21 January 2025

The Tax Administration Framework Review: New ways to tackle non-compliance

Response from ICAS

The Tax Administration Framework Review: New ways to tackle non-compliance

1. The Institute of Chartered Accountants of Scotland ('ICAS') is the world's oldest professional body of accountants. We represent over 24,000 members working across the UK and internationally. Our members work in the public and not for profit sectors, business and private practice. Approximately 11,500 of our members are based in Scotland and 10,000 in England and Wales.

2. The following submission has been prepared by the ICAS Tax Board. The Tax Board, with its five technical Committees, is responsible for putting forward the views of the ICAS tax community; it does this with the active input and support of over 60 committee members.

3. ICAS has a public interest remit, a duty to act not solely for its members but for the wider good. From a public interest perspective, our role is to share insights from ICAS members into the many complex issues and decisions involved in tax and regulatory system design, and to point out operational practicalities.

General comments

4. We welcome the opportunity to respond to the technical consultation – The Tax Administration Framework Review: New ways to tackle non-compliance. We have appreciated the opportunity to discuss the consultation with HMRC at several stakeholder meetings.

5. The current consultation follows the 2024 call for evidence: The Tax Administration Framework Review - enquiry and assessment powers, penalties, safeguards which discussed potential proposals for strategic reform, as part of the 10 year strategy (announced in 2021) to build a trusted, modern tax administration system.

6. It is disappointing that instead of putting forward proposals for broader reform of the framework for enquiry and assessment powers (building on responses to the call for evidence), this consultation continues the trend of introducing piecemeal changes to address problems arising, without fixing the fundamental underlying issues. The focus is solely on non-compliance (particularly of individuals and small businesses), not on improvement, modernisation or simplification of the system which would benefit all taxpayers.

7. As set out in our response to the 2024 call for evidence (and in previous responses and policy papers) we support simplification and modernisation of the tax administration framework; both taxpayers and HMRC would benefit from a more streamlined, simpler system that would be easier to understand, administer and use.

8. Reform should include the consolidation of the core tax management and administration provisions in one place (including updating and modernisation) to make it easier to access, understand and apply the legislation. Piecemeal amendments and additions make the current position – with important legislation spread across TMA 1970, numerous Finance Acts and secondary legislation – even worse.

9. The government and HMRC should publish a timetable for the development of (and consultation on) detailed proposals for broader reform of the enquiry and assessment regimes, as a matter of urgency. Comprehensive reform should remove, or considerably reduce, the need for constant additions and adjustments to deal with problems, many of which are caused by an out-of-date underlying legislative structure, which is no longer fit for purpose.

10. Our detailed comments on the proposals in this consultation, reflect our view that these measures should not delay the development of proposals for wider reform and that where possible, in the meantime, it is preferable to use existing processes and powers as the starting point.

11. On this basis we can see some positive aspects to the proposals for supplying additional information, changes to Revenue Correction Notices (RCNs) and partial enquiry notices, subject to important conditions being met and adequate safeguards being in place. We do not support the proposal for the introduction of a new regime requiring taxpayers to self-correct. This would add a new layer of complexity, would be difficult for unrepresented taxpayers to navigate and would increase costs for compliant taxpayers and their agents.

Specific Questions

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

12. This would depend on the claims involved, how onerous the requirements would be and the availability of a secure online channel for submitting the information. Any additional information required should be necessary for HMRC to determine claims and a balanced approach should be adopted to minimise compliance costs for taxpayers.

13. From an agent perspective, there could be some merit in supplying additional information with the returns/claims for individuals/smaller businesses, if this would speed up processing of the claim/any repayment due – and avoid HMRC only asking for information months later. The agent is more likely to have easy access to the information at the time of submission. It can cause problems when HMRC waits for months before opening an enquiry and then asks for information which it is by then more difficult to access.

14. Any requirements to supply additional information need to be carefully considered and the details would have to be clearly explained to ensure that unrepresented taxpayers could deal with them, and to avoid imposing additional administrative burdens unnecessarily.

15. It would be essential for HMRC to ensure that any information supplied is properly reviewed – currently, members report that HMRC sometimes requests information that has already been provided, for example in the 'white space'. We understand that HMRC also sometimes asks for information/evidence that is in the public domain – for example, Companies House details - that HMRC could easily access itself. This causes unnecessary delay.

16. The consultation mentions that a requirement to supply additional information has already been introduced for R&D claims, which must now be accompanied by a completed Additional Information Form (AIF). However, we have received feedback that HMRC subsequently ask questions that were either (a) answered in the AIF, suggesting HMRC has not read it; or (b) answered in the full R&D report, suggesting HMRC has only read the AIF.

17. Any potential benefits for taxpayers of extending requirements to supply additional information to other areas (primarily speedier processing) will only be realised if HMRC properly reviews the information supplied. Additional requirements should only be introduced where HMRC can commit to dealing with the information efficiently

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

18. Examples suggested to us include Business Asset Disposal Relief and Negligible Value claims for CGT. These are examples of claims where HMRC is likely to ask for information by opening an enquiry months after submission – by which time it can be more difficult for the agent to obtain all the requested information. It would have been easier to supply the information upfront with the return.

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

19. HMRC would need to provide clear details of the information required. We have received some favourable feedback on the form for claiming hold-over relief (s165 and s260 TCGA), as an example of a helpful approach that could be used as a model for other claims.

20. If supporting evidence would be required, there would have to be a secure online channel for supplying it – ideally linked to the return/claim form to avoid matching problems. A digital channel would make it easier to supply information quickly and efficiently. It is also unacceptable for taxpayers to be asked for sensitive/confidential information (for example, bank statements) if HMRC cannot provide a secure digital route for supplying these.

21. Currently, we have feedback that some parts of HMRC will use Dropbox but others either refuse to use it (on the basis that it is not sufficiently secure – which is also an issue for some businesses) or because the relevant staff do not have licences. Any system needs to be consistently available across HMRC and accepted as secure by both HMRC and taxpayers.

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?

22. We are broadly supportive of proposals for alignment as part of wider reform and simplification of the tax administration framework, subject to consideration of whether there are specific reasons for existing differences. Following the income tax rules might be the best approach here but we have not had any specific feedback on SDLT, so we cannot comment on whether that regime might need to be different.

23. However, HMRC should only be using these powers in appropriate cases, ie where there is an obvious error (for example, arithmetical or transposition) or the return appears to be incorrect based on data in HMRC's systems (for example, a taxpayer stating Scottish residence status who appears to be living in England). They should not be used in cases where opening an enquiry would be more appropriate – for example, those involving interpretation of legislation where extensive evidence and correspondence (and possibly meetings) are more likely to be required. We are aware of problems arising where HMRC has used RCNs in R&D cases, where this does not appear to be appropriate.

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?

24. As set out in our response to Question 4, we are broadly supportive of alignment. However, there should be a simple, secure digital mechanism for rejecting corrections, for example an online form (with an alternative route for the digitally excluded). If evidence will be required (see our response to the next question) the mechanism should include the ability to supply evidence, not least to avoid problems where agents (or taxpayers) have to send in data separately, which HMRC then has difficult matching to the right case. There will need to be an alternative route for digitally excluded taxpayers.

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?

25. As set out in our response to the 2024 call for evidence, we do not support the introduction of a blanket provision requiring supporting evidence when rejecting HMRC error corrections. In some cases, this would be disproportionate and could cause delays.

26. For example, after the introduction of Scottish taxpayer status we received numerous reports of incorrect HMRC 'correction' notices that arose because incorrect/out of date information was held on HMRC systems (sometimes because the taxpayer had forgotten to update HMRC's records for a change of address or had been using a relative's address for correspondence). The agent or taxpayer could easily correct the problem (once identified) by rejecting the incorrect 'correction' and providing the correct address; it would be unhelpful to make this more difficult by imposing a blanket requirement for detailed evidence in support of rejections.

27. Any evidence requirements should be balanced and proportionate. The timeframe for rejections must be realistic – 60 days, or (if supplying evidence will be mandatory) 90 days.

28. HMRC also needs to deal with rejections of RCNs quickly and efficiently. Some HMRC 'corrections' will inevitably be incorrect. Apart from Scottish/rUK residence cases, we understand

that a particular problem area involves bare trusts, where interest accrues in the name of one taxpayer, but another taxpayer is beneficially entitled to it (and it appears on their return). Currently, we understand that it can take months to resolve these cases.

29. The introduction of an online system for rejections (which also allows evidence to be submitted, so there are no 'matching' issues) should help to ensure they can be processed quickly.

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

30. Yes, HMRC should be required to explain the reason for a correction clearly and in full. HMRC's own SA manual comments that "If you make a correction using information already held on our systems, you must advise the customer, and the agent if there is one, in writing to advise what you have changed and why." We consider that a proper explanation is essential in all cases.

31. We are aware that some of the corrections sent to taxpayers 'correcting' their residence status to/from Scottish taxpayer did not provide adequate/any explanation – something we raised with HMRC at the time. The lack of adequate explanation generated calls from agents/taxpayers to HMRC helplines, which is unhelpful for taxpayers and agents but also for HMRC.

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

32. See our responses to Questions 5, 6 and 7 – an online system for corrections and rejections should be introduced to simplify the process, reduce delays and (if evidence is also required) ensure that any evidence can easily be matched to the right case.

33. HMRC should always explain the reason for corrections clearly and in full to prevent calls being made to helplines for an explanation of why a correction has been made.

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

34. As discussed at stakeholder meetings about this consultation, HMRC does have the power to issue partial closure notices, having opened an enquiry under the current rules, and some enquiries may effectively be 'aspect' enquiries. However, we understand that HMRC is concerned that opening an enquiry to deal with, say, a repayment, could then preclude HMRC opening another enquiry if a full review of the return identifies other issues.

35. Ideally, HMRC should conduct a full review of the return in the first place, so that a single enquiry could deal with all issues, and the taxpayer would then have certainty. However, in practice HMRC is increasingly using informal enquiries and nudges which can cause problems for taxpayers and agents.

36. Taxpayers, particularly corporates, report that the absence of a legal basis for enquiries makes them difficult to deal with. Agents have also reported that informal enquiries may not be covered by fee protection insurance. However, a full enquiry into a return may be disproportionate and involve considerable time and costs for agents and taxpayers.

37. Amending HMRC's powers, so that there would be a statutory basis for an enquiry into a specific issue, might help to address the problems and could be useful. However, certain conditions would need to be met.

38. We agree that there should be obligations on HMRC to work within specified time limits (provided taxpayers/agents also meet deadlines), as suggested in the consultation. Currently, we regularly receive feedback that agents supply information to HMRC quickly in enquiry cases (with HMRC often setting 30-day deadlines) but can then wait for months for a response from HMRC. It would be essential that issues worked under a partial enquiry notice could be resolved quickly to minimise costs for taxpayers. HMRC will need to allocate sufficient resources to ensure that this can be delivered.

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

39. It is important that partial enquiries should focus solely on a specific issue and should not expand to cover other areas, once they have commenced. Any 'mission creep' would undermine the advantages to HMRC, agents and taxpayers of having a legal basis for a targeted enquiry that could then be dealt with in a shorter timeframe.

40. It should be a requirement that HMRC's notice of a partial enquiry specifies the issue to be covered. HMRC's guidance to its caseworkers would need to stress the importance of setting out the details clearly and ensuring that the enquiry only covers that issue.

41. Certainty for taxpayers is very important, so we agree with the suggestion in the enquiry that HMRC should not be able to 're-open any risk' that had already been dealt with under a partial enquiry.

42. However, we also have some concerns that because HMRC would retain the right to open a full enquiry (we assume this would be within the normal enquiry window), it would in effect have two opportunities to challenge a return, undermining certainty. The consultation indicates that HMRC might use the power in cases where taxpayers have claimed a relief or are awaiting payment of relatively small amounts, but there is no indication that it would be restricted to these circumstances. Such a restriction (even if it could be put in place) might in any case be unhelpful as it could inhibit the use of the power in some corporate cases where we have been told it might be useful.

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

43. See our response to Question 10.

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?

44. We do not support the introduction of this proposed new power to require taxpayers to self-correct. We do not believe it would be an effective approach for taxpayers, particularly unrepresented taxpayers who would find this process confusing and hard to navigate. It appears to be a statutory version of an HMRC nudge letter – with a requirement to reply (and sanctions for failing to do so). However, HMRC nudge letters can be very poorly targeted.

45. If the taxpayer and their agent check – and are confident that the returns submitted are correct – they usually do not have to reply to an HMRC nudge letter, which would simply incur additional costs for the taxpayer (some nudge letters specifically state that no reply is required, if no correction needs to be made). Imposing a statutory requirement to respond to a similarly poorly targeted notice to correct (with potential sanctions for not replying) will impose unnecessary additional costs on compliant taxpayers and their agents.

46. HMRC already has sufficient powers to deal with taxpayers submitting incorrect returns, particularly if the proposals in this consultation relating to RCNs and partial enquiries go ahead. This proposed new power would add extra layers of complexity (including new penalties) and would impose additional costs on compliant taxpayers where HMRC's targeting is poor.

47. If HMRC is confident that a taxpayer's return is wrong, in many cases it could use an RCN which (under the proposed new approach set out in this consultation) would require the taxpayer to explain why they have rejected the RCN. If HMRC is uncertain, or there are likely to be technical issues to be discussed, an enquiry would be more appropriate – including a partial enquiry, if the proposal in this consultation is taken forward.

48. The comment in the consultation about 'several similar errors submitted by the same agent' indicates that HMRC is concerned about bulk claims by repayment agents. However, taxpayers using those agents are unlikely to appreciate that the agent is submitting high volumes of claims

(and why that might be a problem). HMRC would need to provide very detailed explanations to the taxpayers in these circumstances and probably respond to contact from them – it is difficult to see why this would be any improvement on using enquiry powers (particularly if the proposal on partial enquiries goes ahead, which might facilitate a short enquiry into one issue).

49. This new power would add an extra layer of complexity, rather than contributing to any simplification of the legislative framework. As set out in our general comments, we would prefer to see proposals for broader strategic reform and modernisation, rather than piecemeal additions to address problems caused by the failure to update and modernise the framework. However, if immediate changes are deemed to be necessary, amending the existing powers related to RCNs and enquiries would be preferable to this proposal.

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?

50. See our response to Question 12 – we have not identified any benefits arising from this proposal.

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?

51. Taxpayers would need to be given time to receive the notice (particularly where this was issued by post) and either to check with their agent (if they have one) or to take advice. Unrepresented taxpayers would be likely to struggle to deal with the proposed regime. A minimum of 90 days would be required for the taxpayer to make the correction or respond.

52. It would be essential for HMRC to be subject to a strict timeframe for their response, where the taxpayer replies to say that no correction is necessary.

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

53. Taxpayers (and agents) would need a simple and efficient way to respond to HMRC, where they do not agree that any correction is required – a secure online form or digital channel should be available where the original return was filed online. There would need to be an alternative for digitally excluded taxpayers.

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

54. See our response to Question 12. This proposal is likely to increase costs unnecessarily for compliant taxpayers and their agents. Many of the problems seem to arise from the behaviour of some high-volume repayment agents – it would be preferable to take more robust action against these agents.

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?

55. See our response to Question 16. It would be preferable to tackle ‘rogue’ agents more robustly, rather than ending up having to impose penalties on taxpayers who have been exploited by those agents. In these circumstances, we agree that any sanctions would need to be carefully designed. It would be unacceptable to impose penalties on taxpayers for failing to respond where no correction is needed (but the taxpayer failed to navigate the process).

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

56. See our responses to Questions 12, 16 and 17. Where the problems arise from ‘rogue’ agents, we agree that some additional incentives for taxpayers to comply could potentially be helpful, but it would also be important to ensure that taxpayers understand why the problems have arisen, so that they can avoid future issues.

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

57. There do not appear to be any benefits for compliant taxpayers and their agents from this approach. As set out in our response to Question 12, HMRC nudge letters can be very poorly targeted - but will not be ignored by these agents, who will check the position. However, once they have checked and are confident that the return submitted is correct, they may not reply to an HMRC nudge letter because this would simply incur additional costs for the taxpayer. Imposing a statutory requirement to respond to similarly poorly targeted notices to correct (with potential sanctions for not replying) will impose unnecessary additional costs on those who are compliant and do not ignore the current nudge letters.

58. HMRC already has sufficient powers to deal with taxpayers submitting incorrect returns, particularly if the proposals in this consultation relating to RCNs and partial enquiries go ahead. This proposed new power only appears to add complexity and would impose additional costs on compliant taxpayers where HMRC's targeting is inaccurate. It is unlikely to change the behaviour of 'rogue' high volume agents who will not be attempting to assist their clients to deal with any notices to self-correct.

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

59. As set out in our responses to previous questions, we do not support this proposal – not least because it would involve the creation of new safeguards and channels for dispute resolution, specific to these notices. It would be essential for taxpayers to be able to challenge HMRC's notices to self-correct and a robust process would need to be introduced.

60. We have previously supported suggestions (and the limited pilot that took place) for HMRC to supply the CRS information it holds when it sends nudge letters about offshore income. Due to the UK tax year end, HMRC finds it difficult to identify whether all the offshore income has been reported, and the letters are often sent where the submitted returns are correct. The vague nudge letters (which do not supply the details HMRC holds) generate calls to HMRC from agents looking for information and impose additional costs on taxpayers. We would like to see increased transparency and disclosure of information by HMRC anyway (not solely for offshore data), to help agents and taxpayers (who want to comply) deal efficiently with 'nudges' and enquiries, but if these proposals for requiring a self-correction go ahead, it will be essential.

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