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Improving HMRC's approach to dispute resolution: HMRC consultation[1]

Response by the Chartered Institute of Taxation

1 Executive Summary

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

1.2 We support the aligning of appeals processes between direct and indirect taxes, because it would help mitigate the confusion and misunderstandings that different rules, terminology and procedures currently create and would be of particular benefit in multi-tax disputes. We consider that it would be preferable to move all taxes onto the direct tax appeal process. This is because 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.

1.3 We do not support aligning the existing direct and indirect models in the way proposed in the consultation document, which is more akin to the indirect than direct model. The existing indirect process leaves little time for further discussion once HMRC have issued their formal decision, unless the review period can be extended (which is not straightforward). It is often the case that even at this stage there can still be uncertainty and misunderstandings over the facts, so it would have been beneficial if there had been more time to resolve these during the pre-decision stage. The direct tax model already accommodates further time for discussion between the parties with its 'initial appeal to HMRC' stage before the case moves to the formal 'view of the matter' stage.

1.4 There is the option within the direct taxes model for the taxpayer to opt for statutory review before one is offered so the dispute could still proceed to a formal appeal quickly if that is what the taxpayer wants. Additionally, the direct tax model can facilitate swift resolution of a dispute if HMRC have the information

[1] https://www.gov.uk/government/consultations/the-tax-administration-framework-review-improving-hmrcs-approach-to-dispute-resolution/the-tax-administration-framework-review-improving-hmrcs-approach-to-dispute-resolution

they need and can issue a view of the matter letter quickly. Adopting the direct tax model therefore seems to provide HMRC with flexibility to act efficiently in suitable cases and to take longer in other cases.

1.5 We support Alternative Dispute Resolution (ADR) as an important tool in the resolution of tax disputes and encourage any action which might improve the take-up and effectiveness of ADR generally. ADR can play a vital role in helping the parties to resolve their tax disputes without needing to go to the Tax Tribunal. We therefore support there being a requirement for HMRC and taxpayers to demonstrate they have considered other means of dispute resolution, but we question whether this needs to be prior to appealing to tribunal.

1.6 HMRC should endeavour to raise awareness of, and offer, ADR at every opportunity during the course of a dispute, pre- and post-decision. The process for applying for ADR should be as simple and straightforward as possible, while also maximising the likelihood that all appropriate cases will be accepted. HMRC could help their caseworkers to identify taxpayers who are most likely to be unaware of ADR by continuing to embed collaborative ways of working, including the use of mediation, into their internal training programme and internal and external guidance.

1.7 In terms of alignment of processes between direct and indirect taxes, the direct tax model which allows access to ADR without the need for an appeal to the tribunal to have been made seems preferable compared to the indirect taxes model which only permits applications for ADR once the taxpayer has appealed against an HMRC decision to the tribunal and has received an acknowledgement from the tribunal. This can trip taxpayers up and lead to them to applying for ADR too early and having their applications rejected by HMRC. HMRC should change its processes to hold an application for ADR in abeyance where it is received before HMRC are formally notified by the Tribunal Service that the taxpayer's lodged their appeal with the FTT, or alternatively, remove the requirement to notify the tribunal of an appeal first and insert ADR as another step in the process (like statutory review is now).

1.8 We do not agree with the suggestion of charging taxpayers for using ADR. This seems difficult to justify, particularly since HMRC do not charge for any other services and also because ADR can sometimes be needed because the compliance check was not conducted properly. Charging taxpayers for using ADR could be counterproductive and deter people from using it.

1.9 HMRC should ensure that any changes that are made to the design of online processes as a result of this consultation comply with the minimum standards we believe are essential when developing new digital forms and systems to be used by taxpayers and agents.

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 consultation seeks views on options for simplifying, modernising and reforming HMRC's approach to dispute resolution. It focuses on the ease of access and use of HMRC's ADR and statutory review processes.

3.2 Our stated objectives for the tax system 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.

4 Question 1: How should digital appeal routes for taxpayers looking to pursue dispute resolution with HMRC be designed?

Question 2: How could the dispute resolution process best be streamlined and integrated with digital services?

4.1 We understand from the feedback we have received from our members that the existing digital processes for applying for statutory review and ADR generally work well.

4.2 However there is one digital process that does not work effectively for tax agents. That is the online portal[2] for appealing late submission points and penalties and late payment penalties for VAT[3] and requesting a statutory review. The issues described in the next paragraph mean that it is not possible for agents to retain evidence of the appeal, which does not sit well with a tax adviser's obligations under HMRC's Standard for Agents or the Professional Conduct in Relation to Taxation (PCRT)[4].

4.3 In summary the issues are:

1. The lack of a 'save and retrieve' function – the process must be completed in one go.

[2] https://www.gov.uk/tax-appeals/penalty
[3] i.e those charged for VAT return periods starting after 31 December 2022By Finance Act 2021
[4] PCRT help sheet A: Submission of tax information and 'tax filings'.

2. There is no facility to print a copy of the appeal in either draft or final version, meaning that the agent cannot show their client the draft to approve the wording of the appeal before it is submitted to HMRC, eg what their reasonable excuse is.

3. Not all the usual grounds for reasonable excuse appeals are listed.

4. There is no facility to download and save a copy of what has been submitted to HMRC.

5. When submitted there is no automated receipt, IR mark or equivalent to evidence that the appeal successfully reached HMRC via the gateway. This makes is hard for agents to know if the submission was successfully received by HMRC and could result in appeals not being made on time (if the agent does not know the appeal bounced and needs to be resubmitted before the 30 day deadline expires).

6. This means that the agent does not have evidence of the appeal requesting statutory review, so they have an incomplete trail of evidence, which is problematic if the agent subsequently needs to appeal to the First Tier Tribunal (FTT).

4.4 We understand that some tax agents are choosing to appeal these penalties by post because of the deficiencies in the online portal, which is clearly at odds with HMRC's aim to increase the digitalisation of the tax system and reduce the amount of physical post.

4.5 We strongly recommend that HMRC address the issues that we have identified before this same deficient online process is introduced for Income Tax Self Assessment (ITSA) points and penalties when Making Tax Digital (MTD) for ITSA commences next April.

4.6 HMRC should ensure that any changes that are made to the design of online processes as a result of this consultation address and resolve the issues that we have identified with the existing process.

4.7 In terms of the design of digital forms, we set out in Appendix One 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.

4.8 HMRC say they are exploring showing statutory review and ADR progress in taxpayers' customer accounts. We do not believe that this will increase taxpayers' awareness and understanding of, or willingness to use statutory review or ADR, which we consider to be a greater priority, so if HMRC resources are limited we would not focus them on changing the online processes. If HMRC do decide to streamline and integrate dispute resolution processes in taxpayers' accounts, then in terms of its design, we set out in Appendix Two 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.

Statutory Review

5 Question 3: Does the model proposed provide a simpler process to resolve disagreements?
Question 5: Is there anything further this model could incorporate to provide a simpler process?
Question 6: Are there aspects of the current 'view of the matter' stage that provide benefits and should be retained?
Question 7: Would it be preferable to retain the initial appeal to HMRC while incorporating the rest of the proposed model where possible?
Question 9: What could be the unintended consequences of this suggested model?
Question 10: Are there any other aligned appeal processes, which improve access to dispute resolution, you think HMRC should consider?
Question 11: Should HMRC consider an initial review/alternative stage to the process where a decision has been automated?
Question 12: Are there particular taxpayer groups for who this reform would be best or ill suited, and why?

Note: Questions 4 and 8 are answered in paragraph 6 below

5.1 We have grouped these questions together because we have fundamental concerns with HMRC's proposed direct and indirect taxes aligned model (Diagram 3). Whilst we support the aligning of appeals processes across direct and indirect taxes, because it would help mitigate the confusion and misunderstandings that different rules, terminology and procedures currently create (and would be of particular benefit in multi-tax disputes), we consider that it would be preferable to move all taxes (including NIC) onto the direct tax appeal process (Diagram 1), not the indirect taxes appeals model (Diagram 2) or the proposed new model (Diagram 3).

5.2 The approach taken by HMRC in direct tax cases 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 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.

5.3 This is particularly the case where HMRC issue estimated discovery assessments during a compliance check in order to protect their position before assessment time limits expire. This will often be the case in complex multi-tax disputes, including those within Code of Practice 8 and 9. Once an appeal has been made against the assessment, 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.

5.4 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 the process, but we have also received feedback that the more flexible direct tax approach would be helpful, principally because the existing indirect tax process leaves little time for further discussion once HMRC have issued their formal decision, unless the review period can be extended (which is not straightforward). There is always the option within the direct taxes model for the taxpayer to opt for statutory review before one is offered so the dispute could still proceed to a formal appeal quickly if that is what the taxpayer wants. Additionally, the direct tax model can facilitate swift resolution of a dispute if HMRC have the information they need and can issue a view of the matter letter quickly. Adopting the direct tax model therefore seems to provide HMRC with flexibility to act efficiently in suitable cases and to take longer in complex cases.

5.5 Turning to the proposed direct and indirect aligned model in more detail, it is not clear if the 'pre-decision stage' would be mandatory or optional. We have received feedback that the existing indirect taxes pre-decision stage letter is not often seen in practice, with HMRC often moving straight to the formal decision stage (which as mentioned above leaves little time for further discussion). It is often the case that even at this stage there can still be uncertainty and misunderstandings over the facts, so it would have been beneficial if there had been more time to resolve these during the pre-decision stage (so as to reduce the time needed for any Tribunal appeal). This scenario is already accommodated for in the direct tax model with its 'initial appeal to HMRC' stage providing time for continuing discussions between the parties before the case moves to the formal 'view of the matter' stage.

5.6 We are also concerned that the proposed new model removes the taxpayer's right to request statutory review before it is offered. As noted above, this option within the existing direct taxes model provides for flexibility should the taxpayer wish to proceed to a formal appeal more quickly, perhaps because they consider that discussions with the HMRC caseworker have already reached an impasse and the case needs to be looked at by a fresh pair of eyes. The right for the taxpayer to request a review, and for HMRC to offer one, should be retained.

5.7 We consider that the process should be simple and harmonised for all taxes. We therefore consider that the same process should apply regardless of whether HMRC's decision was automated (see Question 11).

5.8 It is also unclear how HMRC would be able to issue a pre-decision letter at the same time as they issue a discovery assessment. Often HMRC will issue discovery assessments protectively to preserve assessment time limits before the full facts of the case have been established. Where estimated discovery assessments are issued, this appears to be a formal decision under Model 3 since HMRC's caseworker would not hold sufficient information to issue a pre-decision letter. This would push the case straight into an appeal process (statutory review or tribunal) before HMRC's Fraud investigation Service (FIS) or other case teams manage to conclude their factual investigation, thus impeding the conduct of their investigation.

5.9 Under Model 3, the concern is that HMRC will be prevented from issuing estimated discovery assessments to protect their position in their largest, highest value and highest risk compliance checks, thus potentially increasing the tax gap, simply because under the current direct tax model there can be many months (or years) following the issue of an assessment where HMRC lack the evidence to issue view of the matter letters.

5.10 The existing direct taxes model allows for the parties to continue discussions following the issue of the assessment. It also helps HMRC establish communication with those taxpayers who have up until then been uncooperative. It is not in the interests of either the taxpayer or HMRC to curtail this process. it would cause problems in how cases are managed and could potentially lead to more requests for statutory review, ADR and appeals to the tribunal, whereas many of those cases would now be settled by agreement following the initial appeal to HMRC.

5.11 It is helpful to illustrate how the current direct tax model works in complex cases with some examples:

5.12 Example 1: Mr A receives a letter from HMRC's Fraud Investigation Service (FIS) offering the Contractual Disclosure Facility (CDF/COP9) as HMRC suspect serious fraud but want to proceed using civil powers. Mr A accepts the offer, submitting an outline disclosure. After an interview and scoping meeting with Mr A's advisers, HMRC appreciate that Mr A has complex tax and financial affairs. The case is more complex than HMRC anticipated and there are at least ten tax risks to be considered but it appears that most of the mistakes probably occurred due to carelessness rather than deliberate wrongdoing so assessment time limits are six years from the end of the tax year for those mistakes. HMRC are concerned not to allow assessment time limits

to expire so the caseworker uses the information available to HMRC to issue estimated discovery assessments whilst they wait for Mr A's advisers to prepare and submit his disclosure report. Mr A appeals the assessments, continuing to work with HMRC. As Mr A falls ill during the process, the report's submission is unavoidably delayed. The complex, lengthy report is submitted 18 months after the scoping meeting. HMRC review the report carefully, asking further questions and discussing technical matters with HMRC technical specialists and Mr A's advisers. 48 months after offering the CDF, FIS are ready to issue view of the matter letters. But Mr A is happy to agree HMRC's position, so a contract settlement is entered into (s54 TMA 1970) covering all taxes, penalties and interest for all years and incorporating instalment payments.

5.13 Example 2: Mrs B receives an opening s9A enquiry for 2022/23 and confirmation that this will be conducted by HMRC WMBC's High Risk Wealth programme. HMRC's concerns include matters such as residence, domicile and trusts as well as several UK situs issues. HMRC form the view that tax is likely to be due for many previous years, for which they did not open s9A enquiries. The caseworker uses information available to issue estimated discovery assessments bearing in mind the 4, 6 and 12 year assessment time limits, protecting HMRC's position before time limits expire. Mrs B appeals all assessments, continuing to work with WMBC to providing factual information and documentation and discuss technical matters. It takes WMBC 55 months to complete the compliance checks and issue view of the matter letters and an enquiry closure notice, after governance board approvals (as set out in its Code of Governance for Resolving Tax Disputes). Overall HMRC considers £50 million tax is payable. Mrs B disagrees with HMRC's assessments and appeals to the FTT.

5.14 In both the above examples, it is many months before HMRC have enough information to issue view of the matter letters with any confidence. The proposed new process (Diagram 3) would not provide sufficient flexibility for HMRC to work these cases. The direct tax process (Diagram 1) provides flexibility, encouraging HMRC and the taxpayer to work together collaboratively (per the LSS) with a view to concluding on the tax due. This is supported by the inaccuracy penalty mitigation criteria (which also encourage engagement with the compliance check).

5.15 We would recommend that HMRC speak to senior operational leads in FIS and HMRC's WMBC's High Risk Wealth programme to understand the practical implications of these proposals on HMRCs ability to assess tax and tackle the tax gap.

6 Question 4: Would the model potentially improve access to statutory review and ADR where disagreements cannot be resolved in other ways?

Question 8: To improve access to ADR, would it be beneficial to remove the requirement to notify the tribunal of an appeal, requiring acknowledgement by the tribunal, which HMRC must then be notified about?

6.1 Perhaps the simplest way to reduce the number of instances where ADR applications are rejected simply because HMRC are yet to receive the notification of a Tribunal appeal, would be to alter the process so taxpayers have 30 days after a statutory review outcome (or decision, if the taxpayer is not using statutory review) to accept the review conclusion, apply for ADR or appeal to the FTT. If they apply for ADR then they should have 30 days to appeal to the FTT after the ADR concludes or the case is rejected for ADR.

6.2 Another option might be for HMRC to hold back ADR applications for which they are yet to get the appeal notifications, telling the taxpayer agent that they are waiting for the notification, and resume processing them when the appeal notification arrives (rather than outright rejection of ADR applications).

6.3 Alternatively, rather than waiting for the Tribunal's notification, the ADR application could simply have a tick box on it for the taxpayer to indicate that they've appealed to the FTT (where they are legally required to do so) and if the box is ticked then HMRC need not reject the application.

7 Further comments

7.1 HMRC must ensure contract settlements under section 54 TMA 1970 remain available for most taxes and consider expanding them to VAT, as they efficiently close disputes incorporating multiple years, taxes, penalties and time to pay arrangements thus saving taxpayers, HMRC and agents time compared to issuing multiple assessments and separately interacting with Debt Management to negotiate time to pay.

7.2 Finally, we consider that HMRC should concentrate on resolving issues with statutory review raised previously with a view to increasing taxpayers' and agents' willingness to use the process for cases which do not involve fixed penalties. Specifically, review officers should be prevented from contacting case workers and vice versa from when the taxpayer requests a review or one is offered by HMRC until the review is complete. HMRC should ensure that taxpayers know that they can submit additional information to review officers at the start of the process and facilitate this happening. HMRC should also devote more resources to statutory reviews as currently it is common for HMRC to need to extend the 45-day deadline (sometimes repeatedly for each appeal) to conclude the statutory review.

Alternative Dispute Resolution

8 Question 13: Should it be a requirement for HMRC and taxpayers to demonstrate they have considered other means of dispute resolution prior to appealing to tribunal?

Question 14: At what point in the taxpayer journey would it be best to make this consideration? For example, when a taxpayer is first informed about their statutory time limit to appeal to the tribunal.

Question 15: What would be the benefits and risks of such an approach?

8.1 We support ADR as an important tool in the resolution of tax disputes and encourage any action which might improve the take-up and effectiveness of ADR generally. ADR can play a vital role in helping the parties to resolve their tax disputes without needing to go to the Tax Tribunal. The high resolution rate is strong evidence of the benefit of using mediation to resolve a tax dispute – for all parties involved. We therefore support there being a requirement for HMRC and taxpayers to demonstrate they have considered other means of dispute resolution, but we question whether this needs to be prior to appealing to tribunal in all cases (particularly as indirect taxes cannot use ADR before a Tribunal appeal is made at present).

8.2 In our view, so long as HMRC and the taxpayer can demonstrate they have considered ADR (even if they conclude that the case is not suitable for ADR), this should be sufficient whether this is before or after appealing to the tribunal. In addition, it is not clear why it is necessary for there to be a single point in the taxpayer journey when it would be best to make this consideration, particularly because of variations in compliance check processes, case conduct and taxpayer's circumstances. After all, once the taxpayer has made

an appeal to the tribunal and has received an acknowledgement, they can apply for ADR at any time up until the tribunal hearing – and they should be encouraged to do so.

8.3 The benefits of such an approach would potentially be an increase in successful applications for ADR and an increase in the resolution of disputes which might otherwise have gone to the tribunal. The risks are that HMRC do not have the resources to deal with an increase in applications for ADR.

8.4 The consultation document does not say what the consequences would be for either HMRC or taxpayers if they failed to demonstrate that they considered ADR in suitable cases, but perhaps this is addressed by recent announcements from the tribunal regarding costs awards (see below).

8.5 There is currently no obligation in tax legislation on either party to a tax dispute to engage or consider mediation. However, as the consultation document notes, the tribunal must bring to the attention of the parties the availability of alternative dispute resolution procedures and to facilitate their use.[5] The clarification in June 2020 by Judge Sinfield (Chamber President) of the First Tier Tribunal (FTT) under Rule 3 regarding the circumstances in which ADR could be used in tax disputes even after an appeal has been made[6] was very useful. However Rule 3 stops short of requiring parties to consider and engage in mediation (the Tribunal cannot compel the parties to undertake ADR) and there is no procedure in place for testing whether the parties have given consideration to its use at any time in the 'journey' of the tax dispute, nor any sanction for a party failing without good reason to engage in ADR.

8.6 The FTT has recently issued an updated Practice Statement encouraging the use of ADR in the management of tax disputes which builds on the earlier Practice Statement published in June 2020. The 2025 Statement includes a new passage on costs in relation to ADR and provides that '*an unreasonable failure to consider or enter into ADR may, in an appropriate case, result in costs being awarded against a party or in a party recovering a lower proportion of their costs*'. This reinforces the existing position (eg in *Cannon v HMRC* [2018] UKFTT 160 (TC), the FTT decided it was unreasonable for HMRC to decline to engage with the taxpayer with a view to settlement.

8.7 A requirement for HMRC and taxpayers to demonstrate they have considered ADR before appealing to the tribunal would support what the tribunal has already been doing to encourage greater use of ADR in appropriate circumstances.

9 Question 16: Including current provisions on ADR exclusions, what criteria would be most appropriate to refer taxpayers to ADR without overwhelming resource and capability?

9.1 Figures published in HMRC's Annual Report[7] indicate that there are many applications for ADR which are rejected. In 2023/24 there was a total of 1,309 applications, with 512 cases accepted into ADR. 334 cases rejected by HMRC governance panels and 326 rejected as being 'out of scope'. A similar position occurred in the previous year.

9.2 It is disappointing that so many taxpayers wanting to use ADR are having their applications rejected. We recognise that some of these people may be applying too early in the process (before they have appealed to

[5] r.3(1)(a) Tribunal Procedure (First-tier Tribunal) (Tax Chambers) Rules 2009/273.
[6] https://www.judiciary.uk/wp-content/uploads/2020/06/200615-FTT-Tax-Chamber-Practice-Statement-on-ADR-1.pdf.
[7] HMRC's Annual Report and Accounts 2023/24 Table 14 page 119
https://assets.publishing.service.gov.uk/media/66a8ebc349b9c0597fdb0784/HMRC_annual_report_and_accounts_2023_to_2024.pdf

the tribunal) and may go on to reapply successfully, but HMRC should evaluate the criteria they use to decide whether an application should be accepted or rejected and actively try to bring more people into the process. We are also concerned that the potential for rejection might be putting some taxpayers off from applying and deterring agents from recommending ADR to other clients.

9.3 We understand that HMRC are in the process of moving from an 'out of scope' list to a more principled based approach within ADR. We hope that this will result in more applications being accepted by HMRC and look forward to continuing to engage with them on this as the new approach is rolled out.

9.4 Given ADR's potential to unlock and resolve disputes (either wholly or in part), and the tribunal's desire to encourage more use of ADR, HMRC should devote sufficient resources to cope with an increase in demand for ADR. Ultimately, ADR is a more cost effective means of settling disputes for both taxpayers and HMRC than taking a case to tribunal.

9.5 An increasing use of ADR could help free up precious tribunal and judicial time to enable those cases that cannot be resolved through mediation or are not suitable for mediation to be processed and heard more quickly. Increasing use of mediation in tax disputes could potentially make a significant contribution to tackling and reducing the number of outstanding appeals at the Tax Tribunal.

10 Question 17: How can we best identify taxpayers who are most likely to be unaware of ADR as an effective dispute resolution tool?

10.1 Unrepresented taxpayers are least likely to be aware of ADR, compared to those who have an adviser helping them with their dispute. Having said that, unless an adviser is a specialist in dispute resolution, they may also not be aware of ADR and/or the role it can play in helping to resolve disputes.

10.2 In our view, the use of mediation to resolve tax disputes can be very successful. Increasing the scope and awareness of it amongst both taxpayers and within HMRC could be effective at reducing the number of disputes reaching the Tax Tribunal, thereby relieving the pressures on the Tribunal Service and saving costs for HMRC, as well as taxpayers. Even if a case is not settled in full through ADR, it still helps to reduce the number of issues to be considered by the tribunal.

10.3 HMRC should endeavour to raise awareness of, and offer, ADR at every opportunity during the course of a dispute, pre- and post-decision. The mindset should be 'why not ADR' rather than, as appears to be the case at present, 'why ADR'. HMRC should mention it to all taxpayers whose compliance checks are ongoing for (say) more than 18 months and set out the options for ADR when issuing all view of the matter letters. The process for applying for ADR should be as simple and straightforward as possible, while also maximising the likelihood that all appropriate cases will be accepted.

10.4 HMRC could help their caseworkers to identify taxpayer who are most likely to be unaware of ADR by continuing to embed collaborative ways of working, including the use of mediation, into their internal training programme and internal and external guidance.

10.5 In terms of external guidance, particularly aimed at the unrepresented taxpayer, HMRC could consider expanding their interactive compliance guidance tool to cover ADR and reviewing whether there is the potential for a YouTube video on the subject. Flat guidance could be expanded to include examples of how

ADR can help in resolving cases, perhaps drawing on examples of the types of cases that end up at the tribunal which could potentially have been resolved earlier through ADR.

11 Question 18: What types of impasses or queries best suit a referral to ADR?

11.1 ADR can be used successfully to provide clarity on the facts of the case under dispute and how tax legislation and/or policy applies to those facts. During the course of a tax dispute, it can be common for misunderstandings on both sides to occur which can become entrenched leading to a position of impasse. ADR can help break this impasse.

11.2 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 issues for litigation, thus reducing the time needed for the FTT hearing (and preparation for it). We note that the 9 May 2025 FTT Practice Statement encourages the use of ADR to make litigation more efficient with the objective of saving time and cost and ultimately helping reduce delays. The Statement also makes it clear that unreasonable failures to consider or undertake ADR may result in costs being awarded against a party or a party recovering a lower proportion of their costs.

11.3 Many disputes and entrenched positions develop solely as a result of misunderstandings of fact, law and the failing of one party fully to appreciate the position of the other party (and sometimes of their own). Often tax disputes can become confused as being down to a point of policy whereas if the HMRC officer understood the facts better they would see it was not a policy point and that an answer can be arrived at within HMRC's Litigation and Settlement Strategy (LSS).

11.4 Although it is perfectly possible for both sides in a dispute bilaterally to work out the causes of it, it requires a common approach and willingness by all to find a solution. This can be an impossible challenge if entrenched positions have already been taken; especially if the principal cause of the dispute is a breakdown in the working relationship. Mediation can help, often quite quickly, to identify what issues lie behind positions being taken which often gives a real opportunity to help reconcile apparently irreconcilable differences; an opportunity not open to the court process. The presence and assistance of a trained and experienced mediator can significantly facilitate the negotiation process and increase the prospects of success. Additionally, in some cases, the discussions with and explanations by HMRC during mediation can help taxpayers feel that their position really has been properly heard and considered by HMRC and can help taxpayers understand the rationale for HMRC's position such that the taxpayer then accepts HMRC's position, avoiding the need to continue the dispute.

11.5 There are some tax disputes that are currently excluded from ADR that we think would benefit from being included. Some of these eg 'basic' and 'default' cases will particularly affect unrepresented and / or low income taxpayers because they are likely to involve low value appeals, such as appeals against late filing penalties of over (say) £1,000 or £5,000. Mediation could help these types of cases which would otherwise end up at the Tax Tribunal, which is likely to be a daunting prospect for an unrepresented taxpayer. Indeed many taxpayers in this category may decide not to pursue their appeal for that reason. This strikes us as an 'access to justice' issue.

12 Question 19: What points within the taxpayer journey are best to refer a taxpayer to ADR?

12.1 The direct tax model, which allows access to ADR without the need for an appeal to the tribunal to have been made, seems preferable compared to the indirect taxes model which only permits applications for ADR once the taxpayer has appealed against an HMRC decision to the tribunal and has received an acknowledgement from the tribunal. This can trip taxpayers up and lead to them to applying for ADR too early and having their applications rejected by HMRC. The direct tax model can be helpful to allow points in a complex case to be discussed and mediated before the case goes through the governance board(s), following which a view of the matter is issued.

12.2 Existing rules permit the postponement of direct tax liabilities before the tribunal hears the taxpayer's appeal but for indirect taxes the payment of the tax must be made before the appeal is heard, subject to a hardship application. Hardship applications can significantly delay the ADR process because they can take many months to be approved. Some thought should be given to how to accelerate the ADR process where a hardship application has been made. HMRC could consider allowing more circumstances where the payment rules for indirect tax could align with those for direct taxes, thereby reducing taxpayer, HMRC and tribunal time and costs in dealing with hardship claims and appeals.

13 Question 20: Are there other approaches for an ADR consideration requirement that HMRC could consider?

13.1 It would be helpful to know whether HMRC have done any evaluation of online ADRs to assess how they are working compared to those conducted in-person. We consistently receive feedback from our members that in-person ADRs work much better than those conducted online and that they and their clients would prefer to do them in-person.

13.2 However, since COVID HMRC have moved the majority of ADRs onto Teams and this seems to be the norm now. It is unusual for an ADR to take place in person, unless there are extenuating circumstances, such as the taxpayer (or agent) having special needs which make it difficult for them to participate in an online meeting. We appreciate of course that there will be additional costs attached to in-person ADRs, but given that many advisers consider they work better (ie are more likely to resolve the dispute or reduce time at Tribunal), we think that HMRC should at least publish some evidence to justify continuing to do the majority of them online.

14 Question 21: Is it feasible for HMRC to charge the taxpayer for using the ADR service?

14.1 No, we do not agree with this. It is very difficult to justify charging taxpayers for using ADR, particularly since HMRC do not charge for other services like statutory reviews. Charging taxpayers for using ADR could also be counterproductive and deter people from using it.

14.2 Additionally, our members tell us that taxpayers often apply for ADR because the compliance check was not handled properly. For example, the case worker refused requests for meetings that the taxpayer wanted because they were concerned the case worker had misunderstood crucial facts or law, thus drawing inappropriate or incorrect conclusions. This has been an issue in recent HMRC investigations into R&D claims - in some cases fact-finding meetings ahead of the ADR have resulted in the ADR not being needed. In some other cases the taxpayer perceives that HMRC have a predetermined preferred outcome rather than HMRC starting with an open mind, which then affects the conduct of the compliance check. Charging for ADR in these circumstances would be inappropriate as HMRC would be charging the taxpayer for a process to rectify inadequacies in HMRC's work.

14.3 If taxpayers are not engaging with ADR now in large numbers, whilst there is no charge, it seems even less likely that they would engage with it if there was a fee for using it (particularly since cost considerations are already a key issue given that ADR is rarely covered by fee protection insurance policies). Indeed for some taxpayers a charge would be unaffordable, leading to potential issues or allegations that HMRC are operating a two-tier dispute resolution process where those who can afford it have more option to resolve their dispute without going to Tribunal.

14.4 Perhaps some thought should be given to whether it might be appropriate to offer some kind of means-tested financial assistance to taxpayers whose case would benefit from ADR but who are unable to use it due to concerns about the cost.

14.5 Some taxpayers may perhaps be willing to pay for a single external CEDR qualified mediator if HMRC allowed them to use an independent mediator for the ADR rather than a mediator who is employed by HMRC.

15 Acknowledgement of submission

15.1 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

3 July 2025

APPENDIX ONE

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.

<u>Submission of the form</u>

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 TWO

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.