8 May 2024

The Tax Administration Framework Review: enquiry and assessment powers, penalties, safeguards

Response from ICAS

The Tax Administration Framework Review: enquiry and assessment powers, penalties and safeguards – call for evidence

About ICAS

1. The Institute of Chartered Accountants of Scotland ('ICAS') is the world's oldest professional body of accountants. We represent over 23,000 members working across the UK and internationally. Our members work in the public and not for profit sectors, business and private practice. Approximately 11,000 of our members are based in Scotland and 10,000 in England.

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 call for evidence: The Tax Administration Framework Review: enquiry and assessment powers, penalties and safeguards.

5. 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. However, it is important that any changes strike a balance between HMRC's interests and those of taxpayers. HMRC's powers should not simply be increased across the board and taxpayer safeguards should not be undermined or removed. It will also be important to ensure that the majority of taxpayers who want to comply with their tax obligations are not disadvantaged because HMRC believes that a minority are trying to 'play' the system.

6. There should be further consultation on detailed proposals for reform, particularly proposals involving the alignment of direct and indirect taxes. There are also considerable differences, particularly between annual taxes, those which operate on a quarterly or monthly basis and one-off or infrequent transaction-related taxes. In some areas alignment might be beneficial but in others a standardised approach might be less appropriate.

7. VAT is more aligned with other indirect taxes and customs than with direct taxes, so moving VAT procedures away from those for other indirect taxes could make the system more difficult to deal with. This should be taken into account, when considering which taxes should be included in any alignment proposals.

8. A key part of the reform and modernisation of the framework should be the consolidation of all tax management and administration provisions in one place. The Taxes Management Act 1970 would be the logical place to look for these provisions but in practice it currently contains only part of the relevant legislation. Important provisions are scattered across numerous Finance Acts. It is impossible for most taxpayers (and difficult even for agents) to access the relevant legislation and apply it to their circumstances.

9. The call for evidence proposes increased digitalisation of HMRC communications and appeal processes. We broadly welcome this (subject to adequate provision for the digitally excluded) but

some practical issues will need to be addressed and HMRC digital systems must work effectively. Increased digitalisation will also need to be reflected in the new Taxes Management Act to avoid the need for piecemeal patching of gaps in Finance Acts (as, for example, occurred in FA 2020).

10. Concerns have been raised with us that HMRC resources might be diverted into reform and away from day-to-day work running the tax system, leading to further deterioration of service levels. It is very important that this does not happen. Additional HMRC resources may also be needed to implement some aspects of reform, for example the extension of ADR and Statutory Review.

11. It is vital that HMRC and the government are committed to completing a comprehensive reform programme. It is also essential that the government provides adequate HMRC resources for initial implementation and to meet ongoing requirements imposed by reform – and makes available the parliamentary time and other resources required to put in place a new Taxes Management Act. Introducing a few piecemeal changes before dropping the project would exacerbate existing problems, without providing any significant benefits.

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?

12. It can currently be confusing for taxpayers to have to deal with many different processes and requirements across different taxes. However, there are considerable differences, particularly between annual taxes, those based on shorter return periods and those applying to one-off or infrequent transactions. It seems unlikely that a single set of powers across all taxes would be feasible or beneficial.

13. We can see scope for identifying taxes where a common approach could be applied and aligning powers across those, after further consultation on the details.

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?

14. As noted in our response to Question 1, we can see scope for greater alignment. We believe that there could be considerable potential benefits arising from greater alignment of powers across taxes where a common approach could feasibly be applied. Reducing the number of different regimes that need to be understood and dealt with, would be beneficial.

15. In addition to simplification through greater alignment, it would be helpful if the aligned enquiry and assessment powers and processes were simpler and clearer. This would help taxpayers to understand and deal with their obligations more easily and reduce scope for disputes. However, any changes must be balanced, ie not simply increasing HMRC's powers, extending time limits for assessment or reducing time limits for taxpayers to make claims.

16. Any new administrative framework needs to be backed by the consolidation of all tax management and administration provisions in one place – a new comprehensive Taxes Management Act. This new legislation should take account of digitalisation and should be written in the more user-friendly style which the Tax Law Rewrite Project applied to other important tax statutes. Being able to find the relevant legislation easily and an improved understanding of the rules (facilitated by better legislation), would be a significant benefit.

17. One risk associated with moving to a new model is the uncertainty that is always produced by change. Agents and advisers will be familiar with the current rules for taxes they deal with and will need time to adapt. It is also essential that HMRC and the government are committed to comprehensive reform and to providing the necessary resources to achieve this. The outcome could be the worst of both worlds if reform commences with some piecemeal changes but is then dropped. Familiarity with the current rules would be undermined – without seeing the benefits that could arise from completing a comprehensive reform programme.

18. Further consultation will be needed to identify taxes where a common approach could work – and on specific proposals for the aligned powers that would apply.

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

19. In the short term, there would be costs associated with developing understanding of the new rules and in adjusting systems to reflect them. However, if genuine simplification and new consolidated legislation are achieved, in the longer term the benefits should outweigh the costs. As set out in our general comments, it is vital that there is government and HMRC commitment to completing a comprehensive reform programme once it commences.

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

20. We have received feedback that HMRC's increasing use of informal enquiries and nudge letters can be problematic. 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. Conversely, we have also had feedback from agents that simple informal enquiries can be helpful if they can be quickly dealt with and remove the necessity for a lengthy full enquiry.

21. We suggest that some of these issues might be addressed through the introduction of an additional enquiry power (with a legal basis) to allow HMRC to carry out more limited enquiries, possibly restricted to a specific issue.

22. As set out in our response to Question 2, there should be further consultation on taxes where a common approach could feasibly be adopted. This should also help to identify areas, if any, where specific enquiry and assessment powers would be required.

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

23. We have no comments on the specific examples given.

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

24. Given the differences between indirect taxes and direct taxes, and between taxes dealt with on an annual basis compared to those based on shorter return periods and those applying to one-off or infrequent transactions, it is inevitable that there will be gaps and mismatches.

25. Rather than starting with gaps and mismatches, we believe it would be preferable to identify groups of taxes where a common approach might be feasible, and then to consider how to deal with any gaps and mismatches identified.

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

26. The proposals for HMRC to make consequential amendments across different tax regimes may have some merit, although we would need to see specific proposals to comment in detail. However, any powers to allow HMRC to make consequential amendments should be accompanied by rights for taxpayers to make consequential amendments too.

27. The call for evidence considers the problems arising from the absence of the ability to make consequential amendments only from HMRC's perspective. However, it is important to recognise that taxpayers also face difficulties.

28. For example, we have feedback from large businesses that an HMRC enquiry into complex areas of tax, where there may be disagreements on technical issues, can take a very long time to

complete. At the conclusion of an enquiry taxpayers should have the ability to make consequential adjustments based on the final agreed position – for groups this might include amendments in other group companies, as well as across different taxes.

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

29. We note the problems with 'discovery' identified by HMRC, including disputes and litigation - and the similar issues arising from the indirect tax provisions which also relate to HMRC's knowledge of the facts. However, for many taxpayers (who are not trying to manipulate the system), discovery can help in achieving certainty in a reasonable time frame, where full and open disclosure is made in the 'white space'. This should also assist HMRC in identifying cases where there is genuine uncertainty that requires investigation.

30. Certainty for taxpayers, within a reasonable period, should be a key consideration in developing proposals for the removal of the provisions relating to HMRC's knowledge of the facts. It would not be appropriate to remove these provisions and replace them with a simpler strict time limit solely to accommodate an unwillingness or inability on HMRC's part to consider disclosures of information properly within the current time limits.

31. We would welcome further consultation on detailed proposals setting out what the strict time limits would be, whether they would vary for different taxes (as set out in our responses to earlier questions, some grouping of taxes might be possible) and how certainty for the taxpayer would be achieved in a reasonable timeframe.

32. As the call for evidence notes, it would be important to tackle non-compliance robustly. We therefore assume that there would need to be specific provisions and longer time limits where certain types of behaviour were involved, for example evasion/deliberate failure to supply information to HMRC. This would inevitably reduce any simplification benefits and could continue to generate disputes and 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?

33. There are clearly problems arising from the 'process now, check later' approach. The call for evidence highlights the cost to HMRC and risks to the Exchequer – but there can be problems for taxpayers too. For example, taxpayers may have made what they believe are genuine claims to R&D reliefs, at the instigation of 'rogue' agents – only to find that HMRC wants to claw the money back, sometimes several years later.

34. It seems unlikely that a 'grant-type' model as suggested in the call for evidence would work. There are already significant problems with HMRC service levels; running a grant-type model for all claims would require levels of resource that HMRC is unlikely ever to have and could cause further deterioration in service levels.

35. However, targeting known problem areas could be more feasible. The introduction of the Additional Information Form for R&D claims could be a model for the provision of additional information upfront in other areas, if it proves to be a successful tool in reducing error and abuse.

36. We do not support the proposal for blanket provision of supporting evidence when rejecting HMRC error corrections. As outlined in HMRC's manual, obvious errors may include arithmetical errors, the wrong carry forward figure or missing information (which HMRC holds on its systems). These should be largely uncontentious. However, recently there have been reports of HMRC using error corrections (particularly to remove R&D claims) where it is unclear that there is an obvious error – and the more appropriate approach might be an enquiry into the technical basis for the claims.

37. Introducing a requirement to supply detailed evidence in all cases, to address problems in a specific area, where use of the power to correct obvious errors may not be the right approach anyway, would be disproportionate and could cause unintended delays.

38. After the introduction of Scottish taxpayer status, we were aware of numerous incorrect HMRC corrections of 'obvious errors' 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) and reject the incorrect 'correction'. Making that more difficult would only hold up the process of reaching a correct outcome.

39. If HMRC has evidence of widespread problems with rejections of error corrections, it would be useful to have additional information before commenting further on proposals for change.

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

40. We broadly support the greater use of digital communications by HMRC. However, this is subject to several important conditions being met.

41. It is essential that digitally excluded taxpayers have effective non-digital mechanisms for dealing with HMRC and with their tax obligations. Nobody should be forced into having to share details of their tax affairs with friends or family, or into paying an agent, because they cannot use digital HMRC systems. There also seems to be an increasingly inflexible approach to taxpayers who cannot authorise agents via a digital handshake. Maintaining security is clearly important but security may be undermined anyway if non-digital authorisation routes are either not available or are so complex/difficult to navigate that taxpayers cannot use them. The routes for taxpayers who need additional support (to use digital or non-digital systems) to access HMRC's extra support team need to be well publicised and accessible.

42. For those who can use digital options, HMRC's digital systems must work effectively for agents and taxpayers, and cover anything they need to do. Currently, there are gaps in the digital systems, and some do not work well. Agents, in particular, would not spend hours waiting for HMRC's telephone lines to be answered if they could use a digital option instead.

43. There is a clear risk that taxpayers might fail to receive the emails (alerting them to something new in their account) or fail to log in to their digital accounts for other reasons, so they miss vital communications (or only see them when it is too late). Before stopping paper communications, HMRC will need to consider how it could deal with taxpayers who have not logged in – will it know that taxpayers have not seen important communications? Will it be able to resend important communications, and will it try to contact taxpayers who have not accessed their digital accounts, by other means?

44. Taxpayers who have appointed agents usually expect that their agent will receive all communications from HMRC and deal with them on their behalf. They frequently either do not have Personal Tax Accounts/Government Gateway accounts at all, or having set up access (for example, with the agent's help in order to authorise the agent) stop using them immediately. In practice agents are not always copied on communications with clients already. If statutory notices and other vital communications are only sent to the client's account in future, this will cause significant problems. If they do access them, clients will not even be able to forward communications sent to their digital account to their agents.

45. Digital processes can go wrong, and agents/taxpayers can find themselves excluded from their HMRC accounts and have difficulty reinstating access. It is essential that if HMRC moves to more digital communications and systems, taxpayers and agents continue to have access to non-digital channels for obtaining HMRC support when digital services go wrong. We have had reports that it is increasingly difficult to get help through webchat or via a helpline, when a digital system is not working.

46. We suggest that any move towards sending statutory notices digitally should involve a transitional period when communications are sent both digitally and by physical post. This should help to identify problem areas and identify solutions before physical communications are discontinued.

47. It is also essential that HMRC improves its ability to use email and to receive digital communications/access digital information from taxpayers and agents. We are aware of numerous areas where agents would like to send information digitally to HMRC but HMRC either cannot access it digitally (eg access to client information stored digitally in MTD record keeping systems) or refuses to use a digital channel which the agent (or taxpayer) is happy to use.

48. There is also apparent inconsistency within HMRC – for example, we understand that some business areas will accept the use of Dropbox, but others will not. Introducing secure digital mechanisms for providing information, that HMRC agents and taxpayers are able and happy to use, should be a priority.

Penalties

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

49. We agree with the comments in the call for evidence about the work of the Powers Review in harmonising some penalties. We also agree that it would be useful to consider aligning late submission, late payment and inaccuracy penalties across all HMRC regimes, although further consultation would be required on detailed proposals.

50. The work of the Powers Review contributed to the problem identified in our general comments above, that provisions relating to tax management and administration (including penalties) are scattered across the Taxes Management Act and numerous Finance Acts. It can be very difficult to find the relevant legislation relating to penalties for different taxes.

51. Consolidation and updating of all the tax management and administration provisions into one place - a new and updated Taxes Management Act – is essential.

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

52. The new late submission points-based penalty regime for VAT returns (which will cover MTD ITSA returns too) is directed at regimes with regular returns, rather than one-off, infrequent returns. A differentiated approach, related to filing frequency clearly makes sense. The penalty point approach has the added advantage of raising awareness of the penalty regime (before a penalty is actually incurred) and providing an incentive to file on time going forward.

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.

53. There are too many different penalty regimes, with differing rules. It is not clear that all of these remain necessary – for example, is a separate penalty regime for offshore non-compliance still appropriate, given the expansion of international information sharing?

54. The principles underpinning the Powers Review noted that penalties should be clear, easily understood and accessible to all but that is not currently the case. It is unlikely that penalties will act as an effective deterrent if taxpayers are unaware of when penalties will be imposed or how they operate. As set out in our response to Question 11, it can also be difficult to find the relevant legislation.

55. Rather than trying to simplify particular regimes, it would make more sense to decide whether all the different penalties remain necessary – and then try to align and streamline as many different regimes as possible.

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?

56. As the call for evidence indicates, a perception of fairness in applying penalties is important in maintaining trust in HMRC and the tax regime. The Powers Review principles also set out that

penalties should be fair and proportionate. Applying the same level of penalties to someone making an innocent mistake as to someone deliberately evading tax would be a mistake.

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

57. Feedback we receive supports the use of penalty suspension in encouraging future compliance. The taxpayer is made aware of the details of the penalty regime, without actually being charged a penalty – and receives a clear explanation of how to avoid being charged penalties in future.

58. Automatic suspension of the first penalty or a warning for a first offence, as suggested in the call for evidence could be helpful alternatives to the present regime, provided the taxpayer still receives information on the penalty regime and advice on how to avoid penalties in future.

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

59. Making fixed penalties more proportional to taxpayers' income or resources would add more complexity to the penalty regimes and create another potential source of dispute with HMRC. It could also lead to taxpayers filing protectively using estimated figures where they cannot access the information needed to file a full return (for example, where accounts have been delayed).

60. There might be scope to make penalties more proportional to the tax due. Initial late filing penalties are flat rate, but once the return is 6 or 12 months late, the penalty is the higher of a specified amount or 5% of the tax due. Consideration could be given to increasing the percentage.

61. Penalties for late filing imposed where no tax is due are widely perceived as disproportionate and unfair.

62. The assumption that the size of the penalty is the main factor in determining compliance may not always be correct – for large businesses there are other factors which are more important. We discuss this further in our response to Question 17.

63. We have also received feedback that many individual taxpayers are anxious to avoid penalties because they are keen to get their tax right and want to avoid problems with HMRC, rather than being specifically concerned with the size of the penalties.

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

64. It is not clear that this would be effective for all taxpayers. Some unrepresented and vulnerable taxpayers may be failing to comply because they do not understand the system and need help and support, which they struggle to access. Simply increasing penalties, without offering a way out of a problematic situation, is unlikely to be the right approach for these taxpayers.

65. As set out in our responses to earlier questions, an initial explanation of potential penalties (without actually incurring one) and some advice on how to comply in future seem to be helpful in many cases. As the call for evidence notes most taxpayers are keen to put things right once they are made aware of a problem – explanation and the incentive to comply in future will often be effective in these cases.

66. It is not clear from the call for evidence how widespread deliberate ongoing non-compliance and non-cooperation over a long period are (or the reasons that usually lie behind ongoing non-compliance), so it is difficult to say whether the proposals to tackle these issues by simply increasing the size of penalties would be effective and proportionate to the problem. As noted, it is unlikely to work in cases where the failure to comply arises from a lack of understanding of what is required and an inability to obtain the right help and support.

67. Reform opportunity K refers to penalties being viewed as 'just another cost of doing business'. Feedback we have received indicates that for large businesses the size of penalties is not the

most significant factor. Generally, tax managers in large corporates do not want to incur penalties for reputational reasons. Penalties have an impact on the company's Business Risk Review, with HMRC mentioning penalties that have been incurred. The Business Risk Review is seen by non-tax stakeholders and incurring penalties does not look good to customers and regulators.

68. A blanket approach to penalty escalation is unlikely to be appropriate – a more tailored approach, taking into account the reasons behind continued and repeated non-compliance would be preferable, but that is likely to add complexity.

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

69. See our responses to Questions 15, 16 and 17.

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

70. As set out in our earlier answers, there are already too many different penalty regimes, adding complexity and making it difficult for taxpayers to understand which penalties might apply and how they operate. Adding new penalties, without reviewing whether all the current ones continue to be necessary – and without considering opportunities for streamlining and alignment – is likely to undermine the deterrent effect of all penalties.

71. Reform opportunity M refers to 'undesirable' behaviour and adopting 'unreasonable' positions. How would these be defined - who decides what is undesirable or unreasonable? Again, these proposals seem to have the potential to add complexity and create further sources of dispute and litigation. It might be preferable to focus on improving existing penalty regimes before considering introducing new ones.

72. On the specific issue of carelessness by agents, we recognise that there is a problem where the taxpayer has taken reasonable care in appointing an agent to deal with a tax matter (so is not subject to a penalty) but the agent has been careless. It is not clear whether the call for evidence envisages that a penalty should be applied to the agent in these circumstances – or whether the proposal is to amend the legislation so that a penalty could be imposed on the taxpayer. We suggest that if a penalty were to be applied in these circumstances, it should be applied to the agent, rather than the taxpayer.

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

73. See our response to Question 10. We are supportive of increased use of digital communications, subject to the conditions we outline being met. As noted, we do have concerns about taxpayers losing access to their digital accounts or not receiving email alerts – causing similar problems to those arising where taxpayers have not notified a new address to HMRC.

74. As set out in responses to earlier questions, we see significant advantages in processes that alert taxpayers to the possibility of a penalty before one is actually imposed – and allow an explanation to be given of how to avoid penalties going forward.

75. The call for evidence mentions daily penalties where notifications are sent after the end of the period within which the penalties apply. This is ineffective as a deterrent (or as an incentive to comply) because many recipients will not have been aware of the penalties until it is too late. It looks more like an attempt to raise revenues than to improve compliance.

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

76. No. Regular uprating in line with inflation would produce very odd figures and small increases every year. It would be preferable to review penalties, say, every five years, so that penalties

could move to a sensible new amount (approximating to an increase in line with inflation over the period), for example, £100 to £120, £150 or £200, depending on rates of inflation.

77. We also note that uprating penalties regularly is likely to be perceived as unfair and solely aimed at revenue raising when allowances and thresholds are not regularly uprated. The dividend allowance and CGT AEA have been reduced significantly in recent years and the personal allowance has been frozen – bringing more people into tax who are unfamiliar with making returns/reporting liability. The annual exemption of £3,000 for IHT has not been increased since 1981; other IHT exemptions, for example the small gifts exemption, have similarly not increased for many years and the IHT threshold has been frozen at £325,000 since 2009.

78. Uprating penalties but not uprating allowances and thresholds could undermine confidence in the fairness of the tax system.

Safeguards

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

79. We are not convinced that the universal adoption of either the direct or indirect taxes approach to appeals would be the best approach. An approach which combined elements of each might produce better outcomes. A simplified, aligned approach should certainly be helpful in improving understanding of the process and reducing the possibility for error.

80. A regime which encourages resolution by agreement in the shortest possible time should be the aim. We note HMRC's comments that some taxpayers want to prolong disputes to delay payment, but feedback from our members indicates that many taxpayers would like their cases resolved as quickly as possible and find HMRC delays (for example, in dealing with information provided) frustrating.

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

81. See our response to Question 22.

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

82. We support the alignment of payment requirements across regimes by extending the ability to postpone the payment of tax to indirect taxes. Hardship applications take up time and resources, for HMRC and taxpayers.

83. There is also a risk that being required to pay the disputed tax in full could make it difficult, or even impossible, for some taxpayers to pursue an appeal. Given that the right to appeal is a key safeguard, this is undesirable and likely to undermine trust in the fairness of the tax system.

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

84. We have no comments on this question.

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?

85. Before HMRC takes steps to improve access to statutory reviews and ADR, it will be important to establish how both options will be resourced, if more taxpayers use them. We are already receiving some feedback about issues with ADR facilitators, or with ADR not being available, that suggest that training needs to be improved and numbers of facilitators increased. We are also receiving feedback that HMRC is increasingly asking for extensions to the time limit for statutory

reviews, which may indicate that there are insufficient reviewers (although we appreciate that a complex case might require more than 45 days to deal with).

86. We have received mixed feedback about statutory reviews. Some members report finding them helpful, either because HMRC decisions have been overturned, but also in some cases where HMRC's decision is upheld. In the latter cases, the reviewer has been able to explain the decision in a way that helps the taxpayer to understand and accept it – even though the reviewer works for HMRC they are seen to have taken an objective approach. However, there is also a perception amongst many agents that the reviewers are not independent (because they are HMRC staff) and simply 'rubber stamp' HMRC's original decision. In complex technical areas, unless the reviewer has the relevant knowledge and experience, they are viewed as unlikely to diverge from the HMRC internal specialist advice behind the original decision.

87. Voluntary take up of statutory reviews is unlikely to increase significantly unless agents and taxpayers believe that it presents a genuine opportunity for an objective review of the case, reconsideration of the facts/technical issues and a realistic possibility that the original HMRC decision could be changed. Better publicity for the statistics on the outcome of reviews, particularly for automated penalty cases, where there is quite a high 'success' rate for taxpayers (as set out in HMRC's annual report and accounts) might assist.

88. As noted above, we have had some positive feedback where the statutory reviewer has clearly succeeded in explaining HMRC's decision more effectively than the original caseworker. Does HMRC have any way of obtaining/analysing feedback on the experience of statutory review, in cases where HMRC's decisions are upheld, that might help to identify why some confirmations of the original decision are better received than others?

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

89. Given that lack of awareness of statutory review is clearly a factor in some cases (as set out in the call for evidence), it would be worth exploring a system that did encourage take up of review and ADR, if this approach included a detailed explanation of both processes and the opportunity to raise further queries. However, as set out in our response to Question 26, there are other issues that need to be addressed.

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

90. Mandating statutory reviews should only be considered in simple penalty cases. As a general principle, we believe it would be preferable to encourage or recommend statutory review, reinforced by clear explanations of the process and outlining the statistics for outcomes.

91. However, as noted in our response to Question 26, the statistics for the outcomes of statutory reviews in automated penalty cases show that there is a reasonable chance that the original decision will be cancelled or varied. These cases should also be relatively straightforward, so they would be most suitable for a mandatory approach, if one were to be adopted.

92. In other cases, we do not believe that mandatory statutory review would be appropriate.

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

93. See our response to Question 28.

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

94. Yes, this would be unacceptable. It should not be within HMRC's discretion to decide to deny access to one of the safeguards to some taxpayers.

95. The call for evidence suggests that HMRC would want to withdraw the offer of a statutory review where there were no reasonable grounds for appeal, or where the dispute involves an avoidance arrangement – but HMRC would clearly have a conflict of interest in these circumstances and its interpretation of the criteria might not be generally accepted. To maintain trust in the system, given the scope for disagreement, there would need to be an appeal process for challenging HMRC's decision which would obviously prolong the process further.

96. As set out in our general comments, the majority of taxpayers who want to comply with their tax obligations should not be disadvantaged by giving HMRC the ability to withdraw a safeguard, without any independent oversight. Feedback from our members indicates that far from wanting to prolong disputes many taxpayers would like their cases resolved more quickly by HMRC and find it frustrating that there are frequently delays in HMRC responses once information has been provided, or that HMRC requests extensions to the time limit for statutory reviews.

97. Instead of seeking to remove the right to a statutory review, HMRC should instead ensure that all statutory reviews are completed within the statutory time limit of 45 days. This would speed up the resolution of cases for all taxpayers – and ensure that the minority of taxpayers deliberately seeking to prolong disputes through opting for statutory review would have their ability to do so restricted to 45 days.

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

98. See our response to Question 10. More digital channels, like those for some VAT and PAYE penalties would be helpful, provided they work effectively. However, proper provision needs to be made for the digitally excluded, and others who need additional support.

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