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The tax administration framework: Supporting a 21st century tax system - HMRC call for evidence

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 19,000 members, and extensive volunteer network, in providing our response.

1.2 We support this broad review of the UK's tax administration framework which we believe is long overdue. We strongly agree with the government that we need 'a tax system that is fit for the challenges and opportunities of the 21st century'. Much of the existing framework was designed during the last century and is not fit for purpose for the digital age.

1.3 We are pleased that this is going to be a ten-year project but we would have liked the review to have focussed more on the end goal. In other words, what sort of tax system do we want to have in place by 2031 and how do we get there? Once there is a clearer picture of the end goal, we would then recommend drawing up a roadmap setting out the stages of the journey to reach that goal over the next ten years.

1.4 We would urge the government not to design a new tax administration framework around a flawed and complex existing tax system. The ten-year strategy would be much improved if the government took a more holistic approach and first addressed some of the key underlying problems with the UK tax system such as removing the differences in taxation of income from employment and self-employment so as to eliminate the tax incentives to move from employment to self-employment. Once fundamental issues like this are addressed, a clearer picture will emerge of how the tax administration framework can support a reformed tax system.

1.5 The UK has one of the most complex tax systems in the world. We think that simplifying the tax system needs to go hand in hand with reviewing the tax administration framework. Our concern is that if we just accept that we have a complex tax system and focus on trying to make it easier for people to interact with it by designing a framework and processes around it, it risks hiding the complexity from taxpayers who become more and more detached from it and less and less likely to understand it. We can see now with the

proliferation of disguised remuneration tax avoidance schemes how this detachment and lack of awareness of how tax rules work and lack of understanding of their own tax affairs can have serious, even life-changing, consequences for taxpayers. (We acknowledge elsewhere in our response that there are areas where the problem is not (or is not solely) over-complex legislation and the issue is apparently more one of resources).

1.6 We support the objectives for the tax administration framework as set out in Box 2.2 on page 12 of the Call for Evidence. These are very similar to the CIOT's five objectives for the tax system as set out in para 3.2 below. We would like to see the government commit to sticking to these principles during the course of the review, including when introducing legislation on any new tax measures that have an impact on the tax administration framework during the next ten years. If they do not stick to these principles this will undermine the commitments and purpose of the framework review. Given that the review will outlast the current Parliament (and probably the one after), we would encourage the government and HMRC to build consensus and cross-party support for proposals for reform that emerge from the review.

1.7 Significant changes to the current tax system are due to be introduced very soon. There is less than two years before Making Tax Digital for ITSA is mandated in April 2023. This introduces digital record keeping and quarterly reporting obligations for taxpayers with trading and property income above a £10,000 threshold. There is also a new late filing and late payment penalty regime for income tax, capital gains tax and VAT being introduced from April 2022. These are both significant changes, and it is hard to see how they will be successfully and smoothly integrated into the existing self-assessment and penalties frameworks. Ideally, we would have liked the ten-year review of the tax administration framework to be done first, not overlapping with the introduction of MTD and a new penalty regime. There is the risk that any changes to the framework will just end up tweaking what is already in place rather than making any big structural changes. Big projects are expensive and will not get off the ground without buy-in from business, so the sooner decisions are made and the longer the lead in times the better.

1.8 The existing tax administration legislation is spread over several Finance Acts and other Acts including the Taxes Management Act (TMA) 1970. It is essential that the eventual outcome results in the replacement of all existing legislation by a new Taxes Management Act, which will also contain the legislation underpinning the new tax administration framework that results from the process which this Call for Evidence is beginning. 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.

1.9 The tax administration framework is wider than simply the legislation on which it is based. It includes the systems and processes that HMRC use to administer the framework, and HMRC's guidance and communications which support and explain the law. Our response considers all of these areas.

1.10 It is significant that much of the feedback we have received from our volunteers and members about problems with the tax administration framework concerns not the legislation underpinning the framework (although there are undoubtedly issues with that which we highlight in our response), but HMRC's processes, systems, communications and guidance. We think significant progress can be achieved by making improvements in these areas, including to HMRC's service standards, to help reduce burdens on taxpayers and build trust in the tax system. We are conscious however that any suggestions we make are dependent on the investment being available to reform and improve HMRC's systems and to increase HMRC's resources. This is why we need a roadmap as big system changes need long lead in times and the costs and benefits need to be carefully analysed in advance. As mentioned already, we would not want to see improvements to systems being made without also addressing the complexity, where it exists, of the underlying legislation.

1.11 **Chapter 3 Ensuring consistent obligations for people to enter and exit the tax system** – we broadly agree with HMRC's aims here. Registration requirements and processes should be as consistent and simple as possible. We have identified that the main difficulties with the current systems of registration and deregistration lie mainly with how HMRC process applications, how their systems support applications for different taxes and how taxpayers interact with HMRC's systems. It can often take a long time to obtain a registration number, such as a Unique Taxpayer Reference (UTR) or VAT registration number, and in the meantime a taxpayer cannot file returns or pay the tax they owe. There should be a single system for taxpayers to use to register and deregister for different taxes, to track the progress of applications and appoint one or more agents. We also think the Government should explore the wider use of a single taxpayer identifier number which a person would use for all interactions with Government, not just HMRC. A single taxpayer identifier number has some attractions but also raises a number of ancillary issues which would need to be considered carefully. In our view, improvements to processing and HMRC's systems in the area of registration and deregistration should be looked at in the first instance before considering any legislative changes to the timing of registration.

1.12 **Chapter 4 Improving the way tax liabilities are calculated and assessed** – most issues here stem from the legislation and case law for each type of tax. HMRC and the Government should take the opportunity to simplify the law in this area where possible, for example by reviewing the adjustments that are required to establish a tax liability, reforming basis periods and changing the UK's tax year. This is a golden opportunity to 'think big' about modernising the UK's tax system and for the Government to consult on moving the tax year from 5 April – either to 31 March or 31 December. Better and more timely use of taxpayer and third party data should be explored as this will help with the calculation of tax liabilities and drive compliance. A single customer account should be developed where taxpayers can see their tax liabilities in one place, and which could reduce the need for taxpayers with simple affairs to have to complete an annual self-assessment tax return. Authorised agents must have access to the same information that their clients have in their digital accounts, and at the same time. However, the position of multiple agents also needs to be covered and care needs to be taken where individuals have different capacities (for instance personally or as a trustee).

1.13 **Chapter 5 Using data and information to make tax compliance effortless for the majority –** HMRC should develop a rigorous and secure system for collecting and using data from third parties to pre-populate a taxpayer's digital record, tax return etc, with full consultation and a roadmap and timeline setting out each stage of the journey. More timely use of real time data and information should be explored which could help build a picture of a taxpayer's tax position, but this needs a cautious approach since much of the UK's tax system works in arrears, not in real time. There should be rigorous safeguards introduced so that taxpayers know what data and information about them is being collected by HMRC and have the right to challenge and correct it. The effort to make tax easier for the majority (which we support) should not, however, be at the expense of forgetting some of the more complex aspects of the tax system, even though they may only affect a minority.

1.14 **Chapter 6 Tax payments and repayments** - most of our comments on payments and repayments are connected with HMRC's processes and systems not currently working efficiently, rather than issues with the underlying legislation. It would be helpful, for example, if HMRC could introduce a better payment system for taxpayers to use to make payments to HMRC in order to avoid the problems often encountered at the moment, such as using the wrong reference number or bank details which means that payments end up in the wrong place and cannot be matched with the correct liability. It should also be made easier to arrange set-offs of under- and overpayments between different taxes. Taxpayers may find it easier to make regular, more frequent or earlier payments (if they want to) if they have a single view of their tax liabilities and

payments in one place, for example in a new single customer account, so we think HMRC should explore this further alongside a commitment for the same information to be available to agents.

1.15 **Chapter 7 Building in effective methods of verification, sanctions and safeguards to promote compliance -** 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 10 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. As with previous chapters, many of our comments in this chapter concern not just the legislation underpinning HMRC's powers, sanctions and safeguards, but HMRC's processes, systems, communications and guidance in relation to those powers, sanctions and safeguards. One area of concern is that it is difficult 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 enquiry period. Discovery assessments beyond these time limits are appropriate where HMRC genuinely newly discover something about a taxpayer, but too often are currently used to cover-up failures by HMRC properly to act on information which they already have within the enquiry window. Another is that most taxpayers simply do not comprehend the different avenues HMRC have to challenge tax returns. These differ depending on the tax in question. Trust in the tax system would be enhanced by simplification and by harmonising rules for challenging tax returns across all taxes. Then there are often delays in the enquiry process meaning tax disputes can sometimes take many years to resolve which erodes trust in the tax system. We also note that there are several areas involving penalties that are problematic, and we highlight some particular issues with various aspects of legislation in the area of compliance and administration that we think need to be addressed.

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 This call for evidence seeks views on how the tax administration framework could be reformed as part of the Government's commitment to creating a trusted, modern tax administration system. The Government is seeking views on how legislation underpinning HMRC's administration of the tax system could be updated to provide a better experience for individuals and businesses, enable opportunities to further reduce the tax gap, and help build greater resilience and responsiveness to future crises.

3.2 The CIOT's stated objectives for the tax system which are all highly relevant to the topics explored 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 In this response we have sought to answer each question posed by the Call for Evidence, but there is likely to be some overlap between the difference sections and questions, meaning that the answers to individual questions should not be considered in isolation but in the context of the Call for Evidence generally.

3.4 This response supplements the comments we provided to HMRC in six workshops held during June and July 2021.

3.5 We look forward to continuing our engagement with HMRC on their review of the tax administration framework as it develops over the next ten years.

4 Contents

Chapter 2 Reviewing the tax administration framework

5 Q1. Are there reforms which HMRC should focus on for the framework review? Which changes should we prioritise to drive improvements in the taxpayer experience?

5.1 Chapter 2 of the call for evidence seems to reinforce HMRC's misunderstanding of what taxpayers do and why. We need to step back and think more about where we all want to get to and with which underlying tax rules (not just with what we have now) and work out how to get there. Otherwise there is a risk of repeating the problems with the 2005-12 Powers and Safeguards review, which was thorough but had no budget or remit to change the underlying tax system, so reinforced existing problems, such as the employee / self-employed divide – despite good consultation at the time. All the areas listed for review on page 9 were looked at in 2005-12 and will only emerge with a good result this time if the underlying tax system is addressed.

5.2 The increase in self-employment is mentioned on page 9 as if it was merely due to lifestyle changes, yet – while lifestyle changes are undoubtedly part of this - much of the rationale is due to the significantly different ways people are taxed and the onus on employers in terms of employer duties and liability. Building a system around more people being self-employed is not going to solve the latter issues.

5.3 The age and complexity of legislation mentioned on page 10 of the call for evidence is a problem. Maybe this is because the system is being developed as an onion, with more and more layers, rather than looking at what is causing the underlying problems, sorting those and then having a simpler administration system around it.

5.4 Current tax administration law is fragmented and spread across multiple Acts of Parliament. As we have already noted, we think it is essential that the eventual outcome of this review results in the replacement of all existing taxes management legislation by a new Taxes Management Act. We recall that tax administration law was due to be reconsolidated in the noughties in a new Management Act, but work on this stopped because as fast as HMRC started to look at it more powers were brought in. We anticipate that this could be a problem with the present framework review unless there is a very strong commitment to reform and consolidation.

5.5 We recommend that HMRC consult on changing the UK's tax year as part of this review of the tax administration framework (following up on the work already in progress through the Office of Tax Simplification (OTS). The Framework Review is a golden opportunity to 'think big' about modernising the UK's tax system and, in our view, it would be a missed opportunity for the Government not to seriously look at moving the UK's tax year to either 31 March or 31 December. Retaining a 5 April tax year end makes little sense in today's global world.

5.6 Harmonising legislation and processes across taxes should be considered. Processes for corporation tax, PAYE and VAT compliance checks, assessment, payment and appeals should be aligned, with any deviations kept to a minimum and only for clearly defined reasons. This would mean that taxpayers find it easier to get familiar with the processes and to use them. Simple and familiar processes should increase compliance with and trust in the tax system. However, we would accept that some taxes will – through their very structure – inevitably require some processes to be different. Inheritance Tax would, perhaps, be a good example which should not be straight-jacketed into a harmonised process simply for the sake of uniformity. There should, perhaps, be a presumption in favour of a harmonised system, but with recognition that there may need to be ongoing exceptions.

5.7 At risk of stating the obvious, HMRC need to 'solve the basics', eg like processing VAT registrations and repayments claims on a more timely basis; otherwise it will be difficult to build public interest in and support for the rest of the ten-year journey.

5.8 We agree that the calculation and payment of tax should be as effortless as possible for personal taxpayers (page 11 of the call for evidence) but, again, this would be easier if the underlying rules were simplified, eg employment and self-employment taxed in the same way.

5.9 The Government should reduce the inequality issues for the digitally challenged by developing a national education and hardware programme for the 'left-behind' and those due to leave school to educate them about basic tax and digital transactions with Government and third parties such as banks, ensuring they have secure access to the internet, so that digital channels can develop with minimal concern for how this group will have access. Ensuring that this happens would allow more interactions to be digitised and improve the efficiency of the tax system. But ignoring this significant group would widen the digital divide and make further digitalisation problematic.

6 Q2. Where is the tax administration framework creating challenges to the trust that taxpayers place in the tax system and HMRC's administration of it? How could the framework be reformed to address these challenges?

6.1 There can be an over-reliance by HMRC on its software and automated systems to get things right. However, HMRC systems are not always consistent with 'letter of the law'. This erodes trust in the tax system. The call for evidence gives two examples of recent legal challenges (see Box 2.1 of page 10 - voluntary tax returns and penalties for filing a return late) which led to amendments to legislation needing to be made. Interestingly, this demonstrates that challenges to the existing system have not stopped HMRC updating the legislation where they have needed to and arguably they could just continue to do this going forward as and when further challenges arise. However, in our view this is just papering over the cracks and not a sustainable approach.

6.2 Other examples which demonstrate where HMRC's practice is not consistent with the law, and hence the complexity of the current tax system, are:

i. Cases where HMRC's computer system has not been able to demonstrate certain actions happened eg whether a notice to submit a return has been issued[1].
ii. The extensive exclusions list[2] for online filing of SA tax returns each year.
iii. The process for offsets of CGT overpayments in respect of property disposals reported via HMRC's 30-day reporting service where HMRC's systems cannot currently deal with what the legislation requires and allows[3]. We reference this at para 18.4.

These examples demonstrate the complexity of the current tax system and the costs in terms of time and resources in sorting out things that have gone wrong. It also shows that when a new rule or process is being developed and consulted on, more thought needs to go into how the system, in particular the digital system, can be designed and implemented to ensure not only that the rule or process works in practice but also that

[1] Pantelli TC6929 – no proof that notice to file dispatched, burden of proof on HMRC. Also A Galliara TC 06431.
[2] Self-Assessment Individual Exclusions for online filing – 2020 to 2021 https://www.sa2000.co.uk/2021-exc-indi.pdf
[3] https://www.tax.org.uk/cgt-on-property-30-day-reporting-issues-process-for-offset-of-cgt-overpayment

it is consistent with the law. This needs to be considered much earlier than it is now and before legislation is drafted. If it appears that a new rule or process will not easily be integrated within existing systems (or updated systems following this framework review) and be consistent with the law this should be a 'red flag' to prompt a rethink of the proposal.

6.3 When there is inadequate consideration to how a policy is implemented digitally, this creates administrative and cost burdens for taxpayers. One example is the difficulties trying to incorporate recent changes to the employment allowance into payroll processes due to having to report state aid. Additional problems are caused by HMRC not producing full specifications early enough (a recent example is the in-year charge of Class 1 National Insurance (NIC) on termination payments). Another example are the problems with the Worldwide Disclosure Facility (WDF) and digital disclosure facility (DDS), which are being discussed with HMRC following the recent Evaluation of the Implementation of Powers and Safeguards since 2012[4]. One of the issues with the WDF is that the online system restricts information submission so much it is impossible in many cases for taxpayers to submit a complete disclosure to HMRC through it. More information must be submitted separately and matched up. This causes extra costs for taxpayers and means HMRC spend more time matching up the information. Another example is the 30-day CGT reporting service as mentioned in the previous paragraph.

6.4 The high income child benefit charge (HICBC) is a good example of a tax that was introduced without enough regard to how complex it was going to be to design it into the current tax administration framework (and hence how easy it would be for people to understand it and comply with it), because there is no interaction between the PAYE and SA systems in HMRC or with other Government departments. There has been significant non-compliance with the HICBC leading to many taxpayers suffering penalties leading to a loss of trust. A large number of HICBC penalties were cancelled or refunded by HMRC[5] accepting that taxpayers had a reasonable excuse. This is surely an indicator of the complexity of the charge and lack of awareness amongst taxpayers. Recently, HMRC's power to assess the HICBC on taxpayers who have failed to report it on a self-assessment tax return has been rejected by the Upper Tribunal in its decision in the case of Jason Wilkes[6] which held that the discovery assessment provisions[7] cannot be construed as extending to the HICBC. Yet, child benefit claims data is data that the Government holds and problems could have been avoided by automating the systems by joining up tax and benefit data and HMRC automatically imposing the HICBC once people have tripped over the threshold. If a system cannot be designed to administer a tax, then that strongly calls into question whether that tax was sensible in the first place.

6.5 More generally, we have seen that the pace of new legislation can run ahead of the ability to develop the systems to implement it, and this should mean that either one needs to slow down or the other needs to speed up (which means more resource, and expensive resource, at that ie changes to tax law and IT systems). This should be taken into account when recommendations are made by HMRC to the Ministers who make the ultimate decisions on new legislation.

[4] See Commitment 21 on page 9 of HMRC's report February 2021 https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/958474/Evaluation_of_HMRC_s_implementation_of_powers__obligations_and_safeguards_introduced_since_2012.pdf

[5] Review for High Income Child Benefit Charge penalty cases concludes - https://www.gov.uk/government/news/review-for-high-income-child-benefit-charge-penalty-cases-concludes

[6] The Commissioners for HM Revenue and Customs v Jason Wilkes [2021] UKUT 0150 (TCC) – see https://assets.publishing.service.gov.uk/media/60dc5a51e90e07717b84dc52/Jason_Wilkes_decision.pdf

[7] 29(1)(a) Taxes Management Act 1970

6.6 A key challenge to the trust that taxpayers place in the tax system is the ability to rely on guidance. The complexity of the UK tax system means there are many situations when the legislation is uncertain in its application and taxpayers inevitably rely on guidance in various forms to find out about and navigate the system. Guidance extends to the traditional written guidance on GOV.UK, in HMRC manuals and other written formats, helplines, decision-based interactive guidance and the virtual assistant, guidance in newer formats such as online videos or webinars and HMRC's direct engagement with taxpayers via online platforms and through the HMRC administered agent and customer forums. The increasing use of technology means also that guidance is increasingly embedded in digital tools and software.

6.7 In our members' experience, there is low awareness of HMRC's current published position on reliance[8]. This statement dates from 2009 and does not address or distinguish different and newer formats. There are complex legal questions in respect of reliance where HMRC change their approach on a point of law and guidance is changed retrospectively and where a taxpayer relies on incorrect advice with related questions around the imposition of penalties and interest. However, leaving aside these complex legal issues, reliance on guidance is fundamental to trust in HMRC's administration of the tax system and should be considered in that light.

6.8 The need to address the question of reliance and its boundaries has assumed greater importance given HMRC's increasing engagement with taxpayers through new digital platforms, social media, webinars and forums. In this form of engagement there is a particular risk that the boundary between guidance and advice becomes blurred bringing the question of reliance into sharper focus. We think it is essential to prioritise this issue separately. We welcome therefore the commitment to a further formal consultation on reliance as part of the follow-up work to this Call for Evidence.

6.9 Poor service levels on the part of HMRC create significant challenges to the trust taxpayers (and their agents) place in the system and HMRC's administration of it. It undermines trust when you cannot get through on the telephone to speak to HMRC in a timely manner, or when you wait five months or more for HMRC to reply to a letter. It makes matters worse if when HMRC do eventually respond they tell you that they want you to respond in 30 days (after the letter has taken two weeks to reach you due to navigating HMRC's internal postal system). It is essential to improving trust in the tax system that service standards are addressed and improved. This should be a priority in line with fulfilling the commitments in HMRC's Charter[9] and improving the 'customer experience'.

6.10 Another area where the tax administration framework creates challenges to the trust taxpayers place in the system is the taxation of state pensions. Like the HICBC, the Government has this data, yet state pensions are not taxed at source under the PAYE system. Why not? This may have been understandable decades ago but is no longer acceptable in the current environment: addressing it would reduce the risks of people significantly under or over-paying income tax. HMRC also need to have better messaging around the state pension as taxpayers approach retirement. Many have no idea that this will form part of their taxable income and even less that their PAYE coding notice will try to deal with this.

6.11 As already noted, harmonising legislation and processes across taxes should be considered. Simple and familiar processes should increase compliance with and trust in the tax system.

[8] https://www.gov.uk/guidance/when-you-can-rely-on-information-or-advice-provided-by-hm-revenue-and-customs#:~:text=HMRC%20will%20be%20bound%20by,result%20in%20your%20financial%20detriment
[9] https://www.gov.uk/government/publications/hmrc-charter/the-hmrc-charter

6.12 A major simplification of tax-geared penalties is needed. Tax-geared penalty regimes are so numerous and complicated that taxpayers struggle to understand them, and this undermines trust and fairness. Also, the interpretation of the behavioural categories for penalties varies to a degree between officers so, to some extent, taxpayers are treated differently.

6.13 The processes for internal / statutory review are being considered elsewhere[10] but should be mentioned in this response as the process is not fully trusted and therefore under-utilised (costing HMRC more if taxpayers appeal to the First Tier-Tribunal (FtT) rather than using internal review).

6.14 There has been an erosion of safeguards is some areas which has affected trust in the system. For example, accelerated payment notices (APNs) and follower notices etc cannot be appealed and the only remedy (after the representations stage) is judicial review which is not cost effective for most taxpayers. The recent Haworth case[11] in the Supreme Court has demonstrated that such powers need to be very carefully exercised and that HMRC must not over-reach these powers. Also, the taxpayer cannot appeal some decisions eg rejection of a request for mediation. If it is agreed that mediation is a good thing which can help resolve tax disputes so there should be more of it, should the service be independent (or should a right of appeal be introduced)?

6.15 Some taxpayers are digitally excluded for a variety of reasons. HMRC must comply with the Equalities Act (and the Public Sector Equality Duty) by ensuring that those who cannot engage digitally can easily deal with all aspects of their tax affairs without being online. We are concerned that too much guidance and services are only accessible online now which will lead to disengagement with the tax system by many and a consequent loss of trust.

6.16 It is important to recognise that the digitally excluded are just the tip of the iceberg of digitally challenged people. Whilst we recognise the many benefits of the increasing digitalisation of the tax system, it concerns us that HMRC see this as the only way forward and will try to force taxpayers down the digital route regardless of their digital capabilities, examples of this are 30-day CGT residential reporting and the Trust Registration Service. We are not sure that forcing digital on taxpayers helps build trust in the tax system. A revised tax administration framework should, by all means, be 'digital first', but should be accessible to all including the digitally excluded and the digitally challenged, providing education and support where required. There should be a clear and well understood alternative to digital for any taxpayer who cannot interact digitally with the tax system which would give a much higher chance of building a trusted relationship with HMRC.

6.17 Trust in the tax system would be improved if HMRC develop an ethos of trusting taxpayers, by default, rather than the feeling many people get when interacting with HMRC is that they are not trusted. Making a small error or not understanding an obligation does not mean one has not taken care and should not be trusted.

6.18 The tax administration system should de-incentivise tax avoidance and tax evasion; tackle underlying systems and the supply chains that give rise to tax avoidance, not the individual taxpayer caught up in it – eg loan charge and disguised remuneration hits individual low income taxpayers who have hardly benefitted, yet the agency / umbrella companies and the end user of services (often a public sector organisation) are not tackled in many cases. This contributes to the undermining of trust in the tax system.

[10] Commitment 15 of HMRC's Powers and Safeguards Evaluation Review of post 2012 powers (page 9 of HMRC's report February 2021) https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/958474/Evaluation_of_HMRC_s_implementation_of_powers__obligations_and_safeguards_introduced_since_2012.pdf

[11] R (on the application of Haworth) v Commissioners for Her Majesty's Revenue and Customs https://www.supremecourt.uk/cases/uksc-2019-0124.html

6.19 There is a fairness and trust point around time limits, in that you would expect the periods for which HMRC can go back and correct errors to be the same as that for taxpayers but that is not always the case.

6.20 We do not want to see the creation of new problems during the course of this ten-year review which lead to poor customer and / or agent experiences, such as the 30-day Capital Gains Tax (CGT) reporting and payment changes introduced for sales of UK property on or after 6 April 2020. This will not help build trust in the tax system.

7 Q3. Do you agree that these are the right overarching objectives to guide this review or do you believe there are others it should consider? Do you feel that some of these objectives are more important than others?

7.1 We broadly agree that these are the right overarching objectives to guide this review. We are supportive of the aims of a reformed tax administration framework – they are practical pillars that can form the basis for a modern tax system.

7.2 Objectives that we recommend are added to those set out in Box 2.2 on page 12 of the call for evidence are that 'a revised tax administration framework should':

i. be accessible to all including the digitally excluded and the digitally challenged, providing education and support where required. The digitally excluded are mentioned (on page 11), but this is just the tip of the iceberg of digitally challenged people, which the Government itself estimated to be around 11m people a few years ago.
ii. recognise that a taxpayer can appoint an agent to deal with their tax affairs and provide support to agents so that they can represent their clients effectively with HMRC and without barriers.
iii. embed a culture (or aim) for continuous improvement within the framework.

7.3 Whilst it is mentioned elsewhere in the Call for Evidence and the overarching objectives do include simplicity, we consider that one aspect of simplicity is a presumption towards harmonisation ie ensuring that the same administrative processes apply to all taxes and NICs. This will also simplify matters (as taxpayers rarely only deal with HMRC just on one tax in their lifetime) and should have the by-product of increasing trust in the tax system.

7.4 HMRC should use these aims to develop a roadmap for the next ten years. By taking each of these areas to the furthest point possible in the next ten years, what would the goal look like? Use this as the aim and then plan towards it, taking into account that some sequencing of reforms will probably need to happen.

7.5 As previously noted, we are concerned that the scope of the review risks being a missed opportunity to look at underlying policy decisions for individual taxes, such as the differences in taxation of income from employment and self-employment, and as a consequence it could end up merely papering over some cracks while the tax system will continue to creak at the edges and continue to give rise to really problematic issues such as disguised remuneration tax avoidance schemes and the loan charge, which erode trust in the tax system.

8 Q4. How could the review ensure the best coverage of viewpoints and expertise from those who depend upon the tax administration framework? Are there particular models of consultation engagement or collaboration that could work well?

8.1 The Call for Evidence is very broad, so we have found it beneficial to have conversations with HMRC on specific parts of the document to help narrow down the area of focus a bit, whilst not losing sight of the overall aim of the review.

8.2 HMRC should carry out calls for evidence and consultations on areas for change that come out of this review in the normal way, but we would recommend that further consultation is broken down into specific areas so that it is more focussed and hence more manageable. In addition, we suggest that HMRC meet with professional bodies and the tax charities to discuss options for changes.

8.3 As mentioned elsewhere, once there is a clearer picture of how the framework should be reformed, HMRC should draw up a roadmap setting out the stages of the ten-year journey to reach the end goal. A roadmap will help everyone understand the sequencing of any changes and reforms and help taxpayers and HMRC plan for the changes, in terms of the costs and resources that might need to be deployed.

8.4 In this response we make numerous references to the work of the OTS. The OTS has produced several detailed reviews on aspects of the tax administration framework since its creation ten years ago and made many practical and sensible recommendations. We have been struck whilst writing our response just how many of the OTS's suggestions are highly pertinent to this ten-year review and we would encourage HMRC to revisit them. We recommend that HMRC continue to engage with the OTS as this review progresses.

8.5 We suggest that tax advisers, tax charities and Online Centres around the country are polled on the current issues and potential solutions. These are the people that have constant contact with taxpayers, including the disadvantaged and digitally challenged. They could help move this review forward.

8.6 The use of simple surveys (such as those used by the OTS and professional bodies) could help reach 'real' taxpayers who would not normally respond to a government consultation.

8.7 It is imperative that HMRC look hard at previous implementations and what went well and what went badly. There are lessons to be taken from as long ago as the implementation of self-assessment, RTI, CGT digital reporting and even MTD for VAT. Simply saying they have had a good uptake does not recognise the problems there have been for taxpayers and agents alike. Good beta testing with a sufficient population and cross section of taxpayers is also imperative. Post-implementation reviews have been employed too seldom but should be imperative with this project.

9 Q5. Are there other international examples or models of tax administration that could inform this review of the UK's tax administration framework?

9.1 There is a strong case for HMRC to modernise by adopting trends that have worked well in other countries. Some examples which our members have provided us with are:

i. The Australian Taxation Office (ATO) hire strongly externally, such as from the Big 4 advisory and accountancy firms, bringing officers a more commercial and high-performing mindset. HMRC might need to review the competitiveness of remuneration for this to happen in scale.

ii. Brazil, India and China are leading the way on VAT evolution (emerging market countries are leading the way with digitisation of taxes) – mandatory e-invoicing, real time tax filings, pilot use of blockchain technology for VAT collection, etc.

iii. Secondment / exchange programs for HMRC staff to OECD / other leading tax authorities.

iv. HMRC mentioned during one of our calls with them that they had been speaking to the ATO to see how they have dealt with pre-population and third party data and information. We understand that in Australia they commenced pre-population for individuals and are now moving on to business / sole trader related data with a five year 'Data Window' project. From what we have seen this looks like it could be very useful in helping HMRC explore what might be feasible in the UK.

v. Although Estonia has a simpler tax system than the UK and has only one rate of personal income tax, pre-population of tax returns has made tax return preparation and filing a lot quicker and easier as well as reducing errors and omissions.

vi. Develop an ethos that paying tax is a way of looking after your family, friends and community (as in some Scandinavian countries). Stop using sticks that not paying the right amount harms hospitals etc and place the focus more on paying tax has a feel-good factor.

9.2 Building trust in the tax system could require HMRC to adopt a less adversarial approach in its interactions with taxpayers and instead think about partnering together with large business sector taxpayers (and with individual taxpayers with complex affairs) who are in a cooperative compliance framework to jointly resolve issues, remove uncertainty and increase public confidence. Chile and Australia are good examples to replicate / take inspiration from. However, this is likely to be problematic given how the UK tax system operates and could be counter-productive if it leads to or gives the perception of preferential treatment for certain taxpayers. HMRC's Litigation and Settlement Strategy[12] (LSS) says that HMRC and taxpayers should work collaboratively, and we agree that a less adversarial approach would be better in many cases, but HMRC are already sometimes criticised for giving preferential treatment to large businesses and high net worth people (either in the outcomes of checks or in the timeliness of checks progressing) which is not consistent with either the Charter[13] or the LSS. Similarly large taxpayers have Customer Compliance Managers (CCMs) whereas medium and smaller ones do not and therefore struggle, for example, to make disclosures of errors.

[12] Resolving tax disputes Commentary on the litigation and settlement strategy October 2017 https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/979527/HMRC_Resolving_tax_disputes.pdf

[13] The HMRC Charter November 2020 https://www.gov.uk/government/publications/hmrc-charter/the-hmrc-charter

Chapter 3 Ensuring consistent obligations for people to enter and exit the tax system

10 Q6. What are the key challenges with the current legislative provisions relating to the identification and registration of taxpayers?

10.1 We broadly agree with HMRC's aims here. HMRC should devote the greatest focus to the customer journey and digitalisation of registering / payment of taxes etc. If a single, one-stop, self-service digital portal for each taxpayer can be built, then making the requisite notifications and obligations will become simpler and more real-time.

10.2 A challenge is that the different registration requirements (as shown in the examples in box 3.1 on page 15 of the Call for Evidence) are more to do with how the different taxes are assessed, when they become payable and who they apply to, than the registration requirements, which basically are designed to fit the structure of the underlying tax. For example, not every individual is an employer, not every unincorporated business needs to be VAT registered, not every employer is a company etc. so those who become employers or need to register for VAT will need to let HMRC know separately.

10.3 Registration obligations and deadlines are different for each type of tax, and, as noted above, not every individual or entity will necessarily need to register for more than one tax at the same time. It is therefore difficult to see how one single obligation to notify or register could be created. We do however agree that where possible registration requirements and processes should be as consistent and simple as possible. Perhaps it might be feasible for, as an example, a taxpayer who is starting in business with employees from the start and who wants or needs to be registered for VAT from day one to register for both ITSA, PAYE for employers and VAT together – this would make sense – but what works for one taxpayer will not necessarily work for another, each will have their own individual needs so there needs to be a flexible approach.

10.4 The ability for a taxpayer to have one Government Gateway account which enables them to register for different taxes and then to be able to track the progress of their registrations online would simplify things greatly. They would then have one interface to which they can go for any and all registrations. Perhaps the proposed Single Customer Account could be utilised to help streamline and monitor an individual's registration applications with HMRC? We note that there is currently the ability to register for self-assessment online[14] (if you already have a UTR number; otherwise you need to complete Form SA1) but it is not through a Government Gateway and you cannot track the progress of your application.

10.5 It is important that HMRC allow registration for different taxes to be done online and this does now appear to be the case, except for some limited circumstances. One example we are aware of where it is not possible to register online is when an individual employs a carer or support worker in their home. The online checklist[15] requires you to go through a list of questions on different pages on gov.uk then ends up advising you to telephone HMRC, but the link it provides takes you to a page with a telephone number for various employer issues[16], none of which is how to set up with HMRC as a new employer. This is an example where guidance should be improved.

10.6 Non-digital means for registering with HMRC, such as using the telephone, should be provided where the taxpayer cannot interact with HMRC online.

[14] https://www.gov.uk/register-for-self-assessment/not-self-employed
[15] https://www.gov.uk/register-employer
[16] https://www.gov.uk/government/organisations/hm-revenue-customs/contact/employer-enquiries-support-for-new-employers

10.7 We are aware that there are often delays in HMRC processing registration applications, for example there have recently been long delays in registering for VAT and obtaining a VAT registration number. We have also heard of long delays by HMRC in issuing UTR numbers. This would appear to be the main cause of current problems with registration because without the appropriate registration number it is not possible for a person to interact with the UK tax system, file returns and pay the tax they owe. In some instances it can actually prevent trading or inhibit the receipt of income, for example not being able to raise VAT invoices without a VAT registration number. We do not know if legislative changes would help here – it appears to be more an issue with processing the applications rather than any difficulties with the legislation underpinning the taxpayers' obligations. Perhaps there should be a legal obligation for HMRC to issue a UTR or a VAT number within a certain timeframe?

10.8 It is difficult registering overseas individuals and entities who do not have a UK tax reference (National Insurance number (NINO)/ Companies House reference number). There is no visibility on timeframes when they or their agent can expect a UTR to be issued. Could HMRC use the same system that has been introduced to generate a Land Return reference and apply this to generating UTRs? Would this cause any Money Laundering issues?

10.9 When registering clients including overseas individuals and entities, there is an inconsistent approach from HMRC as to the information required in order to register the client. In some cases HMRC have requested a NINO for an individual when the individual is an overseas member of a UK partnership and is not required to have a NINO.

10.10 We are also aware that some taxpayers are not being automatically registered for self-assessment once they are set up on Companies House, for example members of LLPs. This is an example of a system issue which should not occur given IT capabilities now.

10.11 There is also an issue that sometimes arises where HMRC's PAYE system does not recognise that a person is registered for self-assessment and submitting tax returns, and it will generate a P800 to collect a tax underpayment or refund an overpayment based on incomplete data. This causes confusion and wastes time for taxpayers and agents who must correct a situation that should not have happened in the first place. Improvements to HMRC's IT systems are desperately overdue in the area of interaction between the National Insurance and PAYE (NPS) system and the self-assessment system.

10.12 We note that registration and authorisation processes have been introduced for some taxes which do not fit in within the existing framework and consequently they have proved very challenging for both taxpayers and their agents to navigate and comply with. We are thinking particularly of ATED and 30-day reporting for CGT which have been designed as standalone systems, also the Trust Registration Service. We question the net benefit of developing standalone systems that operate independently of mainstream systems such as the personal tax account and the agent services account, especially where they require their own separate agent authorisation process. Also, a new Residential Property Developers Tax (RPDT) is currently being consulted on for introduction in April 2022. The short timescale for development of this new tax underlines the practical need to align the reporting and registration requirements to existing corporation tax legislation and systems as far as possible. If HMRC are serious about reforming the tax administration framework, we do not want to see the problems we have seen with ATED, the 30-day CGT reporting and the Trust Registration Service repeated during the course of the next ten years whenever a new tax or a new reporting obligation are introduced. This would badly affect confidence in the system and HMRC's desire to reform it.

10.13 This reinforces our earlier comment about new legislation running ahead of HMRC's IT implementation capacity. One way of cutting a corner on this is not to integrate the new system well with the existing digital system, personal tax account etc, another is not to give it an effective agent access model. The result is chaos as with, for example the Trust Registration Service,when it first came in. We need a pause in the flood of new complexifying legislation both for all these reasons and to get core simplicity in the system as mentioned earlier.

10.14 We agree with simplifying the authentication of agents. It should be streamlined across the different taxes and it should be made much clearer what authority each authorisation provides. The present system is not coherent and as a result it is not well understood. The recent section in Agent Update 81[17] illustrates just how complicated the agent authorisation process is across the different tax regimes. However, the process of simplification should continue to recognise that taxpayers may want to appoint different agents for different purposes at different times (see 10.18 below).

10.15 If a new reporting service is introduced, it should not be necessary for agents to have to go through another authorisation process with their existing clients. For example, this has happened with the new 30-day reporting for CGT - it should not have been necessary for agents, who were already authorised to act for clients for the purposes of self-assessment, to have to go through another authorisation process with these clients. Taxpayers simply do not understand why they need to authorise agents again for each new system when they have already given authorisation in the form of a Form 64-8[18]. HMRC citing security does not wash well with taxpayers when the trusted relationship is between them and the agent. Indeed it harms the relationship which HMRC are seeking to improve.

10.16 If 'digital handshakes' are going to be the norm going forward in the agent authorisation process, we recommend that agents must be able easily to bring over existing clients to new systems (such as MTD for ITSA) where there is already a Form 64-8 authorisation in place without the need for a new digital handshake.

10.17 The current 64-8 and COMP1 forms do not authorise the use of email so separate email authorisation processes must be completed. Why not combine them in the 64-8 and COMP1[19] forms?

10.18 It is also important that there is a simple, fast and coherent process if a client wishes to use multiple agents, for example if a client wants to appoint different advisers for different taxes. The process still needs to the same for all taxes though. Two examples where there are problems are:

i. A lawyer is appointed to deal with an ad hoc matter by a client. They sometimes find that they have displaced the existing Form 64-8 by mistake which can result in HMRC sending them correspondence etc about the client's wider tax affairs.

ii. When a taxpayer changes their accountant / tax adviser, it seems impssible to get HMRC's system to recognise that the old agent will finish off old years and the new agent will deal with new ones, which is often the most efficient way of bringing about any change of responsibility.

This is likely to become a much more significant problem when Making Tax Digital for Income Tax Self-Assessment (MTD for ITSA) is mandated.

[17] See https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/942598/8318-Agent-Update-WT-81_v4a_20201209-accessible.pdf
[18] https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/815650/authorise_agent_64-8.pdf
[19] https://www.gov.uk/guidance/tax-adviser-authorisation-for-compliance-checks

10.19 There is currently no process in place for HMRC themselves to register taxpayers even if they might have identified from their records or from data obtained from third parties that a taxpayer should have potentially registered for one or more taxes. However, we are not convinced that automatic registration by HMRC would work. It would not necessarily be easy to identify that someone was trading just from data provided to HMRC by an online platform like eBay, for example, and registering someone who did not need to be register causes its own problems (as noted elsewhere). To be sure, HMRC would need to contact the person concerned and ask questions. HMRC would also need to check that a person was not already registered with them. Third party data can act as a useful tool for downstream compliance activity, but we do not think it should not be used by HMRC to register people without further investigation.

10.20 HMRC could use the third party data they hold to write to taxpayers or to put bespoke prompts and nudges into a person's digital tax account, for example about what taxes they believe the person may need to register for, what the rules are and what the deadlines are for registration. Filing and payment deadlines could also be included. If it is possible to do this before registration deadlines have lapsed, it might be a useful tool in improving compliance. Any such nudges and prompts would need to be carefully worded, and pitched at an educative / guidance level, in order to build trust with taxpayers rather than cause alarm. HMRC would also need to be confident that the third party data they have received is correct.

10.21 HMRC could consider working more closely with online platforms from an educative / guidance point of view, as people might be more receptive to messages about their potential tax obligations from the online platforms rather than HMRC. We are aware that this is already happening, but more could be done.

10.22 A taxpayer is obliged to notify HMRC under s7 TMA 1970 that they are chargeable to income tax or capital gains tax for any year of assessment, unless they have already received a notice to file a self-assessment return under s8. However, there is often confusion about this where a person's untaxed income is below the level of the personal tax-free allowance. This area is in need of clarification / simplification.

10.23 If HMRC issue a notice to file a tax return under s8 TMA 1970, for whatever reason, then the return must be completed and returned, even if there is no liability, unless the individual can persuade HMRC to withdraw the notice to file. HMRC usually refuse to withdraw a s8 notice when the individual is a member of a partnership or a director of a limited company, even if there is no income chargeable to tax in the year of assessment. Refusal to withdraw the notice by HMRC does not necessarily 'help build trust in a tax system that is recognised as fair and even-handed'.

11 Q7. What benefits of the current legislation should be preserved?

11.1 The ability for a taxpayer to register for one tax and then to separately register for another one at any point thereafter. Similarly the ability to de-register for taxes one by one as circumstances change.

11.2 Taxpayer safeguards in the current legislative framework should not be lessened as a result of this review.

12 Q8. What likely changes and developments will the framework need to handle? What are the key priorities for framework reform in the area of identification and registration of taxpayers?

12.1 A single customer account (for any type of taxpayer) with a single digital interface through which the individual or entity can register or de-register for any tax and appoint an agent (or more than one agent, eg for different

taxes).

12.2 We refer to the responses we have made to Q6 which are also relevant to this question.

13 Q9. Are the current approaches to the timing of registration still appropriate, or are there opportunities for reform?

13.1 The Call for Evidence suggests that moving registration closer to the start of a relevant taxable activity, where applicable, could improve trust and reduce non-compliance (p16). We are aware that previous attempts to move the notification deadline forward for new sources of income (such as self-employment income) for people not already in self-assessment led to an increase in defaults (it was reduced to three months from the start of self-employment rather than the current six months from end of the tax year during which self-employment started[20]). So bringing it forward may not solve the problem – it may make it worse – for example:

- It can be especially problematic for self-employed taxpayers on low incomes. Often, they may not know when they started trading and many will fall foul of the rules if a decision is made to shorten the notification period.
- It may only be after the end of the tax year that a person realises that a hobby has turned into a commercial business.
- Conversely it may only be after the end of the tax year that a person realises that what they had intended to run as a commercial business has not really taken off the ground or developed as they wanted, so they might not need to notify HMRC.
- Many people will not approach an accountant until after the end of the tax year and it is only then that it is realised that HMRC need to be notified of a new source of income.
- It may only become clear some time afterwards, with the benefit of hindsight, exactly when a business has started.
- A person may not be able to tell that they are resident in the UK until late in the tax year (or in some cases not until after the tax year has ended).

13.2 Once a person is put into self-assessment this has consequences, for example:

- Needing to complete and file a self-assessment tax return, unless they specifically tell HMRC they no longer need to be in self-assessment and HMRC agree to remove them.
- If filing deadlines are not met, late filing penalties will be incurred.

If a person is put into self-assessment unnecessarily and fails to fully understand the consequences or seek help, one can see that problems can quickly mount up which will then need to be unravelled down the line. It is our understanding that HMRC prefer a person not to be in self-assessment if it is not absolutely necessary.

13.3 What is most important for compliance is that people need to be aware that they should register and of what requirements are coming down the track at them. The OTS did a report[21] about (or including how) startups (got registered) that may assist here.

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[20] s7 Taxes Management Act 1970 - Notice of liability to income tax and capital gains tax

[21] Simplifying everyday tax for smaller businesses: a further business lifecycle review May 2019 – see para 2.3 for example. https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/801449/Simplifying_everyday_tax_for_smaller_businesses_-_web.pdf

13.4 Requirements should be publicised in multiple ways so that people are aware of them (otherwise they may feel the system is trying to trip them up unfairly which does not help build trust). In addition to 'traditional methods' including guidance on gov.uk, some publicity could be carried out in new ways (eg mandate estate agents, conveyancers and solicitors to tell taxpayers about the 30-day CGT returns and the need to also report the same gains on self-assessment tax returns as part of property transaction conveyancing).

13.5 What is also important for compliance is that the person can register for self-assessment and obtain a UTR from HMRC promptly which will enable them to file a tax return and pay what they owe (see above). Indeed, there is no penalty for missing the s7 notification deadline if a taxpayer files their self-assessment tax return on time and pays the tax they owe on time. While we appreciate that HMRC may need to make additional checks on new registrants, might it be possible to issue a 'provisional' UTR in a shorter timeframe so that a taxpayer could file returns. The 'provisional' UTR could later be confirmed (or not). While it was still provisional certain aspects of the tax system (e.g. claiming repayments) would be suspended.

13.6 Taxpayers are often uncertain whether they need to notify HMRC under s7 TMA 1970, especially if they have income subject to withholding tax, and HMRC's online tool[22] to check if you need to submit a tax return is not fool proof. Also, there is often confusion about the difference between registering for self-assessment (and obtaining a UTR) and notifying a new self-employment and registering for Class 2 National Insurance, and the different processes and forms that are required for each (see guidance on gov.uk[23]). In short, the s7 notification rule is meaningless to anyone not working in tax. Ideally taxpayers should not need to separately register for NICs.

13.7 We are uncertain how the introduction of MTD for ITSA could impact on the current notification obligation in s7, but a person should not be obliged to start making quarterly reports under the MTD rules earlier than the latest date they must need to notify chargeability, ie currently 6m after the end of the tax year they started to receive a new source of trading or property income (unless they already in self-assessment). There may be an argument for bringing the notification deadline forward to help with integration with the MTD for ITSA rules, but we still need to be wary of the pitfalls of doing this, mentioned above.

13.8 We wonder if there might be a case for dispensing with the obligation to notify chargeability for a new source of trading and property income within MTD and to create a new obligation to register for MTD for ITSA (including Class 2 NIC)? Would this help make the rules easier to understand? However, there is not much time left before MTD for ITSA is introduced in April 2023, and changes require decent lead in times (eg to IT systems) so we are not certain what is feasible given the short timescales we are facing.

13.9 The Government could explore the wider use of a single taxpayer identifier number which a person uses for all interactions with Government, not just HMRC. This could be the existing UTR or NINO[24], or ideally a new number to replace the existing UTR and NINO systems. A single taxpayer identifier number has some attractions but also raises a number of ancillary issues which would need to be considered carefully. Having several taxpayer identifier numbers does give a degree of security. It is likely that such a number would be needed from birth, for accounts in the name of children for example. We understand that in Spain, for example, a Tax Identification Number (NIF) for Spanish citizens and a Foreigner Identification Number (NIE) for non-Spanish citizens are issued by the Spanish Ministry of Interior and used as a form of identification mainly

[22] https://www.gov.uk/check-if-you-need-tax-return
[23] https://www.gov.uk/register-for-self-assessment/self-employed
[24] We note that the OTS discusses this issue at length in its third party data report and considered the NINO as the likely most practical one to extend to a universal number – see Recommendation 3.
https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/997582/Third_party_data_report.pdf

for Spanish tax purposes but also for a range of other financial and legal transactions such as opening a Spanish bank account or getting a driving license. A single UK taxpayer identifier number could help HMRC match up third party data, such as bank accounts, to the right taxpayer, and help with the pre-population of data into digital tax accounts and improve compliance. This would be a big change, but in our view the Government should be 'thinking big' not just tweaking existing systems that do not work that well and are not easily understood.

13.10 Easier deregistration and reregistration would be helpful. It would reduce the number of people who stay in self-assessment 'needlessly' and the potential for fines and penalties that can cause.

13.11 De-registration can sometimes cause problems, especially if HMRC unilaterally take people out of self-assessment based on incomplete data. We are aware that sometimes HMRC will make the decision to take a person out of self-assessment incorrectly because they may not know, for example, that they have a new source of untaxed income that will need to be reported on their tax return. This is not a problem with the process therefore, but an issue with HMRC's rationale to remove them. If that person recognises this themselves, or if they have an agent advising them, they should ask HMRC to put them back into the self-assessment system. However, it is likely that many people will not do this and will remain outside of the SA system even though they should be in it, leading to them being non-compliant. Some may even use it as a reason to disengage their tax agent.

13.12 We think there is scope to harmonise deregistration across different taxes, for example, when a person ceases to trade it should be possible for them to deregister from ITSA, PAYE for employers and VAT at the same time if they choose to. However, we think this should be optional as, for example, larger businesses will probably have different teams dealing with different taxes and so they may prefer to deregister separately.

Chapter 4 Improving the way tax liabilities are calculated and assessed

14 Q10. What key issues relating to the way tax liability is established arise within the existing legislative provisions?

14.1 Most issues stem from the legislation and case law for each tax eg income tax, corporation tax or VAT. The review of the tax administration framework will not resolve them but HMRC and the Government should take opportunities to simplify those systems where possible.

14.2 The adjustments that are required to be made to establish a tax liability can be complex and confusing for the ordinary taxpayer to understand. There is probably a significant amount of simplification that could be done in this area. We note that the OTS has made recommendations in several of its reports to address the complexity that is caused by the tax adjustments that need to be made to arrive at the tax liability[25] but we do not think that any of their suggestions have been taken forward. Perhaps it is now time to revisit them and think about consulting on them further as part of HMRC's ten-year framework review.

14.3 The system of 'basis periods' for the self-employed and partners in partnerships can be difficult for taxpayers to understand and calculating overlap profits and keeping track of them can be difficult. If a person uses tax return software and/or has a tax adviser, the difficulties that basis periods and overlap can present can be overcome relatively easily. However, this area can be very confusing for the unrepresented individual. Lack of understanding leads to mistakes.

14.4 A recent issue has been the inability for HMRC's systems to pre-populate the figures for Self-Employment Income Support Scheme (SEISS) grants received by taxpayers into 2020/2021 SA tax returns. If this had been possible it would have made it much easier for taxpayers to comply with their tax obligations. Instead, many taxpayers who received SEISS grants are not reporting them correctly on their 2020/2021 tax returns, or at all. This appears to have been an IT issue, not a legislative issue. However, it demonstrates that there is still a long way to go before we have a tax system where it is 'easy to get tax right and hard to get it wrong'.

14.5 Some taxes' legislation enables HMRC to open enquiries (eg income tax/CGT under s9A TMA 1970, stamp duty and corporation tax) and make determinations in the absence of a return. However, other taxes (eg IHT, PAYE) do not have such rules and instead rely solely on discovery assessments (or equivalent). The rules should be harmonised across taxes. Please also see our comments elsewhere about how easy it is now for HMRC to issue discovery assessments within 4 years of the end of a tax/accounting year, meaning that the deadline to open enquiries is pretty much meaningless now. In the interests of simplicity, perhaps there should be consultation on whether HMRC's enquiry powers are still fit for purpose. As we state earlier, discovery assessments should not be used to cover-over HMRC failure to act properly on information clearly available during the enquiry window.

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[25] OTS Competitiveness Review 2014
https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/292456/PU1647_OTS_competitiveness_review_call_for_evidence.pdf
OTS Small Company Taxation Review 2016
https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/504850/small_company_taxation_review_final_03032016.pdf
OTS Simplification of the corporation tax computation 2017
https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/624328/CT_Review_-_final_report_June_17_web.pdf
Accounting depreciation or capital allowances? Simplifying tax relief for tangible fixed assets 2018
https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/716300/Accounting_depreciation_or_capital_allowances_print.pdf

14.6 Amendment time limits are not aligned across taxes at the moment. For example, a VAT return can be amended up to four years after its due date / submission, which is currently different to a self-assessment income tax return and company tax return, where the deadline is one year. Alignment of amendment time limits across the taxes could be considered. However, given the many differences between the different taxes and how they are returned to HMRC, making an amendment process consistent across taxes will be difficult to achieve without other changes also being made to the tax system. We considered this in our response to HMRC's 2018 Call for Evidence on Amendments to Tax Returns[26]. In our response we went on to say that this should not stop HMRC considering how a more streamlined digital amendment process could be introduced for each individual tax. To our knowledge HMRC have not so far issued a response to that Call for Evidence.

14.7 There are sometimes different time limits for making an election and revoking it. For instance you can elect for the remittance basis up to four years after the end of the tax year; but once you have elected for it you only have one year to change your mind. These should be made consistent.

14.8 Another point is that sometimes HMRC require the same transactions to be returned twice eg in the 30-day CGT return following the sale of a property and in the annual self-assessment return. Any such examples of duplicate reporting by the same person should be eliminated in this streamlining of the tax system. It frustrates taxpayers, costs them money and erodes trust in the tax system. Data submitted to HMRC under 30-day CGT reporting should automatically be swept into the taxpayer's self-assessment tax return.

15 Q11. What benefits of the current legislation should be preserved?

15.1 The ability to amend returns (eg self-assessment tax returns and company tax returns) up to a year after the submission deadline should be preserved.

15.2 Shorter assessment time limits for cases involving reasonable care/reasonable excuse and carelessness compared to those for deliberate failures and errors should be preserved. Ideally these time limits would be simplified and applied across all taxes and NICs too. Currently there are different time limits for failures to notify (4, 12 or 20 years) compared to errors (4, 6, 12 or 20 years) – ideally the failure to notify time limits would match those for errors.

15.3 The ability to revisit claims and elections after discovery assessments are issued should be preserved.

16 Q12. What likely changes and developments will the framework need to handle? What are the key priorities for framework reform in the area of calculating and assessing tax liabilities?

16.1 The framework will need to handle the introduction of MTD for ITSA which is currently due to be mandated from April 2023. This will introduce mandatory digital record keeping and reporting for ITSA taxpayers with income above a £10,000 threshold. It may be necessary to review and reform the basis period rules for the self-employed and partners in partnership before April 2023 to avoid multiple MTD reporting obligations arising during the year. In Box 4.1 on page 19 of the Call for Evidence, there is the suggestion that trading income could be taxed for a tax year based on the income arising in that tax year. This seems sensible, but it would lead to an acceleration of tax liabilities in the tax year of change for taxpayers whose accounting period does not align with the tax year. HMRC would need to introduce rules for the year of transition which would

[26] https://www.tax.org.uk/ref516

alleviate this impact, eg by allowing relief for overlap profits brought forward and deferring or spreading the additional tax charge that could arise in the year of transition. There may be specific issues pertaining to partnerships which will need to be addressed.

16.2 Another option might be to examine how the basis period rules might be aligned for property and trading income. One such option may be the ability for taxpayers to choose to have their property income basis period aligned with their trading income basis period. See the CIOT's 2021 Budget representation on the taxation of property income[27].

16.3 We recommend that HMRC consult on changing the UK's tax year as part of the Tax Administration Framework Review. The UK's tax year ends on 5 April and has done since 1800 following the introduction of the Gregorian calendar. 5 April is not used by any other countries in the world, many of whom use 31 December as their tax year end. We note that the OTS has recently published a scoping document[28] on the subject focussing on the implications of moving the tax year end date from 5 April to 31 March, and that it will also outline the main additional broader issues, costs and benefits that would need to be considered if the end of the tax year were moved to 31 December.

16.4 We would encourage the Government to reflect on the OTS's report when it is published and itself launch a consultation on moving the tax year from 5 April – either to 31 March or 31 December. But changing the tax year should be a longer term plan – perhaps over 4 or 5 years - as there will be transitional rules to address and businesses and HMRC will need time to prepare.

16.5 Changing the tax year to 31 March would probably be more straightforward than changing it to 31 December, although any change is likely to involve quite big system changes for both taxpayers and HMRC / Government so the costs of change would need to be carefully assessed and analysed before any decision is taken. It would bring about an obvious simplification in terms of payrolls which currently work to the 5th of each month and it will help reduce multiple filing obligations that could arise under MTD for ITSA. However, if changing the tax year is a longer term plan (and we think it should be) then the benefits and costs of moving it to 31 December should be seriously considered.

16.6 As already mentioned, the Framework Review is a golden opportunity to 'think big' about modernising the UK's tax system and, in our view, it would be a missed opportunity for the Government not to seriously look at moving the UK's tax year to 31 December. Retaining a 5 April tax year end makes little sense in today's global world. Changing it only by 5 days to 31 March would not be much of a change or deal with the issues caused by using a different year end to much of the rest of the world. Some of the advantages of using 31 December over both 5 April and 31 March include:

i. It would be more easily understood by taxpayers as it coincides with the calendar year.
ii. It could present an opportunity to reform basis period rules at the same time (eg to tax income for the tax year based on the income arising in that tax year (as noted on page 19 of the Call for Evidence)) even though it is not necessary to change the tax year to reform basis periods.

[27] https://assets-eu-01.kc-usercontent.com/220a4c02-94bf-019b-9bac-51cdc7bf0d99/0219fc12-9963-4af8-af65-becb8754bfea/210113%20Chartered%20Institute%20Of%20Taxation%20Budget%20representation%20on%20taxation%20of%20property%20income.pdf

[28] https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/991396/Potential_for_moving_the_end_of_the_tax_year_-_Scoping_document_.pdf

iii. It would help avoid multiple filing obligations under MTD for ITSA and VAT if quarters were aligned with 31 December.
iv. It is used by a large number of other countries, notably the USA, France, Germany and Ireland.
v. Having a different tax year end creates problems for taxpayers who interact with other jurisdictions, for example internationally mobile employees and taxpayers who were not born in the UK. This includes difficulties reconciling overseas income which is reported on a calendar year basis and issues around proving tax residence. It also makes it harder to deal with foreign tax credit claims. There are a significant minority of such taxpayers in the UK.
vi. It could help prevent tax leakage that may be being caused by mismatched tax years with overseas jurisdictions.
vii. Offshore data coming into HMRC under exchange of information agreements from overseas jurisdictions which use the calendar year could be used for pre-population of tax returns (eg in relation to income from digital platforms).

16.7 Moving the tax year to 31 December could involve a short 9-month transitional period (6 April to 31 December) but we think that this could be managed effectively. For example, it might involve pro-rating the personal allowance, CGT annual exemption etc and some transitional rules to prevent leakage. Some thought would need to be given to how to treat the minority of self-employed taxpayers whose accounting period does not end on 5 April or 31 March. Perhaps this could involve allowing them to relieve overlap profits brought forward?

16.8 The fact that the UK's tax year is different to the tax years used by overseas jurisdictions (many of whom use the calendar (31 December) year as noted above) also creates difficulties with marrying up offshore data. The offshore data received by HMRC is usually for a year ending on 31 December, whereas the UK tax year ends on 5 April. We know this is making it hard to match data coming in to HMRC from overseas jurisdictions under the CRS and the Foreign Account Tax Compliance Act (FATCA) and making it more difficult to efficiently identify cases for nudge letters or compliance checks. This situation is likely to get worse as international co-operation increases and more exchange of information agreements are developed eg through the OECD.

17 Q13. How could tax return obligations and processes be updated? What should a 'tax return' look like in a digital tax system?

17.1 We think this review provides an opportunity to 'think big' - let us consider what we want the tax system to look like in ten years and work towards that, rather than just tweaking existing rules and processes.

17.2 Tax return obligations and processes need to be as simple as possible whilst providing certainty for taxpayers that they have met their filing obligations and paid the right amount of tax at the right time.

17.3 Harmonising filing obligations could mean it is less likely that a taxpayer makes a mistake or misses a filing deadline. But harmonising obligations could be difficult in practice whilst the triggers for reporting and filing are currently different across the taxes. However, it would be very helpful if, as a start, a single digital gateway, or single customer account, could be developed through which taxpayers can report, file and pay their taxes in one place.

17.4 However, HMRC need to recognise that there are many taxpayers who will not interact digitally with HMRC. This will not just be digitally excluded taxpayers, but also taxpayers represented by an authorised agent who do not wish to engage directly with HMRC which is why they appoint an agent. This is why it is essential that

authorised agents can see and have access to the same data and information that is available in their clients digital account, and at the same time as it is available to their clients.

17.5 We think that most people want to have as little direct contact with HMRC as possible so reducing contact whilst helping people meet their filing and payment obligations should be the goal. Contact could be reduced by only needing to send HMRC information once, and HMRC's systems then using that information where it is needed, for example using it to pre-populate forms and returns. HMRC should continue to work towards removing more people from the self-assessment system by the better use of taxpayer and third party data.

18 Q14. How could HMRC better establish tax liability in future, to help build trust in a tax system that people see as fair and even-handed?

18.1 In the future, HMRC should be able to use software and data to pre-populate tax returns, forms etc with data from third parties, such as banks and other financial institutions, rental property income from letting agents etc, which taxpayers then check for accuracy. Taxpayers must be able to overwrite entries they consider incorrect in order to make a submission that they consider to be correct. After all, we expect HMRC will want taxpayers to confirm electronically that the return is complete and correct ie agree to a statement similar to that in the signature box on the existing tax return. A free-text disclosure box is also essential (as demonstrated by the Supreme Court's comments in *HMRC v Tooth* [2021] UKSC 17) so that the constraints of pre-determined boxes do not prevent the taxpayer from submitting a correct return as a whole (as that would undermine trust in the system). See also Recommendation 6 in the OTS third party data report[29] and also our comments elsewhere about the ever-growing list of problems with the tax return boxes.

18.2 As mentioned elsewhere, a single customer account is needed which brings together all data held by HMRC about a taxpayer across the different taxes and data sources associated with that taxpayer. This new single account should replace the current Personal Tax Account and Business Tax Account which are not joined up and have limited functionality.

18.3 A single customer account has the scope to make tax a lot easier especially for taxpayers with simple affairs. If the right capability is built into the account, it could mean that some people who now have to complete a self-assessment tax return because for example they make pension contributions or gift aid payments, or they have to pay the HICBC, would no longer need to submit an annual tax return to HMRC. The status of the information in the single customer account which constitutes a person's 'return' for the tax year would then need to be considered – eg could HMRC 'enquire' into it under their s9A TMA 1970 powers, what safeguards would apply etc – rather than it being some kind of informal system.

18.4 In the future HMRC must have a single IT system that holds data and information about taxpayers and uses it correctly to establish a taxpayer's tax liability. This will help build trust in the tax system. We want to avoid the problems that arise due to mismatches of taxpayer records / data between different legacy IT systems within HMRC, for example because the National Insurance and PAYE (NPS) service and the self-assessment systems do not 'talk to each other' properly. This includes P800s being incorrectly issued to taxpayers within self-assessment, and HMRC not collecting Class 2 National Insurance contributions correctly. We are even seeing new problems being created from more recent IT developments connected to the CGT 30-day property reporting service and how HMRC's systems deal with the interaction of the CGT 30-day return and the self-

[29] Taxpayer trust and safeguards Recommendation 6 on page 9
https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/997582/Third_party_data_report.pdf

assessment tax return where there has been an overpayment of CGT that is available for set-off against an income tax liability. An interim solution has been found but all these types of problems take taxpayers and HMRC time and effort to resolve and ultimately erode trust.

18.5 It would be worth considering whether HMRC's systems could be better integrated with other Government departments' systems such as Companies House and the Department for Work and Pensions (DWP), to form a single 'source of truth' with respect to data and information that is relevant to a person or entities tax position.

18.6 The ability for digitally excluded taxpayers to submit returns and other information to HMRC by means other than online must be preserved (see earlier Equalities Act) comments.

18.7 There are complex rules around making claims and elections particularly where a mistake is made. From the perspective of fairness and efficiency, when a taxpayer (corporate or individual) is bringing their tax affairs up to date (eg via compliance check involving discovery assessments or contract settlements) then the tax they end up paying can be more than they would have paid for a specific year than if they submitted a correct return at the time. This is perceived as unfair and damages taxpayer trust in the tax system – people understand they need to pay late payment interest and penalties for the mistake but to have these charged on an inflated tax liability is a problem. This issue arises due to the limitations on consequential claims and elections (eg the narrow scope of s36(3) TMA 1970 compared to that of s43A TMA 1970), 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 be re-written so that whenever a liability is determined (even if that is up to 20 years after the end of the tax year) the tax liability is that which would be charged if a correct return had been submitted on time.

18.8 There is another issue regardless of whether any culpability exists because s43(2) says that claims must be made before the end of the year of assessment following that in which a discovery assessment is issued. However, many compliance checks and appeals remain unresolved at this deadline, leaving taxpayers unclear on what to do as they do not know how their case will ultimately be determined and the size of any claim needed as a result. Taxpayers of all types should be able to make claims up to (say 60 – or at least 30) days after their discovery assessment (or s54 TMA 1970) contract settlement is finalised in order that they are (overall) assessed on the same tax as they would have been if they submitted their returns correctly in the past. These figures should form the basis of interest and penalty charges too.

18.9 HMRC's systems (or the personal tax account) could be used to help both HMRC and taxpayers track claims, elections and other data that affects future tax years eg Principle Private Residence elections; form 17; EIS investments; overlap relief.

18.10 During a call with HMRC on Chapter 4 of the Call for Evidence HMRC told us that they were thinking about longer term reform to benefits and expenses, for example payrolling more benefits and reforming the Form P11D process. In our view, whilst the P11D process can undoubtedly be very cumbersome, we are a long way from being able to successfully payroll all benefits under the current system. We note the OTS report[30] on expenses and benefits recommended reforming the benefits and expenses system first before moving to compulsory payrolling. Difficulties with the current system that would make payrolling benefits very tricky include the treatment of directors' loan accounts, the treatment of beneficial loans (which is based on balances

[30] Review of employee benefits and expenses: final report 2014
https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/339496/OTS_review_of_employee_benefits_and_expenses_final_report.pdf

at the start and end of the tax year), the rules for class 1 NIC and class 1A NIC not being aligned with income tax and revisions to figures made after the end of the tax year. Also, it will be harder for smaller employers to payroll benefits as they do not necessarily have the resources and tend to rely on their agent (if they have one) to prepare their Forms P11D.

18.11 We think the customer journey could be improved in relation to PAYE coding notices which currently generate a significant amount of contact between taxpayers and HMRC, and also taxpayers and their employers, and can take a long time to correct / update. Some suggestions are:

i. It would help if HMRC provided a clearer explanation in the notice of how the figures that make up a PAYE code number have been worked out.
ii. Where multiple codes are issued on the same day, making it clear which one was issued last.
iii. Allow trusted agents to change tax codes online without needing to telephone HMRC (HMRC's systems could 'red flag' for any big and unusual changes for follow up).

18.12 Use of blockchain technology behind digital currencies could be explored to identify and track tax liabilities in real time. There are many emerging technologies that could have wide applications for how taxes are identified, monitored and paid. HMRC should be a player in this space and launch pilots / sandboxes to trial new technologies.

Chapter 5 Using data and information to make tax compliance effortless for the majority

19 Q15. What key issues do the current legislative provisions relating to the provision and use of data and information present?

19.1 We think that there are tensions over the ownership of data and information once it is submitted to HMRC. We are not sure if this is a result of how the current legal framework operates and rules about how data must be handled, or not. However, whatever the cause it does create problems. If we take the example of RTI payroll data, once the employer sends it to HMRC what happens to it is outside the employer's control, which means it is very difficult to change or correct it. The employer cannot overwrite it because it is now on HMRC's system, and they do not have a full picture of what is sitting on HMRC's system. This means that they can only change it by sending in an amendment but without having the full picture, this is not necessarily an easy process. There are similar complexities for the employee, if they disagree with what their employer has submitted to HMRC.

19.2 It follows from this that there are key questions about who controls the data once it is submitted to HMRC, and how we identify which is the definitive and correct version of the data.

19.3 There are areas where HMRC are not currently able to collect and use data and information from third parties which, if such data were available to HMRC, would help taxpayers to comply with their tax obligations, calculate their tax liability and pay the right amount of tax. We can think of two examples where we believe current legal constraints on confidentiality / data protection prevent HMRC from using data and information that is held by other Government departments. This is data about state pensions, state benefits and child benefit claims which is held by the Department for Work and Pensions (DWP). It does not make sense that data and information held by other departments that is relevant to a person's tax position is not being shared with HMRC. Some issues we have identified are:

i. It is our understanding at present that HMRC can only use state pension data to populate PAYE coding notices and simple assessments, but that sometimes this data is incorrect especially in the year a person first starts to receive their state pension.
ii. State pensions (and some state benefits) are not taxed at source through the PAYE system. In our view they should be part of the PAYE system so that tax codes can be operated on them and tax deducted at source by the DWP. This would help reduce the risks of people significantly under or over-paying income tax, and potentially reduce the number of simple assessments and the number of state pensioners within the self-assessment system.
iii. The high income child benefit charge (HICBC) would work better and the level of non-compliance with it would be reduced if tax and benefit data for individual taxpayers was joined up. For example, the HICBC could be automatically imposed once a claimant has tripped over the threshold. This could be done through the digital tax account, with alerts to taxpayers and invitations to ask for child benefit not to be paid.

19.4 It is important always to be aware of the context in which the legislative provisions relating to the provision and use of data and information have been granted and in which they are being used. On page 21 of the Call for Evidence HMRC list information and inspection powers (such as under Sch 36 FA 2008) as examples of HMRC's current information provisions. In our view, these powers are in a different category to the administrative and collection powers under which data is provided to HMRC by third parties (such as data about bank interest obtained annually from UK financial institutions and third party data-gathering powers (such as under Sch 23 FA 2011)). The latter can assist HMRC is building up a picture of a taxpayer's tax position and help compliance, but the former are powers used typically during the enquiry process so require different

safeguards. It is probably not helpful to think about them in the same way.

19.5 Harmonisation (see Box 5.1 on page 22) would probably require changes in the underlying tax legislation, for example if record keeping requirements were harmonised. However, record keeping requirements must fit with the relevant legal assessment time limits etc for the particular tax concerned so we are not sure how much harmonisation will be possible unless time limits etc are streamlined across taxes? What could be reviewed is whether existing record keeping rules all currently fit with existing time limits, or whether there are any areas which could be improved. For example, when time limits were recently extended to 12 years for certain offshore tax non-compliance, record keeping requirements were not similarly extended, leading to a mismatch between the length of time records are legally required to be kept and the extended assessing time limits. The current disparity between record keeping requirements and discovery assessment time limits means that taxpayers who follow the record keeping rules then find they have no evidence to defend themselves against discovery assessments (where they bear the burden of proving what the correct liability should be). Likewise, data is often required to be erased after a certain period of time under the Data Protection Act 2018 meaning that the availability and quality of evidence reduces with time and thus the taxpayer's ability to defend and explain themselves. This undermines trust in HMRC. HMRC should ensure the record keeping rules and assessment time limits match up.

19.6 The disparity between assessment time limits and record keeping requirements also means that HMRC may want to access information in order to issue an assessment but the person (taxpayer or third party) who is complying with the record keeping requirements will no longer hold that data.

19.7 Taxpayers want certainty over their tax affairs in as short a period as possible, including the ability to correct mistakes (particularly overpayments) in relation to a defined period of time. HMRC want the flexibility to assess additional tax liabilities whenever they identify them. This creates a natural tension between taxpayers and HMRC which Parliament attempted to balance via legislation such as assessment time limits and deadlines within which enquiries should be opened. The Supreme Court judgment in the case of *Tooth*[31] confirmed that the only time restriction on issuing discovery assessments is the statutory assessment time limit. There is no requirement for HMRC to act on a timely basis after it becomes aware of an insufficiency / under-assessment. In the interests of not undermining trust and perceptions of fairness in the tax system, we encourage HMRC in the first instance to update its guidance and processes to encourage HMRC officers not to delay assessments after HMRC make a discovery. This is important for HM Treasury as it cannot spend the money on public services until a taxpayer pays it to HMRC (albeit that this is somewhat mitigated by interest charges). It is also important for taxpayers as the sooner assessments are issued, the sooner certainty may be obtained. Nasty surprises (unexpected assessments) at the 11th hour should be avoided as they may detrimentally impact taxpayers' general perceptions of the tax system.

19.8 However, updated guidance and processes may not be enough. Ideally, we would like to see a legal requirement introduced on HMRC (a) if they have discovered during the enquiry window, to instigate an enquiry timeously (b) if they ought reasonably to have discovered something during the enquiry window, to be barred from issuing a subsequent discovery and (c) if they make a discovery after the enquiry window to act timeously.

19.9 HMRC often do not provide specifications in enough detail for software developers to make sure that users of the software know where to put data so the right figure can be put in the right box for reporting to HMRC. This

[31] HMRC v Tooth [2021] UKSC 17

often seems to arise in the area of payroll taxes.

19.10 There is a general reluctance for HMRC to show taxpayers what data they hold (eg data provided to HMRC under Automatic Exchange of Information agreements such as the Common Reporting Standard (CRS) by overseas jurisdictions – HMRC's 'nudge' letters tend not to specify what they relate to). Unfortunately many of the nudge letters are wrong, adding stress for taxpayers, reducing their confidence/trust in HMRC and adding professional fees in dealing with them. HMRC need to be much better able to accurately analyse data if they are going to use nudges and trust would be improved if the information was shared with taxpayers. Indeed the forthcoming OECD gig economy data sharing processes specifically include provision for the data to be provided to the taxpayer as well as tax authorities. This information will help taxpayers get their tax returns right and could also be auto-populated into returns.

19.11 One other point relates to data which HMRC hold on third parties which impinges upon someone else's tax position. For instance in a lot of domicile enquiries, HMRC ask for all sorts of data about family members, their whereabouts and intentions. HMRC should be very careful about retaining such data on third parties. They should not be allowed to use their powers in relation to taxpayer X to engage in fishing expeditions in relation to taxpayer Y. They should also examine any such aspects of the tax system and decide whether the legal test (here the domicile test) is fit for purpose if it requires third party data in this way.

20 Q16. What benefits of the current legislation should be preserved?

20.1 The safeguards in Part 4 Sch 36 FA 2008 should, as a minimum, be preserved. They should also be enhanced.

21 Q17. What likely changes and developments will the framework need to handle? What are the key priorities for framework reform in the area of data and information?

21.1 We refer to the recommendations made by the OTS in their July 2021 report 'Making better use of third party data: a vision for the future'[32]. Everything in their report is highly relevant to reform of the tax administration framework in the area of data and information.

21.2 HMRC should make better use of third party data. As we move towards increased digitalisation of the tax system and the economy in general, a taxpayer should not have to give HMRC information that HMRC already have in their possession if they have received that data from elsewhere.

21.3 The same principle applies to data and information provided to HMRC by the taxpayer themselves. If they have provided information to HMRC for one purpose, it should be possible for HMRC to use it for another purpose connected with calculating that taxpayer's tax liability, subject to the taxpayer having given the appropriate consent and compliance with data protection rules. Care will be needed, however, that information provided by one taxpayer should only be capable of being used in relation to the tax affairs of a different taxpayer with proper safeguards.

21.4 Gradually the use of data and information should be extended by pre-population of tax returns, firstly with state benefits, including the state pension and PAYE income, then extending it to interest income before extending it further, ensuring at each stage that problems are established and addressed, so as to improve the

[32] https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/997582/Third_party_data_report.pdf

quality of pre-population and trust in the tax system. Only then should HMRC consider extending it to other areas, such as pension contributions and other forms of relief/income.

21.5 A more digital tax framework will probably need to handle the population of data into a taxpayer's records and the pre-filling of forms, returns etc. This would be made easier if a new system of a single UK taxpayer identifier numbers was introduced (see para 13.9 above). However, it will be essential that the security of such a number is watertight as any breaches of security involving this number would be very damaging and undermine trust in the system.

21.6 There is a case for using more real-time data and information to build a picture of a taxpayer's tax position and tax liabilities. It could be beneficial in certain areas, but not all, so we think this needs a cautious approach, mainly because the UK's tax system does not work in real time, it works in arrears. We are not sure how great the benefits of using more real time data will be in areas where the tax system works in arrears, such as the taxation of income from self-employment and property. Taxpayers who do not know whether they are resident in the UK until the end of the tax year should also not be prejudiced. There will be concerns about its accuracy due to accounts etc only being finalised after the end of an accounting period / tax year etc. Another issue may be with seasonal fluctuations with income – farming, holiday guest houses etc. In other words, real time data and information is interesting, but it cannot be relied upon until the tax position is finalised at the end of the year. As mentioned elsewhere, HMRC should not take action, such as registering a person for self-assessment, based on what could be incorrect or incomplete real time data.

21.7 Universal Credit (UC) is perhaps a useful example of the limitations of real-time data. UC bases calculations on recent data, but becomes very sensitive to mismatches of timing, and to errors.

21.8 If information is available in real time, there is no point delaying the transmission of it to HMRC. But if the tax calculations are not done in real time, then going out of your way to gather information in real time is unnecessary: doing so just adds an administrative burden and introduces sources of error and confusion. This is partly what is happening with 30-day CGT reporting, which would be better dealt with as a provisional calculation to be amended / finalised at the end of the tax year.

21.9 We can see that where there is an advantage in seeing data in real time is that it would give a taxpayer, a third party or HMRC time to check it and correct it, if necessary, before the end of the tax year.

21.10 There are more advantages to using real time data for PAYE purposes, such as in PAYE coding notices. But this does not always work effectively because often the data is incorrect or already out of date by the time it is used. Sometimes it feels like PAYE codes are being micro-managed to an unhelpful degree. It is not easy to correct errors in tax codes either, and usually involves the taxpayer or their agent needing to telephone HMRC which can be time-consuming.

21.11 HMRC need to improve their current systems so as to be able to use real time and third party data on a more timely basis than they do now.

21.12 We need to be mindful that there is a distinction between data provided by the taxpayer themselves and data provided by third parties about the taxpayer. This is probably most relevant when considering the accuracy of the data and who is accountable and responsible for the accuracy of the data and correcting inaccurate

data. In our view, HMRC should start from the presumption that data provided by the taxpayer is correct (in accordance with the Charter[33] principle 'treating your fairly').

21.13 We agree with setting standards for the quality and formatting of data received from taxpayers and third parties, so that HMRC can effectively process, use and match the data quickly and accurately. There is likely to be a tension over who has control over the form in which data is provided because third party data holders may have obligations to provide data to different stakeholders who will all have different needs. HMRC are likely to need to enter discussions with third party data holders about the form in which they require the data from them which will need to balance the relative costs and administrative burdens of alternative formats.

21.14 We need to be mindful that any changes in the area of data and information should make things easier for both taxpayers and HMRC, so it is important that they are done right. For example, it is not going to much use if data is provided, say by a financial institution, in global amounts with no breakdown of the individual amounts that make up the total figure. If the taxpayer disagrees with the total figure, it will be impossible for them to identify where the error is without a breakdown of how it is made up. Similarly, if data is provided for a period that does not coincide with the UK's tax year, it may be very difficult for the taxpayer to identify where an error has been made. In this situation, the taxpayer would be in a worse position than they are now supplying the data themselves.

21.15 It follows from this that the underlying data and information provided by both the taxpayer and third parties needs ideally to be tagged and traceable from the return, form or account it has been pre-populated into (eg a self-assessment tax return, CT600 company tax return, digital tax account etc). A good structure for holding the data on HMRC's systems needs to be put in place from the start.

21.16 Any reform in the area of data and information must include agents. Authorised agents must see and have access to the same data and information that their clients have access to and at the same time. Represented taxpayers will be likely to expect their agents to sort out discrepancies with third party data and the agent cannot therefore be handicapped by not having access to the same information as their clients.

21.17 There should be more transparency and facilitation of the channels through which third party data and information can be collected.

21.18 Potentially uploading the information onto one platform would enable HMRC / the taxpayer to calculate the taxpayer's tax liability more easily.

21.19 Given the impact that better use of data and information will have on the tax administration framework it is essential that a roadmap is produced and agreed with third party data providers, setting out what is required from them and when, so that issues can be addressed and resolved well in advance - see Recommendation 2 in the OTS third party data report.

22 Q18. What principles should govern HMRC's collection, use and onward transmission/sharing of taxpayer data?

[33] 'We'll assume you're telling the truth, unless we've good reason to think you're not'. https://www.gov.uk/government/publications/hmrc-charter/the-hmrc-charter

22.1 There should absolutely be a set of principles to govern the collection, use and onward transmission/sharing of taxpayer data by HMRC. We support a sensible approach to have the right safeguards and checks around data. This will be key to building trust in the system.

22.2 Any principles should have 'teeth' so that HMRC can be held to account if they do not follow them.

22.3 This should be on top of legal requirements around confidentiality, GDPR etc.

22.4 The principles should cover ownership of the data and responsibility for keeping the data secure.

22.5 A key principle is allowing taxpayers to correct (not just challenge – see page 22 of the Call for Evidence) inaccurate data that HMRC hold. This will be vital.

22.6 Another principle should concern hierarchy of the data, for example that data provided by the taxpayer themselves takes precedence over that provided by a third party.

22.7 The principles should include that third party data is used only for the purposes of calculating the taxpayer's liability and not for another purpose. Nor should information which a taxpayer provides about third parties be used except with very strict safeguards.

22.8 Another principle could concern minimising burdens on taxpayers to provide data through HMRC obtaining data directly from other Government departments, such as the DWP.

22.9 The costs and burdens on third parties to provide data and information could be potentially huge. It should be a principle that any costs and burdens on third parties are minimised.

22.10 This could be helped by HMRC thinking carefully about why they want the data and information in the first place. By asking themselves this question, we think this could help to avoid HMRC asking for data for the sake of it and which they will never use. Taxpayers and third parties should not be burdened with increased costs having to provide data and information to HMRC which is not needed and not used. It will also help avoid taxpayers making the wrong decision, for example when choosing software.

22.11 Let us take MTD for ITSA as an example to illustrate the risk that a taxpayer could make a wrong software choice. HMRC are introducing mandatory digital record keeping and quarterly updates from April 2023. The reason behind the requirement to provide quarterly updates to HMRC is to evidence that the person is keeping their records in an approved digital format. Taxpayers will be making decisions about what software to purchase based on the information available at the time as to why HMRC want the data. However, if this changes over time, for example if this data is later going to be used by HMRC as a basis to calculate quarterly tax payments, then taxpayers may have approached things in a different way if they had known this at the start and could end up incurring unnecessary costs or making expensive mistakes with software choices. This is why we urgently need a MTD for ITSA roadmap setting out the long term plan for MTD.

23 Q19. What additional safeguards would be needed for taxpayers and third parties if the role of third parties/intermediaries was expanded?

23.1 Taxpayers should by default be able to see what data and information third parties send to HMRC about them so that they are aware of what data and information is being provided, and have the opportunity to challenge and correct it in a timely manner.

23.2 A key concern surrounds who is responsible for the accuracy of the data that HMRC will be given by third party providers, how HMRC will use this to pre-populate a taxpayer's digital tax account / return etc and how the taxpayer will be able to challenge and correct errors and discrepancies. As tax becomes increasingly digitised it will be necessary to consider the extent to which other parties (software, banks, agents) take responsibility for the information they provide to HMRC. This is an area that will need to be kept under review.

23.3 We would not support any proposal that a taxpayer would not be able to override incorrect data or be forced to contact the third party data provider to sort out the discrepancy. This would be extremely burdensome for the taxpayer and could cause a great deal of stress and worry, particularly if the discrepancy is large, until the dispute is resolved. It would in fact be more burdensome than the current regime where the taxpayer's obligation is to enter the correct figure onto their tax return themselves. The impact on third parties is also likely to be significant – a statutory obligation would need to be placed on those third parties to require them to resolve queries within a specific timescale and subject to specific rights of appeal. If issues around incorrect third party information had to be resolved directly with those third parties, an agent's authorisation from their client to represent them with HMRC would also need to hold good against the third party, who will otherwise likely refuse to liaise with the agent on data protection or similar grounds. This might in turn require changes to the form in which the client/taxpayer gives their authorisation.

23.4 We think that the best and simplest position is that a taxpayer (or their authorised agent if they have one) should be able to correct inaccurate data themselves. This would fit with the current legal position that the taxpayer is responsible for the accuracy of their own tax return. We do not think this position should change. To minimise taxpayer error, the taxpayer could be asked first whether they agree with the data – perhaps by ticking a box – so that they have to make an active decision whether to accept or reject the pre-populated data. If they disagree with it, they should be able to insert what they believe is the correct figure instead and also be required to provide an explanation as to why they are overriding the third party data. Warning prompts and nudges could be utilised to warn the taxpayer of the consequences of submitting incorrect information. If the taxpayer substitutes another figure to replace a pre-populated figure this should act as a 'red flag' for HMRC's risk assessment procedures. If HMRC want to challenge the figure they should use the normal enquiry/compliance check process to do that.

23.5 An alternative approach would be for HMRC to send all third party data it receives about the taxpayer to the taxpayer to be approved by them first before HMRC use it to pre-populate forms, returns etc or for any other purpose. However, this could be a very cumbersome and time-consuming process so we do not think this would be workable.

23.6 The taxpayer should not suffer any financial costs or unreasonable administrative burdens when correcting inaccurate data.

23.7 It should be made clear how a taxpayer can access the data and information HMRC have about them, how they can check it and how they can challenge and correct it if they think it is wrong. Taxpayers tend to assume HMRC's figures are correct so this is not going to be easy for HMRC to communicate, especially where taxpayers are not represented by an agent. HMRC must ensure that prominent flags are put on taxpayers' tax accounts if information is imported from third parties, to remind taxpayers to check it and, if they consider it incorrect, to overwrite it. A free text box should be provided so the taxpayer can explain such amendments. This is essential as if it is a case of mistaken identity (eg taxpayer A can see £100 interest from bank B with whom they do not hold an account) then bank B will not be willing to talk to taxpayer A, who is not their client.

23.8 Permission should have to be given by taxpayers to third parties to share information with HMRC and only for certain limited purposes, ie for the calculation of their tax liabilities.

23.9 Third party data obtained by HMRC must not be shared with anyone else (except perhaps on an aggregated and anonymised basis) or used for marketing purposes.

Chapter 6 Tax payments and repayments

24 Q20. What key issues do the current legislative provisions relating to payments present?

24.1 Most of the following comments are connected with HMRC's processes and systems not working efficiently. The top priority should be a single one-stop, self-service payment portal. This is an overdue and much needed modernisation.

24.2 It can sometimes be difficult for a taxpayer to make a payment to the right place, for example they might use an incorrect reference number, or no number at all. This can make it hard for HMRC to allocate the payment against the right liability. When paying PAYE, if a taxpayer uses the wrong reference number the payment can end up in the wrong tax year which then leads to problems reconciling payments with RTI returns. We have heard that some PAYE reconciliations can take months, even years to sort out. There should be a better way of matching RTI submissions with payments in HMRC's systems.

24.3 Growing companies sometimes struggle with quarterly instalment payments (QIPs) as they need to estimate how much their corporation tax liability will be in order to make QIPs during the year and before their accounts are finalised. This can also be a problem for established businesses where trading is particularly seasonal or if they are experiencing unpredictable trading conditions. Consequently, despite doing their best to comply, they face interest charges and the opportunity cost of the time taken to try to work out the QIPs. It may be better to use the same system as income tax ie payments on account are based on the previous year's tax liability, with an ability to amend downwards if need be and a sweep up payment when the return is submitted.

24.4 The collection of tax can be too separate from the rest of HMRC. Time to pay needs to be built into s54 TMA 1970 settlements regardless of where it is dealt with in HMRC - some inspectors refuse and issue assessments instead and then refuse to pass information about the taxpayer's finances and need for time to pay on to HMRC's Debt Management and Banking teams. This is very inefficient use of staff time from HMRC's perspective and causes extra stress and anxiety for taxpayers who also lose trust in HMRC as a result. This does not fit with the Charter[34] standard of 'making things easy'.

24.5 Taxpayers who are represented by agents will rely heavily on their adviser to tell them what their tax liabilities are, when they are due for payment and how to make the payment. It is important that HMRC recognise the role that agents play in helping their clients comply with their tax obligations and pay their taxes on time.

24.6 If you do not have an agent, you will be much more reliant on HMRC to help you navigate the system and pay on time. HMRC do need to improve the way they communicate with taxpayers and consider how they can use the increasing amount of data they have about taxpayers to send more bespoke messaging to taxpayers and nudge them towards certain behaviour. This is already being used in the area of compliance, but there may be scope for using it more proactively not just with regard to payments but also to help taxpayers claim reliefs they are entitled to etc. This could help build trust with the general public.

24.7 It would be helpful if HMRC could improve how taxpayers make payments to the authority. The present system feels very clunky and old-fashioned. There needs to be better sign-posting. If HMRC are expecting a payment from a taxpayer because they have filed a return showing a liability is due, could HMRC's systems generate bespoke reminders (emails, text messages etc) and prompt the taxpayer to log into their Government Gateway or digital tax account to make the payment? Could HMRC pre-populate the taxpayer's account with the correct reference number and the amount they are expecting so the payment process is simplified? Other

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

Government departments already do this relatively seamlessly, such as the DVLA[35]. Ideally the account should look more like a credit card statement and payment be automatically allocated so as to minimise interest and penalties.

24.8 We would also point out that many taxpayers and agents have lamented the demise of hard copy payslips. This sounds old-fashioned, but for many people, especially elderly people, paying by cheque is still the norm, and the lack of a payslip is problematic. Whilst we are not advocating a return to hard copy payslips, this does demonstrate that digitalisation is not a 'cure all' and that there are still many people who do not wish to engage digitally with the tax system.

24.9 HMRC also need to be mindful that some people find the constant noise created in their lives by e-mail, text message etc very worrying and upsetting for their work/life boundaries. Adding to this by sending chasing messages and reminders will add to pressure on those people and could erode trust. HMRC need to be careful how they word message and reminders and how often they send them out – so that taxpayers understand them and do not feel threatened by them and so as to build and maintain trust in the system.

24.10 It can sometimes take HMRC a long time to organise payment processes and reference numbers at the end of a disclosure. Often large sums of money are involved. Taxpayers want closure at the end of a disclosure process and delays in being able to pay what they owe drag the process out unnecessarily. Ideally a SAFE payment reference number should automatically be issued at the start of a disclosure process (eg COP8 or COP9) just as it is for WDF cases.

24.11 It should be easier to arrange set-offs of under- and overpayments between different taxes. A taxpayer might get confused where they have more than one tax to pay and muddle up the payments, for example if a taxpayer is in self-assessment but also operates a PAYE scheme for their carer or nanny, they might incorrectly use their PAYE reference number for their SA payment. When this sort of thing happens it is currently very hard to correct and can take a long time to put right. A simpler automated off-set process would save time for both the taxpayer and HMRC. The system should ideally calculate the method of offset which generates the lowest overall bill for the taxpayer – a bit like an Oyster card calculating which ticket options are the cheapest for the journey actually taken.

24.12 **Repayments** – when repayments are made on a timely basis by HMRC this helps build trust in the system. However, where there are delays in making repayments, and particularly where there is no explanation for the delays, this undermines trust if taxpayers come to the view that HMRC are quicker at taking payment than giving repayments. We know that repayments can sometimes get 'stuck' in the system. We appreciate that repayments have to go through fraud checks and that these can take time, but some delays appear to be unreasonable and without explanation. HMRC should be more transparent about why delays in making repayments may be occurring and when repayments will be made. Whilst delay is still frustrating, this would at least help manage expectations and reduce unnecessary contact time with HMRC chasing up repayments. HMRC are now undertaking checks on self-assessment repayments, asking taxpayers to provide 'know your client' (KYC) evidence to prove their identity. This seems to be happening regardless of whether the taxpayer, a new agent or an established agent filed the return. If an established agent files the return online via their agent gateway, then we consider that HMRC should accept that as evidence the repayment is genuine as the agent must KYC the client before they take them on – unless there is evidence that the agent's credentials

[35] https://www.gov.uk/vehicle-tax

have been hijacked. Also HMRC should provide a more secure method for taxpayers to submit copies of key documents such as passports, than just relying on the general post.

24.13 The Call for Evidence does not mention interest or repayment interest. The rates at which HMRC currently charge and pay interest are:

- late payment interest rate - 2.60% from 7 April 2020
- repayment interest rate - 0.5% from 29 September 2009

There is therefore a mismatch between the rate HMRC charge on late payments and the rate they pay on repayments, and this difference can end up being penal which can in turn affect trust in the system. The fact that late payment interest is at penal rates causes a number of problems (see e.g. Jusilla v Finland[36]). We think it would be better that interest should solely reflect commercial restitution for the time value of money. If the taxpayer's behaviour merits an element of penalty, then this should be solely dealt with through the penalty system, not through interest.

24.14 The calculation of interest where there are overpayments and repayments for multiple years is a recurrent issue, especially in a group or partnership context. HMRC's systems do not seem able to get it right automatically. Members report that they often see overpayment interest and repayment interest running concurrently on the same amount.

25 Q21. Are there any particular benefits of the current legislation that should be preserved?

25.1 The use of direct debits for VAT payments should be preserved. Direct debits help taxpayers avoid missing payment deadlines and thus incurring late payment interest and penalties. Could HMRC use direct debits more widely for other taxes, for example PAYE? Would this help minimise the problems described in para 23.2 above? If trust is an issue for some taxpayers, could HMRC offer payment by direct debit on a voluntary basis?

25.2 The extra 7 days allowed for VAT payments should also be retained. Many taxpayers find these extra few days helpful.

25.3 The ability to postpone payments on liabilities that are under appeal eg under s55 TMA 1970 should be preserved and consideration should be given to whether it should be extended to all taxes and NICs.

26 Q22. What benefits could a single/reduced set of payment rules, applied across the taxes, bring?

26.1 A single or reduced set of payment rules applied across the taxes is desirable, but we are not certain how it could be achieved, given there are currently different payment rules for different taxes. It sounds like a significant piece of work, so it will be necessary to analyse the costs and benefits carefully to be sure that the investment that might be required to change the rules is commensurate with the benefits that can be achieved.

26.2 A single or reduced set of payment rules applied across the taxes would make it much easier for taxpayers to know what they need to do and when. But we think there would probably need to be two sets of payment

[36] https://hudoc.echr.coe.int/tur#{%22itemid%22:[%22001-78135%22]}

rules recognising that some taxes are regular, and some are one-offs. Regular taxes include income tax, corporation tax, NICs, PAYE and VAT - taxpayers make payments of these several/many times. These should be subject to one set of identical payment rules. Other taxes are one-offs ie transaction/event based – Inheritance Tax, CGT, Stamp Duty Land Tax for example. These should be subject to a different set of payment rules. So we should end up with only two sets of payment rules.

26.3 A single or reduced set of payment rules could mean fewer deadlines for taxpayers to remember and could lead to less tax being paid late. It would make it easier for taxpayers to meet payment deadlines and help them plan. They should also be allowed to pay earlier if they want to eg by monthly direct debits. On the other hand, there is the risk that payment deadlines at the same time will create cash-flow issues for some taxpayers, and thus be counter-productive.

26.4 If the ambition is that taxpayers have more certainty over their liabilities and payments, then we would advocate that this can be also achieved by enabling them to be able to see all their liabilities and payments, across all the taxes they interact with, in one place – such as in a digital tax account. We note that this is one of the 'opportunities for reform' outlined on page 25 of the Call for Evidence (5th bullet point). We support this. Non-digital alternatives should be provided for taxpayers who are unable to interact with HMRC digitally.

26.5 Taxpayers are entitled to appoint an agent(s) to help them with their tax affairs and HMRC's Charter[37] recognises that a taxpayer can appoint someone to represent them. HMRC must put processes in place to enable agents to interact easily with HMRC's systems and see and do what their clients can see and do. Provision should be made so that tax agents also have a single view of the tax payments made and the tax liabilities becoming due for each of their clients. We understand that this may present HMRC with systems challenges where a taxpayer uses a different agent for different taxes, and we suggest that any solution to this problem should be addressed in conjunction with any changes and improvements to the agent authorisation process.

26.6 Taxpayers may find it easier to make regular or more frequent payments (if they want to) if they have a single view of their tax liabilities and payments in one place.

27 Q23. What likely changes and developments will the framework need to handle? What are the key priorities for framework reform in relation to payments?

27.1 With the introduction of MTD for ITSA in April 2023, there has been talk of introducing more regular payments of income tax to coincide with quarterly reporting. HMRC's Call for Evidence on Timely Payment[38] is looking at the benefits and challenges of the current tax payment timings, and for moving to more frequent, in-year tax calculation and payment.

27.2 We make more detailed comments in our response to the Call for Evidence on Timely Payment but our key points in relation to the suggestion of moving to more frequent, in-year tax payments are that:

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

[38] https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/972143/Timely_payment_-_call_for_evidence_.pdf

i. We think that more should be done to promote / extend the current voluntary payment options (eg the Budget Payment Plan). We note the investment in HMRC to do this and perhaps that should happen and bed in before further decisions are taken.

ii. Similarly, education is important. Our perspective is that represented taxpayers are usually well advised about their tax liabilities and the need to budget accordingly, but unrepresented ones are more at risk of the financial 'shocks' brought about by their tax bills. So more should be done to educate taxpayers around the need to put money aside etc.

iii. If we move to more frequent payments, we think that basing them on previous years – albeit with the ability to flex if not representative of current trading – is preferable (at least in the short / medium term) to basing payments on real-time data. We think there are many problems with moving to a more real-time basis of taxation, and whilst looking back is often not perfect, it is easier to do and normally based on complete information.

27.3 We would urge the Government to refrain from introducing new payment rules and systems which do not fit in with whatever decisions are made by this current review. There needs to be a coherent and joined-up approach to the design of any new system(s). A recent example of new rules being introduced which caused a significant number of teething problems were new rules[39] introduced to accelerate the reporting and payment of CGT where a person sells a property in the UK on or after 6 April 2020 (which we have mentioned elsewhere in this response). Under these rules, you must report and pay any CGT due on UK residential property within 30 days of selling it. HMRC created a brand new online service to report and pay without any consultation with stakeholders or potential users. Our members and their clients have found interacting with this new system incredibly challenging and frustrating which has damaged trust in the tax system. This is an example of tax changes running ahead of the capacity to produce integrated agent-accessed IT.

[39] https://www.gov.uk/capital-gains-tax/report-and-pay-capital-gains-tax

Chapter 7 Building in effective methods of verification, sanctions and safeguards to promote compliance

28 Q24. What key issues do the current legislative provisions relating to powers, sanctions and safeguards present?

28.1 As with previous comments, much of the feedback in this section concerns not just the legislation underpinning HMRC's powers, sanctions and safeguards, but HMRC's processes, systems, communications and guidance in relation to those powers, sanctions and safeguards.

28.2 It is difficult for a taxpayer to obtain certainty on their tax affairs by putting enough information and disclosures on their self-assessment tax return to be sure that the tax year is closed after the end of the normal enquiry period[40]. Members frequently tell us that it is almost impossible to put enough information on the return to avoid a later discovery assessment. The result is that HMRC open an enquiry but often allow it to drift indefinitely (as there is no deadline within which an enquiry must be concluded), forcing the taxpayer to apply for a closure notice. In other cases HMRC do not open an enquiry in time – but this then means that the taxpayer is exposed to the risk of discovery assessments for 4, 6 or 12 (offshore) or 20 years. A solution might be to allow taxpayers to elect for an enquiry to be deemed to be opened into, say, matters disclosed in the white space. HMRC have the power to issue partial closure notices to shut each issue under enquiry as the enquiry progresses, thus giving taxpayers' some certainty, but in practice these rules are rarely used.

28.3 Most taxpayers simply do not comprehend the different avenues HMRC have to challenge tax returns. These differ depending on the tax in question. Trust in the tax system would be enhanced by simplification by harmonising rules for challenging tax returns across all taxes. For example, HMRC open enquiries into self-assessment income tax/CGT returns (eg under s9A TMA 1970), SDLT returns and corporation tax returns. However, there is no equivalent regime for PAYE, VAT or IHT. For these taxes and those for which there are enquiries, a regime of 'compliance checks' exist which combines the use of information powers (eg Sch 36 FA 2008) with assessment powers (eg discovery under s29 TMA 1970 or Reg 80s). Whilst enquiries have the benefit of taxpayers being able to ask the Tribunal (FTT) to direct HMRC to close the enquiry, enquiries are otherwise open ended as there is no deadline by which they must be resolved. Discovery powers can be exercised at any time up to the statutory assessment time limit, and there is no ability for the taxpayer to ask the FTT to direct HMRC to close its check. The deadline for HMRC to issue an enquiry notice is now largely irrelevant anyway as in practice it is effectively superseded by the 4 year discovery assessment time limit (so taxpayers have no certainty on their tax position when the enquiry window closes). Additionally HMRC can issue 'determinations' if taxpayers fail to submit tax returns – these have their own legislative regime (eg s28C TMA 1970) but are unnecessary as HMRC can also issue discovery assessments in the same situation. In the interests of simplicity, perhaps there should be consultation on whether enquiry and determination powers are still fit for purpose any longer.

28.4 The enquiries v discovery issue creates a 'minefield' for IR35 cases. The PAYE position is challenged by HMRC using (effectively) discovery powers. Reg 80(5) Income Tax (Pay As You Earn) Regulations 2003 (SI 2003/2682) states that PAYE determinations are 'subject to Parts 4, 5, 5A and 6 of TMA' so HMRC can take 4 years plus to assess, depending on culpability, if they consider IR35 applies. However, if there is no open corporation tax (CT) enquiry, then companies struggle to restate their CT position as there is a tight deadline for claiming an overpayment. Similarly, if the individual employee does not have an enquiry into their personal returns for the appropriate tax year, then their position may not be easily or fully restated. Interest is charged at the

[40] HMRC may enquire into a self-assessment tax return if they give notice to the taxpayer within a certain time, normally up to the end of the period of twelve months after the day on which the return was delivered (s9A TMA 1970).

underpayment rate on the IR35 PAYE, even though the company has already paid CT (on which it is due a refund) and the individual has paid tax too (which now the company needs to pay). Even if the individual authorises an offset to the company, the CT and individual's tax paid already just attracts repayment supplement rather than stopping underpayment interest accruing on the IR35 PAYE. The CIOT made HMRC aware of the IR35 issue a long time ago, then raised it again in the context of Off Payroll Working (OPW) (because it adds another party to be assessed), but it is only very recently that HMRC's have acknowledged the issue and started to look at how to address it.

28.5 There are often delays in the enquiry process and tax disputes can sometimes take many years to resolve. This can erode trust in the tax system. Delays are not necessarily caused because of problems with the legislation. They will often be due to resourcing and systems issues at HMRC. During a call with HMRC on Dispute Resolution, we were told that HMRC should be responding to correspondence from taxpayers or their agents within 30 days or, if a full response is not possible, that HMRC should be in contact with the taxpayer or their agent every 30 days with a progress report. However, this target is not well publicised outside of HMRC, and, in the experience of many of our members, is not being met. It would help build trust and increase transparency if HMRC met their 30 day target more often.

28.6 We frequently hear complaints from our members about how long it takes for HMRC to respond to correspondence from them, but that HMRC will insist on a prompt reply, sometimes using their statutory powers to enforce it (an avenue not available to our members or the ordinary taxpayer). A typical example we recently heard about was from a member who told us that he is dealing now with a case where the enquiry went entirely silent for 9 months, without even a holding letter, before being suddenly reinvigorated by HMRC. He goes on to say. 'the last letter received from the HMRC officer concerned came in last Wednesday and asked for a reply by close of play last Friday'. It does not help that HMRC's post can take a long time to reach its destination, often arriving long after the date on the letter, notice, statement etc. We accept that delays can also be caused by agents and taxpayers taking a long time to respond to correspondence, but the legal avenues available to the taxpayer to accelerate a response are limited. This also undermines taxpayers' perceptions of fairness and trust in the system.

28.7 One particular bottleneck, which is a cause of serious delay, is the length of time it can take an HMRC officer dealing with an enquiry/case to get technical input from specialists within HMRC or Solicitors' Office. This may be an issue of resource or training, but it needs to be addressed urgently.

28.8 We would recommend that HMRC's Litigation and Settlement Strategy[41] (LSS) be reviewed to assess whether it is still fit for purpose. However in our view its 'all or nothing' approach can drive HMRC officers not to settle a case because of the risk it might not fall within a strict interpretation of the LSS. This leads to a bottleneck of cases queuing to be heard at the Tribunal. Perhaps a less restrictive approach is needed now? This would help resolve a lot of old cases that have been dragging on for years. We appreciate that the LSS is there to help protect the trust of the wider public in HMRC to be fair and even handed in dealing with tax disputes, which is clearly essential, but as we have noted elsewhere, there are examples where there is a perception, real or otherwise, that certain taxpayers receive preferential treatment from HMRC regardless of the LSS.

[41] Resolving tax disputes Commentary on the litigation and settlement strategy October 2017
https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/979527/HMRC_Resolving_tax_disputes.pdf

28.9 HMRC's Code of Governance for Resolving Tax Disputes[42] process can give the public reassurance but it is not perceived as fair and equitable by those in it because the process is a 'black hole'. There is no transparency around it at all. This means it is difficult to judge if the process is fair and working effectively.

28.10 There are several areas involving penalties that are problematic:

i. Penalties for failing to make a return when there is no tax liability. This can produce very disproportionate outcomes. However, we note that this is to some extent being addressed by the new penalty points regime due to start in April 2022 for some taxes. In the interests of taxpayer confidence, the system should be simple and apply across all taxes.
ii. Behavioural penalties for errors on returns and the categorisation of taxpayer behaviour which led to the error. There are difficulties operating the legislation in practice and demonstrating / proving the type of behaviour. This was not thought about enough during the 2005-2012 Powers Review. It is hard to challenge HMRC on penalties. Many taxpayers are unwilling to go to Tribunal due to costs and because it is a public forum. In effect, the system can mean that it is cheaper to accept HMRC's view on penalties than appeal. We understand HMRC want to test penalties but they can be aggressive in their approach, for example asserting behaviour was deliberate not careless.
iii. The standard of behaviour below careless currently does not have a name. By default it should be 'took reasonable care', but it is often called 'innocent error'. However, 'innocent error' is a misnomer as it does not rely on the taxpayer's innocence (they may be oblivious) but on the taxpayer taking active steps. A small suggestion which might be helpful is whether giving this category of behaviour a formal name in the legislation would help to promote the true standard.
iv. Penalty regimes are spread across the statute book (eg Sch 24 FA 2007, Sch 41 FA 2008, Sch 55 FA 2009 and others). It would make things easier if they were consolidated into one Act of Parliament.
v. There are too many different types of tax-geared penalty now, each with their own regime scattered across various Finance Acts. The rules on which penalties take precedence over others are not straightforward. This is causing major confusion and complexity. In some cases HMRC officers are confused as to which penalty regime is relevant and try to apply aspects of regime A which are not relevant to regime B, when calculating regime B penalties, and vice versa. The complexity means that taxpayers are also confused and this generates feelings of unfairness. We suggest that all penalty regimes are brought together in a new Taxes Management Act (see earlier comments) and simplified.
vi. Consideration should be given to whether the same regime could apply in the same situation regardless of what the tax is (harmonisation), but this would need careful thought as tax geared penalties in relation to capital taxes are, we suggest, different to tax geared penalties relating to income tax, and can be a much more severe sanction (if they lead to a loss of capital assets which cannot be replaced).
vii. A penalty regime should clearly distinguish between a person who is trying their best to comply but still getting it wrong and the person who is deliberately getting it wrong. The failure to correct penalty for offshore non-compliance does not do this and consequently has produced some very harsh outcomes for some taxpayers. It is also hard to understand why a person should be more harshly penalised for making an offshore error than a person who makes a deliberate error with their UK tax.
viii. A penalty regime should be easy to understand. The interaction between the myriad penalties for offshore tax non-compliance is incredibly complicated and consequently difficult to understand for both taxpayers and HMRC.

42 https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/655362/HMRC_Code_of_governance_for_resolving_tax_disputes.pdf

ix. Consideration should be given to whether other sorts of tax geared penalties are actually effective eg asset based penalties and offshore asset moves penalties. They are rarely seen in practice and generally taxpayers are oblivious of them so there is no deterrent effect. Replacing them with the one regime for all taxes (as set out in the previous paragraph) implemented fairly and consistently would be more effective and probably more cost effective for HMRC to operate and enforce, with a more effective deterrent effect if it was properly publicised.

x. There is too narrow interpretation by HMRC of when penalties can be suspended – as some case law demonstrates. Also the suspension process is often not cost effective for taxpayers to engage with as it is too long and unwieldy so it ends up being cheaper to pay the penalty meaning that the regime appears not to be achieving its aims fully.

28.11 There are several other areas involving compliance that are also problematic:

i. Managing Serious Defaulters (which is an HMRC process, not in law) – HMRC have never published data on its effectiveness. There should be a review carried out to consider whether the programme is working as intended or not, and whether it should continue, be reformed or cancelled.

ii. Making a disclosure to correct errors – taxpayer awareness is low of the digital disclosure service and the let property campaign. Plus it is often not clear how to make a disclosure to correct historic returns. For example, if COP9 or the WDF is not appropriate, in many cases it is hard to know how to proceed (even for agents). HMRC should make it easy for taxpayers to contact a named team/person with suitable experience at handling the process efficiently from start to finish so they can rectify mistakes of all kinds (this is more cost effective than HMRC needing to open compliance checks).

28.12 In the following paragraphs, we highlight some particular issues with various aspects of legislation that we think need to be addressed.

28.13 The correct mechanism for making claims for relief carried back to earlier years and how HMRC should enquire into them needs to be clarified. See the Supreme Court case of Derry[43] in which the court had to decide whether the correct process had been followed by HMRC when opening an enquiry into a share loss relief claim on the taxpayer's self-assessment tax return – was the correct legislation s. 9A or sch. 1A TMA 1970? This may not need a legislative solution - see Lady Arden's comments at para 30 in *Cotter*[44]. '*If the Revenue is uncertain as to whether to open an enquiry under section 9A or schedule 1A, it can, and should, open enquiries under both sets of provisions on a protective basis*'.

28.14 Several cases, including Derry (above) have highlighted that the current self-assessment tax return is not fit for purpose. In the case of Derry the Supreme Court said that '*there is an urgent need for clarification, not only of the precise legal status of the different parts of the return, but also of any relevant differences between the paper and electronic versions of the return, and their practical consequences'*. The limitations of the self-assessment tax return were also a key issue in the recent decision in the case of *Tooth*[45] (as we have noted elsewhere in this response) where the taxpayer had used the wrong boxes on the tax return due to a technical issue with the tax return software. A free-text disclosure box is also essential so that the constraints of pre-determined boxes do not prevent the taxpayer from submitting a correct return as a whole (as that would undermine trust in the system).

[43] R (on the application of Derry) v HMRC [2019] UKSC 19

[44] Cotter v Revenue and Customs Commissioners [2012] BTC 50

[45] In HMRC v Tooth [2021] UKSC 17 the Supreme Court decided that disclosing information in the wrong box on a tax return and explaining it in the 'white space' was not an inaccuracy, as the return had to be considered as a whole.

28.15 The representative partner regime is not fit for purpose. In Appendix Two we identify some of the issues that cause problems and possible injustices and which we think are worth looking into more closely to see if there is anything that can be done to mitigate them.

28.16 The legislation appears to allow group relief surrenders to be withdrawn with the claimant's consent (FA 1998 Sch 18 para 71(4)), but HMRC do not accept this where the claimant's return is final.

28.17 There appear to be some ambiguities in the rules around 'joint amended returns' (Sch 18 para 77 and regulations) and we are not convinced that they are applied correctly in practice.

28.18 There are issues with how the time limits work for claims that have to be made in a return, in particular group relief and capital allowance claims for companies where the time limit is based on the filing date and the company has not been given a notice to make a return (FA 1998 Sch 18 paras 74 and 82), or where an enquiry is opened after the time limit has expired.

28.19 S690 ITEPA 2003 is not flexible enough. There should be an 'official' month 13 adjustment to finalise the position.

28.20 VAT requires payment of tax before an appeal can be heard (except in cases of hardship). This can affect taxpayers' judgements as to whether to appeal their case or not. Perhaps the review could consider whether VAT should use the same rules as direct tax (ie postpone payment for appeals to the FTT).

28.21 Timing issues arise where HMRC are able to recover an underpayment but the taxpayer is unable to get corresponding relief because of different, inconsistent or unclear rules for claims (time limits, restrictions on overpayment relief, limited scope for consequential or late claims) – see our comments in para 18.7 above.

28.22 There should be a facility to make a late application for internal review for direct taxes, as already exists for VAT. As already mentioned, the processes for internal/statutory review are being considered elsewhere[46] but the process is not fully trusted and therefore under-utilised.

29 Q25. What benefits of the current legislation should be preserved?

29.1 Safeguards and assessment time limits varying depending on culpability should be preserved but also enhanced.

29.2 The discovery rules (s29 TMA 1970) do not need revising (apart from the point on guidance about encouraging HMRC officers not to leave assessments to the 11th hour – see above). Also see previous comments. If a discovery is made (or ought reasonably to have been made) during the enquiry window (based upon information then available to HMRC) then HMRC should act timeously.

29.3 It was suggested during a call with HMRC to discuss the Call for Evidence that HMRC could be given the right to enquire more than once into the same tax year / period. In our opinion, this is not a good idea. HMRC can use their discovery powers after completing an enquiry (for the taxes that have enquiries) so HMRC already have all the powers they need.

[46] Commitment 15 of HMRC's Powers and Safeguards Evaluation Review of post 2012 powers (page 9 of HMRC's report February 2021) https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/958474/Evaluation_of_HMRC_s_implementation_of_powers__obligations_and_safeguards_introduced_since_2012.pdf

29.4 The ability to appeal and postpone tax for direct tax should be preserved and consideration should be given about extending this to NICs and VAT.

29.5 Lower penalties for taxpayers coming forward without prompting to rectify mistakes should be preserved.

30 Q26. What likely changes and developments will the framework need to handle? What are the key priorities for framework reform to support taxpayers to get their tax right and deter non-compliance?

30.1 It is arguable that HMRC may be in part contributing to non-compliance given the current complexity / paper-based nature of the tax system. Reforming the tax framework properly may do away with the need to beef up this area. The reality should be that HMRC should have access to such a comprehensive set of data and information that the majority of taxpayers should not be non-compliant if tax can be identified, monitored and potentially paid on a real time basis.

31 Q27. What principles should govern HMRC powers, sanctions, and safeguards, to build trust in the tax system?

31.1 It is crucial that taxpayers and the public have trust in the tax system when it comes to how HMRC exercise their powers and sanctions, and how taxpayer protections and safeguards operate.

31.2 In Appendix One we set out the CIOT's 10 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.

31.3 We support the 2005-2012 powers and safeguards principles (see Annex B HMRC's Report into the Evaluations[47] of its implementation of post 2012 powers).

31.4 We endorse the recommendations made by the CIOT's Low Incomes Tax Reform Group in its December 2020 report 'A better deal for the low-income taxpayer'[48]. The paper outlines practical steps to making the tax and associated welfare systems work better for people on low incomes. The recommendations are grouped around 7 principles for the tax system that LITRG believe should be firmly lodged in the minds of those designing and managing the tax system.

1. Clear and Up to Date
2. Simple
3. Equitable
4. Just
5. Accessible and responsive
6. Joined up
7. Inclusive

[47] See page 58
https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/958474/Evaluation_of_HMRC_s_implementation_of_powers__obligations_and_safeguards_introduced_since_2012.pdf
[48] https://www.litrg.org.uk/latest-news/reports/201204-better-deal-low-income-taxpayer

32 Q28. How should the framework maintain consistency and fairness between taxpayers and groups of taxpayers, while also providing HMRC with appropriate discretion to enable them to take account of individual taxpayers' circumstances and wider concepts of fairness?

32.1 Legislation already exists providing shorter assessment time limits where taxpayers took reasonable care or have a reasonable excuse. Similarly no penalties are due in these situations either (for errors, failures to notify). The concepts of reasonable care and reasonable excuse are not always consistently applied by HMRC. This leads to feelings of unfairness and undermines trust in the tax system. It also increases costs for HMRC as taxpayers appeal penalties that they consider are inappropriate. It would surely be more cost effective for HMRC to get it right in the first instance. The recent powers and safeguards review is considering updating the guidance on reasonable excuse and providing more training to help officers get this right. Similar work should be considered for 'reasonable care'.

32.2 HMRC's Needs Enhanced Support team is helpful. It should be given sufficient resources and be well enough known about both within and outside of HMRC that it gets drawn into all relevant cases.

32.3 HMRC are sometimes criticised (although often unfairly) for giving preferential treatment to large businesses and high net worth people (either in the outcomes of checks or in the timeliness of checks progressing) which is not consistent with either the Charter[49] or the HMRC's Litigation and Settlement Strategy[50] (LSS). Similarly large taxpayers have Customer Compliance Managers (CCMs) whereas medium and smaller ones do not and therefore struggle, for example, to interact with the tax system where the process is not straightforward (for example, large partnerships who are not assigned a CCM have difficulty registering members/ partners for self-assessment in bulk) and to make disclosures of errors. The CCM model has arguably created a two-tier system where it is easier for customers that are assigned a CCM to engage with the tax system than those who do not have a CCM. This undermines trust in the system and leads to perceptions, true or otherwise, of unfairness in treatment between different categories of taxpayers.

32.4 Suspension of penalties helps with providing HMRC with discretion to take account of individual circumstances etc but, due to a lack of available statistics it is unclear how effective suspension is. Similarly, as already mentioned, it is unclear how effective other things like Managing Serious Defaulters programme are. This makes it difficult to determine how fair the system is.

32.5 Some penalty legislation gives HMRC 12 months to issue the penalty assessment after the tax is determined. In our experience such a time span is not necessary and it could be done within 3 months as the tax and culpability is generally considered together (particularly where discovery is involved).

32.6 There is the odd situation where a penalty can be charged even though no tax can be charged which cannot be described as fair. This should not be possible – it stems from the wording of Sch 41 FA 2008 and HMRC v Robertson[51] .

32.7 There are odd parts of the tax system which do not currently fit into the self-assessment system, for example s282 TCGA 1992[52] and the Transactions in Securities rules in ITA 2007[53]. There are also situations where

[49] The HMRC Charter November 2020 https://www.gov.uk/government/publications/hmrc-charter/the-hmrc-charter

[50] Resolving tax disputes Commentary on the litigation and settlement strategy October 2017 https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/979527/HMRC_Resolving_tax_disputes.pdf

[51] [2019] UKUT 202 (TCC) https://www.bailii.org/uk/cases/UKUT/TCC/2019/202.pdf

[52] Recovery of CGT from donee

[53] ss 682-713 Income Tax Act 2007

taxpayer A's tax liability depends upon another parties' tax position (e.g. offshore trusts). These areas could be looked at as part of wider reform / simplification of the tax system.

Chapter 8 Further Suggestions

33 Q29. Are there any further suggestions that you have for how the Tax Administration Framework could be reformed?

33.1 We welcomed HMRC's recent report into the Evaluation of their implementation of powers, obligations and safeguards introduced since 2012[54] and the 21 commitments it made. We are continuing our engagement with HMRC on many of the themes coming out of the report. Whilst welcoming the report and the commitments, we would like to see work continuing which will monitor how HMRC are performing against the 21 commitments to ensure that trust continues to be built in HMRC's administration of the tax system.

33.2 Appeal processes in general should be identical regardless of what tax decision is being challenged.

33.3 Alternative Dispute Resolution (ADR) should be encouraged more. Ideally people should be able to appeal against HMRC's refusal to put a case into mediation too. Even better, to help avoid accusations or perceptions of bias, mediation should be run by an independent body (eg HMRC Courts and Tribunals Service) rather than HMRC.

33.4 As already noted, there is no appeal against many parts of the tax administration system (eg a rejection of an overpayment claim that HMRC do not enquire into; APNs & FNs etc). This creates access to justice issues due to the cost of taking a case to judicial review. Ideally the law should be changed to allow appeals to the FTT on these points.

34 Acknowledgement of submission

34.1 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

15 July 2021

[54] Evaluation of HMRC's implementation of powers, obligations and safeguards introduced since 2012 – 6 February 2021 https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/958474/Evaluation_of_HMRC_s_implementation_of_powers__obligations_and_safeguards_introduced_since_2012.pdf

APPENDIX ONE

HMRC POWERS & SAFEGUARDS

The CIOT's 10 principles against which HMRC's use of its powers[55] 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[56], 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.

[55] 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.

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

APPENDIX TWO

Representative Partner Regime

In this appendix we identify some issues with the representative partner regime that cause problems and possible injustices and which we think are worth looking into more closely to see if there is anything that can be done to mitigate them.

1. The Taxes Management Act 1970 (TMA) does not define 'representative partner' (in practice a partnership has to register with HMRC using Form SA400 which asks it to identify the 'nominated partner' defined as 'the partner who has been nominated by the partnership to receive and submit the partnership returns').

2. Our view is that having one partner, chosen by the partnership, responsible for receiving and submitting the partnership returns is the correct approach, and that any disputes about partnership profits etc should be sorted out between the partners themselves (and not involve HMRC). This generally works well.

3. However, it breaks down if the person who has been appointed as representative partner suddenly becomes unable or incapable of performing the role (for example because of family or work commitments, illness or because they die) or the representative partner turns out not to be cooperative or reliable (a 'maverick'), for whatever reason.

4. This can sometimes lead to problems developing which mean that the partnership ends up not complying with its tax obligations and these problems can be difficult, if not impossible, for the other partners to overcome.

5. This can happen where the representative partner is being uncooperative (either as regards communicating with other partners or with HMRC, or both) or is simply unreliable / unavailable, and, for example, does not provide other partners with figures they need for their individual tax returns, or does not submit the partnership tax return to HMRC on time. Sometimes an affected partner may have retired and may no longer have any influence over the partnership affairs.

6. Often, the partnership arrangements will not allow the other partner(s) to wrest control from the representative partner, or a breakdown in communication renders it impossible for the other partner(s) to take any corrective action.

7. When this happens, there does not seem to be any formal procedure to replace a representative partner with another partner. We think that there should be some mechanism for the partnership to unappoint the representative partner and appoint a new one to take over the responsibility for acting for the partnership, by notification to HMRC at any time. This needs to be an easy process for the partnership to do without recourse to the existing representative partner.

8. In respect of a late partnership return, HMRC can charge late filing penalties on all partners (rather than just on the whole partnership) but only the representative partner has a right of appeal (Finance Act 2009 Sch 55 para 25(4)). Where the representative partner is not cooperating or responding, the other partner(s) currently has no effective remedy or means of taking corrective action. See for example Jack Dyson TC04336.

9. In the case of Jack Dyson (referred to above), the First Tier Tribunal held that this was a potential breach under the ECHR Article 6 (1) (fair and public hearing for criminal charges) However, the tribunal concluded that it had no power to remedy that breach so upheld the late filing penalty.

10. An interim report by the OTS which was published in January 2014 highlighted that this had the potential to create 'significant unfairness' (para 5.18), particularly in cases where partners are in disagreement, because a partner who considers they have a reasonable excuse cannot appeal unless they are the representative partner. The OTS set out further areas for it to explore as including (1) investigating how the late filing penalties for partnerships on the partnership return could be changed with the aim of making them fairer and (2) extending the work into the appeal rights of individual partners. We are not aware that any of these recommendations have been taken forward yet.

11. The 'nominated partner' will be responsible for filing the partnership return and all other requirements imposed under Making Tax Digital for Income Tax (Sch A1 para 5 as introduced by F(No 2) A 2017 s60) so the current issues around appeal rights will continue it seems under MTD for Income Tax. Para 5 also states that the 'Commissioners' can nominate the nominated partner for this purpose and refers to a revocation of a nomination by the partners; both of these are to be provided for in regulations (not yet published). We think this area warrants further discussion.

12. Partner Disputes:

    a. Finance Act 2018 Sch 6 Part 5 has inserted TMA 1970 s12ABZB which provides for partner appeal rights in certain circumstances for tax years 2018/19 onwards. It provides that the partnership return is conclusive with regards to an individual partner's share of profits or losses but that where there is a dispute between the partnership and the partners regarding the entries on the return, either may refer the matter to the tribunal. This only covers situations where the dispute is about determining the appropriate share of profit for the partner, not a dispute about the total amount of profit declared by the partnership. This legislation is untested. It does not give appeal rights to partners in respect of late filing penalties. See also HMRC's guidance at SAM122001 and PIM150000.

    b. For years before 2018/19 (ie before TMA 1970 s12ABZB), the position was easier to fix as a result of *King & others v HMRC* [2016] UKFTT 409 (TC). A partner could put the figure they considered to be correct onto their return, even though it disagreed with their profit share per the partnership's return. However, it is now difficult for a partner to depart from the entries on the partnership's return.

    c. This creates a tension between the new requirement of s12ABZB and the general obligation on taxpayers (eg partners in a partnership) to submit tax returns which they believe are correct and complete to the best of their knowledge and belief. If they think the partnership return is wrong, it is hard to rectify that before filing their own return, particularly if there is a dispute between partners/with the representative partner. If the partner submits their own return and it is later proven to be incorrect in relation to the partnership profit share, then they could face error penalties under Sch 24 FA 2007 if they were culpable. If they hold off submitting pending resolving the dispute (particularly one that does not fit into the referral mechanism envisaged by the new legislation) then they could be at risk of tax geared late filing penalties depending on how late their return is (including the ones up to 100% of the tax). One option may be to submit their return marking up the partnership figures to be provisional with a suitable note in the additional

information box where the issue cannot be referred to the Tribunal under s12ABZB. However, all of this is a bit of a mess in practical terms. It would be helpful to clarify how HMRC will deal with this in practice, particularly where the Tribunal mechanism does not kick in, so that taxpayers and their advisers know what they should do if a partner is unhappy about the partnership's figures and wants to submit a return they personally consider to be correct.