

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

The IFA welcomes the opportunity to comment on the call for evidence published on 15 February 2024.

We would be happy to discuss any aspect of our response and to take part in any further consultations in this area.

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General comments

1. The IFA shares HMRC's ambition to reform aspects of the tax regime as part of the government commitment to establish a trusted and modern tax administration system in a way that better tackles economic crime and welcomes the opportunity to contribute to this call for evidence.
2. The IFA invited comments from UK members including retired members, members engaged in public practice and members working in industry and ran several focused discussion groups to garner opinions.
3. The following responses reflect these discussions with any reference to the 'IFA' or 'we' are reflective of these engagements.
4. In general, we feel that a review of enquiry and assessment procedures are long overdue since the last review in 2017.
5. We agree the desired outcomes listed in Appendix A look appropriate, however HMRC should make every effort to define the purpose of imposing penalties, as some respondents were concerned that some penalties appear to reflect a desire to raise additional revenue rather than a punishment.
6. We are supportive of the ambition to simplify and harmonise enquiry and assessment powers to make the rules easier to understand, implement and comply with.

Responses to consultation questions

Enquiry and assessment powers

Q1: What are the potential opportunities, benefits, and risks of moving to a single set of powers across all taxes?

7. We feel that the current tax regime can be complicated for taxpayers, tax agents and, at times for HMRC staff. Therefore, there is potential for simplifying penalty and information gathering powers by using improved digital communication channels.
8. The introduction of a single simplified tax regime is supported, although there may need to be exceptions to this, to allow the regime to be able to deal with simple errors and complex non-compliance.
9. We also note the alternative suggestion of taking steps to identify where a common approach would work, but also identifying taxes that may need a different approach. This second approach is generally supported and would allow flexibility where required but would help to achieve greater consistency.

Q2: 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?

10. The rights of taxpayers should always be paramount, so it is important that any changes are not perceived as a burden as this could create further uncertainty.
11. Implementation of major reforms will result in additional work for taxpayers, agents and HMRC. Therefore, HMRC should put in place well communicated plans to all concerned with a transparent road map of timelines and milestones for all to follow.

Q3: What are your views on any potential costs of changes to assessment and enquiry powers?

12. We find it difficult to answer this question until there are more specific details available to determine potential costs.

Q4: Are there any circumstances or taxes where specific enquiry and assessment powers may be necessary?

13. No circumstances or taxes where specific enquiry and assessment powers may be necessary were identified.

Q5: What would be the impact of greater alignment in the examples mentioned?

14. We are supportive of aligning powers and addressing gaps as detailed in reform opportunity B, as this would provide a consistent approach and remove any ambiguity.

Q6: Are there other potential gaps or mismatches that you think it would be beneficial to address?

15. No other potential gaps or mismatches identified.

Q7: What are the merits and risks of HMRC introducing a consequential amendment power across periods and tax regimes?

16. We are concerned that if the proposal allowed time limits to be suspended, it could lead to uncertainty for a taxpayer, as they would be in the dark regarding when to expect a conclusion.
17. We can see some merit in this approach, however when looking at cost savings, HMRC should also be aware of the potential impact on the taxpayer in terms of tax demands becoming payable over a longer time period as the taxpayer may not have the resources to satisfy any demands given the time passed, and possible changes in circumstances.

Q8: What are your views on the opportunities and merits of reform in this area?

18. We are cautiously supportive of the introduction of a strict time limit approach, however the safeguarding element should not be underestimated as the lack of certainty can create a variety of problems for the taxpayer, such as stress and mental health issues.

Q9: 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?

19. The IFA are concerned that moving to a grant-type model for processing claims structured around an application, decision and appeal approach could simply create an additional admin burden on HMRC, taxpayers and agents leading to potential delays to those making claims.
20. If this approach is adopted, then clear guidance would be required for all to follow, including HMRC staff who would potentially require additional specialist training to process grant applications.

Q10: Are there specific issues relating to compliance activity that need to be considered as HMRC moves to greater use of digital communications?

21. We support the proposal to utilise improved communications using digital communications as this could help speed up the process by removal of delays caused by the postal system.
22. The use of a single customer account or agent services account that keeps the taxpayer and tax agent informed of the status of enquiries, assessments and claims would be welcomed by agents who have called for full access to client's tax affairs for many years.

Penalties

Q11: Which types of non-compliance do you think should have common penalties applied consistently across HMRC's tax regimes?

23. The IFA supports the proposal to harmonise penalties for late filing, late payment, failure to notify, inaccuracies and certain wrongdoings across HMRC's regimes and sees this as the most obvious simplification opportunity.
24. When harmonising penalties, HMRC need to consider the impact of such penalties as defined in the consultation document in relation to fairness and perceived fairness. For example, some IFA members have commented that the ability to pay a late penalty fee can vary significantly between a simple self-assessment with a low tax liability and a late corporation tax return penalty that is simply seen as part of its costs and does not serve as a deterrent.

Q12: Are there tax regimes where a differentiated approach to certain penalties may be needed?

25. The IFA is of the opinion that there are too many separate penalty regimes and therefore harmonisation of the penalty regime should be a priority, rather than create differentiated approaches that could cause confusion.

Q13: Are there particular penalty regimes you think should be simplified? We would welcome views on why and how such penalty regimes might be reformed.

26. The only comments received from IFA members relate to the regimes where the multiple number of escalation points can be confusing to agents and taxpayers, with a call to simplify these regimes to promote better understanding.

Q14: What are the potential benefits and challenges of moving away from the current set of behavioural penalties? What alternative models should be explored?

27. The IFA supports the behavioural model to distinguish between non-deliberate and deliberate behaviour as described in the consultation document. This would not only simplify the regime but provide a perception of fairness to help promote trust in HMRC and the tax regime.

Q15: What alternatives to the current model of penalty suspension do you think should be explored?

28. The IFA is generally supportive of the proposed process to suspend penalties without conditions for the first non-deliberate or careless failure, with the penalty becoming payable if HMRC identifies other instances of non-compliance over the next four years.
29. This proposal would require investment to ensure that HMRC staff are able to clearly identify non-deliberate or careless failures. If this is not possible, then the IFA would also support the simpler solution to issue a warning letter for first offences rather than suspension.

Q16: What merits and challenges would making fixed penalties more proportional to a taxpayer's income, resources, or tax liability present? Are there other models that should be considered?

30. The IFA generally supports the proposal to link fixed penalties to taxable income or the amount of tax at stake. We feel linking to taxable income could lead to increased appeals and add to delays in resolution. We believe this would help strengthen perceptions of fairness and be the most efficient process in terms of admin burden to HMRC.

Q17: Do you agree that penalty escalation could help to address instances of continued and repeated non-compliance? What challenges could this present?

31. The IFA agrees that penalty escalation could help address instances of continued and repeated non-compliance, provided clear guidance and support is given.

Q18: Are there particular models of penalty escalation you think should be considered, and why?

32. No specific models were commented on by IFA members, however there was support for the recently implemented points system for late VAT submissions where one-off failures do not attract penalties, which are only incurred for repeated non-compliance.

Q19: Are there specific behaviours and situations that you think penalties could help to address, and why?

33. There are no additional behaviours or situations identified that IFA members suggested could be addressed by penalties.

Q20: Where could HMRC communicate in a more timely or effective manner with taxpayers about penalties?

34. Timely digital communications should be shared on taxpayer's, as well as their agent's portals, and not rely on the postal system with digital prompts or notifications to advise of action required.
35. It is imperative that HMRC look to harmonise its own internal digital systems to ensure accurate data is used, as this will help guard against mistrust in the receiver of a digital notifications in terms of spam or cyber security issues and improve efficiencies across HMRC's digital platforms.

Q21: Would you support the regular uprating of fixed penalties for inflation? What challenges would this present for you?

36. The IFA supports the proposal for regular uprating of fixed penalties for inflation and the suggestion of creating a central tariff of fixed and daily penalties that is reviewed every 5 years looks appropriate.

Safeguards

Q22: What are the merits and challenges of aligning the appeals process with either the direct or indirect taxes approach?

37. The IFA supports the alignment of the appeals process across direct and indirect tax regimes as this will make the appeals process easier to understand for taxpayers and agents, as well as HMRC.
38. In general, we would prefer the direct tax approach as some members suggest that the cost of indirect tax appeals can be a barrier to pursuing claims for those in lower income brackets.

Q23: Are there other examples of appeals processes for direct and indirect taxes that could be considered as an alternative approach and why?

39. No other examples of appeals processes for direct and indirect taxes were put forward by IFA members.

Q24: What are the merits of aligning payment requirements across regimes where a liability is disputed, and a tribunal appeal is made?

40. As referred to in our response to question 22, the IFA support adopting the direct tax approach for all taxes and have no further comment on this issue.

Q25: Are there specific circumstances where you think the existing differences across regimes are important or desirable to maintain?

41. No circumstances were identified where the existing differences across regimes should be maintained.

Q26: 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?

42. In group discussions, there was limited understanding of how statutory reviews and ADR actually work. Therefore, the IFA believes HMRC should focus on making available simpler guidance that is easily accessible and include reference to support materials when disputes arise would benefit all parties.
43. Engaging with professional bodies via stakeholder groups, as well as in member training, such as providing experts to explain and discuss processes in webinars and conferences as well as providing articles for publications, would help to demystify the process.

Q27: What are the merits and challenges of increasing take-up of statutory reviews and ADR with a 'recommendation and opt out' approach?

44. The reduced reliance on lengthy and costly tribunals for both the taxpayer and HMRC, while preserving taxpayers' rights, would appear to be a positive outcome. However, the potential increased take up of statutory reviews or ADR will impact on HMRC and consideration needs to be made to ensure sufficient resources are made available to train HMRC staff.

Q28: What are your views on the possibility of mandating statutory reviews in certain circumstances?

45. We believe mandating reviews for certain cases could be effective provided appropriate guidance and training is offered to promote better understanding for taxpayers.

Q29: Are there specific circumstances where you think it would be appropriate or inappropriate to mandate statutory reviews?

46. The IFA has no evidence to support any other circumstances where it would be appropriate or inappropriate to mandate statutory reviews.

Q30: Would you have any concerns if HMRC were to withdraw the option of statutory review in some cases?

47. The IFA would be concerned if HMRC were to withdraw the option of statutory review in some cases. Whilst we understand the need to combat those that seek to exploit this option by prolonging disputes and defer paying the correct tax, it is important that any restriction to this safeguard is carefully considered.
48. This could impact trust in HMRC and when considering this option, we believe HMRC should review its processes to identify those that are looking to exploit the system at an early stage and build processes to deal with them earlier on, rather than simply removing the option completely.

Q31: Are there other areas you think would benefit from alternative appeals channels (for example, digital)?

49. The use of a single customer account or agent services account that keeps the taxpayer and tax agent informed of the status of enquiries, assessments and claims would be welcomed by agents who have called for full access to client's tax affairs for many years.

Contact details

Should you wish to discuss this response further, please contact Tim Pinkney, IFA Director of Professional Standards, by email at timp@ifa.org.uk.