ICAEW
REPRESENTATION 41/24

THE TAX ADMINISTRATION FRAMEWORK REVIEW: ENQUIRY AND ASSESSMENT POWERS, PENALTIES AND SAFEGUARDS

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ICAEW welcomes the opportunity to comment on The Tax Administration Framework Review: enquiry and assessment powers, penalties and safeguards call for evidence published by HMRC on 15 February 2024, a copy of which is available from this link.

In summary: We understand the need to consider the enquiry and assessment framework but see significant challenges in implementing these changes – and abolishing the current enquiry window is not necessarily the appropriate starting point. By contrast, we would support a major simplification of the penalties framework. We also believe that the existing safeguards (statutory review and ADR) are the correct ones and would work with HMRC to help further publicise these processes.

This response of 2 May 2024 has been prepared by the ICAEW Tax Faculty. Internationally recognised as a source of expertise, the ICAEW Tax 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

1. We appreciate the opportunity to provide our thoughts on this call for evidence. We agree that a wholesale review of enquiry and assessment procedures would be timely. The tax landscape has moved on considerably since the 2007 Powers Review and much of the reforms subsequently introduced following that review are not achieving their desired aims.
2. Appendix A to the call for evidence lists the following desired outcomes for any changes to existing procedures:
   - provide certainty by being clear and easily understood;
   - provide appropriate safeguards and effective support (e.g. for vulnerable taxpayers);
   - be as simple and transparent as possible;
   - help reduce the cost for taxpayers of meeting their obligations and for HMRC; and
   - build trust in the tax system, via powers that are proportionate and used fairly.
3. We agree with these desired outcomes, and we also add a desire for certainty through taxpayers' tax positions being confirmed as early as possible. This could allow business owners to focus on the day-to-day running of their operations and reduce the number of cases that go to Tribunal.
4. As a general principle, while we agree that there are some areas of the existing tax legislation that could be improved, the starting point should be to focus on HMRC's application of the existing rules. For example, HMRC's processes (including accessible helplines) could be improved which would allow it to open and resolve enquiries more easily without the need for legislative change.
5. We are supportive of alignment and harmonisation across the various heads of tax, although that should not be done for alignment's sake. Rather, we would prefer for the review to consider where differences cause problems for HMRC, taxpayers and agents and explore opportunities for alignment to ameliorate those difficulties. We have also noted below areas where alignment would be challenging, based on differences in the way certain taxes are administered or the type of income or profits they relate to.
6. Alignment, were possible, may help achieve HMRC's objectives and simpler rules may also improve taxpayers' ability or willingness to engage with the process. This should also make it easier and cheaper for HMRC to move staff between compliance teams. The volume of factsheets and guidance could also be reduced. Both should yield significant cost savings for HMRC.
7. Any work that HMRC carries out in re-formalising the tax compliance regime should consider its use of nudge letters and prompts given during the completion of electronic documents. These should ideally be incorporated into the regime on a statutory footing.
8. Once the revised processes are enacted, HMRC/HMT/Government need to resist tweaking/expanding them for several years to give them time to bed in.
9. In terms of formatting, HMRC's aim should be to consolidate all compliance-related legislation into a single management of taxes act, though it could start by making piecemeal changes, if the former seems too onerous at this stage. There will never be a 'right' time to replace TMA 1970 so HMRC should start small with a new act and keep adding to and updating it in response to changes in capabilities etc.
10. Finally, we are concerned about the comments included in the call for evidence which suggest that agents are providing a barrier to the smooth running of the tax system. While there will inevitably be some parties that seek to abuse the rules, we would hope that HMRC can acknowledge that the tax profession and its representative bodies are supportive of and play a vital role in the proper functioning of the tax system. Without the actions of agents ensuring returns are completed correctly and submitted in a timely fashion and explaining

and encouraging compliance with tax obligations, HMRC's job in policing the tax system would become more onerous.

ANSWERS TO SPECIFIC QUESTIONS

Enquiry and assessment powers

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

11. We agree with the premise that the current UK tax system is hugely complicated, even for specialist practitioners and at times for HMRC staff. As such, there is considerable potential for simplifying penalty and information gathering powers, along with better communication methodologies. As well as potential simplification and communication changes, better advertisement of some of the existing processes such as statutory review and ADR that could also lead to a swifter resolution of enquiries.
12. We support the ambition of introducing a single tax regime, though we have received mixed feedback on whether a single set of enquiry and assessment powers would be possible. The way that different taxes operate may require a different assessment regime to apply to them. For example, VAT is an invoice-based transaction tax assessed monthly/quarterly/annually where all data necessary to identify the correct treatment is known when the invoice is issued. Income Tax is a profits-based tax assessed annually where information to identify the tax treatment of an expense may not exist until long after the expense date. This may therefore necessitate a different approach across different tax heads, which HMRC should take into account as it formulates its thinking further.
13. In addition, we acknowledge that HMRC undoubtedly receives a greater volume of information – much of it on an automatic basis – than at the time of the previous powers review. This might be thought to support a replacement of an enquiry window with an assessment regime, supported by HMRC's Schedule 36 powers.
14. However, if HMRC were to move away from a self-assessment basis to an open-ended and lengthy assessment regime, this would not necessarily send the signal of a modern tax authority for the 21st century. Instead, it could signal a step backwards but without many of the features and supports available for taxpayers in the Inland Revenue and Customs era of the mid 1990s.
15. It may be appropriate to revisit this question in c.5 years' time when Making Tax Digital has potentially made the idea of pre-populated tax returns a more realistic possibility – or alternatively, if the UK were to move to a model where even self-employed or gig economy workers had tax deducted at source through e-invoicing, for example, hence reducing the self-reporting burden.

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

16. Any decisions on assessment time limits need to balance taxpayers' need for certainty against the public interest in HMRC being able to assess and collect unpaid tax to fund public services, benefits and the national debt.
17. It is important that any changes are not simply one-way, i.e. granting HMRC extra powers without matching rights for taxpayers, as this would create further imbalances in the tax system. A return to a pre-self assessment system may in fact simply create additional administrative burdens for HMRC and greater uncertainty for taxpayers if implemented without corresponding increased access to HMRC inspectors and policy decision-makers.

18. We are therefore broadly in favour of retaining the existing enquiry and assessment powers. Given the reduced resource and technical capabilities of HMRC, it does not appear appropriate to return to a pre-self assessment tax system.
19. Should HMRC choose to move instead to a fixed assessment window now, this should be matched by an equal extension in taxpayers' ability to self-amend their returns and make claims for relief.
20. In addition, if HMRC wishes to move away from a self-assessment system, the ability to make consequential claims should be expanded beyond the current restrictions of s36(3) TMA 1970 and Paragraphs 61-65 Sch18 FA 1998 to give reasonable opportunities for taxpayers to arrange their affairs in an efficient manner in response to the completion of an enquiry or assessment. The current restrictions, including in cases of voluntary disclosures, is unfair and causes frustration in taxpayers who had made errors despite taking reasonable care.
21. Similarly, there would need to be much clearer communication about when any compliance check began and when it had ended. This is not always clear at present, and much commentary has already been raised with HMRC about the confusion that can arise regarding nudge letters.

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

22. It is difficult to determine what the potential costs or reduction in costs could be without specific proposals on the table. We recommend that any calculation of costs includes up-front communications, training and additional taxpayer support as well as the potential for reduced support in a less complex system in the future.

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

23. Regardless of the system adopted, contract settlements (TMA 1970 s 54) should be retained as they provide an effective, efficient way to close compliance checks involving multiple taxes and/or periods with built-in instalment payments. Taxpayers should be notified directly whenever HMRC queries their affairs (unlike currently with agent nudge letters), given they remain responsible for their tax returns.
24. If an assessment and discovery-type regime is adopted for all taxes, the revised provisions should be drafted to empower HMRC to override incorrect/excessive claims/elections, including those made outside returns like overpayment relief, by issuing a discovery assessment. This would remove the need for enquiries into claims and provide a cheaper route for appeals (at present judicial review is the only option where HMRC rejects claims without enquiring into them). Clearly some specific provisions would be needed for group relief amendments and partnership discoveries (see s30B TMA 1970).

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

25. We are broadly supportive of greater alignment in the examples of discovery determinations and directors' responsibilities for PAYE given under reform option B.
26. On the other proposals, we believe that there is already greater alignment than the call for evidence suggests. For example, while income tax for self-assessment does not include consequential amendments in the same way as for corporation tax, HMRC can deal with this situation via discovery assessments and make use of the presumption of continuity.

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

27. Currently, HMRC's record keeping requirements (e.g. TMA 1970 s 12B and FA 1998 Sch 18 para 21) are out of step with assessment time limits, particularly in relation to offshore matters. This sets an unrealistic burden on taxpayers and tends to result in higher levels of penalties issued by HMRC. We recommend that HMRC reduces or removes certain assessment windows, so that the windows are better aligned.
28. There is a current mismatch between the overpayment relief rules of four years and discovery assessments or determinations which are increasingly issued for six year periods. We recommend reinstating a six year window for overpayment relief.
29. We have already commented above on the consequential claims available to taxpayers at the end of an enquiry or discovery assessment, and that this mismatch should be removed.

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

30. We consider that HMRC can already assess additional taxes under existing legislation, including the standard discovery powers and group relief clawback. The need for additional legislation is therefore unclear.
31. In addition, introducing a time-unlimited amendment power would remove finality and certainty on UK tax positions. There may also be practical challenges for HMRC, with the taxpayer no longer having the funds to pay the tax by this point.
32. The proposed changes would also increase perceptions of unfairness in the UK tax system. For example, if a person submits a tax return that they believe is correct for six years and HMRC only queries it in year seven, there may be a concern that HMRC has deliberately delayed opening an enquiry any sooner in order to increase the likelihood of late payment interest (which is deliberately set 3% points above base rate bank interest.) The counteraction to this – that taxpayers no longer have time limits for claiming reliefs, allowances and elections – is not practical for HMRC.

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

33. It is important that reformed conditions for assessment retain safeguards to ensure that HMRC is using its powers in these areas appropriately and that any changes are even-handed so that taxpayers receive the same amount of time to self-amend returns, claim reliefs, elections, allowances, etc. In general, the examples from other tax authorities cited in Appendix B do not include comments on the availability of binding guidance, published clearance decisions, access to tax agents or the nature and length of the litigation pipeline in other jurisdictions. We are concerned that HMRC and ministers may advocate for change based on a skewed understanding of only some aspects of those tax administrations.
34. Although a safeguard could be introduced for taxpayers which requires HMRC to act without undue delay where it discovers that there is an inaccuracy in or an omission from a return, the current application of HMRC's extended offshore assessment powers instead indicates that HMRC case teams will instead seek to contest that they were unable to assess within the 'normal' period – thus increasing appeals, statutory reviews and ultimately litigation.

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

35. It is understood by all parties that this is a hot topic at present, particularly around claims for employment expenses and R&D tax credits. However, we also note that HMRC already has some powers to unilaterally amended returns in certain cases eg through ss9ZB & 12ABB TMA and Para 16 Sch 18 FA 1998. This helps to ensure that HMRC can claw back the tax on invalid claims in these cases, but that it has been noted that these powers have not always been utilised appropriately by HMRC staff.
36. Changing to a grant-based system would just move the admin burden forward and lead to significant delays to all claimants. Past experience has also shown that where, e.g. organised criminals have sought to subvert the tax system as in the MTIC arrangements, they have always been able to move faster than either HMRC or compliant taxpayers, and therefore this administrative burden is also unlikely to be effective in preventing any abuse of the rules. Finally, it would place additional resource and expertise burdens on HMRC by forcing HMRC staff to take on a regulatory role regarding scientific/software research and economic advances (in the case of R&D tax relief).
37. A better alternative might be for HMRC to move to a trusted agent approach whereby claims made by those agents receive a lighter touch. This links in with the current debate about regulation of the tax profession.

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

38. We appreciate that HMRC is operating in a fast-changing economy, where more taxpayers are digitally literate. Greater use of digital communications would also help to remove the current postal delays, which can cause issues regarding information requests, opening enquiries and closing paperwork.
39. Having said that, careful thought would need to be given to spam filters, old/inaccessible/incorrect email accounts, hacking of taxpayer emails and support for the digitally excluded. One answer may be that HMRC communications are issued across more than one format/platform automatically.
40. We would like to see greater use of the single customer account and/or the agent services account in keeping taxpayers and agents informed of the status of enquiries, assessments and claims. Much like a delivery company's website will give you an update on where your

parcel is, such a system could confirm, for example, at what stage a piece of correspondence is in being processed or reviewed.

Penalties

41. Overall, we believe that any reform to penalty regimes should be considered in the context of the following questions.

    1. What changes would make the biggest impact?
    2. Where is there the most complexity?
    3. How can penalties be designed so that their intention is only to incentivise compliant taxpayer behaviour, rather than financially penalising wrongdoers?

42. We believe that the answer to the third question is:

    - Make penalties as easier to understand as possible and make taxpayers and agents as aware of them as possible.
    - Set the level of each penalty sufficiently high that they provide a financial incentive for taxpayers to take action to avoid them, but not so high that they cause an undue or disproportionate financial burden.
    - Allow for differences in penalty amounts to encourage compliant behaviour but don't allow such differences to compromise the simplicity of the system.
    - Ensure that penalties only apply where deadlines are known in advance. There is an issue with ATED and NRCGT backdating notices and charging daily penalties which is counter-productive to the policy intention of the daily penalties. Penalties are intended to deter non-compliance, not generate government income.

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

43. Aligning penalties for late filing, late payment and failure to notify across all taxes is the biggest penalty simplification opportunity, albeit with recognition of different frequency of filing obligations. ICAEW is aware that late filing and payment penalties were always intended to be aligned, but the relevant Statutory Instruments have not yet been enacted. As part of this revised regime, we would recommend that late filing penalties are refunded if it is established once the return is filed that either no tax or a minimal amount of tax (less than £1,000 for a corporate; £100 for an individual) is due.

44. There is duplication within the existing penalties for record keeping and these could be consolidated. HMRC has a bulk data penalty regime in Sch 23 FA 2011 and now a second one has been added at s349 F(no 2)A 2023. As a minimum, these should be aligned into a single regime, perhaps with other similar penalties e.g. s84 FA 2019. We believe there is also an argument for removing penalties for failure to keep records and only penalising taxpayers for inaccuracies in returns or failure to notify.

45. The need for a consistent definition of prompted vs unprompted penalties (in particular for disclosures following a nudge letter) also remains open and provides an opportunity for significant simplification.

46. ICAEW would also support a review of remaining TMA 1970 penalties, with a view to absorbing them into the new, single regime or potentially abolishing them. This includes s98A (special penalties in the case of certain returns), s99A (certificates of non-liability to income tax), s99B (declarations under Chapter 2 Part 15 ITA 2007) and s109C (penalty for a company's failure to comply with s109B).

47. Any transition should be conducted as swiftly as possible to avoid transitional periods. For example, taxpayers reporting under making tax digital for VAT (and soon for income tax) operate under a 'points based' system whilst corporation tax self-assessment does not. This is an example of a situation where two different systems are running in parallel and causing complexity and needs to be avoided as a feature of any future reform.

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

48. At present, there are already too many penalty regimes, including separate penalty regimes maintained for:

    - Electronic sales suppression (Sch 15 FA 2022)
    - Notification of Uncertain Tax Treatments (Sch 17 FA 2021)
    - Senior Accounting Officer (s68 F(No2) A 2007)

    These should be reviewed to determine whether they are achieving their aims or should be repealed. In general, we do not consider that differentiated penalty regimes are helpful to HMRC or taxpayers.

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

49. There are several simplifications that we would support, namely: offshore and asset-based penalties, restricted mitigation where disclosures are made more than three years after an error arose, and the mitigation rules more generally.

50. There are also a number of penalty regimes where the multiple number of escalation points causes unnecessary complexity and administration, such as the late filing penalties applicable under income tax self-assessment. There is an argument for simplifying these regimes because taxpayers are more likely to be influenced by them the better they understand them.

51. We would support a significant simplification of the additional penalties introduced since the previous powers reviews, especially those relating to particular types of assets and offshore matters. These 'offshore' penalties apply to only three taxes, do not appear to be used frequently, and add considerable complexity.

52. For example, there are currently different definitions of offshore matters and offshore transfers under FA 2019 (No.2) and s36A TMA 1970. The effective penalty rate – especially when compared with deliberate behaviour under COP9 – now has the potential to deter voluntary disclosure to HMRC. By contrast, the existence of the Common Reporting Standard and other automatic information exchanges has reduced the risk to HMRC and the Exchequer. The offshore penalty regime could be abolished without significant risk to HMRC.

53. Similarly, the restriction in the discount for long-standing inaccuracies lacks any statutory basis and is inconsistently applied. As a result, taxpayers are unduly financially penalised if they were genuinely unaware of an error that occurred over a number of years / tax periods.

54. Finally, the tax geared penalties wording could be changed so penalties are only imposed if HMRC can assess the tax liability. This would be simpler, fairer and increase trust in the system. At present penalties can be imposed even if no tax is assessable – see HMRC v Robertson [2019] UKUT 202 (TCC) and Maxxim Residential Design v HMRC [2023] UKFTT 474 (TC) for example. We also see HMRC issuing penalties for rejected VAT refund claims by non-residents.

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

55. We broadly support behavioural penalties, focused on changing taxpayer behaviour long term, rather than alternative systems which are purely financial measures. We would be in favour of measures that improve a system of behavioural penalties (with greater discounts for co-operation and full disclosure), rather than abolition.

56. Annexe B to the call for evidence says that Australia reduces penalties by 80% if a taxpayer voluntarily admits a mistake. We would go further and suggest that a 100% reduction could be adopted for those who respond (e.g. by registering to disclose via COP9/WDF) to nudge letters within, say, 60 days and are fully co-operative. Deliberate penalties could become eligible for suspension in cases of full co-operation (see below).

57. We do not agree with the proposal to charge higher penalties for repeated mistakes. This will be highly subjective to apply and in practice HMRC will already consider whether a long-running or repeated error should now be penalised at a more serious behavioural level (eg careless rather than reasonable care). In addition, it's not unknown for HMRC to suddenly query a return which has been prepared in the same way for the last ten years, with the taxpayer not being aware there was any issue. Charging higher penalties for 'repeated' mistakes in this case would leave the taxpayer feeling aggrieved.

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

58. We broadly support the current process for suspending penalties and believe that it should also be extended to include deliberate penalties as well. The challenges with the system relate to HMRC's need for more resources to effectively monitor the suspension conditions and better training for staff so that HMRC can share the cost and time in identifying suspension conditions (particularly in cases where the costs of arranging the suspension can outweigh the proposed penalty). If these limitations cannot be dealt with, a better option could be to follow HMRC's simplest suggestion of replacing suspension with a warning for the first offence.

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

59. We understand the rationale for this idea, but think it would be time-consuming for HMRC to administer. For example, if HMRC chose to calculate penalties based on net assets and cashflow, this can fluctuate considerably year by year and is difficult to estimate even with automated data that HMRC receives. Any attempt to link penalties to these metrics are likely to significantly increase the amount of appeals against these administrative penalties.

60. There is a further risk that this would potentially distort taxpayer behaviour (e.g. by under-declaring income on returns in order to reduce penalty risks). It is preferable for HMRC that many taxpayers would rather get it right and submit a few weeks or months late than rush, and then submit an amended return which can take 12+ months to process.

61. We would prefer that any flexible penalty size is determined with reference to the amount of tax at stake, rather than the value of the income or assets of the taxpayer concerned. This is already the case for late filing and late payment penalties beyond a certain point, which suggests that the current penalty levels are appropriate.

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

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

62. Overall, the penalty regime should be simplified, rather than having new conditions added to an already over-complex series of rules. In practice, there is already an escalation principle in the existing model: whether through the 'telling', 'helping' and 'giving access' criteria, the

escalatory approach at Para 3(2) Schedule 24 FA 2007, the new Making Tax Digital points-based penalties or the impact on larger business risk rating for cases of consistent late filing.

63. Reform L appears complex and harder to administer, which we are not convinced would be an effective deterrent. It may also be unfair if the second and third issues are unrelated to the first mistake.

64. We also do not agree with the principle that interest could be charged on penalties and strongly believe that this should be removed.

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

65. The definition of 'unreasonable behaviour' is highly subjective and risks introducing an alternative definition to that in the 'Notification of Uncertain Tax Treatment' legislation. In the meantime, it is worth remembering that HMRC already has behavioural penalties and sanctions in place that address specific behaviours and situations. In addition to those mentioned above, HMRC can undertake criminal investigations, apply the para 1A Sch 24 FA 2007 penalty provisions, enabler/facilitator penalties, POTAS etc.

66. Any changes relating to agents need to bear in mind the current consultation on Raising Standards in the Tax Profession, existing penalty regimes plus the Professional Conduct in Relation to Taxation (PCRT) and the Standards for Agents. We are not convinced that further actions are needed now, and to do so risks designing the tax system around the small proportion of serially non-compliant actors in the tax market. It may also lead to conflicts of interest between agents and advisors, risking taxpayers to be unrepresented at the settlement stages of a long-running enquiry with HMRC.

67. A more effective approach would be for HMRC to use its existing data to publicise similar errors made by agents on returns, either through representative bodies or with the firms directly.

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

68. It is difficult to comment on this effectively, given the plethora of existing penalty regimes. ICAEW would be happy to discuss specific concerns that HMRC may have in any future consultation. In the meantime, there are some initial comments on late filing penalties:

69. Telling taxpayers upfront of potential penalties would be most effective e.g. by sending them information with the notice to file. Digital prompts also need to become more accurate, as otherwise they will risk being ignored on the one hand and leaving vulnerable taxpayers prey to fraudsters masquerading as HMRC on the other. Once the data was accurate, it could be shared on taxpayer's digital portals as well.

70. On efficiency generally, members have observed that HMRC has split the tax assessment, penalty assessment and payment in separate stages often operated by different teams. This means that messages are not raised with taxpayers at the right time or is raised at an early stage when the taxpayer is unable to understand the full settlement offer before them.

71. The call for evidence notes issues relating to HMRC being unaware of a person's address. In most cases, HMRC will know the new address via the information submitted by the employer but this has not yet rippled down through HMRC's system. In the 21st century there should be a simple process (like the "tell us once" system to notify government of a person's death) which taxpayers can use to tell the government once that they moved house and then that should update their records across government e.g. HMRC, DVLA, DWP etc. It should also be noted that it is common for the local council to be aware of the taxpayer's address for

council tax reasons. The passport office may also be aware, but the information is not automatically shared.

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

72. Round sum amounts updated on a regular basis would be preferable, but should only be enacted if allowances, tax bands are also uprated by inflation.

73. There is no specific question relating to option P, but we offer our thoughts on this option here. Greater publication could be useful for transparency purposes and agents could use it to help clients/potential clients understand the importance of making voluntary disclosures quickly or taking reasonable care to submit accurate returns. However, publication on gov.uk is unlikely to make much difference as few people will be aware of it (the same issue applies to the publishing of deliberate defaulters' details).

Safeguards

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

74. We support aligning the appeals process across the different heads of tax. As well as making these processes easier to understand for taxpayers and agents, alignment would make it easier for HMRC to train staff, move them between teams and automate processes. The preferred route is to adopt the direct tax approach which would reduce unfairness in the tax system, because the cost of indirect tax appeals deters less-wealthy taxpayers from pursuing claims.

75. Another positive feature of the direct tax model is that the taxpayer can appeal the assessment or closure notice and keep discussions going with the HMRC officer. This provides an opportunity for HMRC to protect its position whilst also enabling ongoing collaborative working with the taxpayer resulting in an LSS-compliant settlement without the need to go to court. The indirect tax process precludes this approach as it quickly passes cases to statutory review or to tribunal.

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

76. As part of the administrative appeals process in France, the taxpayer can request that a separate third-party body examines and agrees the facts (not the application of the law to the facts) of the case. Something similar could help to give a better impression of the impartiality of the statutory review process.

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

77. Ideally, the direct tax process will be adopted for all taxes. If this is not possible, then we suggest that the direct tax process is at least applied to employer duties cases where NIC and PAYE currently mean that two separate systems are operated. We also recommend reintroducing Certificates of Tax Deposit.

78. Having to pay or guarantee the tax upfront for VAT can be prohibitive in some cases and hardship applications can themselves cause extra stress at a time when a business is already experiencing difficulties. Processing hardship applications is also costly and time consuming for HMRC.

79. We do not support adopting the current indirect process for direct taxes. This is partly because the estimated amount can often be quite different to the amount of tax due and partly because dry tax charges tend to arise more regularly in direct taxation.

80. If taxpayers are required to pay liabilities before the FTT considers their case, then they cannot use the funds for other purposes such as growing their business. Adopting the indirect tax regime could cause permanent negative impact on growth for those who ultimately win their case and unfairness for taxpayers who cannot afford to appeal assessments. Repayment interest exists but is set at a lower rate than late payment interest and is not seen as offering proper compensation after a taxpayer wins their case. Aligning the two rates of interest for over and under-payment more closely could help taxpayers to see an upfront tax payment as a worthwhile investment.

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

81. Although not relating specifically to appeals processes, s227 IHTA 1984 rightly notes that IHT does not need to be paid until 90 days after grant of probate to give time for property sales to complete and the funds to be transferred to HMRC. HMRC should also continue to accept property in satisfaction of tax (s230 & 231 IHTA).

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

82. HMRC's advertising of the review options available could be improved considerably. The existence of statutory review and alternative dispute resolution is not that well-known, especially amongst unrepresented taxpayers. These options are likely to be more attractive than going to tribunal which can be relatively expensive.

83. Plain English factsheets on the options could help, along with more webinars to publicise the opportunities. Adequate resourcing of reviews by HMRC is essential to deliver them within timeframes that are already not being met.

84. Other options to improve take up of ADR include:

- reducing topics where ADR is precluded and improving guidance on which types of disputes are suitable for ADR to minimise applications being declined;
- consistently raising awareness of and offering ADR as an option for resolving disputes within its scope and encouraging case workers to use it; and
- Holding ADR proceedings in person as the norm as this is more likely to attract taxpayers to apply.

85. Other options to increase applications for statutory review include:

- improving awareness of how to effectively use statutory review (for example, cooperating by supplying additional information or consolidating lengthy correspondence to help the review officer understand the points in dispute and the taxpayer's position and encouraging taxpayers to allow the review officer more time than the original 45 days whenever it is requested);
- preventing review officers from contacting the case worker or sending matters back to them for input during the review (this calls into question whether the procedure is truly independent);
- making more effort to determine whether the taxpayer or agent has anything else to submit to the review officer before making their decision; and
- repealing s 49E (8) TMA 1970 which automatically upholds HMRC's original decision if the review fails to conclude in 45 days (or such longer time as is agreed prior to the expiry of the deadline: this can currently undermine taxpayer confidence that reviews may overturn HMRC's previous view).

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

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

86. We have answered questions 27 and 28 together. We believe that these are good ideas, providing that HMRC is provided with sufficient resource to staff any increased take up of statutory review and ADR.

87. Mandating statutory reviews could be cost effective for HMRC and taxpayers alike if clear guidance is given so taxpayers (particularly the unrepresented) can effectively present their case to the review officer. However, HMRC should guard against perceptions:

    - of a two-tier system treating taxpayers differently (despite the HMRC Charter); and
    - that ADR or statutory review become an additional cost and 'yet another hurdle' to taxpayers accessing 'justice' via a tribunal hearing before an independent judge.

88. Any revised legislation should retain the current taxpayer right to opt immediately for a FTT hearing or go to the FTT after ADR and/or statutory review is completed.

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

89. One possibility for mandation could be where the amount of tax at stake falls below a certain amount (eg £10,000). However, this might lead to unrepresented taxpayers (who are more likely to make up a significant number of cases where there is a lower value of tax at stake) speaking without legal representation such that there is an imbalance of knowledge and power when compared with the HMRC team.

90. Another possibility could be to apply this to certain penalty decisions, especially late filing penalties. This would certainly help to unclog the tribunal system which over recent years has seen a preponderance of penalty-related cases. It was acknowledged in the workshops with HMRC on this topic however, that if we never see cases of this type at the tribunal, we lose valuable decisions made by tribunal judges which help us navigate and interpret the tax system.

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

91. There would be strong concerns to any restriction of access to this important taxpayer safeguard. It is anticipated that doing so will severely damage trust in HMRC teams' decision making, with concerns including whether there will be mission creep to the initial 'blackballed cases' lists, and whether cases will be arbitrarily reassigned to the blackballed categories in order to prevent statutory review.

92. Reviews are an essential way of obtaining a well-reasoned explanation of HMRC's decisions and can help taxpayers understand HMRC's case, obtain advice on their chances of tribunal success and reflect on whether they want to spend time and money on an appeal.

93. Overall, we believe that it is better to design a system around compliant taxpayers, rather than adapting it to take account of the small non-compliant minority. Not undertaking reviews could cause HMRC to lose the opportunity to identify and resolve mistakes, thus entrenching them and delaying resolution.

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

94. As with question 10, we support the provision of alternative appeals channels if this support's HMRC moving to a long-term effective and modern tax system by avoiding current postal delays, so long as HMRC does not wholly replace existing processes that work for the digitally excluded, the blind or deaf, etc.

95. However, systems do need to be up to scratch before they are introduced. For example, it needs to be possible to save appeal forms as they are completed and there needs to be more free-form text boxes for the taxpayer and agent to provide the necessary information.

96. Agent services accounts (ASA) are also problematic as the mail generally goes to a central account at larger firms and not to the staff member dealing with the case. Also, the ASA can't cope with more than one agent – but for complex enquiries/disclosures a specialist agent is likely to be instructed (not least due to PCRT). Until the ASA can cope with delivering specific post to a specific agent, digital notification of appealable decisions should not occur.

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).