HMRC Call for Evidence: The Tax Administration Framework Review: enquiry and assessment powers, penalties, safeguards

Management of taxes

17 May 2024

The CIOT, ATT and LITRG have responded to HMRC's recent Call for Evidence on 'The Tax Administration Framework Review: enquiry and assessment powers, penalties, safeguards', looking at how certain aspects of tax administration could be reformed as part of the government commitment to establish a trusted and modern tax administration system. It explores a range of topics within tax administration relating to HMRC's enquiry and assessment powers, penalties and safeguards.

The call for evidence is on the GOV.UK website: tinyurl.com/2p9km4sz

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The CIOT response

Enquiries and assessments

In principle, we support greater consistency and alignment of powers across all tax regimes, preferably with any deviations kept to a minimum and only for clearly defined reasons. There seems no reason in principle why the process should be different depending on the tax or the taxpayer involved. This would reduce complexity and help to improve both trust in the system and taxpayers' understanding of HMRC's compliance powers.

A key area of focus should be whether HMRC's enquiry powers in taxes such as Income Tax Self Assessment and Corporation Tax Self Assessment should be retained and extended to VAT and PAYE, or whether these powers should be removed in favour of assessment powers that are subject to a statutory time limit based on something akin to VAT's 'evidence of facts'. On balance, we would favour the removal, not the extension of enquiry powers. This also has the benefit of bringing certainty to a taxpayer's position more quickly than the current regime. We suggest that consultation on potential reform in this area should be prioritised by HMRC.

Shorter assessment time limits for cases involving non-deliberate behaviour, as compared to those for deliberate failures and errors, should be preserved. These time limits should be simplified and applied consistently across all taxes and National Insurance contributions too. The disparate time limits currently applying across different tax regimes creates confusion and increases complexity.

In the interests of fairness and engendering trust in the tax system, the time limits and processes for consequential claims need reviewing, so that the final tax liability is that which would have arisen if a correct return had originally been submitted on time. Similarly, we do not support a time-unlimited amendment power for HMRC.

Penalties

In principle, we support alignment of penalties across all the tax regimes. While there are variations in the number and frequencies of returns depending on the tax regime concerned, the common factor across the different regimes is the requirement to submit a complete and accurate return, and pay any tax due, by a certain date. So there seems no reason why the regimes for late filing, late payment, failure to notify and error penalty should be markedly different.

There is currently a proliferation of different penalties. A simpler overall penalties regime, with fewer different types of penalties, could have many advantages, such as ease of administration and increased deterrent effect.

We support retaining the distinction between deliberate and non-deliberate behaviour, and the penalty consequences of deliberate behaviour should be greater. Where the behaviour is non-deliberate, the ;suspension regime could be replaced with a policy not to penalise the first error, and no penalty should ever arise where a taxpayer has taken reasonable care.

Safeguards

It is crucial that taxpayers and the public have trust in the tax system when it comes to how HMRC exercise their powers and impose sanctions, and how taxpayer protections and safeguards operate. The way HMRC use their powers and operate safeguards should be effectively monitored and subjected to appropriate oversight.

Where possible, we support the aligning of appeals processes to help mitigate the confusion and misunderstandings that different rules, terminology and procedures currently create. This would be of particular benefit in multi-tax disputes. We also support alignment of payment requirements across regimes, based on the existing direct tax rules.

We support an approach which allows adequate time for disputes to be settled by agreement. This saves time and costs for all parties and can help bring disputes to an earlier resolution.

A new Taxes Management Act

The outcome of this review should result in the replacement of all existing legislation by a new Taxes Management Act. Future legislative changes can then be made to the new Act, ensuring that all administration legislation is kept together and is easier to find and follow for HMRC, taxpayers and professional tax advisers. Once the revised processes are enacted, the government needs to resist making further changes to them for several years to give them time to bed in.

The full CIOT response is available here: www.tax.org.uk/ref1295

The ATT response

The ATT supports the call for reforms of the tax administration framework on tax compliance, seeing the patchwork of policies, legislation and guidance that underpins HMRC's ability to administer taxes and duties as 'woefully lacking' for a modern, digital 21st century tax system. However, we thought that it was overambitious to undertake a consultation looking at 31 reforming opportunities, covering assessment powers, penalties and safeguards, in a 12 ;week consultation period.

ATT would have preferred to have seen each of these areas reviewed separately with suitable time and space to allow for a considered reflection of how ;each area could be re-envisaged, remodelled and reformed.

We thought that once the tax administration framework review had been completed, it would be time to retire the Taxes Management Act 1970, and consolidate the remaining tax administration in one 'fit for purpose' taxes management Act. This would simplify and consolidate the tax code, as well as helping taxpayers to find the information they need in one easy and accessible place.

Our general view on the tax administration framework is that where a full and detailed examination of a tax has been undertaken, and the results clearly indicate that alignment of assessment powers, penalties and safeguards is possible with other taxes, then there should be alignment. This should have the effect of creating both simplicity and certainty for taxpayers, as well as having potential cost benefits for taxpayers and HMRC.

The consultation looked at procedural opportunities around introducing a consequential amendment power across periods and tax regimes. Whilst we could see some merits in this, we were not in favour of any changes which undermined taxpayer certainty, especially when there are existing options available to HMRC (protective assessments, discovery, etc.).

The alternative dispute resolution (ADR) and statutory review processes are important safeguards which taxpayers can use during and after compliance cases. We support the extension of the types of cases that can be eligible for ADR, as this has the potential to take some of the pressure off the tribunal system, which itself is struggling with the number of cases at present. If the ADR process is to be extended,

we recommend that the ADR teams are provided with the appropriate resources, staffing and training necessary to undertake this additional work.

The consultation considered the potential that certain cases, such as filing penalties and those with low value tax at stake (under £10,000), should be mandated to statutory review rather than being able to apply immediately to the tribunal system. We were not in favour of this, nor were we in favour of the statutory review process being denied to certain individuals 'where there are no reasonable grounds for appeal or where the dispute involves an avoidance arrangement'. Statutory review is an important second check of the initial compliance officer's reasoning and rationale for adopting a position, and to assess whether that thinking was correct. It also allows taxpayers the opportunity to give weight to arguments which may have been seen as being 'unheard' during the enquiry process. It is therefore an important safeguard against compliance officers driving through a decision which would otherwise not have stood up to scrutiny.

The full ATT response is available here: www.att.org.uk/ref451

The LITRG response

LITRG's response focused on the reform opportunities as they relate to unrepresented taxpayers who are unable to pay for professional advice.

On enquiry and assessment powers, LITRG recommends that HMRC should improve the use of data in the spirit of 'prevention rather than cure' – suggesting they should make the best possible use of the information they have at the earliest opportunity to encourage compliance, rather than waiting for non-compliance to occur and then raising assessments or open enquiries.

On the whole, LITRG is in favour of inconsistencies within the enquiries and assessment powers being removed or minimised to ensure fairness, improved understanding for taxpayers, and ease of administration for HMRC.

LITRG has raised concerns relating to the concept of 'carelessness' when determining which time limits apply, as this can lead to disputes between HMRC and taxpayers. Our response sets out some suggestions for how this might be improved – such as moving away from the concept of carelessness altogether. However, we appreciate that this might cause other areas of dispute and might give HMRC an

increased appetite for trying to prove deliberate non-compliance.

On the subject of penalties, LITRG's response gave thought to the idea of aligning penalty regimes. While we are not necessarily opposed to alignment per se, we do question whether this would benefit the taxpayer (as opposed to HMRC and the tax profession) as an objective in itself.

That being said, the suite of penalties most relevant for self assessment taxpayers (that is, failure to notify, inaccuracy, late submission and late payment) contains many examples of misalignment which can feel unfair. In particular, the fact that these obligations each have separate penalty regimes, when in reality they are bound together as a whole process, can lead to instances where multiple penalties are charged relating to the same underlying point (for example, lack of awareness that a source of income was taxable). Accordingly, our response sets out that we would prefer HMRC to take a more holistic approach.

As regards safeguards, LITRG points out that for many lower income and/or unrepresented taxpayers, the available safeguards are likely to be underutilised. We feel that a key element to improving access to safeguards will be increasing taxpayer awareness and understanding, with a particular focus on unrepresented taxpayers, who will often find the process of a tax dispute daunting and distressing.

We are generally welcoming of aligning the appeals and payment processes across taxes and feel the focus of any unification should be on simplicity and ease of access for the taxpayer. We also take the opportunity to look at the current system of liability postponement (for direct taxes) in more depth, particularly in light of the recent tribunal case of *Benjamin Erridge v HMRC.*

In the case of all three leading themes of the call for evidence – enquiries, penalties and safeguards – LITRG expressed support for new or enhanced digital solutions to be developed by HMRC. But in all cases, we urge HMRC to ensure that they are introduced with care and operate alongside continuing options for those who are not digitally able.

The LITRG response can be found at: www.litrg.org.uk/10910

Margaret Curran ;*mcurran@ciot.org.uk*
Steven Pinhey ;*spinhey@att.org.uk*
Antonia Stokes ;*astokes@litrg.org.uk*