



DISCUSSION DOCUMENT: HELPING TAXPAYERS GET OFFSHORE TAX RIGHT

15 June 2021

ICAEW welcomes the opportunity to comment on the Discussion document: helping taxpayers get offshore tax right published by HMRC on 23 March 2021, a copy of which is available from this [link](#).

Enter summary of major points:

- We believe that a significant proportion of examples of non-compliance on offshore matters arise as result of individuals being unaware of their obligations, either because they are based overseas and do not pro-actively monitor their UK tax obligations, or they are based in the UK and find the rules relating to their overseas affairs complex and difficult to interpret.
- The chances of errors and inaccuracies arising on the reporting of overseas income increases as a result of the UK having a different tax year to most countries around the world.
- Significant gains could be achieved through more efficient and intelligent use by HMRC of the data it holds on the income and gains received by UK taxpayers. This might be less costly and disruptive than introducing brand new HMRC powers.
- Greater use of nudges and prompts could be effective in encouraging taxpayer compliance provided these are issued on a timely basis and are tailored to the individual's circumstances, rather than generic.
- If HMRC wishes agents to play a greater role in promoting improved taxpayer compliance, we suggest that greater support is provided to them in fulfilling that role.
- Where it believes it to be appropriate, HMRC should consider lobbying for greater use of withholding taxes in cases where there is persistent and widespread non-payment of taxes on UK income by overseas individuals and businesses.

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KEY POINTS

CAUSES OF NON-COMPLIANCE

1. We believe that it is important to understand that most remaining non-compliance around non-UK source income and assets is the result of genuine misunderstandings by taxpayers. One of the most significant problems with offshore compliance is that the tax rules surrounding this area are some of the most complicated in the UK tax code. The remittance basis, offshore trusts and the transfer of assets abroad rules, for example, are very difficult for agents to understand, let alone the individuals to which they apply. This area of tax law is greatly in need of simplification which is a process that would greatly improve the accuracy of tax reporting from those who genuinely wish to comply.
2. It is also common for less sophisticated taxpayers to assume that because income or assets have been taxed overseas there may be no further UK reporting or tax obligation. At the same time, we would encourage HMRC to consider changing their language around 'offshore', which has recently become associated with the successful anti-evasion campaigns such as No Safe Havens, to something which more taxpayers may identify with eg, 'non-UK'.

DIFFICULTIES WITH THE TAX YEAR END

3. A significant difficulty that taxpayers and agents alike find with reporting offshore income is the fact that, in most countries in the world, the fiscal year follows the calendar year, whereas in the UK the tax year ends on 5 April.
4. This means that taxpayers will typically need to incorporate information from two different tax returns for each territory in which they generate income when preparing their UK tax return. Strictly speaking, individual items of income should be identified separately, rather than simply applying a pro-rata basis, which more or less means starting again from scratch in compiling a schedule of the individual's overseas income, rather than using the overseas tax returns as a starting point. It is then necessary to translate those individual items at an appropriate exchange rate and work out what overseas tax has been incurred on each one in order to identify the foreign tax credits available in the UK.
5. Overall, this is an extremely long and laborious process for some taxpayers which would be made much more straightforward if the tax year in the UK followed a calendar year basis. In that case, the taxpayer or agent could more or less transplant the information he or she used to compile the overseas tax returns into his or her UK return. This would have the following benefits:
 - It would save the taxpayer or agent significant time and expense
 - It would reduce the incidence of errors as the information reported in UK returns would be easier to check back to overseas tax returns and prevent the possibility of items being reported twice in consecutive tax returns or missed altogether
 - It would make life easier for HMRC as reported income and foreign tax credits claimed could more easily be checked against overseas tax returns
6. Another benefit from changing the tax year to a calendar basis would be to make it easier for HMRC to analyse the CRS and FATCA data it receives from other countries. The discrepancy in tax years is mentioned in paragraph 2.11 of the consultation document as an inhibitor to HMRC being able to use this data to its full potential. This will only become more of an issue in the future when HMRC implements the forthcoming OECD-led data sharing on CRS avoidance arrangements and opaque offshore structures, as well as the gig economy data sharing.

MAKING BETTER USE OF DATA HMRC HOLDS

7. Rather than bringing in new compliance obligations for taxpayers, the majority of whom already try to file on an accurate and timely basis, we believe it would be more efficient for everyone if HMRC were able to better manage (and where appropriate, share with taxpayers and their agents) the information it already holds in order to assist taxpayer compliance. As an example, when an overseas company disposes of a residential property in England or Wales, ATED, CGT and SDLT are all in point but feedback we have had from our members suggests that HMRC's teams and systems looking after each of these taxes do not 'talk to each other'. By maintaining a more 'joined up' system, HMRC would be able to issue nudges or prompts to a taxpayer where one of these taxes becomes reported in respect of the other taxes. Similarly, taxpayers who engaged with one of these teams in HMRC would receive a verbal prompt from HMRC to consider the other related taxes.

NUDGES AND PROMPTS

8. We support the proposal for greater use of nudges and prompts by HMRC. We believe that while prompts have the potential to help taxpayers and HMRC, they will need to be carefully designed and used at the appropriate time. We believe that these should be specifically targeted rather than generic and be made in response to information HMRC receives, for example, through CRS data, or because of declarations that taxpayers have made of offshore income and gains in the past. Generic questions, eg. 'have you considered rental income' are unlikely to be of much use.
9. We believe that prompts should be issued on a timely basis (ie, as soon as possible after HMRC has received the information it relates to or on issuing a notice to file a tax return) rather than when the relevant return is being prepared. Copies of these prompts should be shared with taxpayers' agents as well as with taxpayers.
10. Changing the tax year to a calendar year would also make these nudges and prompts more effective. If data arrived in January or February, this would leave plenty of time for HMRC to use these in nudges in advance of an individual or their agent completing a return. Once MTD has become established, it might even be used to pre-populate returns.
11. Where taxpayers do not respond to prompts, for example because they misunderstand the prompt or genuinely believe that a generic prompt does not apply to them, this should not in itself be seen as deliberate action to file an inaccurate return.

HMRC LIAISON WITH AGENTS

12. We are supportive of the drive to involve agents more in encouraging greater offshore compliance. We feel that agents could be given more support in fulfilling that role by, for example:
 - a. sharing information that HMRC holds about taxpayers (such as that collected through CRS) on as much of a real time basis as possible
 - b. ironing out the difficulties that firms often face in registering with HMRC as agents for their clients, especially those without a UTR or a NINO.
 - c. copying agents into as much of the correspondence that HMRC has with individual taxpayers as possible.
 - d. HMRC working collaboratively with agents and professional bodies where it wishes to involve them in prompting taxpayers to enter into compliance campaigns.

GREATER USE OF WITHHOLDING TAXES

13. HMRC should consider lobbying government for the introduction of withholding taxes in cases where there is significant non-compliance and failure to pay. An example would be

withholding of non-resident capital gains tax at source by conveyancers in cases where non-residents dispose of UK residential property. Overseas taxpayers are frequently unaware of the requirement to file a return and pay the tax within 30 days of disposal and so a withholding tax at source would prevent such non-compliance from taking place.

ANSWERS TO SPECIFIC QUESTIONS

Question 1. How do you think HMRC could best use offshore data to promote offshore compliance and help taxpayers get offshore tax right first time?

Question 2. How do you think HMRC could best use offshore data to stop errors from happening?

14. We have addressed these above in our suggestions about how HMRC could better use the information it already has, and the benefits of moving to a 31 December tax year end.

Question 3. Should additional safeguards apply to ensure taxpayers' rights are protected if HMRC use offshore data in new ways as set out in paragraph 2.9?

15. While we have not identified any new safeguards, we believe it is very important that if HMRC proceed with some of the proposals set out in this discussion document, eg, the use of prompts, that taxpayers who misunderstand the prompts are not treated as deliberately misfiling a return. Equally, where HMRC may be using additional data sources to check whether there has been tax compliance, we suggest that HMRC checks whether any assurances were given at the time those data sources were created about how the information would be used. For example, there were statements made at the time that the Trust Register was introduced. If HMRC is intending to change the use of that data, it would be a taxpayer safeguard to publicly acknowledge that change.

Questions 4. Do you think making the changes to the data and information collected through the foreign pages, as set out in paragraph 2.14, would be helpful?

Question 5. What other areas are there where it would assist tax agents if it were made mandatory for their clients to provide HMRC (and hence the agent) with details that are not currently required in a self-assessment return?

16. We have answered these questions together.
17. We do not believe that expanding the data on the foreign pages would be the best solution. While we can see that the changes proposed would provide HMRC with a lot more information, we are a little sceptical that it will have the resources needed to review it. We take on board the fact that the information is already to hand (as it forms the basis of the aggregate figures on the tax return), but it would nonetheless result in additional compliance costs in preparing the relevant returns.
18. We believe that a more effective solution may be for HMRC to share the CRS data it receives with the relevant taxpayer and their agent so they can then use this to check off against the income being reported in their UK tax return. We believe that this would reduce the incidence of error and improve the accuracy of the information included on the return.
19. Often, the information that is provided to HMRC through the CRS system can be difficult to reconcile back to UK tax returns because the basis for calculation or recognition is different in other territories. Therefore, by providing the information available to taxpayers or their agents, this would give them time to reconcile this and provide explanations as to why it is

not included in a UK return (because, for example, the relevant individual is not domiciled in the UK and the income was not remitted to the UK).

20. By way of an example to illustrate some of the difficulties that can arise, it is common for a taxpayer to hold a portfolio of cash and equities via a Swiss Bank. HMRC might receive a report from the bank and conclude that the individual only has Swiss income, but the equities might consist of shares in companies in several different countries. If the taxpayer completes a return based on the underlying jurisdictions of the companies from whom the dividends have been received, HMRC might be confused by this and be unable to reconcile this back to the CRS data received only from Switzerland.
21. We understand that under the OECD-led proposals for global gig economy data sharing, there is a suggestion that the relevant data would be provided to the taxpayer as well as the tax authority. If this was done automatically for CRS and the forthcoming CRS avoidance arrangements this could be an alternative.
22. Although it is not specifically mentioned in the consultation document, we would be especially concerned if non-domiciled individuals using the remittance basis were asked to provide details of income and gains that had not remitted to the UK as this would involve disclosure of items on which no tax arises and would place a significant additional compliance burden on the individuals concerned.

Question 6. What terminology do you think would help a broader range of taxpayers associate themselves more accurately with their offshore tax obligations?

23. Making UK taxpayers more generally aware that HMRC has access to information about income and gains generated offshore would help taxpayers to better understand their obligations with regard to disclosure of such amounts. Also, it might be better to use the term 'non-UK' rather than 'overseas' when referring to such amounts. Some taxpayers may associate the terms 'overseas' or 'offshore' with tax avoidance arrangements rather than more typical sources of income from assets based overseas.
24. Similarly, terms like 'inaccuracy' and 'non-compliance', while being well-understood within the tax profession, can sound like jargon to the layman. Plainer words like mistake or error might be better to use instead. Some taxpayers did not comprehend that the Requirement to Correct applied to them as they thought non-compliance meant evasion, and so didn't realise they needed to take any action before the RTC deadline.

Question 7. In which areas of offshore tax should HMRC focus communication efforts and why?

25. We have answered this question under question 10, when discussing prompts and nudge letters.

Questions 8. How should HMRC best carry out public communications to have the most impact in helping taxpayers get their offshore tax right?

Question 9. How can HMRC raise awareness of changes in legislation when the target audience is based offshore?

26. We have answered these questions together.
27. Given the complexity of the UK tax rules relating to offshore income and gains, it would be useful if HMRC worked with professional bodies like HMRC and larger accounting firms to improve education in these areas. Professional bodies and HMRC could discuss the areas where they are seeing the greatest number of errors and what they could do to

help taxpayers better understand their obligations and reduce the incidence of errors in returns.

28. Having said that, there are a large number of taxpayers who never get advice because they don't realise they need it, or have to pay UK tax on their overseas income. It is therefore essential that HMRC finds a way to reach these people too.
29. HMRC could do more to make people aware of changes and of the rules in general. It could, for example, create a relatively simple factsheet in plain English on (for example) the UK tax reporting & payment obligations for non-residents selling UK land/property. It only needs to be one side of A4 and flag that there are complexities so the person may need advice. HMRC could make conveyancers hand it to their non-UK resident clients. The Home Office knows who are the successful applicants for visas & UK citizenship – HMRC could give another basic factsheet (or a link to it) to the Home Office to provide automatically to the successful applicants – a kind of welcome to the UK, but please do file & pay tax.

Question 10. What data would be useful to you when receiving a prompt and when in the process would you like to receive it?

30. Different taxpayers will be influenced by prompts received at different points in the tax declaration process and so it is important that HMRC looks to issue prompts to them at multiple stages. Having said that, issuing a prompt at the point when the individual files his or her tax return is perhaps too late, especially if this isn't done until mid to late January.
31. When a notice to file a tax return is issued, there could be prompts sent to individuals to declare their offshore income or gains. It would be best if this is as specific as possible, drawing on prior disclosures of offshore income or gains or information that HMRC has received about such amounts received by the individual. It would be more effective to say, 'we are aware that you have overseas income or gains', or 'we note that you received overseas income or gains in the past' and possibly to include references to specific jurisdictions based on CRS data than 'please check whether you have any overseas income or gains'.
32. A blanket approach may encourage non-responses, especially if HMRC does not follow up on them. For example, we are aware that some members are seeing their clients become less responsive to HMRC nudge letters which have been issued using high level language for a number of years now. If HMRC wishes to continue using nudge letters as well as tax return prompts, we think it would be helpful to publish some data around the levels of follow up action and tax collection that has been driven by nudge letters. Similarly, HMRC could continue to publicise the levels of information that it receives under the CRS. At present, this tends to be included in HMRC annual reports rather than messaging connected to the annual tax return filing.
33. Further prompts could be included during the tax return submission process eg, the overseas tax pages could be included automatically in certain cases and the preparer or taxpayer could be asked to tick a box to confirm that no taxable overseas income or gains arose in the period if no details of such amounts have been included in the return. However, as mentioned above if this statement is later found to be incorrect, HMRC should take a fact-based approach in deciding whether this was an error despite taking reasonable care or another kind of error rather than automatically assume there has been a deliberate misfiling.
34. It is also important that taxpayers are not treated as having taken deliberate action in calculating penalties for inaccurate disclosures if they fail to respond to prompts, particularly where these are high level or generic.

Questions 11. How could HMRC work with agents and intermediaries to improve offshore tax compliance?

Question 12. What are your views about more direct sharing of information with agents?

35. We have answered these two questions together.
36. As a general rule, all letters, prompts and requests sent to taxpayers should, as far as possible, be copied into their agents. This will help to improve the chances of important messages reaching those taxpayers (where, for example, written correspondence from HMRC to the taxpayer goes missing or has been sent to the wrong address). It will also help agents to provide a better service in advising taxpayers of their liabilities and obligations and in completing accurate tax returns on their behalf.
37. Another way in which dialogue between HMRC and agents could help to improve compliance is by HMRC sharing the CRS data they receive with agents so that this could more easily be tied into and checked against the information received by the client when preparing tax returns.
38. This would also open up the possibility for dialogue at an earlier stage and therefore prevent errors or misunderstandings at a later stage. It is entirely possible, for example, that the data received by HMRC from third parties and through the CRS system is inaccurate, or the amounts concerned are not taxable, perhaps because they are covered by foreign tax credits or they are amounts not remitted to the UK by non-UK domiciliaries. By investigating these amounts upfront, a taxpayer is more likely to submit an accurate tax return and unnecessary enquiries and disputes can be avoided.
39. One of the problems that a lot of agents' experience is the difficulty in being recognised as agent for a client by HMRC where no UTR has been issued. The sooner that agents can be recognised as such on HMRC's systems, the earlier they can liaise with HMRC.
40. There is also a feeling amongst the agent population that much of the work that might naturally have fallen on HMRC in policing good behaviour is being passed over to them without corresponding access to the level of data that HMRC receives (and should continue to receive). While the vast majority of agents are supportive of HMRC's efforts in closing the tax gap, it is commonly felt that more support could be given to agents in fulfilling this role. The archetypal example of this were the letters that agents were asked to send to clients encouraging them to take part in the 'Requirement To Correct' facility. This was felt to be a significant burden given that agents would not have known to keep databases in a format that would allow them to easily identify the clients to whom the letters would be relevant. HMRC could provide more support by sharing more freely the information it holds relating to their clients.
41. We have also commented above on some of the publicity campaigns HMRC could run (eg, around the impact of nudge letters, the volume of CRS data received, up to date press releases on HMRC campaigns or the percentage of offshore disclosures which receive further questions from HMRC after submission). This would assist ICAEW members in discussing tax compliance – whether relating to tax returns, voluntary disclosures or nudge letters – with their clients.

Question 13. How can HMRC ensure agents based outside of the UK meet the standards expected of those giving UK tax advice?

42. If an agent based overseas submits the return on the taxpayer's behalf, then HMRC will already have information about this agent through completing the agent authorisation process. This process could be strengthened so that any new agent that is not already registered to act on behalf of a taxpayer must go through a due diligence process before

becoming authorised to act on behalf of taxpayers. Alternatively, the agent could provide details of its regulatory body and reference on applying to become authorised which HMRC could then check.

43. Where the relevant tax return is filed by a UK agent, but details of overseas income are based on information received from an overseas adviser, we believe that the most effective way of ensuring high standards of work from the overseas adviser would be to place the emphasis on the UK agent to perform its own due diligence on that adviser.
44. Under the professional conduct in relation to tax (PCRT) an adviser can only rely on advice (subject to sense checking the known facts) from a professional within PCRT or equivalent (for example a registered IFA), so an agent who is subject to PCRT should already check advice received from an agent outside PCRT rather than relying on the other agent. The UK agent therefore has to take responsibility for the validity of the advice, so it is unclear why the non-UK adviser is relevant in such a case.
45. One of the suggestions raised by HMRC in a recent roadshow event was for the relevant tax return to include details of advisers based overseas who have contributed to the completion of information used to prepare the return. We can envisage some significant practical details with this including:
 - defining what constitutes advice (we note from the current HMRC consultation on raising standards in the tax advice market that this is not particularly straightforward)
 - tracking what advice was received when and which returns it could have an impact on (which may be many years later)
 - issues around confidentiality and obtaining permission from overseas advisers to have their details included on the return
46. As stated above, HMRC is already consulting on changes designed to raise standards in the tax advice market and we believe that these should be given a chance to 'bed in' first before introducing further measures.

Question 14. How could we further leverage public-private partnership initiatives and the role of financial institutions to promote offshore compliance?

Question 15. Are there other non-financial areas where public-private partnerships could be developed to help promote offshore compliance?

47. We have answered these two questions together.
48. We are not sure at present or from the consultation calls with HMRC what is envisaged as coming under the banner of public-private partnerships. However, we would note that professional bodies such as the ICAEW give HMRC a clear and easy way to communicate across an industry of tax advisors in one go, and to gather views from the profession. Ongoing communications with the ICAEW and similar bodies would therefore support and enhance any public-private working partnership model.

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>).