii.org/cgi-bin/format.cgi?doc=/uk/cases/UKFTT/TC/2011/TC01529.html&query=(Zoe)+AND+(Hamar)
[6] TMA 1970 Para 6 & 7 Sch 1AB and FA 1998 Paras 51E & 51F Sch 18

would cease to exist. The wording of new legislation should be more modern than the current versions eg currently s29(1) refers to an HMRC officer whereas new legislation might just reference HMRC.

11.3 In terms of assessment time limits, longer (20 years) time limits will still be necessary for deliberate behaviour and fraud, and in failure to notify cases where the taxpayer is unknown to HMRC, without having a reasonable excuse for their failure. Shorter assessment time limits for all other cases should be preserved but the same limits should apply across all taxes and NICs. There is also a case for simplifying time limits, for example by reducing the number of different time limits that currently apply to different taxes and different types of non-compliance.

11.4 If moving to an assessment-based system, the existing 20 years (for deliberate behaviour/fraud/failure to notify without a reasonable excuse), 6 year (for failure to take reasonable care) and 4 year (for errors despite taking reasonable care) assessing periods for direct taxes could be retained. However, as part of the review, for assessment time limits purposes, consideration should be given to limiting behavioural considerations to deliberate or non-deliberate behaviour as this might be simpler than the current behavioural distinctions. In other words, retaining the current 20-year time limit for deliberate behaviour, but removing the four and six-year time limit distinction for direct taxes, preferably aligning with the current four-year rule for VAT. The direct tax rules current lead to arguments about whether a taxpayer has been 'careless' or not, because of the extended time limit, which take time and money to resolve.

11.5 One scenario could be to move to a four-year assessment time limit with a one year 'evidence of facts' rule. HMRC receive a large amount of data and have significant data processing capabilities, so lengthy assessment time limits are now less necessary. A time limited 'evidence of facts' rule ensures HMRC raise assessments promptly after receiving data which suggest errors or inconsistencies in submitted returns and provides taxpayers with the vital certainty they need regarding their tax affairs. Further, the sooner an assessment is raised the sooner it may be paid. This approach generally works well for VAT and should be explored for other taxes.

11.6 If a different time limit is chosen, such as six years, in the interests of consistency and fairness it would also be necessary to change the OPR and claim deadlines to six years, revisiting HMRC's powers to raise time unlimited assessments where OPR claims have been made, changing the general four year time limit for making claims[7] and addressing the problems with the current rules for consequential claims.

11.7 With regard to assessment time limits and obtaining certainty, personal representatives submitting an Inheritance Tax account are in an invidious position. They rely on information supplied by others (family, beneficiaries and third parties). To an extent they can protect themselves by making reasonable enquiries (see the *Hutchings* case[8]). But we think that the current system whereby the certificate of discharge provides certainty should be retained.

11.8 Given the large and increasing amount of information available to HMRC from offshore jurisdictions (eg the Common Reporting Standard (CRS), the Cryptoassets Reporting Framework (CARF) and digital platform data) it is difficult to justify retaining the 12-year time limits for offshore errors which only apply to IT, CGT and IHT at present. This should be reviewed.

11.9 The periods for which taxpayers need to keep records are not linked to assessment time limits[9]. This is problematic because it can often mean that records needed to respond to HMRC queries have been

[7] TMA 1970 s43(1) (& TCGA 1992 s16(2A) for capital losses)
[8] Hutchings v HMRC [2015] FTT TC 04221 https://financeandtax.decisions.tribunals.gov.uk/judgmentfiles/j8198/TC04221.pdf
[9] TMA 1970 s12B & FA 1998 Para 21 Sch 18

legitimately destroyed. This can be problematic for HMRC if they cannot obtain the records to quantify liabilities, thus causing additional estimation or extrapolation work which may be more likely to be challenged via a Tribunal appeal. Taxpayers do not generally appreciate that the legal burden of proving what the correct tax is falls on them so do not realise that they should keep records for longer periods. This can result in distrust. In short, the statutory record keeping provisions as they currently stand are not fit for purpose.

11.10 The record keeping provisions should ideally be linked to assessment time limits including those that may be introduced or amended as a result of this review. They should also be extended where an assessment is under appeal so the records must be retained until the appeal process completes. If the records are available this should reduce the number of estimated assessments and may also reduce the number of tribunal appeals. Any associated guidance must set out the burden of proof so that taxpayers can make informed decisions whether to retain records for longer in case HMRC issue unexpected assessments using extended time limits.

12 Question 9: What are the challenges relating to claims for relief and credits? How should reform to enquiry and assessment powers for reliefs and credits be approached?

12.1 HMRC are already requiring the submission of more information upfront to support Research and Development (R&D) claims (eg via Additional Information Forms) and income tax repayment claims involving payment protection insurance (PPI) payments. Requiring taxpayers to provide more information upfront when making a claim for tax relief and credits would help weed out and deter false claims, but HMRC need to ensure that valid claims are correctly identified and processed. Protecting the Exchequer from false claims needs to be appropriately balanced with ensuring legitimate claims are accepted. Otherwise, taxpayers may be deterred from making genuine claims, frustrating policy intentions, if they perceive that it is too difficult to make such a claim due to the level of information and explanations required and the length of time it may take for HMRC to process the claim.

12.2 It would be helpful to introduce a requirement for taxpayers to provide evidence to support a rejection of a revenue correction of an obvious error[10]. The requirement should be put into legislation. However, it would also be helpful to re-clarify the scope of these correction powers. We have raised concerns that, in relation to the rejection of R&D claims by invoking FA 1998 Sch 18 para 16, HMRC have gone beyond the intended scope of the provision of correcting obvious errors and have used the power after reaching a subjective conclusion about the R&D claim, without providing the taxpayer with the safeguards involved in an enquiry.

12.3 It will be important to ensure that HMRC stay within the remit of their Schedule 36 information powers regarding the type of information they would require the taxpayer to provide.

13 Question 10: Are there specific issues relating to compliance activity that need to be considered as HMRC moves to greater use of digital communications?

13.1 We support the greater use of digital communications by HMRC and the development of the single customer account as a means of more efficiently communicating with taxpayers. However, it is important that new processes adequately cater for agents as well as taxpayers, respecting the HMRC Charter and HMRC's commitment that agents should be able to see and do what their clients can see and do. Provision should also

[10] TMA 1970 ss9ZB & 12ABB and FA 1998 Para 16 Sch 18

be made for the digitally excluded and those with particular needs who may need to use accessible versions of HMRC letters and forms. We explore this more fully in our answer to Question 31 below.

13.2 The call for evidence mentions concerns about digital communications being potentially overlooked. This is especially important with regard to compliance checks because many parts of the process have time critical deadlines eg the deadline to reply to an information notice or to appeal an assessment. Making a late appeal by justifying a reasonable excuse is time consuming and expensive to make and administer. There needs to be a mechanism to ensure the taxpayer opens the digital communication, reminders are sent, and sufficient time is provided for them to action it.

13.3 Digital communications must work for agents too. Often complex compliance checks are dealt with by a specialist adviser, rather than the taxpayer's regular 64-8 authorised agent. The Agent Services Account (ASA) cannot cope with multiple agents acting for the same taxpayer, so it is not easy yet to see how the ASA could always successfully be used to send correspondence about client checks to the appropriate agent. Even where the 64-8 authorised agent is handling the compliance check the ASA does not function well because all notifications go into a central place for each firm rather than being notified to the relevant staff member.

Penalties

14 Introductory remarks

14.1 Penalty reform is already under way. For VAT, the points-based regime for late filing, and the late payment interest and late payment penalty regime was introduced from 1 January 2023, and is planned to be extended to other taxes at a later date. Consultation was undertaken on the regime before it was introduced, and we understand that HMRC will undertake an evaluation in the future. Our comments therefore recognise the commitment to this points-based regime.

14.2 When seeking to identify simplification and alignment opportunities, HMRC should be mindful of its penalty principles. We should ensure that any changes are consistent with these principles, yet if there is tension between them it might be worthwhile reviewing the principles themselves.

14.3 Indeed, responses to this call for evidence may identify new principles that should be applied to all penalty regimes. This might be, for example, that no penalty is applied for the first non-deliberate error (see below).

14.4 Once a direction of travel has been determined a timetable or road map should be set out, although we think that the review of enquiry and assessment powers should take precedence. Any changes stemming from that review are likely to impact upon the penalty framework, so it would make sense to undertake the review of penalties once decisions have been made about how or if to change HMRC's enquiry and assessment powers.

14.5 We have previously raised concerns regarding the fairness of the penalty regime when the consequences of delays and mistakes by taxpayers are compared to those for HMRC. While perhaps being outside the scope of this consultation, we would encourage HMRC to consider how HMRC might address these concerns, particularly as one of the stated aims of the call for evidence is to achieve fairness.

15 Question 11: Which types of non-compliance do you think should have common penalties applied consistently across HMRC's tax regimes?

15.1 In principle, we support alignment of penalties across all the tax regimes. While there are variations in the number and frequencies of returns depending on the tax regime concerned, the common factor across the different regimes is the requirement to submit a complete and accurate return, and pay any tax due, by a certain date. So, there seems no reason why the late filing, late payment, failure to notify and error penalty regimes should be markedly different.

15.2 The CIOT publishes a checklist of current tax penalties[11] on its website, which is updated annually. It covers the main penalties introduced since 1970 including those brought in by annual Finance Acts. But it is not exhaustive, for example it does not include penalties that may apply only to one particular tax, duty or levy regime. The latest update is 32 pages long and gives an indication of the sheer proliferation of different penalty regimes that have been introduced, particularly over the last 10-15 years. A simpler overall penalties regime – with fewer different types of penalties - could have many advantages, such as:

- Improving compliance and trust in the tax system. Penalties are designed to encourage compliance and prevent non-compliance. If a taxpayer is not aware of, or does not understand, the consequences of non-compliance, that dilutes their effect. A simplified penalties regime allows the consequences of non-compliance to be made clearer, would be easier to communicate, and therefore easier to understand. If the penalties are well publicised, then the deterrent effect may increase too.
- Improving understanding amongst HMRC, agents and taxpayers, leading to fewer mistakes in the application of penalties. Our members report to us cases where HMRC officers have sought to apply the rules for one regime to cases from another regime (eg penalty bandings for non-deliberate failures to notify after one year to errors), or confusing which penalties can be suspended (or interpreting such rules too narrowly). This adds to time and costs to resolve disputes for HMRC, agents and taxpayers. The mitigations for these penalty regimes are very similar (telling, helping, giving access etc), so there may be merit in combining the regimes so there is one, clear penalty regime for mistakes.
- Being easier to implement and administer. Having different penalty regimes in different legislative instruments causes confusion, and a simpler, more streamlined regime could be enacted by a single legislative instrument. This could also assist its implementation by HMRC as it could be operated by a single (rather than multiple) IT system.

15.3 Late filing and late payment penalties under the harmonised regime in FA 2009 Sch 55 and 56 were going to be aligned across taxes, but this has not yet happened. The harmonised regime does not apply, for example, to Inheritance Tax (though see below), Corporation Tax or Digital Services Tax, because the enabling legislation has never been introduced. As noted above, new late filing and late payment penalties are now being introduced for Making Tax Digital (MTD). As it stands, the MTD for ITSA penalties will run alongside existing Sch 55 penalties for several years, with some taxpayers moving between regimes depending on which criteria they meet. This will create confusion and complexity. Consequently, it will be preferable once and for all to align late filing and late payment penalties across all taxes, duties and NIC.

15.4 The call for evidence mentions record keeping penalties. In our experience it is very rare for HMRC to impose a record keeping penalty, ie under TMA 1970 s12B. HMRC prefer to impose a penalty under FA 2007 Sch 24 if the taxpayer has made an error as a result of poor or non-existent records, rather than a record keeping penalty. Consequently, it is not clear what the purpose is of retaining the record keeping penalty and its removal should be considered.

[11] Checklist of current tax penalties: https://assets-eu-01.kc-usercontent.com/220a4c02-94bf-019b-9bac-51cdc7bf0d99/5f83342b-7d50-433b-af34-620ebb9ecfdd/240409%20Penalties%20Checklist%20CIOT%20FINAL.pdf

15.5 The method of calculating failure to notify (FA 2008 Sch 41) and error (FA 2007 Sch 24) penalties is similar. Consideration could be given to combining these two regimes into one, which may also help to reduce the sort of mistakes during compliance checks referred to above.

15.6 HMRC can penalise third parties failing to provide bulk data under FA 2011 Sch 23. Nevertheless, HMRC introduced a new penalty regime to penalise platform operators for not complying with reporting rules for digital platforms (F(No2)A 2023 s349). Bulk data penalties could be aligned across all bulk data submission requirements.

16 Question 12: Are there tax regimes where a differentiated approach to certain penalties may be needed?

16.1 The tax system is incredibly diverse and complicated, with a variety of different regimes and obligations. They can be based on profits, transactions, payments, life events, and other triggers. Reporting obligations can vary from weekly, monthly, quarterly, annually, and within X days of a particular event. So, there may be an argument for having or retaining slightly different rules for some of these taxes. However, as already noted, in principle, we think there should be alignment across all taxes, with deviations only where alignment would produce an unworkable, adverse or disproportionate outcome.

16.2 The special position of personal representatives in the context of their obligations in relation to Inheritance Tax deserve recognition: they are personally liable for penalties which are not recoverable from the estate. There is currently no tax-geared penalty for failure to submit an Inheritance Tax account on time – and for good reason: examples include foreign assets that may be difficult to identify and then take time to value, and in a contentious estate identifying the executors may take years to resolve.

16.3 We consider that regulatory penalties such as those for Senior Accounting Officer failures, possessing Electronic Sales Suppression software and notification of uncertain tax treatment failures are so specific that they should be kept separate from this alignment process. When the regimes are established enough to provide useful data, consideration should be given to reviewing their effectiveness and updating them or repealing them as appropriate.

17 Question 13: Are there particular penalty regimes you think should be simplified? We would welcome views on why and how such penalty regimes might be reformed.

17.1 We agree with the call for evidence in that some penalty regimes are overly complicated and hard to understand and administer. It can be unclear at present which penalty regime will be applied by HMRC because often more than one can apply. Rationalisation of the regimes and perhaps creating a hierarchy so it is clearer which regime takes precedence if more than one could apply would be welcome.

17.2 The following penalties illustrate some of the difficulties within the existing penalty regime and should be part of this review:

- Offshore penalties are much too complex and should be simplified. The penalties are scattered across various Acts of Parliament, so just putting them into one place would be beneficial. Additionally, the higher penalty percentages for offshore non-compliance do not seem justifiable, and taxpayers often consider them to be very unfair, thus undermining trust in the tax system. Most people are unaware of these penalties until they seek advice on correcting a mistake, so the penalties have little or no

deterrent effect. HMRC get so much information now from overseas jurisdictions under Exchange of Information Agreements that it seems difficult to sustain different treatment for offshore matters. The policy reason for treating offshore matters differently should be revisited.

- It appears that some offshore penalties are rarely if ever charged (such as offshore asset moves penalties in FA 2015 Sch 21 and/or asset-based penalties in FA 2016 Sch 22). Considering their complexity and the lack of awareness, there must be a case for abolishing them due to lack of use.

- The way that unprompted/prompted disclosures impact upon penalties should be reviewed, particularly with the increase in HMRC's use of OTM letters. HMRC will treat a response to a OTM letter as prompted in many cases, thus decreasing the incentive for a taxpayer to respond.

- The percentages for the different behaviours should also be refined so as to increase the incentive for the taxpayer to make an unprompted disclosure and respond to an HMRC OTM letter. This is particularly due to the three-year rule in CH82465 which applies regardless of how quickly a taxpayer acts to fix a problem once they become aware of it. Taxpayers perceive this uplift as unfair if they act immediately, they are told they have made a mistake. Annex B says Australia reduces penalties by 80% if a taxpayer voluntarily admits a mistake. A set % reduction could be adopted for those who respond to OTM letters within (say) 60 days (eg by registering to disclose via one of HMRC's disclosure facilities).

- In recent years, there has been a proliferation of different penalty regimes to tackle tax avoidance[12] so perhaps this is an area which would benefit from being evaluated, reviewed and simplified. It is not clear how often/if these penalties are used and how aware taxpayers are of them. If they are rarely used and taxpayers are not aware of them then their deterrent effect is minimal.

- The remaining TMA 1970 penalties[13] should be reviewed to ensure they are achieving their policy aims or whether they could be aligned or absorbed into other regimes.

- Penalties imposed under FA 2009 Sch 36 para 50 (failing to comply with an information notice, in addition to the standard fixed & daily penalties), which must be considered by the Upper Tribunal (UT) as the First Tier Tribunal does not have jurisdiction. The first step, once the UT is satisfied that the person did not comply with the information notice, is to consider whether an HMRC officer has reason to believe that, as a result of the failure to comply, the amount of tax that the person has paid (or is likely to pay) is significantly less than it would otherwise have been. The legislation does not set a scale or limit on the penalties, and it gives little guidance as to how the UT should determine the amount to charge other than it should 'have regard to the amount of tax which has not been or is not likely to be paid'. These cases tend to come to the UT before the investigation/compliance check is complete, so it is difficult for the UT to know what the ultimate tax liability will be. It ends in a 'back of the envelope' type calculation, and there is no ability for the person penalised to get the amount of the penalty revisited at a later date when the liability is known. Such a regime might benefit from

[12] GAAR penalty (FA 2016 s158), follower notices (FA 2014 s208 and 208A), accelerated payment notices (FA 2014 s226) and the serial tax avoidance regime (FA 2016 Sch 18), plus the 'tax avoidance' amendments to existing penalties such as the penalties for errors regime (which inserted paras 3A and 3B into FA 2007 Sch 24). FA 2020 Sch 13 imposes joint and several liability in relation to some of these penalties.

[13] s98A (special penalties in the case of certain returns), s99A (certificates of non-liability to income tax), s99B (declarations under ITA 2007 Chapter 2 Part 15) and s109C (penalty for a company's failure to comply with s109B).

a more formulaic approach, setting a range for the penalty to apply in a particular instance, and the obligation to adjust the penalty once the correct liability is known. This would not materially change the operation of the regime but would allow it to operate more efficiently.

- The process for reporting errors in pension compliance is opaque, with little clarity over how penalty mitigation is applied or can be accessed. In addition, penalties for reporting pension errors can be administratively burdensome and disproportionate as many errors in this area relate to reporting where there is little or no tax at stake. It would be helpful if this area could be reviewed and updated guidance for the pension industry produced.

- The safeguards against imposing penalties on deceased persons for mistakes made during their lifetimes (see CH301150) should be enshrined in legislation to ensure that taxpayers, agents and HMRC are aware of them and ensure they are not overlooked. We note that the equivalent rules regarding the assessment time limits for deceased person's tax affairs are in legislation already (TMA 1970 s40).

17.3 The legislation could benefit from re-phrasing to remove confusion which causes additional appeals to the Tribunal. It needs to be clear that tax-geared penalties should be charged if HMRC can actually assess the additional tax liability (plus meeting the other criteria for the penalty), for reasons of trust and simplicity. Whilst most agents understood this to be the case, confusion has arisen from decisions such as *HMRC v Robertson* [2019] UKUT 202 (TCC), *Albany Fish Bar Limited v HMRC* [2021] UKFTT 221 (TC) and *Maxxim Residential Design v HMRC* [2023] UKFTT 474 (TC).

18 Question 14: What are the potential benefits and challenges of moving away from the current set of behavioural penalties? What alternative models should be explored?

18.1 We believe there is merit in retaining some behavioural considerations when applying penalties, particularly if assessment time limits are aligned to those behaviours.

18.2 It is essential that the penalty system encourages taxpayers to take reasonable care ie to not make mistakes. Taxpayers should never be penalised for mistakes they make despite taking reasonable care. Some additional tax can arise despite taxpayers keeping proper records and taking and following detailed professional advice. Examples include disputes over legal interpretation of technical tax matters. Such taxpayers should not be charged penalties on top of the any additional tax if it is found to be due. Taking professional advice from a reputable agent, even if that advice turns out to be incorrect, should be sufficient to demonstrate that the taxpayer has taken reasonable care and therefore should not be liable to a penalty. We recognise that defining a reputable agent could be challenging but we suggest this could be considered in terms of one who meets HMRC's standard for agents, such as by belonging to a PCRT body.

18.3 The important distinction between deliberate and non-deliberate behaviour should be retained, and the consequences of deliberate behaviour should be significantly greater than non-deliberate behaviour. If a taxpayer who simply makes a non-deliberate mistake could receive the same penalty as someone who makes a deliberate error, this will significantly undermine trust and increase perceptions of unfairness in the tax system. It is also hard to understand why a person should be more harshly penalised for making a non-deliberate offshore error than a person who makes a deliberate error with their UK tax.

18.4 With the current regime, it can currently take some time to decide the nature of the taxpayer's behaviour and thus their level of culpability. Our members tell us that HMRC officers tend to think taxpayers have a much better awareness of tax than they actually do and are more likely therefore to assert that the taxpayer has failed to take reasonable care (or even has acted deliberately) where that is not the case. Significant time can be spent explaining the position eg reliance on professional advice, the sophistication of the taxpayer, and so on – particularly to identify whether the taxpayer has taken reasonable care or been careless. Therefore, any changes to the behavioural penalty regime must minimise the scope for protracted correspondence about what type of behaviour has caused the error.

18.5 The call for evidence suggests that penalties could be based on the taxpayer's history of making inaccuracies in past years with no behavioural element. We foresee that this would be problematic and be perceived as unfair, particularly if the errors are not noticed for several years because the taxpayer is unaware of the issue and HMRC have not queried the taxpayer's returns.

19 Question 15: What alternatives to the current model of penalty suspension do you think should be explored?

19.1 Under the current penalty regime, which can give rise to a penalty on the first error, the penalty suspension regime can offer relief from penalties, while also encouraging compliance. In this regard the suspension regime is welcome.

19.2 However, the feedback we receive from our members is that its application can be inconsistent, suspension conditions can take time to agree and are often not targeted properly, and there is often little or no follow-up from HMRC to see whether the taxpayer is complying with those conditions. The cost of arranging the suspension can outweigh the proposed penalty meaning it is not worthwhile to seek suspension, although the 'stigma' or regulatory consequences of incurring a penalty can mean that suspension must be pursued.

19.3 Further, we are unaware of any published statistics to demonstrate whether penalty suspension improves behaviours. We are concerned, therefore, that the suspension regime is currently not working effectively or being properly administered. There are other concerns with the regime, such as (we understand) that it is not possible to appeal against a decision by HMRC that the suspension conditions have not been met (Judicial Review being the only option).

19.4 In relation to non-deliberate (ie careless[14]) behaviour, we would favour a regime that does not penalise the first error, but puts the taxpayer on notice that any future errors will incur a penalty. On that basis, the penalty suspension regime could be removed entirely, resulting in a regime that:

- Does not penalise the first default or inaccuracy even if it was caused by carelessness. The points-based penalty regime already accommodates this for late filing, but this principle could also apply to inaccuracies (see below regarding suspending penalties). So, whether the inaccuracy is identified by the taxpayer, their agent, or HMRC, and subsequently corrected, no penalty would apply.
- HMRC would put the taxpayer on notice that future defaults of the same type could incur a penalty. This would encourage the taxpayer to pay greater attention to accuracy of their future filings in a similar way to the suspension regime. Again, the points-based penalty regime already accommodates this for late filing through the issue of penalty point notices, but a similar approach could apply to inaccuracies.
- There would be no requirement for a suspension regime.

[14] Penalties should not apply where a taxpayer has taken reasonable care, so this would only relate to careless errors.

- Once again, the anomalous position of the Inheritance Tax regime as it applies to the 'one-off' event of death would need accommodating.

However, it is essential to define 'future defaults' and 'first default' carefully. If a taxpayer filed their return in a particular way for (say) 6 years in a row, believing that it was correct but later finding out that they were wrong then, this should count as one mistake. They cannot change the past and will only be incentivised if the warning relates to their future behaviour.

19.5 The call for evidence mentions that penalty suspension could be applied automatically without conditions for the first non-deliberate or careless failure with the penalty becoming payable if HMRC identify other instances of non-compliance within the next four years. Four years is a long time compared to the typical suspension conditions available now and could involve lots of returns and payments needing to be made correctly to be clear of triggering the suspended penalty (particularly for employers with PAYE and Construction Industry Scheme (CIS) obligations, and for taxpayers in the Making Tax Digital regime). Therefore, we do not support this suggestion; instead favouring no penalty for the first non-deliberate error.

20 Question 16: What merits and challenges would making fixed penalties more proportional to a taxpayers' income, resources or tax liability present? Are there other models that should be considered?

20.1 We assume that this proposal relates to fixed penalties for the late filing of returns, rather than inaccuracies therein.

20.2 First of all, penalties for failing to make a return when there is no tax liability, and for failure to comply with administrative obligations (that do not have a tax consequence), can produce what might be perceived to be very disproportionate outcomes. Clearly, we recognise the importance of compliance with filing and administrative obligations, but consideration might be given to different levels of penalties (including no penalty), depending upon whether the failure gives rise to an underpayment or late payment of tax.

20.3 In addition, penalties can be levied in circumstances where there is no 'net' tax liability ie an error by one party is wholly offset by the impact on another party. While we recognise this might add some complexity, the ability to look at the 'bigger picture' when considering the application of penalties, rather than individual transactions or circumstances, would help increase perceptions of fairness and trust in the tax system.

20.4 There would be several challenges in making fixed penalties proportionate to a variable (such as income, resources or tax liability). These would include:

- The level of automation - Currently, the issue of a fixed penalty can be automated and represents a single, fixed amount. If such penalties were to be calculated as a proportion of a variable amount:
    - the initial assessment of the penalty may need to be made on assumptions as to what that variable amount should be, and
    - the penalty would need to be amended once the actual variable amount was known.

  Unless this can be automated with a high degree of reliance, we think this will be resource intensive for HMRC to administer, and taxpayers and their agents will find it difficult to monitor and understand.

- Determining the variable - The most appropriate variable when considering the impact of late filing might be the associated tax liability declarable on that return, but as identified in the call for evidence, that might have no correlation with the taxpayer's overall resources and may have little deterrent

effect for (say) a wealthy taxpayer. But the level of the taxpayer's overall resources might not be known to HMRC nor be easy to determine. If 'resources' is interpreted as 'net assets' the considerable work would be needed to value the taxpayer's assets and disputes may arise over the valuation. Information about assets is not included on tax returns. Both factors would mean it is much harder and more costly for HMRC to administer the penalty regime. If 'resources' are to be a factor then a proxy should be chosen for resources from information available to HMRC – this could be the taxpayer's net taxable income and gains, for an individual or profits chargeable to tax for a company. The Criminal Justice Act 1991 proposed a similar approach, and was promptly largely repealed, and it would be instructive to review the experiences of that regime before pressing ahead.

20.5 We should recall that the UK has a high-level of voluntary compliance. We should also not lose sight of the fact that tax returns are a means to an end – that end being the timely payment of any tax due. As penalty reform is extended to those within income tax self-assessment, the late payment penalty and interest regimes will penalise the late payment of any tax due. If and when this is extended to other taxes, the relative importance of late filing penalties will diminish.

20.6 Care should be taken to ensure that any late filing penalties do not exceed error penalties unless HMRC wish to signal to taxpayers that it is more important to file on time than file a correct return. Currently, many taxpayers would rather delay filing by a couple of weeks to resolve last minute uncertainties, instead of risking filing a return in which they lack confidence. Filing a return which then needs correction also takes HMRC time because they have to process the amended return.

21 Question 17: Do you agree that penalty escalation could help to address instances of continued and repeated non-compliance? What challenges could this present?

Question 18: Are there particular models of penalty escalation you think should be considered, and why?

21.1 The call for evidence does not specify whether 'non-compliance' refers to late/non-filing, or inaccuracies, or both. We proceed on the basis that both types of non-compliance are under consideration.

21.2 Regarding late/non-filing, the penalty points system is quicker to penalise continued/repeated non-compliance as, once the relevant points threshold is met, subsequent failures will incur a financial penalty until the relevant period of compliance has been achieved to reset the points to zero. We would not suggest introducing an alternative approach until this system is introduced for ITSA, and it has been possible to evaluate its impact on both VAT and ITSA compliance.

21.3 Where inaccuracies are concerned, we note that the existing penalty regimes already provide for instances of continued non-compliance and repeated non-compliance.

- If a taxpayer's non-compliance continues then their error or failure to notify penalty is higher as the reduction given for 'telling', 'helping' and 'giving access' depends upon the timing, nature and extent of their engagement with HMRC. 'Timing' thus takes into account delayed disclosures or engagement. Indeed, CH82465 states that HMRC adds 10 percentage points to penalties where an issue is ongoing for three or more years. This fails to incentivise taxpayers to rectify mistakes earlier as taxpayers are unaware that HMRC limit their discretion on penalty reduction in this way, until they experience it. Also, if a taxpayer is unaware that they made a mistake for several years then takes steps to correct it as soon as they become aware, they often feel that the additional 10% on the penalty is unfair as they

acted immediately. Failing to obtain maximum penalty reduction for deliberate mistakes can cause the taxpayer's details to be published too (FA 2009 s94).

- In terms of repeated non-compliance, if a taxpayer repeats an error after being made aware they made that mistake in an earlier year, then HMRC already factor this into the decision on what behaviour caused the error. Consequently, what might have been an error despite taking reasonable care in one year is then taken to be caused by at least careless behaviour if the same mistake is repeated soon thereafter. Additionally, large businesses who incur repeated penalties (for errors and late filing/payment) are likely to find this detrimentally affecting their Senior Accounting Officer (SAO) rating.

We therefore struggle to see that there is any merit in increased penalty levels for continued/repeated errors.

21.4 If HMRC decide to proceed with further measures in this area, we consider that this would come with certain complexities and requirements for safeguards, such as:

- The taxpayer must have previously been put on notice in writing that their return/treatment was incorrect. As outlined above, for non-deliberate penalties, we favour no penalty for the first error, with HMRC then putting the taxpayer on notice that subsequent errors would incur a penalty. Penalties should not be allowed to escalate if the taxpayer is unaware that they are making a mistake.
- If a taxpayer is on notice that they have made a mistake, and is potentially liable for escalating penalties, should the escalation be calculated based on each subsequent return that is incorrect, or each time the taxpayer or HMRC identify that they have continued making the error? Taxpayers with regular obligations such as VAT and PAYE could accumulate significant penalties if they are escalated per return, when they are unaware that the error is continuing.
- To operate fairly, in order to be liable for an escalated penalty, it would need to be the same error within the same tax regime. For example, an error on a self-assessment return should not lead to an escalated penalty for a VAT error. It might also be difficult to define, even within the same tax, whether something is the same error. For example, would claiming a deduction for unallowable entertaining be considered the same error as claiming a deduction for unallowable legal costs?

The level of penalty must not become so great so as to dissuade the taxpayer from disclosing. This can particularly be the case when several penalties can be levied at the same time. The cumulative combination of failure to notify/error penalties, plus offshore asset move penalties and asset-based penalties can take the maximum tax-geared penalty to over 300% of the tax. This level of penalty may be deterring taxpayers coming forward to voluntarily disclose offshore mistakes as they will be left with nothing (or even less) of their offshore holdings.

22 Question 19: Are there specific behaviours and situations that you think new penalties could help to address, and why?

22.1 HMRC mention in relation to Reform Opportunity M (designing new penalties to discourage undesirable behaviour) the application of penalties in instances of carelessness by agents and the adoption of 'unreasonable tax positions'. In our view such penalties should be approached with extreme caution and may be unworkable. In principle we do not support the introduction of such penalties for the following reasons.

22.2 HMRC are currently consulting on Raising Standards in the Tax Advice Market[15]. Existing penalty regimes plus Professional Conduct in Relation to Taxation[16] (PCRT) and the HMRC Standard for Agents[17], properly enforced, are sufficient to raise standards when taken with any one of the methods being consulted on in the raising standards consultation. Nothing else should be added until that consultation is concluded, and any reforms introduced have been allowed to bed in and evaluated to assess their effectiveness.

22.3 HMRC can already charge penalties on tax advisers who enable defeated tax avoidance[18], enable offshore tax evasion or non-compliance[19] and those who facilitate avoidance schemes involving non-resident promoters[20]. There are the Promoters of Tax Avoidance (POTAS) regime powers[21] to penalise and sanction promoters of tax avoidance. HMRC can also issue a penalty if an error in a taxpayer's document is attributable to another person[22]. HMRC can also charge penalties on dishonest tax agents[23]. If HMRC want to introduce more penalties on tax advisers, then they should explain why they consider the existing penalties are insufficient. We note that the tax gap statistics do not shed any light on the extent to which third parties' mistakes affect taxpayer compliance.

22.4 Penalties on advisers for carelessness will clearly create difficulties with their client, particularly if the agent accepts culpability. In extreme cases, it might lead to conflicts between clients and their agent, for example if the agent seeks to assign the blame to the taxpayer in order to defend their own position. One of the fundamental principles in PCRT is 'objectivity' which means advisers must not allow conflicts of interest to override professional or business judgments. If HMRC issue an agent with a penalty for carelessness this could impair their objectivity, and client relationships where there are conflicts of interest must be avoided. Indeed, the issue could occur earlier than at the point a penalty is charged, which is more likely to cause an issue with the conduct of the compliance check, for example, if the agent perceives that HMRC could charge the agent a penalty or if HMRC write to the agent (eg to seek more information) with a view to possibly charging a penalty. Ultimately therefore this will mean that the adviser will have to resign.

22.5 The taxpayer will then need to find a new adviser creating additional costs and inconvenience to the taxpayer and delaying the progress of the compliance check. There is also likely to be an impact on professional indemnity insurance (PII) premiums and therefore the level of fees charged and the affordability of tax advice, potentially leading to some taxpayers having to represent themselves.

22.6 It will be challenging to define an 'unreasonable tax position' requiring potentially subjective assessments to be made. It could lead to disagreements and potentially more litigation, making it expensive to administer. At present tax advisers who follow PCRT should be ensuring all submissions to HMRC have a sustainable basis so any positions taken in the returns they prepare would not be 'unreasonable'. Such a new penalty may overlap

[15] Raising Standards in the Tax Advice Market – strengthening the regulatory framework and improving registration: https://www.gov.uk/government/consultations/raising-standards-in-the-tax-advice-market-strengthening-the-regulatory-framework-and-improving-registration/raising-standards-in-the-tax-advice-market-strengthening-the-regulatory-framework-and-improving-registration#:~:text=This%20consultation%20seeks%20views%20on,that%20supervises%20their%20professional%20standards
[16] Professional Conduct in Relation to Taxation: https://assets-eu-01.kc-usercontent.com/220a4c02-94bf-019b-9bac-51cdc7bf0d99/d0836d40-5102-4ac1-89f3-efc9b7c75e8a/CIOT%20-%20PCRT%2003.01.23.pdf
[17] HMRC Standard for Agents: https://www.gov.uk/government/publications/hmrc-the-standard-for-agents
[18] F(No 2)A 2017 s 65 & Sch 16
[19] S 162 & FA 2016 Sch 20
[20] FA 2022 Sch 13
[21] FA 2014 Part 5 & Schs 34 to 36, FA 2015 Schedule 19 and FA 2017 s24
[22] FA 2007 Para 1A Sch 24
[23] FA 2012 Sch 38

with other existing regimes such as the notification of uncertain tax positions and FA 2007 Sch 24 error penalties where the taxpayer is culpable.

22.7 HMRC know what errors are made from their compliance check work so they can already use the data to discuss with firms how to improve their work via the Standard for Agents. Patterns in common errors across all agents could be shared with professional bodies so they can help remind agents how to avoid common mistakes. These two points are more likely to drive improvements in returns' accuracy than adding even more penalties to the tax administration framework.

23 Question 20: Where could HMRC communicate in a more timely or effective manner with taxpayers about penalties?

23.1 We recognise that challenges exist for HMRC, with penalty systems operating across different platforms and the timing and likely receipt of notifications by taxpayers. One of the advantages of a simplified, more aligned penalty regime should be greater ease of administration by HMRC, and better understanding by taxpayers and their advisers.

23.2 Other than how notifications are issued to agents, the penalty points system seems to be working well for VAT. While it is an after-the-event notification of a penalty, it also informs taxpayers of their overall points position and can of itself act as a nudge to improve compliance.

23.3 Clearly, there are opportunities to notify taxpayers of their obligations before they fall due, through their personal tax account/business tax account/single customer account, and via any software they are using to comply with their tax obligations. These nudges and prompts should be encouraged, both to promote compliance, and forewarn the consequences of non-compliance. However, care needs to be taken to ensure such prompts are accurate – sometimes taxpayers currently get text message reminders to pay or file after they have already taken those actions.

23.4 We support modernisation of HMRC's processes so that a liability to a penalty is notified in advance and before they escalate, which is a particular problem with daily late filing penalties currently. Often taxpayers are unaware of them until after they have been charged, which is perceived as unfair and undermines trust in the system. If the penalty system is modernised then HMRC should consider a multi-channel approach to raising awareness, including social and traditional media.

23.5 The call for evidence notes problems with notifying taxpayers about penalties where they did not tell HMRC about their new address. Some taxpayers may assume that HMRC will be made aware via their employer or another part of government so they may not realise they need to contact HMRC. There is a 'tell us once' service to inform government departments about a person's death. Perhaps a similar service should exist for other changes such as new addresses so that the taxpayer need only inform government once and all of government would know.

24 Question 21: Would you support the regular updating of fixed penalties for inflation? What challenges would this present for you?

24.1 In principle, yes. There are too many amounts and thresholds within tax legislation that do not keep pace with inflation. However, the overall perceptions of fairness would need to be considered, as it might be thought

unfair to uprate penalty amounts without uprating other thresholds (such as reliefs and allowances), yet we recognise the latter have wider tax policy implications.

24.2 Uprating penalties, such as by inflation, could mean that the penalty amounts cease to be round sum, thus being more difficult for taxpayers to remember. Also, it would increase the risk that incorrect information languishes on the internet (on non-gov.uk sites), confusing taxpayers if the third-party responsible fails to update their pages.

24.3 Question 16 considered whether penalties could be calculated by reference to the person's tax liability or income rather than being a fixed amount. If this happens then uprating penalties would become unnecessary.

25 Reform Opportunity P: Transparency

25.1 We agree that there should be greater transparency about the penalties that HMRC issue. We are not aware that HMRC publish statistics of all the penalties that they have charged in a particular year. It is therefore difficult to judge the deterrent effect of a penalty without knowing how many are applied. Indeed, knowing that penalties have actually been charged (ie rather than being theoretically chargeable) could add to the deterrent effect if this information was sufficiently well publicised so that taxpayers are aware of it.

25.2 This information would also help identify whether there are any penalties that are rarely or ever used. For example, we are not aware of HMRC charging asset-based penalties (FA 2016 Sch 22), offshore asset moves penalties (FA 2015 Sch 21), or penalties under the serial tax avoidance regime (FA 2016 Sch 18). If particular penalties are not being charged, consideration should be given as to why this is the case, and whether they are still needed.

25.3 Where measures are not acting as effective deterrents, consideration should be given to increasing awareness, or reviewing the requirement for the measure in question. We question whether the Managing Serious Defaulters regime is effective in changing taxpayers' behaviour. It seems little used and therefore of limited deterrent effect. Similarly, HMRC's own evaluation[24] of publishing deliberate defaulters' details (section 94 FA 2009) concluded it was not effective as a deterrent, predominantly because few people are aware of it.

26 Safeguards

26.1 Introductory Remarks

It is crucial that taxpayers and the public have trust in the tax system when it comes to how HMRC exercise their powers and impose sanctions, and how taxpayer protections and safeguards operate. In Appendix One we set out the CIOT's ten principles against which HMRC's use of its powers, sanctions and safeguards and any proposed powers, sanctions and safeguards can be compared. It is essential for building and maintaining trust in the tax system that the way HMRC use their powers and operate safeguards can be effectively monitored and subjected to appropriate oversight.

26.2 The Government should not be tempted to water down or reduce taxpayer protections and safeguards because a small minority exploit them to prolong disputes or delay paying tax. Whilst some taxpayers may

[24] https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/726949/Evaluating_the_Effectiveness_of_Publishing_Details_of_Deliberate_Defaulters__Research_Report_499_.pdf

exploit safeguards, as the Call for Evidence notes on page 27, it is important that any measures designed to address specific areas of risk do not detrimentally affect the compliant majority. This would undermine trust in the tax system.

27 Question 22: What are the merits and challenges of aligning the appeals process with either the direct or indirect taxes approach?

27.1 We support the aligning of appeals processes where possible to help mitigate the confusion and misunderstandings that different rules can create. Currently, the existence of disparate rules, terminology, and procedures contributes to unnecessary complexity, which could be streamlined through alignment. It would also provide an opportunity to simplify the processes. We have observed instances where HMRC's correspondence lacks clarity, suggesting even their own staff find the existing rules confusing, as evidenced by recent decisions concerning R&D enquiries. Likewise, taxpayers risk missing appeal deadlines or having their requests for alternative dispute resolution (ADR) rejected due to misunderstanding the rules and processes. Therefore, aligning appeals processes is not only beneficial for clarity and efficiency but also for ensuring consistency and understanding across all stakeholders.

27.2 Alignment of the rules would be of particular benefit in multi-tax disputes where disparate rules, processes and time limits create unnecessary complexity. A particular example of this is found in employer compliance processes, where the HMRC team must follow two different processes – one for PAYE and the other for NICs. This is inefficient.

27.3 The approach taken by HMRC in direct tax cases usually has the advantage of providing more time and opportunity for the dispute to be resolved by agreement, which we support. From the taxpayer's perspective, it is a lot more cost effective to resolve a dispute by agreement than to litigate, so providing more time and opportunity in which to explore settling by agreement can be beneficial in the long run, assuming the best use is made of this additional time by both parties. This is particularly the case where HMRC issue discovery assessments early in a compliance check in order to protect their position before assessment time limits expire. The flexible direct tax process enables ongoing engagement between HMRC and the taxpayer to establish facts, apply them to the tax legislation and quantify additional liabilities accurately. This supports the collaborative working approach in HMRC's Litigation and Settlements Strategy.

27.4 In indirect tax disputes, the taxpayer has an immediate right – following the issue of an appealable decision by HMRC - to seek a statutory review or appeal to a Tribunal. We have received feedback that aligning that with the direct tax model risks adding delay into an already lengthy and costly process. The issue here seems to be that, by the time of an appealable decision, it is often obvious that the HMRC decision-maker has made up their mind and that an independent view is now required. However, we note that adopting the direct tax approach would not mean that HMRC were forcing a mandatory period of *further discussions* (which could be potentially wasteful and frustrating unless there is also a change in the way that HMRC approach indirect tax disputes and a more collaborative approach is adopted so that the additional time is not wasted). This is because direct tax legislation allows taxpayers to opt for statutory reviews before one is offered so the dispute could still proceed to a formal appeal quickly. Consequently, overall, we consider that it would be preferable to move all taxes (including NIC) onto the direct tax appeal process.

27.5 We support reform to the access to ADR. The direct tax model which allows access without the need for an appeal to the tribunal to have been made seems preferable. We encourage any action which might improve the take-up and effectiveness of ADR generally.

27.6 Adopting one process should help HMRC digitise/automate some of the forms and processes. It should also save training time (in future, once the change occurs) and enable HMRC to move staff between taskforces/teams as need allows more easily. It should also improve taxpayer understanding and trust in these safeguards.

28 Question 23: Are there other examples of appeals processes for direct and indirect taxes that could be considered as an alternative approach and why?

28.1 There are some gaps in the appeals system which mean that taxpayers need to resort to Judicial Review in order to dispute an HMRC decision, which is clearly time-consuming and costly for them and for HMRC. Taxpayers cannot for example appeal HMRC's rejection of an overpayment claim unless HMRC previously enquired into the claim (TMA 1970 Sch 1A para 9). As a general principle, we would expect there should be a presumption that any decision of HMRC could be disputed via the Tax Tribunal rather than via Judicial Review.

28.2 Otherwise, we do not consider alternative approaches are necessary.

29 Question 24: What are the merits of aligning payment requirements across regimes where a liability is disputed, and a tribunal appeal is made?

29.1 We support alignment of payment requirements across regimes. In our view, payment requirements across regimes should be aligned with the direct tax rules.

29.2 We are opposed to changing the existing rules that permit the postponement of direct tax liabilities before the tribunal hears the taxpayer's appeal. We believe those rules strike the right balance between protecting taxpayers and giving HMRC the ability (via the tribunal) to require payment in cases where it is not appropriate to postpone. Aligning the direct tax rules with the payment requirements for indirect taxes, causing direct taxes to be paid to HMRC before the appeal is heard and the outcome of the case decided (subject to a hardship application), would impose additional burdens on taxpayers, deter them from appealing and potentially have significant cash flow implications. In any event, the postponement application process offers a degree of flexibility in that HMRC can, if it is considered appropriate, refuse a postponement application and seek to have the question determined by the tribunal.

29.3 Additionally, HMRC already have the authority to issue accelerated payment notices (APNs) in cases of tax avoidance involving direct taxes where the criteria in FA 2014 s219 are met (GAAR, DOTAS, follower notice issued and others). APNs were introduced specifically to address the issue of the minority of taxpayers who exploit the rules to prolong their disputes and defer paying their tax liabilities for as long as possible. Additionally, TMA 1970 s56 places limitations on postponements of direct taxes under TMA 1970 s55(3), so that direct taxes become payable if the taxpayer loses at the FTT, regardless of whether they obtain permission to appeal to the Upper Tribunal.

29.4 Implementing hardship rules for direct taxes similar to those for indirect taxes could potentially lead to similar problems encountered with the latter, including issues related to complexity, costliness, and time-consuming processes for both taxpayers and HMRC.

29.5 We do not agree that the differences in payment requirements derive in part from the differences in nature between direct taxes and indirect taxes (page 29 of the Call for Evidence). In a VAT dispute, it will not necessarily be possible for the taxpayer to pass the tax burden down the supply chain, for example in a dispute about whether the correct rate of VAT has been charged on retail sales that have already been made to consumers.

29.6 We also note that there is a third payment process – for NIC, compared to PAYE and indirect taxes. That currently involves the County Courts and standstill agreements, which is inefficient for HMRC and taxpayers alike. We therefore consider that the NIC process should be repealed in favour of aligning the direct tax process across all taxes, duties and NICs. In addition, the misalignment between limitation periods for NICs between Scotland and the rest of the UK is unnecessarily complicated and illogical.

29.7 HMRC currently receive late payment interest at 7.75% pa, so HMRC are adequately compensated if collection is postponed whilst appeals are made. In contrast a much lower rate is paid on repayments to taxpayers, which does not fully compensate them for the detriment to their cashflow (particularly if they used a loan to fund payment to HMRC) or for the opportunity cost of using the money in their business. This is further reason to adopt the direct tax, rather than the indirect tax process for postponements.

29.8 If HMRC would like to encourage voluntary earlier payments, then it could consider reinstating the Certificate of Tax Deposit regime. This was attractive as it enabled taxpayers to give HMRC money which could be allocated against a specific liability if the appeal was eventually lost, but without appearing to concede their case in the meantime. It also gave more peace of mind as it was easier to get a repayment than from their self-assessment or SAFE accounts.

30 Question 25: Are there specific circumstances where you think the existing differences across regimes are important or desirable to maintain?

30.1 It is important to retain IHTA 1984 s230 and s231 so HMRC can continue to accept property in satisfaction of IHT and to retain IHTA 1984 ss227-229 so that IHT can be paid by instalments if legislative conditions are met. Also, it would be preferable to go further and allow personal representatives of the deceased 90 days to pay after grant of representation. This is because house sales and similar asset transactions cannot occur until after the grant. Currently, the pressure to pay HMRC before funds are available to settle IHT causes additional stress for them and the families involved, as well as causing additional work for HMRC's Debt Management teams, all due to probate related delays. The default date for payment of IHT could logically be aligned to the filing date (12 months after the end of the month of death), with the extended '90 days after grant' rule applying only where the grant has been applied for within a reasonable period (perhaps the current 6 months after the month of death date), to head off tax-postponing delays. The default date would apply to situations where no grant is required, for example, a property jointly held by the deceased and their children.

30.2 Certainty for taxpayers extends to liability for underpaid tax. IHTA 1984 s240 currently sets out various time limits for recovery of IHT that run from the date when 'payment is made and accepted in full satisfaction of the tax'. That date which triggers recovery periods of 4, 6 and 12 years (depending on the circumstances) can be difficult to ascertain and leads to uncertainty, particularly for an estate where there was no tax paid because

it was initially thought to be free of IHT due to Business Property Relief, but that assumption later turns out to be incorrect. Greater statutory clarity is required and would be achieved by ensuring that the recovery periods for HMRC run from the date of submission of the account.

31 Question 26: How can HMRC improve access to statutory reviews and ADR? Are there ways to encourage voluntary take-up of these you think we should explore and why?

31.1 We note that HMRC have been doing work to raise awareness and increase understanding of statutory review and to encourage its take-up, which we welcome. It is a cost-effective process compared to going to the Tribunal, particularly if the decision is overturned or explained in such a way as the taxpayer can then understand and accept it.

31.2 HMRC need to allocate sufficient resources to statutory review to ensure that they meet the 45-day deadline in the majority of cases, otherwise taxpayers' and agents' view of the process is undermined, and it may mean they are less likely to use it in the future. There is also a need for adequate staff with the relevant tax specialist expertise to handle the reviews. Our experience of the high-volume approach to R&D enquiries in ISBC is that statutory reviews are not of a high quality, despite the review officers being able to consult technical specialists.

31.3 However, there is still a perception that (rightly or wrongly) a review will simply confirm HMRC's decision so for that reason many people will not opt for a review, preferring to go straight to the tribunal[25]. This is somewhat supported by the statistics in HMRC's 2023 Annual Report showing that only 25% of statutory reviews into matters other than fixed penalties reach a different decision. It would be interesting to know the percentage of tribunal cases where the tribunal decision differs from the HMRC position that was upheld on review.

31.4 Another factor deterring use of statutory review is the perception that the review officer will liaise with the caseworker at times such as when additional new information is submitted. This should be stopped in all situations so that the review provides a genuinely 'fresh' pair of eyes. The caseworker should not be able to access the case files during the review. The review officer should simply take the new information into account in reaching their decision, with assistance from a technical specialist not previously involved in the case where needed. The caseworker should receive a copy of the review outcome letter at the same time as the taxpayer.

31.5 TMA 1970 s49E(8), IHTA 1984 s223E(8), FA 2003 para 36E(8) Sch 10 and VATA 1994 s83F(8) automatically uphold HMRC's decision if the review fails to conclude in 45 days or such longer time as is agreed prior to the expiry of the deadline. This provides a helpful 'back stop' to ensure that taxpayers are able to progress the dispute if HMRC is dilatory, but it can undermine taxpayers' confidence that the review will be completed thoroughly, in good time and that it will be fair. In other words the existence of this provision can make it appear (and the taxpayer believe) that HMRC have no interest in changing their mind, which is counterproductive to HMRC's aim to increase the use of statutory reviews and their desire to reduce the proportion of cases going to Tribunal. It is surely better to have the review done properly and avoid the need for Tribunal than to speed up the process artificially by potentially maintaining HMRC's wrong decision or not

[25] HMRC decision upheld in 75% of reviews (excluding VAT default surcharge cases) – see page 130 of HMRC's Annual Report 2022-23
https://assets.publishing.service.gov.uk/media/64e34f1c3309b700121c9baa/HMRC_annual_report_and_accounts_2022_to_2023.pdf

providing the taxpayer with a reasoned review outcome. It would be instructive to see how often these provisions are triggered in practice, and the behaviours they encourage.

31.6 ADR can provide a vital role in helping to relieve pressures on the tribunal by helping the parties to resolve their tax disputes without resorting to litigation. Even if disputes between taxpayers and HMRC cannot be fully resolved through mediation, it can still be useful in agreeing the facts and narrowing the scope of the dispute so that any subsequent Tribunal hearing is briefer and less costly. Therefore, any process changes that help facilitate access to ADR and reduce the number of 'out of scope' applications[26] should be actively encouraged. Using ADR to reduce the topics for consideration by tribunal ie narrowing the areas of dispute could be considered in more cases including Judicial Reviews. HMRC need to allocate sufficient resources to it to ensure all applications are dealt with promptly and efficiently.

31.7 Any measures which currently limit the ability of taxpayers to have truly 'without prejudice' discussions on the mediation day should be reviewed and changed if possible. In particular, HMRC's position on 'tax facts' established in ADR needs to be reviewed. Further, HMRC should take steps to ensure that officers who are engaged in ADR are approaching the process with a mindset to resolve matters rather than as an opportunity to explain existing positions.

31.8 Additionally, some taxpayers would rather use ADR in person and are put off by mediations being online (eg via Teams) as is now the norm, for budgetary reasons. There should be a genuine choice as to whether to hold ADR online or in person. In person meetings can be very effective at demonstrating commitment to resolving a dispute and unlocking ideas for settlement as rapport can be built and difficult issues debated more effectively in person than virtually. Online meetings can assist where the taxpayer is unable to attend in person due to physical difficulties or location/timings. We would encourage a broader perspective to be considered, given the possibility that ADR can unlock a dispute without the need for litigation and therefore save very significant litigation costs.

32 Question 27: What are the merits and challenges of increasing take-up of statutory reviews and ADR with a 'recommendation and opt out' approach?

32.1 This approach sounds potentially interesting, and we think it should be explored further. At first glance it sounds simpler and more flexible than the current process. This would obviously need to be appropriately resourced by HMRC (including HMRC's Extra Support Team (EST)) but it appears to us that resourcing ADR processes ought to be a priority given the very significant costs involved in litigation.

32.2 The materials available to taxpayers on ADR and statutory review are fairly thorough but would benefit from a review. Some taxpayers consider them to be overwhelming due to their length and, in those cases, a telephone number should be provided so the person can talk to a member of HMRC's EST to have their options and the process explained to them instead.

32.3 Even if this suggestion is taken forward, we consider that the current option for direct tax appeals to opt for statutory review before one is offered should continue to be available and expanded to other taxes (see above) as it is an important safeguard.

[26] 268 cases rejected as being out of scope out of 1,013 applications for ADR in 2022-23 – see page 128 of HMRC's Annual Report 2022-23

32.4 The option for taxpayers to take their case straight to tribunal should be retained as some taxpayers simply want to go to Tribunal in order to get an independent decision from a judge, or in some cases it is clear that HMRC's position will not or cannot change (for example for specific policy reasons). In those circumstances ADR, in particular, is unlikely to be a good use of time as they would not be mentally ready to engage constructively with the ADR process.

33 Question 28: What are your views on the possibility of mandating statutory reviews in certain circumstances?

Question 29: Are there specific circumstances where you think it would be appropriate or inappropriate to mandate statutory reviews?

33.1 We think the possibility of mandating statutory reviews for certain cases should be explored further for fixed penalty appeals and cases where less than (say) £10,000 tax is in dispute. We foresee a risk that a mandatory approach could undermine trust in the system if the current percentage of decisions upheld continues, because (rightly or wrongly) taxpayers might feel they are being pushed into a process that will mostly benefit HMRC. This perception could be partially alleviated by increased education of what a statutory review is (for example by a fuller explanation of the process in or appended to decision letters and how to supply additional information to the review officer), so that people understand its limitations as well as its advantages.

33.2 Given the proposed scope of mandatory reviews, a greater proportion of the taxpayers who could benefit may be unrepresented. It is important that clear, effective guidance is provided to them.

34 Question 30: Would you have any concerns if HMRC were to withdraw the option of statutory review in some cases?

34.1 We do not think that HMRC should be able to withdraw the option of statutory review in some cases. It is not clear which categories of cases HMRC consider might not be subject to a statutory review and what the policy reasons for such a decision would be.

34.2 The HMRC Charter[27] specifically says that if you are not happy with/you disagree with a decision you can ask for a statutory review of that decision. In addition, the Charter says that HMRC will treat taxpayers 'fairly'. A fair system is where everyone has equal access to redress and justice within the tax system. Denying certain taxpayers the option of statutory review based on potentially subjective assessments of their behaviour, or the perceived merits of their appeal could be seen as unfair and discriminatory. A fair system should ensure that all taxpayers are afforded the same procedural safeguards and opportunities to challenge decisions made by the tax authority.

34.3 In addition, unless the category of case where statutory review is not to be provided is absolutely clear, there are likely to be problems in defining the categories, which could further complicate the process.

34.4 The detailed reasons letter provided at the end of a statutory review is sometimes the first time that the taxpayer receives a detailed explanation of HMRC's position. This helps taxpayers reflect on their case and obtain advice on the chances of success in the Tribunal and the costs of that option (in both time and money).

[27] https://www.gov.uk/government/publications/hmrc-charter/the-hmrc-charter

We consider it would be very difficult for HMRC accurately to predict which cases will be ones where the taxpayer intends to appeal further regardless of the outcome of the review.

34.5 Withdrawing statutory reviews in certain cases could also increase the Tribunal backlog. Not undertaking reviews could mean that HMRC lose the opportunity to identify and resolve mistakes made earlier in the compliance check process, thus entrenching them and delaying resolution of the dispute.

34.6 The Call for Evidence says that some taxpayers use statutory review as a delaying tactic. While we can envisage this happening in a minority of cases, HMRC should better articulate the scale of this problem. We would also point out that taxpayers can regularly experience delays in the review process caused by HMRC. As noted above, HMRC should allocate sufficient resources to ensure that they meet the 45-day deadline in the majority of cases, otherwise taxpayers' and agents' view of the process is undermined, and it may mean they are less likely to use it in the future.

35 Question 31: Are there other areas you think would benefit from alternative appeals channels (for example, digital)?

35.1 We support HMRC increasing the use of digital channels in modernising tax administration processes, such as a digital appeals process. However, it is important that such processes adequately cater for agents as well as taxpayers, and that provision is also made for the digitally excluded and those with particular needs who may need to use accessible versions of the forms. People should not be forced into using digital channels and requiring them to justify opting out may fall foul of the Equalities Act and Public Sector Equality Duty if they are opting out due to a protected characteristic eg health.

35.2 In Appendix Two we set out what we believe are the minimum standards which should be applied by HMRC when developing *new digital forms* to be used by taxpayers and agents. These cover consultation and testing with potential users, a period of familiarisation, providing clear instructions up front on how to complete the form and the information that will be required to complete it, the ability to save and return to a partially completed form, the ability to amend an entry and to provide additional explanations and to upload attachments. The ability to save and print/download a completed form. An automated receipt must be provided to prove that it has been successfully submitted.

35.3 In Appendix Three we set out what we believe are the minimum standards which should be applied by HMRC when developing *new digital systems* to be used by taxpayers and agents. These include the extent of digitalisation required to deliver it, consultation and testing with potential users, at least equivalent functionality with the non-digital system it replaces, seamless interaction with other HMRC systems, guidance on how to use it. There should be respect for agent authorisations, and agent access and functionality must be provided.

35.4 The call for evidence mentions that HMRC have recently created a digital appeal service to request statutory reviews of VAT late filing and late submission penalties. Whilst we welcome the introduction of a digital appeal service, we do have concerns about how good it is compared to using a paper appeal route because there are invariably restrictions on the data that can be entered, which is particularly key when needing to explain why the taxpayer considers they have a reasonable excuse. Other shortcomings include the fact that it is currently not possible for draft forms to be saved and returned to later (which is needed by both taxpayers and agents), and pdfs of final appeals cannot be downloaded. These shortcomings mean that some agents are not prepared to use the system. It will be important for HMRC to improve its functionality before further use is made of it.

35.5 It would be sensible to introduce an online appeals service to allow taxpayers to request statutory reviews of the new ITSA late filing and late submission penalties once they come into effect. In fact, there seems no reason why an online appeals service enabling taxpayers to opt for statutory reviews should not be introduced for all taxes. [There is already a separate online process run by the Tribunal Service for making appeals to the First-tier Tax Tribunal.] Separately, consideration could be given to introducing a digitised process for the initial appeals (currently just against direct tax assessments, where the compliance check continues to see if an agreement can be reached before HMRC issues a decision letter). Increasing alignment across the taxes would facilitate the streamlining and digitalisation of appeals processes. As noted above, such processes must adequately cater for agents as well as taxpayers, and provision must also be made for the digitally excluded and those with particular needs who may need to use accessible versions of the forms.

35.6 Communicating decisions via personal tax accounts and similar services is possible but given the 30-day deadlines to appeal, care must be taken to (a) provide for the digitally excluded and (b) ensure such notifications cannot be overlooked otherwise this will undermine taxpayer confidence in the tax system. ASA needs improved functionality before agents can engage directly in this way – it is common for disputes to be handled by a different agent to the one who filed the return, not least because of the PCRT rules. The ASA does not accommodate multiple agents at present.

36 Acknowledgement of submission

36.1 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

9 May 2024

APPENDIX ONE

HMRC POWERS & SAFEGUARDS

The CIOT's 10 principles against which HMRC's use of its powers[28] and safeguards and any proposed powers and safeguards can be compared

1. Consistent – powers and safeguards should be applied consistently across HMRC, taxes and taxpayers.

2. Fair -–powers should help build trust in the tax system and achieve a fair balance between the powers of the tax authority and the rights of taxpayers[29], whilst being effective in identifying and dealing with non-compliance.

3. Proportionate – powers should be proportionate to the mischief they are introduced to tackle, used in a fair and even-handed way and are not abused.

4. Evidence based – decisions about when and how to use a power or operate a safeguard must be based on the available facts and evidence.

5. Be targeted appropriately and used for the purpose they were introduced for - the policy rationale for the power or safeguard should be clearly articulated at the outset and later deviations only considered exceptionally and after consultation.

6. Certain – there should be certainty about when and how a power or safeguards will and can be used; it should be set out in statute, with easily accessible and understandable guidance to supplement it.

7. Simple - so the rules can be more easily understood by taxpayers, agents and HMRC officers.

8. Transparent and communicated effectively – so taxpayers, agents and HMRC officers can understand and are aware of what taxpayers need to do to comply with their obligations or to challenge HMRC decisions.

9. Regularly reviewed – powers and safeguards should be reviewed regularly to ensure they are up to date and being used appropriately.

10. Access to justice – powers and safeguards should be subject to appropriate oversight, including the right for taxpayers to challenge HMRC decisions via statutory review, tribunal appeal etc.

[28] HMRC's powers are wide-ranging and cover the ability to undertake compliance checks, obtain information and documents, make decisions, raise assessments, resolve tax disputes and apply interest and penalties. As well as civil powers, HMRC have powers to prosecute taxpayers where criminal behaviour is suspected but criminal law powers are outside the scope of this document.

[29] Fairness includes being inclusive. Taxpayers' rights include their rights to challenge HMRC decisions (eg via statutory review, tribunal appeal etc).

APPENDIX TWO

Minimum requirements for HMRC digital forms

We set out below what we believe are the minimum standards which should be applied by HMRC when developing new digital forms to be used by taxpayers and agents. In this regard we mean forms that have to be completed and submitted online, rather than forms which are available online, but are printed off and submitted by post.

Development of the form

1. Consultation and testing with a range of potential users of the form.

   New digital forms, and changes to existing ones, should be the subject of consultation and testing prior to their launch, to ensure they work as envisaged, meet the requirements set out below, and fulfil the policy objective. This should be carried out with represented and unrepresented taxpayers, and agents of different sizes. A *post-implementation review should be undertaken to assess whether it has met its policy objectives and identify any deficiencies or improvements that can be made.*

2. Government Gateway status

   There should be a clear policy, based on sensible rationale, as to whether a form is in front of or behind the Government Gateway. That policy should be applied consistently.

3. Allow time for familiarisation.

   Sufficient time should be given to allow taxpayers and their agents to adapt to any new processes, particularly for forms which require regular completion, or for users who complete similar forms regularly.

Completion of the form

4. A list of information required to complete the form.

   This will enable the user to easily identify all the information needed to complete the form, assemble it in advance, and prepare to complete it themselves or take advice. This is particularly important if it's not possible to progress through the form without fully completing the previous page. This will ensure that the form can be completed in an efficient manner, in one go.

5. Clear instructions for completing the form.

   There should be clear instructions on how to complete all the boxes on the form, particularly if it is necessary to complete fields with special characters, or enter 'nil' or '0' rather than leave blank, and how to digitally 'sign' the form. Links to relevant guidance should be provided throughout the form.

6. The ability to save and return to a part-completed form.

   This is necessary in case information requirements or other work prevents completion of the form in one go, or the form 'times out' after a period of inactivity, or the form needs to be checked by another party during the process of completion.

7. The ability to amend an entry.

   An easy process for amending an entry that is, prior to submitting, found to be inaccurate, will reduce the scope for error and improve the taxpayer experience.

8. The ability to upload attachments or provide additional explanations.

   Some processes require the provision of supporting documentation or explanations. It should be possible to do this as part of the process of completing the digital form, through the inclusion of attachments or 'white space' explanations. This will enable the complete package to be submitted to HMRC in one go, speeding up the process and reducing the risk of documentation going astray.

9. Sufficient character spaces to meet the requirements of the form.

   The form should provide sufficient space to provide all necessary information and explanations. Fields which require explanations – eg of behaviours or the interpretation of technical points – should be large enough to accommodate them in full.

10. The ability for an authorised agent to complete the form on behalf of the taxpayer.

    Not only is this a requirement of the HMRC Charter ('Recognising that someone can represent you'), but it will also facilitate more accurate and timely completion of forms for represented taxpayers. This should include the ability for the form to be accessed by more than one individual within a business or an agent's firm, to allow for access to be delegated. HMRC's systems should be able to efficiently and securely identify agent-taxpayer relationships, without them having to be resubmitted.

11. The ability to save a completed form.

    This will enable the form to be reviewed, to ensure it is correct and complete, prior to its submission, such as a client reviewing and authorising what their agent has input, or to allow for a manager etc to review the work of a more junior member of staff.

12. The ability to print a completed form.

    If it is not possible for a represented taxpayer to view the completed form online prior to submission, the ability to print it in full will ensure that the agent can obtain approval for its submission from the client. This is necessary because agents cannot normally submit information to HMRC without the client's prior approval. For unrepresented taxpayers, being able to print a form means the taxpayer can check the form off-screen, which is often easier and can help spot mistakes.

13. The ability for the digital form to correctly compute the tax due.

    Tax Returns and other forms which lead to a tax calculation must be able to cope with all tax computations. It should not be the 'norm' for there to be a list of exceptions where computers cannot do the calculations accurately, causing taxpayers/agents to have to print and post the form to HMRC.

Submission of the form

14. Clear messaging to explain what submission of the form means.

    Therefore, the person submitting the form is aware of the consequences of what they are certifying, what the next steps will be, and the consequences of incorrect/false declarations.

15. The ability to capture a copy of the submitted form.

    This ensures that the taxpayer (and, where appropriate, their agent) has a record of what was finally submitted – either by printing it or downloading and saving it. This might be important, for example, if the client requests a copy of the submitted form for their records, or in case of a subsequent dispute with HMRC.

16. A digital receipt or equivalent proof of submission.

    This evidences that the form has been submitted to, and received by, HMRC, and should record the date and time of submission, along with a submission reference number.

Necessary alternatives

17. Non-digital versions of forms for those who cannot interact digitally or find it difficult to do so.

    All digital forms should have a non-digital equivalent, to ensure those who cannot go online, or have difficulty doing so, are not disadvantaged when interacting with HMRC. These should be easy to obtain and include appropriate guidance to aid their completion. This will fulfil HMRC's Charter promises of 'being aware of your personal situation' and 'treating you fairly'.

18. Accessible versions of digital forms for those with particular needs.

    Digital forms should be accessible for those who can go online, but who have particular needs eg those who use screen readers. Again, this will fulfil HMRC's Charter promises of 'being aware of your personal situation' and 'treating you fairly', as well as complying with the Equality Act and meeting Web Content Accessibility Guidelines.

APPENDIX THREE

Minimum standards for the introduction of new HMRC digital systems

We set out below what we believe are the minimum standards which should be applied by HMRC when developing new digital systems to be used by taxpayers and agents. In this regard we mean digital systems and processes by which taxpayers and agents interact with HMRC to fulfil their tax obligations (examples include the VAT registration service, the Trust Registration Service, RTI reporting, the property reporting service, Making Tax Digital etc).

1. Policy development should consider the extent of digitalisation required to deliver it.

   Changes to the tax system invariably require the introduction of new, or changes to existing, digital systems. When developing tax policy, the consultation process should include consideration of how the policy will be delivered, a realistic evaluation of how long new systems will take to put in place, and the costs of development and ongoing compliance.

2. Consultation and testing of the digital system before its use becomes mandatory.

   New digital systems should be the subject of consultation and full end-to-end pilot testing process prior to their use becoming mandatory. Participation in testing should be voluntary, and encompass a variety of circumstances, including represented and unrepresented taxpayers, and both large and smaller agents. Systems should only become mandatory once this has taken place and any glitches rectified, so as to ensure they work as envisaged, meet the requirements set out below, and fulfil the policy objective.

3. The new digital system has at least the same level of functionality as the system it replaces.

   HMRC's ambition is to be 'the most digitally advanced tax authority in the world'. New systems should deliver against that ambition and introduce additional, improved functionality without removing that which exists already. Where the new system requires the completion of digital forms, we have separately set out the minimum requirements for such forms.

4. Interaction with existing HMRC systems is maximised.

   New digital systems should complement HMRC's existing IT infrastructure, pulling through information from existing systems, and seamlessly interacting with those systems. This will improve the overall 'customer experience', as well as improving accuracy and reducing costs all round.

5. Guidance is available on how to use the new digital system before it goes live.

   This will enable its users to make the necessary preparatory steps to their procedures and in-house IT capabilities so they can use the new system effectively and it can deliver the intended benefits and functionality. This should include step-by-step guidance and up-to-date screenshots or YouTube videos to aid understanding. Those testing the system should be able to access the draft guidance to ensure it supports them through the process.

6. The digital system should keep pace with legislative and policy changes.

   The digital system should be regularly reviewed and updated so that it reflects changes to legislative and policy requirements, so that its users remain compliant.

7. The new digital system should respect existing agent authorisations, and that a taxpayer may use different agents for different taxes/obligations.

   HMRC's Charter promises to 'respect your wish to have someone else deal with us on your behalf', which might include multiple agents for various taxes/obligations. Where that wish has already been granted for a particular area of tax, it should not be necessary to repeat that authorisation as a result of the introduction of a new digital system.

8. Agent access should keep pace with that for taxpayers themselves.

   One of the HMRC Charter promises is: 'Recognising that someone can represent you', and HMRC's vision is that agents should have access from the outset of new systems. This will ensure that taxpayers who have instructed an agent to deal with their affairs (a significant majority in some areas) do not miss out on the benefits of digitalisation, or are prevented from complying with their obligations.

9. Agent functionality to mirror that for taxpayers themselves.

   In addition to the Charter promise of 'Recognising that someone can represent you', HMRC's vision is for agents to be able to see and do what their clients can. Adherence to these undertakings will ensure that taxpayers who have instructed an agent to deal with their affairs (again, a significant majority in some areas) can do so effectively, thus promoting compliance and reducing costs.

10. HMRC staff are adequately trained and available to provide on-the-spot assistance.

    Even if all the above criteria are met, taxpayers and agents will need support from HMRC, whether to use the particular service (in which case a dedicated helpline should be considered), resolve glitches in the system, or those who simply need help to 'go digital'. HMRC must provide easily accessible and prompt support and recognise that non-digital channels (such as telephone helplines through to real, knowledgeable staff) will still have a role to play even as more and more services are moved onto digital channels, thus enabling compliance and reducing costs.

11. HMRC, taxpayers and agents should see the same information.

    While in some circumstances third party software will present information differently, where HMRC's systems are being used it should be possible for HMRC to see the same information in the same format as that seen by the taxpayer or their agent. This will enable HMRC to better support its customers and minimise the confusion which currently exists in many areas.

12. New digital systems should work for all affected taxpayers.

    All taxpayers faced with a particular obligation should be able to use the new digital system to comply. Groups of taxpayers (eg such as those based overseas, or without a National Insurance number etc) should not be left behind, or prejudiced, because HMRC's systems cannot accommodate their characteristics. Where there is a staged roll-out of obligations, the timescales and who is in/out of scope should be clear.

13. Non-digital processes for those who cannot interact digitally or find it difficult to do so.

    All digital processes should have a credible, non-digital equivalent, to ensure those who cannot go online (because of their inability to do so, or because HMRC's systems do not accommodate them), or have difficulty doing so, are

not disadvantaged when interacting with HMRC. This will fulfil HMRC's Charter promises of 'being aware of your personal situation' and 'treating you fairly', so those users do not receive a 'second class' service.

14. Accessible versions or characteristics of digital systems for those with particular needs.

Digital systems should be accessible for those who can go online, but who have particular needs eg those who use screen readers. Again, this will fulfil HMRC's Charter promises of 'being aware of your personal situation' and 'treating you fairly', as well as complying with the Equality Act and meeting Web Content Accessibility Guidelines.