



## CALL FOR EVIDENCE: THE TAX ADMINISTRATION FRAMEWORK: SUPPORTING A 21ST CENTURY TAX SYSTEM

Issued 13 July 2021

ICAEW welcomes the opportunity to comment on the Call for evidence: the tax administration framework: supporting a 21st century tax system published by HMRC on 23 March 2021, a copy of which is available from this [link](#).

ICAEW supports the ambition for a fully digital tax system able to support the needs of all taxpayers and their agents, subject to the proviso that sufficient time is allowed for HMRC, software developers, businesses, and the economy to develop the necessary systems and skills and that provision is made to support the digitally excluded.

We also support the premise that a digital tax system could offer potentially significant opportunities to drive up productivity and innovation.

There is a need for an updated tax administration framework to underpin a modern digital tax system. The legislation relating to the administration of the tax system needs to be rewritten.

These changes are being made within the framework of a 10-year strategy but most of the changes seem to be front loaded into the first five years. We have some significant concerns. Firstly, we think that the starting point should be significant simplification of the underlying tax rules. Secondly, HMRC needs to be given the resources and funding to give it the capacity to take on such a major piece of work. There is a significant risk that some changes will be picked up and lead to specific projects without considering the impact on the system as whole.

We would also highlight the extent to which the issues with administration of the existing tax system are due to insufficient funding for training and the development and maintenance of HMRC's systems. This includes joining up information held in different systems. Many of the existing issues could be resolved by process and systems improvement rather than changes to the administration framework. Investment in HMRC systems transformation should be viewed as a long-term infrastructure investment, needed to make a step change in management of taxes. So many of the issues facing taxpayers, business and practitioners can be traced back to out-of-date infrastructure.

There is no doubt that starting from scratch to design a tax system for the UK would produce a very different end result from that currently in place. However, the review needs to bear in mind the complexity of the legislation and the systems we have now and how improvements can be made given the starting position. Improvements that have been suggested regularly over the years are often ruled out because they require significant investment in HMRC's systems rather than because the administration framework is inadequate.

We have identified three fundamental building blocks that need to be put in place to underpin tax administration and facilitate wider changes in the future:

- A single identifier for individuals – the Office of Tax Simplification has suggested extending national insurance numbers to all that require them to interact with the tax system.
- Registration, authentication and authorisation of agents – HMRC needs funding to develop a single system for registering authenticating and authorising agents to provide a firm base on which HMRC can develop digital services for agents and which would also facilitate its work on agent standards.
- Establish income tax, national insurance contributions and capital gains tax (CGT) liabilities in a single system to support a single view of liabilities and address the difficulties caused by liabilities being crystallised in different systems.

HMRC should consider international developments such as those in the OECD report: [Tax Administration 3.0: The Digital Transformation of Tax Administration \(oecd.org\)](#).

This response of 13 July 2021 has been prepared by the ICAEW Tax Faculty. Internationally recognised as a source of expertise, the faculty is a leading authority on taxation and is the voice of tax for ICAEW. It is responsible for making all submissions to the tax authorities on behalf of ICAEW, drawing upon the knowledge and experience of ICAEW's membership. The Tax Faculty's work is directly supported by over 130 active members, many of them well-known names in the tax world, who work across the complete spectrum of tax, both in practice and in business. ICAEW Tax Faculty's Ten Tenets for a Better Tax System, by which we benchmark the tax system and changes to it, are summarised in Appendix 1.

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## KEY POINTS

ICAEW is pleased to respond to the tax administration framework review (TAFR) call for evidence which seeks evidence on an extensive part of the administration of the UK tax system. While the suggestions proposed are ambitious and a more flexible and responsive system would be welcome, the overwhelming view of our members and volunteers has been concern that HMRC should be resourced adequately if we are to make the most of this opportunity. The 10-year strategy of which the TAFR forms a key element, needs funding to be secured for that same period. We appreciate this is difficult to achieve, but the tax administration system underpins collection of the taxes required to run the economy regardless of how they are raised or where that money is spent.

Furthermore, in the context of the 10-year timeframe for the strategy and the sequencing of change, not only should the time and costs to be incurred by government departments be considered, but also the capacity and time needed to absorb change by agents, businesses, the software industry and individual taxpayers.

We have identified three fundamental building blocks that need to be put in place to underpin tax administration and facilitate wider changes in the future.:

- A single identifier for individuals – the Office of Tax Simplification has suggested extending national insurance numbers to all that require them to interact with the tax system.
- Registration, authentication and authorisation of agents – HMRC needs funding to develop a single system for registering authenticating and authorising agents to provide a firm base on which HMRC can develop digital services for agents and which would also facilitate its work on agent standards.
- Establish income tax, national insurance contributions and CGT liabilities in a single system to support a single view of liabilities and address the difficulties caused by liabilities being crystallised in different systems.

The existing tax administration framework implements many complex areas of tax law and practice. Simplification of the underlying tax rules is needed first so that the new administration system can be built for a simpler system. We are seeing work in progress to achieve this simplification, for example on the possible reform of basis periods, and also to consider whether the 5 April tax year end is an obstacle to digitalisation, but this simplification exercise must be undertaken, and implemented, before reforms to administration.

The general public will need to be informed of any changes which result from this review. This will require a significant media campaign by HMRC. Third party marketing will be product based and cannot replace education by government.

We note that greater digitalisation of the tax system presents opportunities, but also carries risks such as third-party interception of sensitive data.

The single digital account/customer record is expected to give taxpayers a single and complete financial picture and bring together different taxes and data sources. It can only do so if the administration and collection of national insurance and CGT are considered at the same time as income tax. The regime for reporting and payment of CGT on disposals of UK residential property is very unsatisfactory.

The PAYE real time information (RTI) system is still struggling with the same problems identified at the time of its post implementation review in 2016. PAYE codes are being overloaded with adjustments, which makes them difficult for taxpayers to understand, and they often contain errors. HMRC's PAYE records must be accurate: many employers are unable to reconcile their liabilities

and payments figures with HMRC's records, and differences between HMRC and Department for Work and Pensions (DWP) records have caused problems for universal credit claimants in particular. Departments should work together to share data so that taxpayers receive a complete service in relation to their tax and finances.

Key to the tax administration framework is that HMRC and other government departments can identify with certainty all taxpayers who engage with the system. The UK currently makes use of several different identifiers for different purposes, and it would be helpful to review these and adopt a single unique taxpayer identifier where possible. This single identifier should be designed so that it is suitable for data sharing across international borders.

A smoother and more timely registration process is needed for individual taxpayers with improved authentication and authorisation for the agents who represent them.

It must be easy for taxpayers to challenge incorrect information held by HMRC. Taxpayers should not be held liable where that information is wrong.

Taxpayer statements are very difficult to follow, particularly where payments on account are made, where amounts are being collected through tax codes and where interest is being applied. Improved and more regular statements and reminders within digital tax accounts, would help people to understand what they owe. There should be a single view of all a taxpayer's liabilities and payments, whatever system they are established in and however they are being collected.

Taxpayers should have the right and be given the access to offset and allocate payments to specific tax liabilities.

There must no move towards earlier payment of tax based on in year estimates until HMRC can demonstrate that these can be made accurate enough to form a basis for payment.

Our members would like to see more collaborative working on enquiry cases and, in particular, more use of Alternative Dispute Resolution.

Penalties should not be punitive but instead be designed to support better taxpayer understanding and behaviour.

There must be no erosion of taxpayer safeguards in any rewrite or consolidation of the legislation.

## **ANSWERS TO SPECIFIC QUESTIONS**

### **CHAPTER 2: REVIEWING THE TAX ADMINISTRATION FRAMEWORK**

#### ***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?***

We consider that the framework review should focus on income tax and national insurance, (including taking into account the interactions with capital gains tax) as that is where there is the most scope to improve the experience for the greatest number of taxpayers.

We suggest that the focus should be on identification and registration of taxpayers and how tax liabilities are established, rather than on payments or powers and safeguards.

#### ***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?***

Taxpayers are mostly influenced by tax policies and their experience of interacting with HMRC and the tax system, both online and by phone and correspondence, and are not particularly aware of the administration framework that underpins it. This can change and trust can be lost very quickly if a taxpayer becomes involved in a dispute with HMRC. A taxpayer should be able to join and leave the relevant parts of the tax system quickly and easily as their taxable income sources change during their lifetime. The administration framework should support this. There needs to be a joined-up experience for each tax; a joined-up experience between different taxes is less of a priority but would also be helpful.

***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?***

We agree that these are the right overarching objectives to guide the review and would not highlight any as being more important than others. We note that there are inherent tensions between some of the objectives. For example, there can be a tension between needing to be sufficiently flexible to adapt to an individuals' circumstances, and fairness and even-handedness. Certainty is important but, in some situations, can mean that taxpayers are unable to dispute tax liabilities (for example, where HMRC determinations cannot be displaced, there is no right to appeal, or the deadline for an appeal has passed and a late appeal is refused).

***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?***

Realistically, wider engagement outside the tax profession and other representative bodies is not likely to be possible until the review develops specific proposals for change.

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

The UK's tax administration system has been developed to support its tax law developed over many years and centuries. International examples often quoted for their modern approach and extensive reliance on digital systems, for example Estonia, are relatively new and so have been able to start afresh. Unless HMRC is going to be given a very large sum to rebuild a system from scratch, over an extended period, this is unlikely to be feasible though that it is not to say that it shouldn't be an aspiration.

There is no doubt that starting from scratch to design a tax system for the UK would produce a very different end result from that currently in place. However, the review needs to bear in mind the complexity of the legislation and systems that are in place and how improvements can be made given the starting position. Improvements that have been suggested regularly over the years are often ruled out because they require significant investment in HMRC's systems rather than because the administration framework is inadequate.

HMRC should consider international developments such as those in the OECD report: [Tax Administration 3.0: The Digital Transformation of Tax Administration \(oecd.org\)](https://www.oecd.org/tax/tax-administration-3-0/).

## **CHAPTER 3: ENSURING CONSISTENT OBLIGATIONS FOR PEOPLE TO ENTER AND EXIT THE TAX SYSTEM**

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

### **Identification of taxpayers**

The key challenge relating to the identification of taxpayers is the lack of a single, unique identifier for each individual or organisation that needs to engage with the UK tax system, an identifier which



allows HMRC and other government departments to know who people and organisations are and to identify them as the same individual throughout their life, as their circumstances change.

The increasing prevalence of cyberattacks targeting taxpayer identity details and the consequent difficulty HMRC sometimes has confirming identity details when transacting, is also very significant. When identity details are compromised it can take many months (and sometimes even years) to resolve the issues that arise.

Identification of taxpayers is even more challenging when a third party such as a paid agent or unpaid trusted helper is involved; a variety of different systems and processes are currently in use for this purpose.

## **Identification of individuals**

For individuals, the mostly widely available identifier is the national insurance number (NINO). However, many individuals who need to engage with HMRC do not have, and are not entitled to be allocated, a NINO. Many UK government systems require a NINO and the fact that not all individuals have a NINO and a NINO is not always required to work in the UK is commonly misunderstood amongst both the public and the civil service.

The fact that NINOs are not available to all individuals who need to engage with the UK tax system has contributed to (but is not the sole reason for) the development of numerous different identifiers across HMRC's systems. These include self assessment unique taxpayer references (UTRs), employer references, VAT registration numbers, CGT UK property account references and many others that are in use for other taxes and duties.

Systems (for example, Making Tax Digital for income tax self assessment (MTD for ITSA)) are sometimes designed with the NINO as a required identifier, creating the need for workarounds for taxpayers who are not entitled to have a NINO.

Where a new identifier needs to be issued on registration, significant delays often occur.

The Office of Tax Simplification has suggested that the solution might be to extend the availability of NINOs to include all individuals who need to engage with the UK tax system; this would require a change in the law governing who is entitled to a NINO.

Whatever unique identifier is chosen it needs to be adopted by all UK government systems operating tax and social security benefits, including universal credit. It should aim to support a system which would last a taxpayer's lifetime, be available to minors and accommodate changes of gender. It could be allocated at birth (the current link between allocating a NINO and a child benefit claim is problematic for some) or when an individual first needs to engage with the UK tax system. Consideration might also need to be given to its use by devolved administrations and more widely across central and local government and for international exchanges of information.

## **Identification of organisations**

Similar challenges exist for organisations including companies, partnerships and trusts which require different identifiers for different HMRC services and for Companies House where applicable. In the future HMRC may also need to be able to link individuals such as partners, company directors and trustees to their individual identities.

## **Agents**

Third party assistance is much more common for HMRC services than for services run by other government departments and will remain vitally important however much tax simplification is achieved. Paid agents provide valuable business and tax advice to their clients and are essential to the smooth running of the UK tax system.

Despite this, HMRC has not been funded to develop a single system to register, authenticate and authorise agents that is fit for purpose and applies to all taxes. This fundamental building block of the tax system is needed to provide a firm base on which HMRC can develop digital services for agents and would also facilitate its work on agent standards.

HMRC instead relies on a patchwork of different requirements across different services. The current processes for registering, authenticating and authorising agents are different for different taxes and are extremely cumbersome. Several steps are involved; one of the early ones involves writing to HMRC and the HMRC team that handles this work, the agent maintainer team, which cannot be contacted other than in writing.

The system needs to be able to accommodate multiple agents for different aspects of the same tax and changes of agent over time. Examples of current problems include the fact that agents cannot change the designatory details in their agent services account and non-VAT registered agents cannot update their address as a VAT agent.

Some new services (eg, trust registration service, CGT UK residential property service) require clients to authorise the client digitally by means of a 'digital handshake'. This approach has proven to be very unsatisfactory as it often fails; it also does not meet the needs of digitally excluded clients or clients who are paying their agent to act on their behalf and are not prepared to interact digitally with HMRC.

HMRC's trusted helper service is extremely limited in the services that it covers and needs to be further developed to cover all HMRC services for individuals. It is also inadequate in that it requires the person being helped to authorise the helper digitally.

## **Registration of taxpayers**

The key challenge relating to registration of taxpayers is timing, given the different dates and requirements for different taxes.

## **Individuals**

For example, an individual setting up a new business must notify HMRC by 5 October following the end of the year in which trading started. For VAT, the registration deadline is generally 30 days after the end of the month in which taxable supplies exceed the £85,000 threshold. An individual or business may also need to deal with other registration requirements, such as registering as an employer, registering to pay capital gains tax on a UK residential property or registering for one or more of the other taxes administered by HMRC.

A single registration process is probably not a realistic option as the requirements arise at different times due to changes in circumstances such as sources of income starting and stopping or turnover increasing to above the VAT threshold.

What should be possible is for the taxpayer or their agent, through the single digital account, to be able to turn obligations on and off as circumstances change through their lifetime. For example, from a first part-time job when it would need to be turned on to effect employer ability to add to a payroll, through turning it off during periods of full-time study, then self-employment turned on during entrepreneurial activity, right through to retirement and when income might be from pensions and investments. This concept has to some extent been flagged by the planned investment in a taxpayer change of circumstances service.

An easy turn on/off function would be required, off being as important as on as taxpayers frequently fail to notify HMRC of changes of circumstance with the result that HMRC creates obligations that then need to be cancelled. There are different rules for missing obligation dates in the current system and it would be helpful if these were aligned.

The tax registration process as an individual moves between the self assessment system and the national insurance and PAYE system (NPS) is not seamless. Self assessment relies on unique taxpayer references (UTRs) to identify taxpayers, NPS uses employer references and NINOs and the self assessment criteria are arbitrary and confusing. The solution is a single system in which income tax, national insurance and CGT liabilities are finalised.

## Companies

With regard to corporation tax there needs to be a more joined up process between Companies House and HMRC. While work was done to improve the system several years ago, it could be more user friendly. It is very easy to set up a company without understanding the obligations this carries. Many companies are established and struck off without HMRC ever being certain whether they have traded or if there is tax due. When companies are registered, HMRC often doesn't have the correct information on accounting date to set up the first accounting period correctly and following the abolition of form CT41G, may not know when the company started to trade.

It is harder for an overseas company to register for corporation tax, especially if it does not have a Companies House registrable presence or a UK registered address. This will only become more problematic as overseas companies become subject to UK corporation tax on their UK income and gains. It would be helpful if such companies could register using overseas addresses.

## VAT

With regard to VAT registration, some businesses have difficulty in understanding what part of their turnover is taxable, exempt or outside the scope VAT. Registration could be simplified by using a threshold of turnover, rather than taxable turnover, although this is difficult to achieve without a review of the principle of the VAT exemption itself. It would be helpful if businesses were allowed to set their VAT stagger group for themselves when they register rather than expressing a preference with the final allocation being made by HMRC. Businesses still have to register for VAT and then separately sign up to MTD and other changes such as transfers of going concern and deregistration are still not as automated as they could be.

## CGT

The need for a separate registration and reporting process for capital gains tax on UK residential property outside self assessment causes additional complexity as well creating a significant administrative burden.

## Agents

The need for a single process for registering, authenticating and authorising agents is mentioned above.

Agents need to be able to register and deregister their clients for all the taxes administered by HMRC. The process can be cumbersome for a new client when it may be necessary for a tax registration to be completed before the agent can be authorised; ideally these two steps could be part of a single process.

One example of the many situations where agents do not have access to digital services is that agents do not have access to register partnerships for self assessment online.

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

One of the benefits of the current system is the relatively generous period of time which is allowed to notify HMRC of chargeability before a penalty is incurred. This can be useful where the exact point when a trade started (perhaps by developing from a hobby) is unclear and ensures that there is no disincentive to registering during the start-up period.

It is also helpful that notification rules for income tax and self-employed national insurance are aligned, though it is unhelpful that HMRC's systems still allow registration for tax but not national insurance if the process for registering a self-employment is not strictly followed.

In the past there was a penalty for failing to register for self-employed national insurance within three months which was not used and eventually withdrawn; it is not clear that it encouraged earlier registration.



HMRC's power to withdraw an obligation or return is important. It was only in 2013 that HMRC was given this power (s 233, Finance Act 2013); prior to that HMRC had to insist that once a notice to file was issued a self assessment return had to be filed.

***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?***

The framework is likely to need to be able to deal with increased cross-border and remote working as well as further devolution within the UK, including to local authorities (for example, some COVID-19 financial support was devolved), as well as exchanges of information between tax authorities.

HMRC will need to be able to accommodate identities for and registration by workers based overseas and others based overseas with UK tax obligations.

The framework needs to be able to accommodate the possibility of further alignment of national insurance and income tax and the possibility of a full merger. In the event of a full merger benefit entitlements might need to be based on tax rather than national insurance records.

The framework needs to be able to accommodate the possibility of new taxes and benefits, especially in response to climate change.

Hobbies being commercialised is likely to increase as the economy changes and more people trade through platforms or use their homes as an opportunity to earn extra money.

As mentioned in the call for evidence, authentication of identity on registration will become increasingly important as more reliance is placed on digital tax systems and the risks of fraud, data mismatches and cyberattacks increase.

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

There is an opportunity to reform the timing of notification of liability for income tax which in general needs to be closer to the time that the relevant source of income starts, but this needs to be done in a way that does not discourage those that fail to register immediately from doing so.

There is scope to reform the rules for notifying chargeability to income tax and to remove the confusion between notifying chargeability and an obligation to file a self assessment return. The current timing, along with the fact that there are two different systems in which income tax liabilities are finalised, results in significant numbers of taxpayers receiving income tax calculations from both PAYE and self assessment.

## **CHAPTER 4: IMPROVING THE WAY TAX LIABILITIES ARE CALCULATED AND ASSESSED**

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

**Income tax basis periods:**

Basis period reform presents a potential simplification opportunity.

Taxing trading income for a tax year based on the income arising in that tax year and aligning it with other income might support modernisation and digitalisation. We would support a consultation on this option. We have concerns about the additional work this might entail for businesses which have good reasons for using a particular accounting date which does not align with the tax year.

Tax year accounting and assessment might also cause many more businesses to align their accounting period with the tax year, which could create significant work flow issues for some agents.

We have not identified an obvious alternative approach to reforming basis periods and suggest that tax year accounting be explored before any other options are considered.

We consider that the concept of annual basis periods should be retained as any shorter period would not take account of seasonal or other variations in income and would probably require a complex set of rules (similar to loss offset and averaging rules) to compensate for this.

### **Single process for establishing income tax and national insurance liabilities:**

The administration of income tax and national insurance would be greatly improved if taxpayers were provided with a joined-up experience as their circumstances change, with liabilities being established in one system. The current systems and processes are based on HMRC being able to divide income tax payers into two populations – PAYE and self assessment – but taxpayers' circumstances now change much more frequently and most will, at some point in their lives, be in a situation where they have income that cannot be dealt with wholly within the PAYE system.

The current legislation imposes an obligation to notify HMRC of chargeability to tax (s7, Taxes Management Act (TMA) 1970) and s8, TMA 1970 imposes the requirement to file a return on receipt of a notice. The circumstances in which HMRC requires a self assessment return is not in legislation but is determined by internal HMRC rules (self assessment criteria).

These criteria are not well understood by many and lead to confusion, for example:

- For many years HMRC required almost all company directors to complete a tax return even if no tax was due, ironically only changing its view when the dividend rate of tax was introduced which brought many directors back within the scope of self assessment.
- Self assessment returns are not required in all situations where tax is due on rental, dividend and other investment income. The £10,000 income threshold that applies in these situations and the £2,500 profit threshold for rental income mean that returns are not due in some situations even where tax is due. HMRC's approach where it seeks to collect the tax through PAYE, but requires a return where it cannot, creates a very confusing situation where taxpayers may have their tax liability established in PAYE or in self assessment in different years, leading to error and in many cases, calculations from both systems.
- Taxpayers are also required to complete returns simply because of inadequacies in the process for finalising liabilities in PAYE. Examples of this include:
  - Income of more than £100,000 and therefore tapered personal allowance.
  - Liability to the High Income Child Benefit Charge.
  - Claims for employment expenses of more than £2,500.
  - Claims for higher rate relief on pension contributions and gift aid (though HMRC will sometimes give this relief through PAYE).
- HMRC requires notification of new trading income sources even where the taxpayer is already registered for self assessment. This requirement is driven by HMRC's systems with national insurance records being held in a separate system and the registration for national insurance is not triggered if a new trade is reported by being added to a self assessment return or a voluntary return is filed.

We suggest that HMRC explores how it can establish income tax liabilities in one system and reconsiders the circumstances in which it requires a return. One possible approach would be for all income taxpayers to have their tax liability finalised in the system that will replace self assessment for taxpayers not in MTD. Taxpayers need to be able to see a full history of their income tax position for each tax year in one place, however it is finalised.

Many agents (and some taxpayers) prefer their clients to remain in self assessment as it offers a better experience than that offered by PAYE reconciliation and gives certainty after the necessary time has elapsed. They find it simpler to complete a return rather than contacting HMRC (probably on several occasions) to update tax codes or correct a P800 or PA302.

## Calculation of income tax and national insurance

Various governments have considered options for aligning the rules for income tax and national insurance, as well as the possibility of a full merger. We suggest that closer alignment be looked at again as fundamental simplification of underlying tax rules is as important as simplification of the tax administration framework.

There are a number of other simplifications which should be considered including:

- Removing or replacing allowances and charges that undermine the principle of independent taxation, namely Marriage Allowance and the High Income Child Benefit Charge which add considerable complexity to the tax system.
- Simplification of rates, allowances, and bands, for example the savings rate, dividends rate, etc, so that all types of income are charged to income tax at the same rate.
- A review of cliff edges and tapers in the tax system, particularly where these can result in very high and unexpected marginal tax rates which disincentivise economic activity, such as the removal of the personal allowance from £100,000 and the pension annual allowance.

## Other income tax considerations

Other aspects of income tax that might be considered for reform include:

- Are tax codes still the best way of managing the amount of tax collected during the year through PAYE? They are not well understood by taxpayers, many simply ignore them, and they generate a lot of contact with HMRC. The consolidated coding notice is a significant improvement, but more fundamental change may be needed – as a minimum, fundamental improvements to the quality of the data on which codes are based and HMRC's internal coding rules and educating PAYE taxpayers to take an interest in their tax affairs. Merely crossing out the last digit to create the code may seem simple to tax professionals, but it is not logical to taxpayers.
- Allied to this is the annual PAYE reconciliation process for finalising income tax liabilities for those not in self assessment. HMRC should be seeking to reconcile PAYE records in real time rather than waiting for several months after the end of the tax year. HMRC is not making full use of RTI data to ensure that it collects the correct amount of tax during the year. The number of taxpayers with over- and underpayments has not reduced since RTI was introduced contrary to what was intended. All taxpayers should be presented with an annual income tax calculation, not just those who have under- or overpaid or who are in self assessment.
- HMRC should have a better process for finalising income tax liabilities in-year where this is necessary, such as deceased and bankruptcy cases. The process that has replaced the R27 is not satisfactory.
- Where a correction is needed because tax has been incorrectly assessed and paid it should be possible to offset the taxes even where the taxpayers and the taxes (including NIC) paid are different. Following the Demibourne case, there are provisions to cover the situation where income tax has been paid to HMRC on income that subsequently has been reclassified as PAYE income but by the wrong legal person (such as the employee rather than the employer). This needs to be extended to off-payroll working situations to cover taxes incorrectly paid by an intermediary such as a personal service company (PSC) where a contractor working via a PSC is reclassified as a deemed employee.
- HMRC should consider the online filing exclusion and special cases for self assessment (including historic records of issues that have now been fixed) and consider how a revised administration framework might avoid these types of situation arising.
- Consideration should be given to the order in which allowances and reliefs are set against income with a view to simplifying the income tax calculation. HMRC should be

seeking to avoid future occurrences of the issues that have arisen with top slicing relief, the dividend nil rate band, interest allowance and rates set by devolved authorities.

- HMRC should consider the dataset that it would like to hold in relation to income tax, particularly given that, over time, it is likely to receive more third-party data which can then be verified by the taxpayer. For example, the current self assessment return does not require a breakdown of interest or dividend income nor of private pensions (the latter is supposed to be shown in the white space on the return, but this approach does not make the information easily analysed). Digitalisation and pre-population change the administrative burden considerations when deciding what data to collect and lack of data reduced the options available to government when designing reliefs, such as the COVID-19 financial support schemes. This needs urgent consideration as the replacement for self assessment is already being designed as part of the MTD ITSA project. We suggest that the self assessment return be carefully reviewed to ensure that the data needed by HMRC is collected and unnecessary reporting requirements and the need to include data in the white space which might not be automatically processed are removed.

## **Capital gains tax**

There needs to be a more coherent approach to establishing capital gains tax (CGT) liabilities. We currently have a mixture of reporting through self assessment returns, a voluntary pay as you go system (which raises some issues around its legal standing) and a very poorly implemented stand-alone system for reporting capital gains on disposals of UK residential property. The 30-day deadline is administratively impractical as evidenced by the number of taxpayers liable to non-reporting penalties.

There are confusing rules for when a disposal of an asset must be reported which are unrelated to whether tax is due and differ depending on whether a taxpayer already needs to complete a self assessment return. This is perhaps designed so that HMRC is made aware of larger transactions even where no tax is due, but arguably is no longer required, given HMRC's access to third-party data about transactions for compliance check purposes.

Many taxpayers do not appreciate until too late the need to establish capital losses, and it would be useful for any future administration system to ensure that capital losses are established at an early stage, with taxpayers being prompted to do so. Taxpayers might also be prompted to make other claims and elections, such as principal private residence elections, and the proposed single digital account would seem to be an ideal place to do this.

The Office of Tax Simplification CGT review second report includes many useful suggestions on the administration of CGT, many of which we support.

Consideration might be given to fully merging the establishment of CGT liabilities alongside income tax and national insurance, particularly if CGT rates continue to depend on marginal income tax rates.

## **Inheritance tax**

The system for inheritance tax (IHT) compliance urgently requires greater digitalisation and needs to include functionality suitable for dealing with the most complex estates. Agents need to be able to use the system to easily file returns arising both as a result of events and periodic charges.

As well as digitalising existing forms, they should be reformed to cover a wider range of scenarios without needing to resort to white space disclosures each time. Overall, IHT has been left behind (possibly due to the relatively modest amount of revenue it raises) and reform is urgently required to help it to catch up with the other taxes. Investment must be made in a system that works for taxpayers, agents and HMRC alike.

Our members have experienced difficulties and frustrations with using the trust registration service since its introduction in 2017, including the need to provide personal details for every named discretionary beneficiary and the fact that the system did not accept updates to information until very recently, therefore requiring agents to re-enter previous information. An alternative could be

introduced if sufficiently consulted on and tested with users whereby details of beneficiaries are only provided when distributions are made to them.

If HMRC was able to accept IHT100s in a bulk format it would provide an administrative saving. For example, HMRC generally expects multiple IHT100 returns in cases where there are multiple settlors and for death in service and funeral trusts. It would be much simpler for agents if the identical information could be provided in spreadsheet or similar format.

## **Corporation tax**

There are some complexities around the commencement and ending of accounting periods through the interaction of s10 and s12 CTA 2009. It does not appear to be consistent that there are different rules for companies in administration compared to companies in liquidation. Furthermore, the fact that companies in liquidation do not end an accounting period when they subsequently cease to trade causes a problem for those companies with shareholder loans that wish to have a repayment of s455 CTA 2010 charges. A consolidation or merging of s10 and s12 could help to resolve these issues.

A more significant issue arises when HMRC's systems recognise incorrect accounting periods as these cannot be corrected nor deleted online.

We believe that the system for filing corporation tax returns is well established, and companies have become accustomed to the requirement for returns and accounts to be submitted in iXBRL format. However, one problem that typically arises is the ability to file corporation tax returns online after the submission deadline. This could still occur during the amendment window where, for example, a long period of account is split into two accounting periods and a filing or amendment to the first period is required less than two years after the end of the second period. We recommend that late filing and amendment should be permitted online where the taxpayer or agent is able to give a valid reason for doing so eg, to correct an understated tax position, recognise a loss carry back claim or making an adjustment following a refiling of the company's accounts.

Where greater simplification could be achieved is through bringing the various elements of submission, including claims and elections, into a single process and mechanism. At the moment, various returns and documents are required alongside the standard tax return and accounts, where relevant. These include a corporate interest restriction return, R&D tax relief claims, reclaims of tax paid on loans to participators, etc. MTD for corporation tax could provide an opportunity to bring all these forms, claims and elections into a single online streamlined process. This would make it a much more intuitive process for companies and their agents to file returns.

MTD for CT could also be used as an opportunity to introduce a corporate group tax account into which group wide returns, such as group payment arrangements and corporate interest allowance returns could be filed. These could then be linked to the CT return and corporate tax account for each relevant company.

There is still some complexity around the requirement for dormant companies to prepare accounts and file tax computations. The definition of a dormant company differs for tax and company law purposes and HMRC will issue penalties to companies that fail to submit corporation tax returns unless they have confirmed that returns are not required. We believe that simplification would be achieved by the removal of penalties from all companies that can demonstrate that they had no income or expenses from an accounts and tax perspective during the accounting period concerned. This would place the onus on the company to prove this is the case but would reduce the incidence of penalties arising where there is no tax at stake. Ideally a company should be able to notify dormancy online for a period that has not completed thereby avoiding the need to file a full return.

## **VAT**

The law and its interpretation surrounding the VAT liability of supplies is very complex. There are many areas in which this could be simplified, an example being the VAT treatment of food. The current call for evidence on simplifying the VAT land exemption highlights some of the complexities in this area. The option to tax land, or anything, can only lead to complexity where there are



options to tax the same thing in different ways. If the law is simplified, which should be easier now the UK is no longer subject to EU VAT law, then it should be easier to simplify VAT administration.

### **Amendments, overpayment relief, assessments and contract settlements**

The review of the tax administration framework should consider the various ways in which tax liabilities change following the submission of a return or initial finalisation including:

- HMRC corrections
- Taxpayer amendments
- HMRC enquiry amendments
- Determinations
- Overpayment relief
- Special relief
- Taxpayer disclosures
- HMRC assessments following an enquiry
- HMRC discovery assessments
- Contract settlements

We consider that the administration of these types of adjustment could be more streamlined. At a minimum it should be much simpler to track any such changes through in a digital system so that there is clarity on the tax position for each tax year.

The difference between an amendment and a disclosure or claim to overpayment relief is not always well understood. Especially where the figures are small, many taxpayers (and some agents) attempt to make adjustments by writing to HMRC (as they would within the amendment window) without understanding the formality involved in making a claim to overpayment relief or a disclosure. We suggest that HMRC considers whether less formal routes might be made available, especially for small amounts.

In particular, overpayment relief and the need to satisfy a complex set of conditions and for a formal claim to be made by the taxpayer seems unnecessarily cumbersome. There is no digital service nor even a standard form. We also suggest that HMRC considers how the power to make a determination in the absence of a return is administered and how this differs from auto-assessments for VAT. Special relief is, in our opinion, too restrictive in the extent to which it allows a taxpayer to displace a determination and should be reviewed.

Being able to adjust a VAT return after filing but before the deadline would avoid notification of errors which are self-correcting.

### **Employer PAYE and NIC**

Dealing with payroll and benefits-in-kind is all about detail and accurate data collation and processing. Once the right data has been input, it is important that the need for manual interventions and corrections by employers, employees and HMRC is minimised.

HMRC's **PAYE implementation review** published in December 2017 (to which we submitted evidence) contained an action plan to deliver, by March 2019, improvements to data quality and discrepancies and exploiting RTI data. Regrettably, much of the action plan remains undelivered.

Unresolved matters that have been raised with HMRC include:

- i. Starter checklists: we suggest that it be mandatory for employers to ask employees – including off-payroll working deemed employees – to complete these, even where a P45 has been provided as P45 does not provide data on student loans. The starter checklists need to make it clear that the student loan questions do not apply to off-payroll working deemed employees.
- ii. Starter checklists: we suggest that starter checklists be made more sophisticated for example to identify cases where a OT rather than a BR code should be applied.

- iii. Residence status: HMRC's database does not always allocate taxpayers living in postcodes close to borders correctly to England, Wales and Scotland and sometimes reaches incorrect decisions on Scottish residence status based on information held in its systems.
- iv. Liabilities and payments: many employers are unable to reconcile HMRC's liabilities and payments records to their own records and there are differences between the information visible to employers, the small number of agents that have access and HMRC staff.
- v. Weeks 53/54/56: tax underpayments by employees paid weekly, fortnightly, and four-weekly (lunar) would be eliminated (as would the need for HMRC to issue P800 underpayment notifications and adjust subsequent years' codes) and Exchequer cash flow would be improved if HMRC changed payroll software specifications to provide that codes are divided by the actual number of pay periods in a tax year rather than 52/26/13.
- vi. Section 690 ITEPA 2003 directions to enable employers to account for PAYE on a proportion of earnings for certain expatriate employees who meet certain criteria: given the inordinate delays in HMRC approving such directions (to the extent that many for 2020/21 were not agreed by the end of that tax year), resulting in overpayments and therefore contact with HMRC, employers who have requested approval need to be allowed to operate them on a self-assessed basis pending HMRC approval.
- vii. Employer-provided benefits-in-kind (BiK): reporting Class 1A NIC on payrolled BiK should be integrated into payroll software so that employers no longer need to complete form P11D(b) and legal vices should be given to HMRC's (pragmatic) guidance saying that the amount of payrolled BiK that an employee should report on their SA return is the P60 figure.

## Trusts

The calculation of tax liabilities for trusts is one of the most difficult to apply and is in urgent need of simplification. Some complications which were brought in to deal with potential avoidance behaviour are no longer necessary. For example, what is the rationale for trustees and settlors of settlor interested trusts reporting the same tax liability, given that the highest rates of tax are now paid by both trusts and individuals alike? Similarly, repayments of income tax on franked income for discretionary trusts could be simplified.

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

The four-year window in which to make some claims and elections is useful and there may be scope for that to be extended to create a consistent deadline for claims and elections across the tax system.

The right of a taxpayer to amend returns following submission should be preserved.

### ***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?***

The framework needs to be able to handle even more frequent changes in taxpayers' circumstances than has been the case. This is particularly important for income tax and national insurance contributions and there needs to be a joined-up system between self assessment and PAYE taxpayers.

The framework may also need to be able to handle further devolution of tax raising powers.

The framework may also need to be able to handle changes to the law around employment status, including the possibility of a statutory employment test and further developments of policy around IR35, off payroll working and solutions for the differences between the tax treatment of income from employment, self-employment and working through a limited company.

The framework will need to accommodate the ‘neither employed nor self-employed’ gig workers that are now numerous within the UK economy. Indeed, giving employed and self-employed individuals as similar an experience as possible could help to reduce the tension sometimes felt between engagers and workers as to their preferred treatment for tax purposes.

The framework needs to be able to accommodate the possibility of new taxes and benefits, especially in response to climate change. A recent example is the complexity of claiming VAT on the cost of charging electrical vehicles.

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

A key priority should be how income tax is assessed, both because this affects the greatest number of taxpayers and because the current systems and processes are the least satisfactory of all the taxes administered by HMRC.

Within income tax the key areas are the basis period rules for trading income for income tax and joined up systems and processes for establishing income tax and national insurance liabilities for all income tax payers which are seamless as their circumstances change.

In a digital tax system, a tax return is likely to look more like a confirmation statement, ie, a calculation presented to the taxpayer which they are required to check and confirm by completing a declaration.

The statement itself would be pre-populated with data previously provided by the taxpayer themselves and/or by a third party. Where information is provided by a third party, the taxpayer should retain the right to overwrite this where they consider it to be wrong.

A declaration might not be required from taxpayers where all or most of the data has been pre-populated, but we consider that there is value in providing all income tax payers with an annual prompt to check that HMRC has calculated their income tax liability to include correct figures for all sources, that all appropriate claims have been made and reliefs given. Income tax payers who are not in self assessment are not presented with an annual calculation or prompt to check their position unless they have underpaid or overpaid tax and receive a P800 PAYE tax calculation or a PA302 simple assessment.

We had digital filing of corporation tax returns for many years before iXBRL was mandated. Despite this there remain various issues that could be resolved, such as removing the limit on the number of characters for the bank account box and the ability to make all claims and elections on the face of the return, rather than via a separate document.

For both individuals and corporate entities alike, the taxpayer should be able to see their affairs across all taxes at a glance in their digital tax account.

***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?***

Under self assessment it is for the taxpayer to establish their tax liability. The obligation to notify a liability under self assessment is so that a tax return can be issued and so trigger an obligation to file a return. This no longer seems appropriate to the design of a new digital tax system, one where not only the taxpayer, but also third parties may be providing information to populate a taxpayer’s single tax account. There is, for example, no notice issued to file a CGT 30-day return.

See also our comments on notification and self assessment criteria in response to Q10.

**CHAPTER 5: USING DATA AND INFORMATION TO MAKE TAX COMPLIANCE EFFORTLESS FOR THE MAJORITY**

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

Government departments already hold vast amounts of data about taxpayers, but this is held across multiple systems and these do not all work well together. HMRC itself has extensive powers

to collect and retain information (both within the UK and also internationally) relevant to taxpayers' tax affairs.

In order to improve the tax collection process and make better use of information, the key questions therefore are how this information will be securely identified, obtained, stored, retrieved and, where appropriate, shared. The main obstacles to better use of information appear to be systems related which will in turn lead to the question of whether the ambition will be properly resourced: does HMRC have adequate funding to fulfil this digital ambition?

Key to using this data to make compliance with the tax system simpler is how the data is stored and having the systems and processes in place to allow it to be shared securely. This should include the following requirements:

1. Accurate identification of taxpayers. The same unique identifier for an individual taxpayer should be used by all government computer systems. See our earlier comments on the need for a unique identifier.
2. International taxpayers. The new system will need to incorporate information about taxpayers from overseas who need to pay UK tax.
3. Information sharing. It is important that different government systems are able to share data between departments on a timely and secure basis.

The rules regarding how the information is shared and what can be shared between systems are not always clear. For example, HMRC's RTI system passes information about salary receipts to Department of Work and Pensions (DWP) to inform the universal credit entitlement. If an individual challenges their award for the period because the employer used the incorrect date for payment, DWP will correct the error in its system, but this change is not reported back to HMRC for it to amend its data on the employer record. The inconsistency causes a mismatch in known data about that individual's income and government's systems do not then agree.

Third parties that provide information to HMRC will need to be given the necessary access in order to supply data they have collected. For example

- banks reporting interest income
- brokers reporting dividends
- letting agents reporting rental income
- foreign entities reporting a UK taxpayer's income to the UK tax authorities
- private pension providers reporting data on contributions

The unique taxpayer identifier would need to be used by these third parties.

The system will need to allow for two-way exchange of information, for example to inform or reply to requests for data from relevant third parties, such as agents. The data must be held securely and must be accurate. It must be easy for a taxpayer to check and challenge inaccurate data held by HMRC, and for it to be corrected if necessary. There will need to be an accessible system by which disagreements can be resolved in a cost effective and timely manner.

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

The rights and safeguards of taxpayer personal information (eg, not publishing tax returns).

The right to appoint an agent and for that agent to have access to all the information and services available to the individual or business.

The right to appeal against a decision and correct wrong information held by HMRC, even if provided by a third party.

#### ***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?***

A key priority is data handling, which needs to be made secure.

A facility will need to be introduced for taxpayers to correct and update third party data about them which is incorrect. Corrections should have an audit trail showing what is changed, when and by whom.

A unique taxpayer identity to allow for more accurate matching of data.

Better integration with overseas jurisdictions to enable cross border working to be dealt with more easily.

Better integration with other government departments, particularly on benefits.

Data held in commercial software. MTD will result in more data being held by third-party intermediaries and HMRC may need to consider a set of standards to apply to commercial software that holds data.

Ensuring that data systems and processing are future proofed to be able to cope with, for example, devolution which could also include local authorities.

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

Taxpayers' right to know what information HMRC holds about them and how that data is stored, used and shared. The Data Protection Act 2018 should apply to data held by HMRC on taxpayers. HMRC should make clear to taxpayers what it does with their data and its retention.

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

The right to challenge information held by third parties, including a taxpayer right to unilaterally correct data held by HMRC. Taxpayers should also have the right to know the source of the data and should be provided with relevant contact details so that they can discuss any errors etc with the source of the data.

Requirement for third parties to respond to agents of taxpayers (ie, right to appoint an agent).

## **CHAPTER 6: TAX PAYMENTS AND REPAYMENTS**

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

The issues around payments and repayments mainly relate to problems with HMRC systems and processes rather than legislative provisions.

Common issues with HMRC's systems and processes include:

- Statements issued by HMRC need to be much clearer and simpler to follow. For example, self assessment statements do not provide a full breakdown of the balance outstanding. They are particularly difficult to follow when amounts due are being collected through a tax code adjustment.
- HMRC should consider issuing statements on a much more regular basis (eg, at the end of each month). This would act a regular reminder to taxpayers of amounts due. Taxpayers frequently report that they have not received payment reminders from HMRC in advance of debt collection action such as a letter from a debt collection agency or HMRC.
- In many cases, (eg, PA302 simple assessments and P800 tax calculations and other taxes such as ATED), no statements are issued at all but instead each amount due is treated as a separate debt and not linked to any other debts that the taxpayer may have and with no account type information available to the taxpayer.
- The proposed single digital tax account needs to display all amounts due by a taxpayer, whatever the head of duty and however the liability arose (a return, HMRC assessment or calculation etc)
- Confusion over payment references causes problems for both taxpayers and HMRC and they need to be simpler and more consistent across all taxes.



- Many employers have not been able to reconcile their PAYE payments and liabilities account since RTI was introduced. This has been made worse by different data being displayed to employers, HMRC staff and the small number of agents who are in the private beta service.
- It is almost impossible to check or verify interest charges and repayment supplements. It would be easier to check the charges if they were added at regular intervals, such as the end of each month, rather than erratically as seems to be the case at present.
- HMRC regularly allocates payments in ways that are contrary to the intention of the taxpayer. Case law makes it clear that debtors have the right to specify what debts they are settling but HMRC does not provide a process to allow this in practice, particularly for online payments.
- HMRC does not have a process for allocating payments to future liabilities which means that it often refunds payments made by taxpayers when they intended that the funds should be held by HMRC in anticipation of a future tax bill.
- HMRC could be much more flexible about allowing taxpayers to offset refunds due for one tax against amounts due for a different tax and should enable offsets and corrections to allocations to be made online by agents and taxpayers.
- Delays to repayments are a regular feature of the taxpayer experience. Some self assessment repayments are made extremely promptly but where this does not happen the delays seem to be inordinate. The rationale for HMRC selecting some repayments for security checks or requesting additional information from taxpayers and how that relates to risk is not obvious – the checks do not seem to be well targeted and even where well targeted are not dealt with efficiently.  
Corporation tax refunds seem to be delayed on a regular basis, particularly where they arise from a loss carry back.  
Repayments of VAT for non-UK established taxpayers are taking longer and longer and the level of questions being raised are disproportionate.
- HMRC could make greater use of direct debits, for example enabling a direct debit for ITSA payments to remain in place rather than needing to be renewed for each and every payment.
- The CT QIPs rules need correcting, HMRC cannot chase outstanding QIPs as the return isn't filed until long after some of the QIPs are due, the taxpayers can't pay the right amount as the QIP is based on current period, etc. Payment problems also exist where companies migrate from the UK.

In terms of legislative provisions, the requirement to pay inheritance tax before probate is granted means that the tax is due before the personal representatives have access to the assets of the estate and this causes considerable practical difficulty. Other options should be considered.

Payment on account rules for income tax self assessment might be reconsidered; this is explored in more detail in the separate call for evidence on timely payments.

With regard to VAT: A reverse charge has the effect of transferring the output VAT liability from the supplier to the customer and increases the risk of fraud. This can have an adverse cash flow effect on suppliers if they would normally receive payment before having to pay the VAT due on their VAT returns. Conversely, postponed accounting for import VAT has a positive effect on the purchaser, as they do not have to pay import VAT at the time of importation but can declare both input and output VAT on the same VAT return, requiring no payment of import VAT to be made unless the purchaser is partially exempt. Even then, the payment of the irrecoverable input VAT would be deferred from the time of import to the time of payment of the VAT return liability.

An alternative method of deferring payment for imports, or release of goods from customs or excise warehouses, is to make use of a duty deferment account. It may be worth noting that the due date of payment of the deferred liability on such an account is different for excise duty and VAT/customs duty.

VAT split payments are being discussed separately and we expect those discussions to continue.

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

We consider that no significant legislative changes are needed in relation to payment rules and that, at this stage, the current legislation should mostly be preserved.

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

We do not consider alignment of payment rules across different taxes to be a priority, except where taxes are assessed together (eg, income tax, national insurance and capital gains tax).

Most taxpayers deal with a limited number of regimes at any one time. Even where they do deal with multiple regimes (say corporation tax, VAT and employer PAYE and national insurance) they are generally accustomed to reporting and paying these separately and we are not aware of any desire for change from taxpayers or agents or any significant benefit that would be brought about by aligning the payment rules. For some taxpayers, mainly business and corporate, different personnel handle the reporting and payments for different taxes or different agents are used for different taxes or even different aspects of the same tax. Many businesses would actively prefer that different taxes do not fall due at the same time.

What would be beneficial is alignment of payment rules for income tax, national insurance and capital gains tax, particularly where the liabilities are currently established in different HMRC systems such as NPS, self assessment and the CGT real time and UK residential property reporting services. Bringing these together into a single assessment and payment process could deliver significant benefits.

Significant benefits would also be delivered if all amounts due by a taxpayer were displayed in one place with full account history information, including for amounts that are currently treated as standalone liabilities.

The experience of moving the collection of Class 2 national insurance contributions from direct collection (usually by direct debit) to collection through self assessment should be heeded. What seemed like a relatively simple change has given rise to numerous complications such as the need for separate processes for some maternity allowance claimants and for those that wish to make voluntary contributions after the self assessment payment deadline. Data discrepancies in HMRC's systems still result in HMRC incorrectly removing Class 2 liabilities from self assessment calculations.

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

We consider that changes to the framework in relation to payments is not a priority and should be considered after significant progress has been made on the work on identifying and registering taxpayers and on calculating and assessing tax liabilities.

To the extent that HMRC has capacity, resource should be allocated to a single set of rules, systems and processes for taxes that are assessed together (income tax, national insurance, and capital gains tax).

Benefits would be attained by improving how HMRC's systems present information on tax due, both in digital tax accounts and paper statements, including across different taxes and by addressing the issues mentioned in response to question 20.

## **CHAPTER 7: BUILDING IN EFFECTIVE METHODS OF VERIFICATION, SANCTIONS AND SAFEGUARDS TO PROMOTE COMPLIANCE**

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

One major issue is that HMRC's enquiry and other powers – and their corresponding safeguards – remain spread across several different pieces of legislation and regime. This reflects the increasing

complexity of UK tax law after the previous simplification process that followed the merger of the Inland Revenue and Customs and Excise.

For example, the inaccuracy penalties in Schedule 24 FA 2007 are now overlaid with several other inaccuracy penalty regimes for “offshore” matters affecting income tax, capital gains tax and inheritance tax alone. As a consequence, the penalty regimes lose their deterrent effect as taxpayers struggle to understand the sanctions that HMRC may apply.

At the other end of the scale, some members have fed back that they find HMRC officers reluctant to agree to penalty suspensions because the centralised selection of enquiry cases makes it harder for an inspector to then follow up and check whether suspension conditions have in fact been complied with.

As the consultation document suggests, one of the key difficulties in the current set of powers is that the enquiry process does not lend itself to speedy resolution of technical issues and disputes. The back-and-forth nature of written correspondence means that in many cases HMRC and taxpayers or their agents take an adversarial approach, each entrenched in their own position and not working together to find common ground. HMRC response times to enquiry letters can also be very slow in some cases which further delays resolution of outstanding issues. More use of email and other forms of electronic communication would help to speed things up.

One of the issues that our members have raised is the discrepancy between the amount of time taxpayers/agents are given to respond to HMRC enquiry letters (typically 30 days from the date of the letter) compared to the typical timeframe within which HMRC deals with such responses. This can produce the impression of unfairness in the enquiry system in favour of HMRC.

One potential solution to this is to set the same deadline for HMRC and taxpayer responses. We assume that one of the reasons why there is a delay in HMRC correspondence is due to a lack of resource. If that is the case, then further funds would need to be provided to HMRC to meet these more demanding response times.

However, another of the key issues our members encounter is HMRC officers not articulating at an early stage the basis of enquiries that HMRC is raising. The litigation and settlement strategy (LSS) sets out that HMRC should, in all enquiry cases, share sufficient detail of the risk or discrepancy identified by HMRC so that the taxpayer can understand it, thereby enabling collaborative working to resolve matters. In some cases, our members have seen, very generic explanations for enquiries being opened such as ‘in order to check your return is accurate’ or ‘HMRC holds information suggesting that additional tax may be due’ without sharing what that information is. If HMRC officers were to provide more detailed explanations of their concerns in relation to returns submitted, this might reduce the amount of correspondence required to resolve enquiries, thereby at least partially alleviating the resource issue referred to above.

Similarly, it would be helpful if there were more routes – especially for corporate and onshore enquiries and disclosures – to have dialogue with HMRC earlier in a process, rather than only at the point when matters have become entrenched and formal processes need to be invoked. We expect there will be an increased demand for these ‘real time’ conversations with HMRC if taxpayers are also required to report to HMRC on a more real time basis.

The bigger problem however is around how the balance of powers, sanctions and safeguards applied by HMRC is, in our members’ experience, skewed in HMRC’s favour.

For example, we are seeing the frequent use of formal information gathering notices as a matter of course, including in cases where taxpayers may not have responded to an informal request because they are still awaiting clarification of why HMRC requires certain information. In penalty discussions, we continue to see an aggressive approach from HMRC where taxpayers are being asked to rebut assertions from HMRC of careless or deliberate behaviour rather than being given a chance to demonstrate that reasonable care was taken.

This has the potential to become an increasing problem where taxpayers withdraw from the relatively few routes that could resolve disputes more quickly (eg, meetings with HMRC) because of concerns that they will either not be listened to, or they will be met with an overly assertive approach by HMRC.

The introduction of customer compliance managers (CCMs) for large business and alternative dispute resolution (ADR) has helped to foster dialogue and made it easier to reach consensus on issues at an earlier stage than would otherwise have been the case. However, smaller businesses and taxpayers unable to afford representation in an ADR process remain outside the scope of these measures.

Aside from CCMs, there are very few opportunities to ask HMRC to look at a client's tax affairs holistically. Typically, individual officers and the specialists they bring on board to consider specific issues (eg, in relation to valuations) do not have an understanding of the wider commercial context of the transaction concerned or the taxpayer's affairs in general.

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

The current safeguards should be retained and should be part of a discussion about the correct balance between HMRC's powers and taxpayer sanctions, particularly with regards to penalties. There have been some moves to address this, eg, with the recent review into HMRC's approach to reasonable excuse for the requirement to correct, but there is scope for wider dialogue.

One suggestion that has been aired informally by HMRC is the question of whether it would benefit all parties for HMRC to have the legal right to enquire more than once into the same accounting period or tax year. The suggestion was that this would lead HMRC officers to reduce the opening information requests in enquiries. We consider that this would both fail to achieve the reduction in HMRC information requests and also undermine a fundamental principle of the tax system which is the need to balance taxpayer certainty with HMRC's responsibilities and duties to collect tax. A clearly defined, single enquiry window is central to that certainty.

We would also note that in situations where new information comes to light, HMRC can either use existing discovery powers or, if HMRC holds evidence that a taxpayer lied to HMRC during the previous enquiry, reopen that previous enquiry. HMRC therefore already holds sufficient powers to make additional assessments at a later date and a more effective way of lightening the burden placed on taxpayers by HMRC information requests would be to encourage greater transparency and upfront dialogue between HMRC officers and those under enquiry.

***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?***

Increasing digitalisation of the tax compliance process and use of pre-populated third-party data on tax returns should provide greater opportunities for earlier liaison between HMRC and taxpayers. This would allow HMRC to enquire into information it already holds and how this information is reflected on a taxpayer's returns. However, there is a danger that if HMRC starts to receive and utilise more third-party data which may potentially be inaccurate, it may take the view that a taxpayer's position is wrong if it does not agree with the data received. The onus to prove the accuracy and completeness of third-party data should not fall on the taxpayer.

Instead HMRC should expand its own data analysis capabilities to integrate and cross-check third party data with other data already held by HMRC. To the extent that it would be helpful to do so, we would support HMRC sharing third-party data (eg, common reporting standard reports) with taxpayers and their agents before tax filing deadlines.

Especially for businesses (companies and unincorporated businesses) that will be required to adopt quarterly reporting under MTD, this could also allow for more regular touchpoints between the two parties. For example, if claims and elections could be made on a quarterly basis, they could be resolved in a more timely fashion, in-year, at a time where the transactions and arrangements and information relating to these are more contemporaneous and more readily to hand.

At the same time, while some businesses would appreciate greater points of contact with HMRC, others prefer contact to be minimal so that they can spend their time running their operations. Therefore, any future tax system also needs to cater for this population. HMRC should work with



software providers to ensure that the provision of quarterly reports is as painless as possible and provides for a reduction in the administrative burden on businesses overall.

Agents must be integrated into the framework more successfully. In particular:

- HMRC must accommodate the fact that multiple agents may need to have access to the same taxpayer data (eg, a group tax function may handle group-wide claims and elections (group relief, corporate interest restriction, annual investment allowance) but with different agents completing the tax compliance for individual companies).
- There needs to be a smoother transition when a client appoints a new agent.

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

Powers granted to HMRC should be sufficient to promote and encourage accurate and complete compliance by taxpayers and be used for that purpose only. HMRC should ensure that it makes maximum use of its existing powers before seeking additional ones. Sanctions such as penalties should not be punitive and should be set at the minimum level required to encourage good behaviour. For example, penalties for innocent errors or those which do not result in a loss of tax should be minimal. Officers should be reminded of this and there should be less resistance from HMRC to penalty suspension. In particular, HMRC should assess the impact on levying late filing penalties on nil returns to determine whether it has any effect on behaviour.

All powers should be granted with a view to HMRC and taxpayers entering into a process of collaboration, rather than an adversarial relationship. As part of this, both new and existing powers need to be exercised in an even-handed way that demonstrates that taxpayer safeguards are being genuinely and effectively taken into account.

There also needs to be greater clarity about when and how key powers are used, including when HMRC has opened a formal enquiry as compared with when it is requesting information to check a tax position but has not explained the powers under which these actions are taken. If HMRC is asking a taxpayer to voluntarily comply with questions from HMRC, it should be made clearer, particularly to unrepresented taxpayers, that there is no obligation to enter into a dialogue with HMRC.

***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?***

We are concerned that additional powers granted to HMRC since 2008 without corresponding safeguards have taken the position to beyond fair. An example of this is the introduction of financial institution notices (FINs) whereby HMRC can request information about a financial institution's customers without obtaining prior approval from the first tier tribunal or the taxpayer. The recent powers review into HMRC's misuse of reasonable excuse has emphasised this.

Whilst powers and safeguards should apply to all taxpayers equally HMRC should consider the perceived levels of risk in relation to individuals/companies or groups of taxpayers in deciding whether or not and how to make use of those powers. In particular, attention should be paid to the impact of HMRC's powers on the most vulnerable and ideally have a dedicated unit dealing with vulnerable people trained to identify and understand the issues they face. HMRC should also take into account the circumstances of each individual taxpayer rather than tarring all taxpayers in a similar industry or who used the same adviser, for example, with the same brush.

Concepts such as reasonable excuse should continue to apply in relation to the determination of penalties and other sanctions and HMRC should ensure that it adopts the principles being established through case law in applying these. Individual taxpayer circumstances should be taken into account, as far as is possible.



## CHAPTER 8: FURTHER SUGGESTIONS

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

An incremental approach to policy changes minimises the risk of creating opportunities to exploit the system and would allow HMRC, taxpayers and agents the capacity to absorb change.

## APPENDIX 1

### ICAEW TAX FACULTY'S TEN TENETS FOR A BETTER TAX SYSTEM

The tax system should be:

1. Statutory: tax legislation should be enacted by statute and subject to proper democratic scrutiny by Parliament.
2. Certain: in virtually all circumstances the application of the tax rules should be certain. It should not normally be necessary for anyone to resort to the courts in order to resolve how the rules operate in relation to his or her tax affairs.
3. Simple: the tax rules should aim to be simple, understandable and clear in their objectives.
4. Easy to collect and to calculate: a person's tax liability should be easy to calculate and straightforward and cheap to collect.
5. Properly targeted: when anti-avoidance legislation is passed, due regard should be had to maintaining the simplicity and certainty of the tax system by targeting it to close specific loopholes.
6. Constant: Changes to the underlying rules should be kept to a minimum. There should be a justifiable economic and/or social basis for any change to the tax rules and this justification should be made public and the underlying policy made clear.
7. Subject to proper consultation: other than in exceptional circumstances, the Government should allow adequate time for both the drafting of tax legislation and full consultation on it.
8. Regularly reviewed: the tax rules should be subject to a regular public review to determine their continuing relevance and whether their original justification has been realised. If a tax rule is no longer relevant, then it should be repealed.
9. Fair and reasonable: the revenue authorities have a duty to exercise their powers reasonably. There should be a right of appeal to an independent tribunal against all their decisions.
10. Competitive: tax rules and rates should be framed so as to encourage investment, capital and trade in and with the UK.

These are explained in more detail in our discussion document published in October 1999 as TAXGUIDE 4/99 (see <https://goo.gl/x6UjJ5>).