ICAEW
REPRESENTATION 2/25

THE TAX ADMINISTRATION FRAMEWORK REVIEW - NEW WAYS TO TACKLE NON-COMPLIANCE

Issued 17 January 2025

ICAEW welcomes the opportunity to comment on the open consultation published by HMRC on 30 October, a copy of which is available from this link.

Main points

- We believe that HMRC should look to harmonise tax compliance and administration rules across the various heads of tax and make better use of its existing powers before introducing new ones.
- We would prefer to see more fundamental root and branch reform over the piecemeal approach set out in the consultation document.
- We are unclear as to the nature of the low-value, high-volume errors mentioned in the consultation document that the proposals are designed to counter. We think that this needs to be established more clearly before moving on to consider the possible solutions.
- We believe that simplification of both the tax code and the compliance system would make it easier for agents and taxpayers to interact with the tax system and help to achieve the reductions in errors that HMRC is seeking. Introduction of additional powers complicates the tax system even further.
- Of the measures proposed by HMRC, we consider that a general requirement on taxpayers to make corrections to their returns (or make a disclosure where they are out of time to make corrections) would have the most impact in reducing and resolving compliance errors.

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This response of 17 January 2025 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 comment on ideas that HMRC is considering reforming its compliance and investigations powers. However, we believe that a better starting place would be to look at
   a) harmonising existing powers and procedures across the various heads of taxes;
   b) ensuring that existing compliance check processes are efficient; and
   c) consolidating the existing taxes management legislation into a single act

   before considering or investigating new powers.
2. Despite HMRC's reference to high volume errors, no data has been provided on the nature, root cause and impact of these errors. It is therefore not immediately clear what issues HMRC is aiming to solve with the proposals and the cases each change may apply to. We think that this needs to be established before moving on to consider the possible solutions, which could include better use of existing powers or more effective training for HMRC caseworkers relating to the use of those powers.
3. We also believe that more work could be done in simplifying the tax system and its administration so that it is easier for taxpayers to remain compliant. This could remove a significant number of innocent errors made by taxpayers such that additional powers to tackle them become unnecessary.
4. Taking each of the proposals in turn:
   a. We believe it would be more effective for HMRC to utilise the information already received by the department rather than introducing additional reporting requirements. That said, we can see some benefits in replicating the R&D tax relief additional information in support of other forms of claims. However, this would need to be introduced gradually so that its impact on the accuracy of those claims can be assessed. Given that some more complex returns contain multiple claims, HMRC would need to make sure that expansion of this idea would not make completing a return prohibitively expensive and complicated. The forms would also need to be optimised so that the additional work involved in completing them is minimised.
   b. We support alignment of the rules around revenue correction notices to the current SDLT model but their use should remain limited and better prescribed in law. The reasons for notices should be clear and detailed and they should not become an alternative to the well-established discovery assessment powers.
   c. We are not convinced by the case made for the introduction of partial enquiry notices. In particular, the way these notices would interact with and supplement the existing enquiry and discovery assessment system needs to be examined in more detail before taking this idea forward.
   d. In theory, taxpayer correction notices could be an effective way to correct errors without HMRC needing to open an enquiry which could be expensive for it, the taxpayer and any agent to deal with. However, we have concerns that these notices might be based on incorrect information and that an alternative course of action (such as a voluntary disclosure arrangement that allows taxpayers and HMRC to correct multiple tax periods and issues at once) might be more appropriate for certain taxpayers and situations. The use of such notices would need to be very tightly prescribed to make them effective. This approach would also not be effective where there is a dispute relating to interpretation of the law. In other words, it should be reserved for cases where, for example, an item of revenue has been omitted from the return or has been reported incorrectly. For reasons set out later in our response, we believe that a general requirement to correct may be more effective.

5. Finally, any changes to the tax compliance system need to prioritise opportunities for taxpayers and agents to interact with HMRC digitally (while also retaining alternative routes for the digitally excluded).

ANSWERS TO SPECIFIC QUESTIONS

AMENDMENT TO CONDITIONS FOR MAKING CLAIMS

Question 1: What are your views on introducing additional information requirements to other claims for tax reliefs and allowances?

6. We agree with the comment made in the consultation document that more upfront information could give HMRC a stronger basis on which to risk-assess claims. This could then give taxpayers more assurance about the availability of a relief or allowance once it has been paid.
7. However, for this approach to be effective, caseworkers would need to properly review the information provided and defer making repayments or processing relief and allowances until they are happy that the claim is genuine.
8. We note that each new filing obligation creates an additional compliance cost that in turn deters the making of claims, and raises questions such as:
    9. what happens if HMRC wishes to challenge information provided in the up-front claims document. Would it need to enquire into the return?
    a. whether the cost of dealing with HMRC is included in fee protection insurance;
    b. who is responsible for the claim under PCRT, etc.
10. As a rule, all information relevant to the tax liability should be in the tax return, and all "additional information" requirements should be designed as supplementary pages to the tax return. Separate forms should only be used where a significant benefit is gained from this.
11. We aware of many situations where HMRC has opened enquiries into R&D tax relief claims asking for the same information as was provided in the additional information form. Similarly, iXBRL information and white space disclosures on personal tax returns are regularly not consulted by HMRC, resulting in unnecessary interventions by HMRC. It is important that HMRC has sufficient resource to be able to process the information collected and use that information to make informed decisions about claims.
12. This is not mentioned in the consultation document but we believe that additional information requirements could be effective in reducing the number of speculative claims, especially those submitted by high volume repayment agents. Additional administrative requirements could disrupt the business model for such agents which would be a positive outcome, albeit at a cost to the compliant majority of taxpayers, making this an appropriate option only in areas where there is significant mass-marketed claims activity.
13. Careful testing and market research should be carried out to assess the potential impact before any additional requirements are introduced.
14. One way of minimising the impact on genuine claimants would be to make the process as simple and user-friendly as possible. This would include providing digital routes where this is preferred by the taxpayer, as well as other mechanisms for the digitally excluded.
15. We also believe that HMRC will need to provide very clear and detailed guidance on the information to be provided and this would probably be best included in the guidance notes to forms on which the claim needs to be made.

Question 2: Are there cases where this approach would be particularly helpful for customers?

16. It is unclear what high-volume errors HMRC is seeking to address with this proposal and how additional information provided with the original claim will address that. These issues need to be clarified first as a matter of priority.

17. Beyond that, we believe that this proposal would be most appropriate in respect of self-contained clams for relief or some other form of repayment where entitlement is complex and fact-dependent and HMRC's assessment of that entitlement is best served by reviewing answers to a set of prescribed questions.
18. One potential problem we can see with this proposal is where an adviser completes a claim for a taxpayer, including the relevant information form, but fails to provide a copy to the CT600 preparer who then files with minimal disclosure as "the claim was already made separately". It is then very unclear who is responsible for what between the separate adviser, the taxpayer and the regular agent.
19. Arguably what would be helpful is a supplementary page (so that HMRC can electronically interrogate the data) with clearly advertised required entries so that the taxpayer knows exactly what elements of the claim are of potential concern, how much data to provide and at what level of detail, etc.
20. HMRC should ensure that it has sufficient resource and expertise to review the information provided. If it just enquires into the claim and asks for the same information, taxpayers and agents will rightfully feel aggrieved that they went to the trouble of providing it in the first place.
21. We believe that information should be included about any agent involved in the claim so that HMRC can track the impact of agent involvement in good and less-good quality claims.

Question 3: How could any additional administrative costs be kept to a minimum?

22. Ideally, we would like to see the information being submitted online via a portal that allows for the upload of pdfs of evidence etc with a post/paper-based alternative also available. It should be possible to save the form in draft and return to it later
23. In addition, the taxpayer/agent should be able to download a copy of the final submission and proof of submission for their records. Otherwise, this will not assist agents in adhering to the PCRT and HMRC agent standards.
24. Finally, it's important that agents can do whatever taxpayers can do in relation to the form.

REFORM OF REVENUE CORRECTION NOTICE (RCN) CONDITIONS

Question 4: What are your views on aligning the conditions for when HMRC can make corrections, so that they are the same across relevant regimes?

25. As set out in our general comments, we would prefer HMRC to take a holistic view of its powers and decide which ones it needs and where there are any gaps, before going ahead with amendments to existing powers.
26. However, looking at RCNs in isolation, in the interests of simplification, there should ideally be one system applicable across all heads of tax under which HMRC can issue notices of correction where there are any obvious errors in, or omissions from a return.
27. The legislation should be redrafted and make it very clear in what circumstances such a notice can be issued. Our view is that this should be restricted to situations where there can be no argument as to the need for the correction eg where there is an obvious arithmetical error. It should not be used in situations where there is a realistic argument that the correction should not apply. On this basis, the SDLT version should be used as the basis for the reform, not the corporation tax version.
28. For example, the notices should not be used to remove R&D tax relief and other claims from a return where it is HMRC's view that the claim is not valid but the taxpayer has not explicitly agreed this is the case.
29. In addition, most RCNs include the right for the taxpayer to reject the correction. This right is important and should be retained. If HMRC disagrees with the taxpayer's response, it can always open an enquiry or other compliance check in response.

30. RCNs should not be used after the deadline for HMRC to amend a return expires. Given some of the comments included in the previous call for evidence around taxpayer's use of statutory appeal rights on discovery assessments, we have concerns that there is a risk here of mission creep to the extent that RCNs become an alternative to discovery assessments.

    Overuse of such a power would erode trust in HMRC and the tax system and should therefore be avoided.

31. HMRC should use other powers to enquire into returns or issue a notice to the taxpayer to self-correct in cases where there is argument as to whether a correction is appropriate. At present, the explanation provided is very high level and simply mentions that HMRC considers the original return was wrong. This gives a taxpayer insufficient detail to respond to and no insight into the evidence that HMRC would deem appropriate for the taxpayer to provide when rejecting an RCN.

32. The notice should explain very clearly why the correction is being made eg HMRC has spotted X specific error which requires Y adjustment to be corrected.

Question 5: What are your views on aligning the ways that revenue correction notices can be rejected, so that they are the same across relevant regimes?

33. If RCNs are to be aligned in other respects, we agree that the rules around rejection of those notices should also be aligned.

34. There may also be opportunities to make it easier for taxpayers to reject RCNs, such as the use of a digital portal, for those taxpayers who prefer this.

35. We believe that a 30-day deadline for submitting a rejection is too short, especially if the RCN has been received in the post as there may be a delay between the issue of the RCN and the taxpayer receiving it. We believe that 90 days would be a more appropriate timescale in which to obtain advice and appoint an agent, where necessary.

Question 6: What are your views on introducing a mandatory requirement for taxpayers to provide evidence to support a rejection of a revenue correction notice?

36. We have concerns around this requirement particularly given the level of explanation and evidence that HMRC is required to provide with the original revenue correction.

37. Guidance would be needed setting out the type of evidence that would be acceptable to HMRC to support a rejection. At present, a RCN is quashed where it is rejected, whereas under the new proposals, HMRC may have the power to reject the rejection if it feels that insufficient evidence has been provided. This appears to tip the balance of power too far towards HMRC.

38. There also needs to be an extension to the deadline for submitting counter-claims, replacement claims, etc. An enquiry closure notice brings with it a 30-day amendment window which would be an insufficient time in many cases.

39. Guidance could be included in the notes to the tax return, and these should be repeated in the paperwork included with the RCN. This should be linked to record keeping requirements more generally. In other words, HMRC should not ask for any evidence over and above what it would request in the event of an enquiry to support an entry in the tax return. Similarly, HMRC should not ask for documents beyond the date when they would need to have been retained for general tax return purposes.

40. Who will be deciding within HMRC what evidence is acceptable and what isn't? If the intention is that HMRC staff are the final decision makers, there are questions about both resourcing and also the independence of the decision maker that will need to be addressed here.

Question 7: Do you think this requirement should extend to HMRC explaining why a correction was made and what evidence is required?

41. Yes, we believe that HMRC should explain and evidence the source of its information indicating what correction is required and what this says. If taxpayers have access to HMRC's view then they may be less confused about the need for the correction and less likely to reject it.

Question 8: In what other ways could the revenue correction process be improved?

42. At present the Interpretation Act says that in law, single can be read as plural and vice versa. This should be overridden in respect of RCNs, so that only one notice can be issued per tax return. If any further adjustments are required, this should be achieved either through an enquiry or a taxpayer self-correction notice.
43. There should also be a deadline by which HMRC must respond if it does not agree with the taxpayer's rejection of the correction e.g. within 90 days. This would help to create more certainty for taxpayers.

INTRODUCTION OF A PARTIAL ENQUIRY

Question 9: What are your views on introducing a partial enquiry power to allow an enquiry into a specific issue?

44. We have concerns about the introduction of this power as we think that HMRC could already achieve its aims through its existing powers. Introducing a partial enquiry power could reduce certainty and increase complexity for the taxpayer.
45. One of the challenges with the enquiry system is that there is no deadline by which an enquiry needs to be completed. This provides uncertainty for taxpayers and so extending the enquiry system by introducing partial enquiries can only add to this uncertainty.
46. We assume that the motive for introducing a partial enquiry power is to allow HMRC to keep open its ability to enquire into further aspects of the return once the partial enquiry has been closed, subject to meeting the overall statutory deadline to open an enquiry (or by using other powers such as information powers coupled with discovery assessments, subject to meeting legislative criteria). Such a closure would give taxpayers no certainty as there would still be the possibility of enquiries or compliance checks being opened into other aspects of the return.
47. This power should not be used to extend the normal statutory enquiry window. For example, let's say that HMRC has opened a partial enquiry and this matter remains unresolved past the deadline by which HMRC would normally have to enquire into the return. We believe that HMRC should not have the power to raise another enquiry into the return after this date just because there is an open partial enquiry into one aspect of the return.
48. If a taxpayer had to deal with multiple partial enquiries into the same return, this could be very confusing and potentially overwhelming for them and for the HMRC case team(s). We assume that those enquiries might be dealt with by different caseworkers and/or departments within HMRC. Unless the taxpayer were a large company with a customer compliance manager, for example, they would not have a single point of contact at HMRC for dealing with their tax affairs and might end up sending correspondence to the wrong HMRC office etc. HMRC teams would also need to co-ordinate deadlines to ensure the taxpayer and their agent have reasonable and realistic response deadlines set, taking into account matters such as any ill health or other adjustments which are reasonable according to the Equalities Act/Public Sector Equality Duty.
49. HMRC already has powers to raise assessments and issue tax determinations in relation to isolated aspects of a return. Adding an additional layer of intervention would complicate the compliance system even further and is a further demonstration of why it is important for HMRC to review its powers in the round, rather than jumping straight into introducing new powers.

50. If HMRC wants to be able to deal with individual issues within returns in isolation then it could open a general enquiry and ask questions on specific parts of the return at any time until the enquiry is formally closed by a final closure notice. In the interim, HMRC can complete individual issues via partial closure notices (PCNs). This power already exists, but HMRC seems to use this power rarely. PCNs bring tax into charge and allow HMRC to impose tax-geared penalties e.g. error penalties. Our preference would therefore be that HMRC take a more flexible approach to the application of the existing PCN powers, rather than introducing a new power.
51. We also assume that this power is being introduced for HMRC to react to information it receives from third parties which indicates that a particular entry or aspect to the return is incorrect. These pieces of information can become available on a piecemeal basis and so this motive is understandable, but this information is often processed by HMRC after the date by which it is able to enquire the return and so, in practice, it is likely that this power would not be used very often. Requiring the taxpayer to self-correct or issuing a discovery assessment would probably be more appropriate in most of these situations.
52. How would partial enquiries, or amendments made during (potentially multiple) enquiries be reflected in the taxpayer's statement of account given that such amendments are currently only processed at the end of an enquiry? These are already too complicated.

Question 10: In which circumstances do you think such a power might be deployed, and what would you see as appropriate taxpayer safeguards?

Question 11: What limitations do you think should be attached to the use of this power and why?

53. Ideally, this additional power should not be introduced but if it were, very specific legislative safeguards would be required, some of which are covered already above:
    a) All correspondence from HMRC should make clear the implications of the enquiry for the taxpayer in relation to the matter being enquired into and the return as a whole.
    b) HMRC should be blocked from discovery into an issue it has raised an enquiry into.
    c) If several partial enquiries are opened into the same taxpayer on the same return, that should be co-ordinated so the taxpayer is not bogged down with lots of deadlines and cumulatively unreasonable demands.
    d) Alternatively, if HMRC wants to open a second partial enquiry when one is already open then it should be required to convert the first enquiry into a full enquiry and deal with all issues through this.
    e) Taxpayers must be able to make consequential claims following the closure of a partial enquiry.
    f) The taxpayer should have the power to ask the FTT to direct HMRC to close a partial enquiry.

A REQUIREMENT FOR TAXPAYERS TO SELF CORRECT

Question 12: What are your views on how this power could be used? Where do you think this power could be applied most and least effectively?

54. We assume that this proposal is intended to put HMRC's current nudge letters on a more formal basis, including both a greater incentive for taxpayers to respond to these letters and offering greater relief for taxpayers who incur professional costs in answering these letters by being able to potentially recoup those costs under enquiry fees insurance arrangements.
55. We anticipate that this power would be used most appropriately where HMRC receives information from a third party that suggests that an entry in a tax return is incorrect. This could be, for example, information collected through the common reporting standard and other exchange or reporting of information regimes, such as the mandatory reporting by digital platforms.

56. We believe that use in these cases might be preferable to the revenue correction notices or partial enquiries mentioned above. This is because it would give the taxpayer the opportunity to check the information obtained by HMRC and confirm whether a correction to the return is required. It is possible that the information HMRC receives is incorrect or it has been misinterpreted. This system would allow the taxpayer to be in control of the process, rather than needing to respond to an RCN or provide information to deal with a partial enquiry, both of which could involve more time and administrative cost for all parties.
57. The taxpayer needs to be able to challenge the source of the information received by HMRC and potentially seek legal redress from the relevant party, or HMRC might need to challenge the source on why incorrect information was provided.
58. The requirement should only be used in situations where the additional information, if correct, indicates that there has been an error in the return. It should not be used in cases where there is subjective judgment over the application of tax rules eg whether a taxpayer is resident in the UK under the statutory residence test.
59. This power could also direct HMRC in determining where else in the return it might seek to investigate further through opening a formal enquiry. In other words, using the requirement to self-correct and the enquiry system in tandem could help to ensure that enquiries are only raised where HMRC has genuine concern over the accuracy of the return, rather than on a speculative or random sample basis.
60. Alternatively, HMRC could introduce a system whereby taxpayers are under a general statutory requirement to correct mistakes they become aware of in their tax returns (or indeed the omission of notifying chargeability e.g. under s7 TMA 1970). This would reinforce the PCRT requirement on agents to encourage clients to make full disclosures of errors they discover or resign where the client refuses to do so.
61. Given that the proposed more focused proposed requirement to correct would not prompt the taxpayer to correct other errors the taxpayer has found in their return post-submission, we believe that it would be in both HMRC's and the taxpayer's interests to introduce a general statutory requirement instead. We believe this is likely to be more successful in correcting non-compliance and allowing taxpayers to make a full and complete disclosure.

Obligations

Question 13: What are your views on the merits and challenges of requiring taxpayers to respond to the new notice and correct their own return?

62. We believe that the requirement to self-correct could be an efficient way to open an investigation into a particular matter within a tax return without the need to open an enquiry, thereby potentially reducing administrative time and cost for taxpayers, agents and HMRC.
63. However, if HMRC directs a taxpayer to correct a specific element of their return and there are other aspects or other years in which errors have arisen, a disclosure using one of HMRC's disclosure regimes would be more appropriate for the taxpayer. This is because it would allow them to get their tax affairs up to date in one go, thereby reducing time and cost overall and potentially minimising penalties and interest. This would apply regardless of the behaviour which caused the errors. However, we note that where there is the possibility of tax fraud having been committed, the CDF/COP9 procedure is likely to be more appropriate as this protects the taxpayer from prosecution. Correcting the mistakes via a disclosure would also be more cost effective and efficient for HMRC.
64. A full disclosure process is also more in line with the PCRT, which requires agents to encourage clients to make full disclosures of any outstanding tax matters. It is also underpinned by criminal law – if a taxpayer knows they made mistakes and does not tell HMRC then that can be 'cheating the public revenue' – a point which is not well understood by taxpayers at large. This is also why a general requirement to correct would be a better option and could increase the likelihood of proactive corrections.
65. Another challenge would be the accuracy of the information on which HMRC is basing its requirement to correct notices. If this information is wrong or HMRC misinterprets it, the

taxpayer may be prompted to make a correction that is not necessary. Taxpayers will need to be given support in dealing with this process, especially where they are unrepresented.

66. One of the challenges HMRC may face is how to deal with the information received in response to the requirement to self-correct notices. For example, if a taxpayer argues that a correction is not required and provides information to demonstrate this, will HMRC have the resources and expertise to review this information to determine what next steps it should take? HMRC should be required to respond within a fixed statutory deadline if it still believes a correction is necessary e.g. 60 or 90 days.

Question 14: What are your views on reasonable timeframes for a taxpayer to respond to a taxpayer correction notice and, subsequently, for HMRC to confirm its position?

67. In the interests of simplicity, the timeframe should be the same for all correction notices and should be set at a sufficient length for more complex areas to be reasonably dealt with, including the time to appoint a new agent, where appropriate. We believe that 90 days should be sufficient in most cases.

68. To ensure taxpayer certainty, we believe that HMRC should not be able to issue a notice outside of its existing assessment time limits and that any notice must be capable of appeal, ideally to the first-tier tax tribunal. Similarly, we consider that taxpayers must be able to make consequential claims if their tax position changes because of a notice requiring them to correct their tax position. It is essential for reasons of fairness and trust in the tax system that taxpayers can make such claims so that their eventual tax liability is no more than they would have paid if they had filed correctly in the first place.

Question 15: In addition to the above, what else might HMRC need to take into consideration when designing obligations?

69. The same rules should apply across as wide a range of taxes as possible to ensure consistency. There must be a range of digital and non-digital options for responding to the notice, to cater for the needs of different taxpayers. Reasonable excuse provisions will also be required to deal with those taxpayers who are not able to respond within the required timeframe.

70. Consideration should be given to how such a requirement fits into existing penalty rules e.g. Para 3(2) Sch 24 FA 2007. If a specific penalty is introduced for failing to correct in response to this type of notice then reasonable excuse provisions will also be required to deal with those taxpayers who are not able to respond within the required timeframe and consideration should be given to not duplicating with other penalties that may be relevant (e.g. failure to notify penalties in Sch 41 FA 2008 or error penalties in Sch 24 FA 2007).

71. The method of responding needs to be clear and easy for the taxpayer to comply with. This needs to be set out both in the notice itself and any accompanying legislation.

72. The consultation document says that this power could be used where there have been several similar errors by the same agent on different clients' returns. We would urge caution in these cases and restrict its use to situations where it is certain that a taxpayer's return has been impacted by those errors. It shouldn't apply where HMRC assumes a return is incorrect because other returns prepared by the same agent are believed to be wrong.

Question 16: What are your views on any potential impacts, costs or burdens of introducing this approach?

73. Although not envisaged within the consultation document, HMRC may seek to introduce agent correction notices, along the lines of the agent nudge letters currently sent out asking agents to make corrections to multiple clients. We believe that this would result in considerably increased administration costs for agents. Also, we note that introducing such a notice would contravene the principle that the taxpayer remains responsible for their tax affairs such that only they can agree to changes to their liabilities. We therefore believe that

correction notices should only be issued to taxpayers, with a copy sent to the agent, where there is one.

Incentives and sanctions

Question 17: What do you think would be an appropriate consequence for non-compliance with a notice, and what factors should HMRC take into consideration?

Question 18: What incentives could HMRC provide to encourage the taxpayer to comply with a notice in the specified timeframe?

74. If the error in the return was not originally careless or deliberate then, if a taxpayer discovers the mistake at a later time and does not take reasonable steps to inform HMRC of it then para 3(2) Sch 24 FA 2007 already deems the error to be careless. Also, the issuance of the notice to correct would trigger the correction to be treated as a prompted disclosure for penalty purposes, thus increasing the minimum penalties. Delaying correction will also affect the 'timing' element of the quality of the disclosure reductions for 'telling', 'helping' and giving access, thus further increasing the penalty. For deliberate penalties this could result in the taxpayer's details being published under s94 TMA 1970.
75. We believe that an incentive should be legislatively baked into the penalty system such that the penalty would be lower if the taxpayer responded to the correction notice, rather than waiting for an enquiry or compliance check to be opened. This may therefore mean removing the concept of 'prompted' from the penalties system and replacing it with a scale of penalty reduction based on the type of HMRC intervention that led to the tax return amendment, albeit this would further complicate an already over-complex penalty system.
76. We note that, as a separate exercise, HMRC will be issuing a consultation document later this year on reform of the penalty system. It is important that these two consultations are conducted in a complimentary manner.
77. The correction notice must be very explicit about the impact on penalties of responding to the notice, versus waiting for an enquiry or compliance check.

Taxpayer safeguards

Question 19: What are your views on the potential benefits and risks to this approach: for taxpayers, agents and HMRC?

78. Most of the potential benefits and risks we have identified have already been set out in our responses to earlier questions. However, to recap on some of the most important:
    a) There is a risk that the taxpayer makes a correction to a single issue on a single return when they should instead be disclosing the error through a disclosure regime as it affects multiple years or they made other mistakes. HMRC will need to point out all options when it sends out the correction notice so that taxpayers are not disadvantaged and are more likely to rectify their tax position in full. As mentioned above, a general requirement to correct may be more appropriate.
    b) There is a risk that the information that HMRC is basing the notice on is incorrect or it has misinterpreted that information. If that becomes widespread, trust around this particular power would be lost with taxpayers and, especially, with the agent community,.
    c) If HMRC does not take action in cases where the taxpayer does not respond to the notice, its impact in encouraging good compliance will be lost.
    d) Unless agents can act for their clients in relation to these notices, there may be more errors or omissions in taxpayer disclosures.
    e) There is a risk for HMRC if taxpayers intentionally give incorrect information in response to the notice but we expect that to be a rare occurrence, and HMRC could reject the correction if it is not happy with it. HMRC would, in any case, retain the ability to investigate civilly or criminally in such a situation but such an investigation is resource intensive.

f) The main potential benefit is that this could be a much quicker way for non-compliance to be resolved, rather than HMRC opening enquiries or raising assessments.

Question 20: What do you believe would be appropriate and proportionate taxpayer safeguards?

79. HMRC must assess the information on which it would base correction notices with a critical eye. We have heard of one-to-many campaigns being launched with inaccurate data, for example not taking account of the splitting of income from joint property between spouses and civil partners or not taking into account allowances, such as the capital gains annual exempt amount. HMRC must do a sense check on each notice that goes out.

80. The possibility of misinterpreting overseas interest income will be reduced if taxpayers can report such income on a calendar year basis, as is proposed in the consultation on the taxation of overseas income. Nevertheless, HMRC should check whether income it might have expected to see in a particular return features in an earlier or subsequent return.

81. The notice should explain in specific detail what HMRC expects to see in the return and why. For example:

    "We note that you received income of X from Y, but we cannot see it in your return. Please can you let us know why it is not included and, if it should be, please amend your return to correct the position."

    Having said that, we can see why it might be advantageous for HMRC to be circumspect to some extent about the information it is expecting to see in the tax return. For example, alerting a taxpayer to the fact that there is missing property rental income where only one missing property has been notified to HMRC could prompt the taxpayer to disclose the income from other properties it hadn't already declared.

82. If HMRC disagrees with the taxpayer's response to the correction notice it should open an enquiry or compliance check (underpinned by information and discovery assessment powers). The outcome of the enquiry (closure notice) or discovery assessment is already appealable so no new safeguards are needed in this regard.

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).