

Discussion document: Simplifying and modernising HMRC's Income Tax services through the tax administration framework
Response from the Low Incomes Tax Reform Group (LITRG)

1 Executive Summary

- 1.1 We are pleased to contribute to this important discussion document concerning HMRC's digitisation agenda, and specifically regarding Pay As You Earn and Income Tax Self Assessment. We support HMRC's ambition to provide simpler and more efficient services for taxpayers and this response makes recommendations to help HMRC realise that ambition.
- 1.2 We are broadly supportive of HMRC improving the scope and quality of their digital offering to taxpayers, and we recognise the resources required for manual processing and intervention in HMRC's managing of the tax system. Overall, digital options should be effective, easy to use and accessible, so that people who are able to use them naturally do so. While we understand the rationale behind the digital channel shift, the means to achieve that shift should not adversely impact taxpayers who are genuinely digitally excluded or add additional barriers to compliance. For example, non-digital options should not be made more difficult to access and additional support should be available for those attempting but struggling with digital services. Making non-digital channels difficult to access would not be in line with HMRC's Charter, their Digital Inclusion Strategy, or their principles of support for taxpayers who need extra help.
- 1.3 Instead, we firmly believe that HMRC's initial priority should be to improve existing services to allow everyone who wants to transact digitally to do so. There are a number of ways in which HMRC's digital services can, and should, be improved. For example, digital services should be broadened to handle taxpayer circumstances which currently require interaction with HMRC through non-digital means.
- 1.4 In the move to issuing various HMRC 'forms' digitally by default, we observe that some forms may be more suitable for the change than others. In particular, tax return forms should still be readily available on paper, in line with a taxpayer's (current) right to file on paper should they wish to do so.

We suggest a dedicated telephone order line is set up for taxpayers to request any HMRC form on paper.

- 1.5 HMRC also need to address wider issues to encourage a digital shift and for it to be successful. These include ongoing difficulties for certain taxpayers in passing Government Gateway verification checks, improved guidance within forms and tools, and robust systems to monitor whether digital communications are received and read (especially digital notices to file a tax return).
- 1.6 We would also like to see an improved (clearer and potentially broadened), definition of what it means to be digitally excluded, with a generous approach to interpretation in practice. We would like to see a better understanding of these groups, especially those at the fringes. However, restricting non-digital services to those who meet any given definition of 'digitally excluded' introduces a barrier for everyone in this group if they must demonstrate they fall within it. HMRC will also need to invest resources in policing access to non-digital services. Therefore, if non-digital options must be removed from the general population, then any non-digital concession should be wide and accessible.
- 1.7 We also believe there are many examples in the current system where people are forced to contact HMRC by phone because a letter is not clear, or a process is not clear (or otherwise doesn't work as well as it could). This causes people to contact HMRC by phone even though that may prefer to interact digitally. This is in addition to transactions where there is no digital option.
- 1.8 HMRC should prioritise identifying all of these pain points and implementing improvements, and then carry out a review of the cost of manual processing for those who can interact digitally but still choose not to. This should be understood before decisions are made regarding non-digital ways of interacting with HMRC which might impact those who rely on them. For example, once digital services are optimised, it may even be more cost-effective for HMRC *not* to have systems and processes in place to restrict access to non-digital alternatives.
- 1.9 For Pay As You Earn (PAYE), alongside a broad recommendation to improve digital routes to resolve common PAYE issues, our response includes a number of specific suggestions for improving its operation with the digital agenda in mind. These include:
 - A better way for taxpayers to challenge incorrect data;
 - DWP applying PAYE to taxable benefits;
 - PAYE tax codes which are easier to understand (for example, by using the full figure for net allowances and using visual tools to aid understanding);
 - A way for taxpayers to digitally request the allocation of their personal allowance across different employments;
 - More flexibility to digitally request a change of tax code upon a change in circumstances.
- 1.10 On Income Tax Self Assessment (ITSA), we observe a general mismatch between the discussion themes and the current legislative requirements under the law. As a general point, we think taxpayers should not be 'required' to do things by HMRC beyond what the law requires.

- 1.11 On the proposal for digital registration, we urge HMRC to have a clear legal definition of what is meant by 'registration' before any requirements are attached to it.
- 1.12 Although we recognise the benefits of transacting digitally with HMRC, we do not think a digital shift is best achieved by the proposals suggested in the discussion document. For example, we would not support a requirement for new ITSA registrations to be made online.
- 1.13 Nor would we support a 'digital by default' notice to file, even if a taxpayer has registered for ITSA digitally. This is because such a document creates an important legal obligation and we feel it should be issued by post to reduce the risk of taxpayers not appreciating its legal significance. We suggest instead that taxpayers might be asked a mandatory question in the registration process (or if filing a tax return online) as to whether they would like digital notices to file, but only after their legal significance has been clearly explained.
- 1.14 We believe mandatory online Self Assessment filing for any group of taxpayer would be potentially problematic. If a taxpayer registers for ITSA electronically, it does not follow that they can file their tax return electronically. In addition, filing on paper is not only currently a legal right but also may be more suitable to a taxpayer's circumstances. If a taxpayer must file their tax return online after they register for ITSA electronically, then such a change may even discourage online registrations.
- 1.15 Regarding the ITSA criteria, as stated above, these should be aligned with the law. Guidance should be clear, consistent and aligned with these criteria (currently it is not). In particular, the GOV.UK tool in its current form presents several opportunities for taxpayer confusion.
- 1.16 IT systems and thresholds are issues of lesser relative importance, but there are strong arguments for up-rating certain thresholds to reduce the number of people in Self Assessment. HMRC should also work on better solutions for certain groups who need to file a Self Assessment return, considering wider use of Simple Assessment and a digital 'short' tax return.
- 1.17 'Raising awareness' of the ITSA criteria should also be considered an issue, and opportunity for reform, in its own right. This is especially relevant for unrepresented taxpayers, many of whom might equate Self Assessment with self-employment.
- 1.18 We are tentatively supportive of codification of ITSA criteria; though the further step of having the legal obligation to file a return directly attached to these criteria would require much more thought, especially as regards the penalty for non-filing in the case of a taxpayer not realising they fall within them.
- 1.19 A further option for legislative reform would be for HMRC to be able to withdraw a section 8 notice after a tax return has been submitted. This would mean that taxpayers who do not meet the ITSA criteria do not lose the ability to get a filing requirement withdrawn (and associated late filing penalties cancelled) simply because they complied with the notice to file.

2. About Us

- 2.1. The Low Incomes Tax Reform Group (LITRG) is an initiative of the Chartered Institute of Taxation (CIOT) to give a voice to the unrepresented. Since 1998, LITRG has been working to improve the policy and processes of the tax, tax credits and associated welfare systems for the benefit of those

on low incomes. Everything we do is aimed at improving the tax and benefits experience of low-income workers, pensioners, migrants, students, disabled people and carers.

- 2.2. LITRG works extensively with HM Revenue & Customs (HMRC) and other government departments, commenting on proposals and putting forward our own ideas for improving the system. Too often the tax and related welfare laws and administrative systems are not designed with the low-income user in mind and this often makes life difficult for those we try to help.
- 2.3. The CIOT is a charity and the leading professional body in the United Kingdom concerned solely with taxation. The CIOT's primary purpose is to promote education and study of the administration and practice of taxation. One of the key aims is to achieve a better, more efficient, tax system for all affected by it – taxpayers, advisers and the authorities.

3. Developing and promoting the use of HMRC's digital services

3.1. General comments

- 3.1.1. When HMRC develop process changes and identify areas for strategic change, it is important that they bear in mind the Charter. We sometimes see HMRC develop new approaches that may assist in making things more efficient for HMRC (or that appear to do so) or deliver some other benefit to HMRC, but these approaches sometimes fail to ensure that taxpayers get things right or have an easy service to use. For example, the recent trial of smart SMS has been claimed as a success, but we are concerned that the measures used in assessing the trial may be misleading or not sufficiently detailed enough to draw firm conclusions.¹
- 3.1.2. Therefore, **a guiding principle when implementing HMRC's desired move to a 'digital by default' approach must be to ensure that all obligations under HMRC's Charter, as well as the HMRC's principles of support for taxpayers who need extra help,² are properly met.**
- 3.1.3. The discussion document sets out HMRC's ambition 'to provide simpler and more efficient services for taxpayers'. While we agree that a push towards more user-friendly and efficient services is good for taxpayers, any simplification – whether that be digital services themselves, or accompanying guidance – must not come at the cost of accuracy. This is a point LITRG have raised on several occasions.³

¹ We understand that one such measure is whether taxpayers called back within a certain period of time after being redirected to GOV.UK. If a taxpayer didn't call back, then it doesn't necessarily mean they found the answer to their question.

² <https://www.gov.uk/government/publications/hmrc-charter/hmrcs-principles-of-support-for-customers-who-need-extra-help>

³ See LITRG reports 'A Better Deal for the Low Income Taxpayer' (section 1): <https://www.litrg.org.uk/latest-news/reports/201204-better-deal-low-income-taxpayer> and 'Good Guidance' (paragraph 3.6, and throughout): <https://www.litrg.org.uk/latest-news/reports/230404-good-guidance-%E2%80%93-importance-effective-guidance-unrepresented-taxpayers>

- 3.1.4. We have concerns as regards the comment set out in paragraph 2.4 of the discussion document (reproduced with our emphasis underlined):

“To achieve a digital channel shift, HMRC plans to provide easy to access digital services, with relevant support, to ensure that taxpayers experience a convenient and streamlined service. Once this is in place, HMRC will provide less choice around the non-digital channels it offers to taxpayers (such as telephony and post) to reduce the use of these channels, where users are able to go digital.”

- 3.1.5. We would argue that if the digital options provided are effective, easy to use and accessible, then HMRC would not need to specifically withdraw non-digital options; those who are digitally able will be naturally drawn to use them.
- 3.1.6. In particular, whatever the direction of travel with HMRC's digital agenda, we feel that **HMRC should commit to providing a permanent phone helpline service for those who need it.**
- 3.1.7. The current channel shift is driven by the desire to reduce demand on HMRC phone lines. **We strongly recommend that HMRC should focus effort on improving existing processes and guidance so that those who want to transact digitally can do so.** There are many examples in the current system where people are forced to phone HMRC because a digital option doesn't exist, the information/letter provided by HMRC is inadequate or deficient in some way or there is some other issue that requires a phone call. **A starting point would be to identify all of HMRC's processes and letters that generate contact and then take steps to address them. Once those changes are implemented, a review should be carried out to see what impact that has had on demand via phones and post.**
- 3.1.8. It would be helpful if HMRC could focus energies on ensuring that digital services are able to handle the affairs of all taxpayers (or as many as possible). For instance, currently, Self Assessment taxpayers who do not have access to commercial software and need to complete residence pages are forced to file on paper – HMRC's own service does not have the required functionality. Developing and improving functionality to ensure it is suitable for use by as many taxpayers as possible should, in our view, be prioritised. Further steps to provide less choice around non-digital channels should not be considered until this work is done.
- 3.1.9. Our particular concern with the quoted statement above is that, in providing less choice around non-digital options, those who are genuinely digitally excluded (or less digitally able) will likely be penalised. Such customers should not be written off as collateral damage in the drive to push the majority of taxpayers to 'digital by default'. If anything, it is these customers who require the greatest level of protection, and this is an area where there is potential conflict with HMRC Charter.⁴
- 3.1.10. LITRG was pleased, via its involvement with both the Individuals Stakeholder Forum and Additional Needs Working Group, to be able to provide comments on HMRC's Digital Inclusion Strategy.⁵ A key point that was made in our feedback on the draft strategy was that a paper option should still offer a

⁴ Relevant standards include 'Making things easy' and 'Being aware of your personal situation'.

⁵ Project led by Kerry Woolford, CS&TD CIDD Equalities Team

good service; it should not be the case that HMRC customers have a worse experience when using non-digital services. We feel this point should be held in high regard when HMRC consider how best to implement their digital ambitions.

- 3.1.11. Any work undertaken in HMRC's desired move to 'digital by default' must tie in closely with both the Digital Inclusion Strategy and HMRC's commitments under the Charter, as already mentioned. Consequently, **we would recommend that HMRC undertake and publish an annual assessment of their digital channel shift work, and how this work aligns with their commitments under both the Charter and the Digital Inclusion Strategy.**
- 3.1.12. A further point to raise here is that **the concept of digital exclusion must be clearly and effectively defined.** Such a definition should be publicly available to ensure HMRC can be held to account where people are directly affected by it. In particular, we understand the Digital Inclusion Strategy, as referenced above, will be an internal document. **We recommend that the Digital Inclusion Strategy should be public facing, or at least a separate public facing alternative should also be developed, as a reference point for HMRC customers and other stakeholder organisations.**
- 3.1.13. It has been suggested in the draft Digital Inclusion Strategy and was again mentioned at the TAFR reduction in paper communications stakeholder meeting⁶ that a person is considered 'digitally excluded' if they have not accessed the internet in the past three months. We understand that this is a standard definition used by the ONS and other government departments and has been adopted to ensure data is aligned across these departments – though it is not clear how this definition works in practice.⁷ We feel that the definition is unsuitable and does not correctly identify those who are truly unable to interact digitally. For instance, there will be some who may have had temporary access to the internet, or whose access has very recently come to an end. There may also be people who can technically access the internet but are not capable of completing tasks online, particularly tasks of a more complex nature. These more nuanced cases should be clearly understood; a gateway test of having accessed the internet within the last three months simply does not provide a full picture of digital inclusion/exclusion.
- 3.1.14. There is also a distinct category of taxpayer who may have tried to interact digitally before the relevant digital service was properly fit for purpose, and therefore became discouraged from further digital interaction. These taxpayers, and others who may be 'digitally uncomfortable', may simply need some hand-holding or basic assistance or training to interact digitally. For example, some taxpayers might be offered a live webchat with an adviser while attempting to complete their tax return online for the first time (see paragraph 3.3.1).
- 3.1.15. However, restricting non-digital services to those who meet any given definition of 'digitally excluded' introduces a barrier for everyone in this group if they must demonstrate they fall within it. HMRC will also need to invest resources in policing access to non-digital services. Therefore, if non-

⁶ Held virtually on 9 May 2023

⁷ For example, in today's largely internet-enabled world, what does it really mean to 'access' the internet – and how can it be determined whether someone has done so in the past three months?

digital options are removed from the general population, then any non-digital concession should be wide and accessible so that the practical and cost impact arising from these points is mitigated. For example, taxpayers might be allowed to self-assess as digitally excluded, or at least given the benefit of the doubt in any assessment.

- 3.1.16. As regards the specific letters and forms that HMRC has suggested will move to 'digital by default',⁸ we offer the following comments.
- 3.1.17. It would be useful for HMRC to draw a distinction between documents which are genuine 'forms' (such as the SA100) versus documents which are better described as 'notifications' (such as a SA300 statement of account). Some notifications are distinct in that they create a legal obligation (like the SA316 notice to file). The approach for each category of form should be considered separately.
- 3.1.18. We have expressed strongly at various forums that **we believe that SA100s and SA200s (together with associated supplementary pages) ought to remain available on GOV.UK for download**, even if they are not routinely sent out. Making the form available online clearly does not affect the level of HMRC's 'paper outputs', but still provides certain taxpayers with a paper choice should they wish. While a 'digital by default' approach is an understandable guiding principle, it currently has no statutory basis and therefore it is our view that removing access to the forms online creates an unacceptable barrier for taxpayers who are still entitled to a choice by law. It is worth highlighting also that some digitally excluded taxpayers may rely on friends and family or the voluntary sector for assistance in dealing with HMRC and/or accessing forms – another reason to ensure that downloadable forms are still available.
- 3.1.19. The discussion document appears to contradict itself by suggesting that taxpayers will still receive a paper notice to file, but then it separately notes that the SA316 notice to file is a letter that will move to 'digital by default'. In our view the SA316 notice to file is a very important document – the fact that it is issued creates a legal obligation on the taxpayer. On this basis **we would recommend that the SA316 notice to file should continue to be issued on paper in all cases**. Regarding the proposal to issue this form digitally by default after a digital registration for ITSA, see our comments at paragraph 5.1.20 onwards.
- 3.1.20. Whilst we are broadly supportive of P2 PAYE tax codes being included in this move to 'digital by default', we would encourage HMRC to expand the information provided on any digital version to help taxpayers understand what their tax code really means and how any adjustments are calculated. We are aware that an interactive tool⁹ has been introduced to aid taxpayer understanding of tax code changes, but this does not provide a sufficiently bespoke explanation for taxpayers and appears to be quite limited in its application. Confusion surrounding tax codes undoubtedly drives additional helpline demand which might be avoided with better explanations

⁸ Paragraph 2.17 of the discussion document

⁹ <https://www.tax.service.gov.uk/guidance/get-help-understanding-your-tax-code/received-tax-coding-notice>

available within the Personal Tax Account (or Single Customer Account, when rolled out). This issue is discussed further in paragraph 4.2.6 below.

- 3.1.21. We do have some concern that moving a P800 tax calculation to digital by default could lead to some taxpayers inadvertently failing to settle outstanding tax liabilities,¹⁰ or failing to claim refunds. However, digital P800s may be beneficial for those without stable housing or who have not kept their address up-to-date with HMRC. **We wonder whether it might be appropriate to ensure that any P800 calculations showing an amount owed to HMRC are also issued in paper form to increase the chances of timely settlement.**
- 3.1.22. Finally, **it is essential that HMRC have (or will have) the ability to identify when electronic communications are actually opened by taxpayers.** This will help HMRC be able to flag where there might be an access problem. This is especially important in the case of a digital notice to file (see also paragraph 5.1.23). If certain documents which require taxpayer action are not accessed digitally within a certain period, perhaps HMRC might follow-up with a further prompt. If the forms are still not accessed, then HMRC could follow-up with a paper equivalent.
- 3.2. ***Question 1: What barriers do you experience when accessing digital versions of the forms above that drive you to a paper option? Are there any particular forms/processes that cause major issues?***
- 3.2.1. One of the most significant problems in this area is logging in via the Government Gateway. It remains the case that many otherwise willing customers are unable to interact with HMRC digitally due to not having the required identification documents to access the Government Gateway. This is an issue that we know HMRC are aware of and has been raised on many occasions by stakeholders. Nevertheless, the point bears repeating and will continue to hinder progress in successfully maximising the use of digital solutions amongst taxpayers.
- 3.2.2. If the proposed introduction of 'One Login for Government' is likely to improve access to HMRC services significantly, then this may go some way to increase take up of digital services. However, it could be argued that a significant push to 'digital by default' is premature if an easier means of accessing digital options is not yet introduced and bedded in.
- 3.2.3. A further issue we perceive as a potential barrier to accessing and successfully using HMRC's digital services is the fact that some people's only access to the internet may be via a smartphone. We wonder if HMRC has any data available as to what proportion of the population falls within this category.

¹⁰ Failure to settle a liability under a P800 can lead to a taxpayer being brought into Self Assessment. If the taxpayer is unaware that they are required to submit a Self Assessment tax return (due to continued communications being delivered digitally but not read), then the problem can escalate, leading to late filing penalties in addition to the initial P800 debt.

3.2.4. Whilst we appreciate that digital services are designed with smartphone users in mind, in particular the HMRC app, this reliance by some taxpayers on mobile-only internet access does nevertheless throw up certain potential concerns:

- The ability to perform a relatively complex and important task such as a tax return on a small screen such as a smartphone, especially when needing to cross refer to other online documentation, may be daunting/frustrating/almost impossible for some taxpayers.
- Taxpayers who rely solely on mobile data for their internet access may be limited by their monthly data allowance. Opting to use free public Wi-Fi is unlikely to be a suitable option for such taxpayers to deal with their tax affairs online, given the lack of security associated with public Wi-Fi connections. It has also been recently reported that up to one million people cancelled their broadband in the last year due to the high cost of living, according to a survey undertaken by Citizens Advice.¹¹

3.3. ***Question 2: How would you like HMRC to provide support and guidance to assist digitally able taxpayers with accessing digital versions of the forms above?***

3.3.1. With the push to 'digital by default' for most forms, it is necessary to offer increased support to taxpayers to ensure they can complete digital forms with confidence and seek reassurance where necessary. Such support needs to start with ensuring that it is very clear to taxpayers whether they will be receiving notifications digitally and, if so, how they will receive such notifications. We would suggest the following methods of support to taxpayers:

- **Webchat functionality should be available at all possible steps of the online form-filling process.** Ideally such webchat will connect to a live adviser, not simply to a chatbot.
- **Guidance within the forms should be improved.** For instance, links to appropriate detailed guidance should always be provided. Some online HMRC tools do not present links to supporting guidance and we feel this can be a weakness to the effectiveness of such tools.¹² Furthermore, the guidance to which the form provides links should, as far as possible, meet the standards of 'Good Guidance' as set out in LITRG's recent report.¹³

3.3.2. A further way that HMRC could provide support to taxpayers would be to incorporate a sensitive and understanding approach to inadvertent errors that may arise where a taxpayer interacts digitally.

¹¹ <https://www.bbc.co.uk/news/technology-65622403>

¹² An example being the Inheritance Tax checker tool. Some high level information is provided within the tool, but there are no links for further more in depth guidance: <https://www.tax.service.gov.uk/guidance/check-inheritance-tax-due/date-of-death>

¹³ See LITRG report 'Good Guidance': <https://www.litrg.org.uk/latest-news/reports/230404-good-guidance-%E2%80%93-importance-effective-guidance-unrepresented-taxpayers>

We envisage that taxpayer uncertainty or 'fear of getting it wrong' could be a barrier to digital interaction.

3.4. ***Question 3: What would be your preferred options for the digitally excluded to access non-digital services for the forms above?***

- 3.4.1. There must be continued access to essential forms via GOV.UK, enabling taxpayers to download and complete forms on paper if they do not have online access or the digital capability/confidence to complete such forms online. This will allow those supporting taxpayers, such as voluntary sector advisers, to download the forms.
- 3.4.2. Ideally, **forms should not be hidden behind the Government Gateway (or equivalent verification) without good reason**, as clearly, this creates a direct barrier to digitally excluded taxpayers, or those who are unable to pass the necessary verification requirements. It can occasionally be challenging for such taxpayers to find out what the non-digital journey is for a given process.
- 3.4.3. It is important to bear in mind that some digitally excluded taxpayers may choose to rely on friends and family to help them access the internet and find the necessary forms. Therefore, in these cases, needing to 'log in' to access the required information or forms will hinder their progress in being able to meet their obligations. There is also a concern that this could lead to certain taxpayers sharing their sign in credentials with friends or family who are trying to help, which clearly is not a desired outcome.
- 3.4.4. **A dedicated telephone order line for paper forms should be available for customers who are unable to access forms via GOV.UK** (i.e. those who are not able/comfortable or simply do not wish to ask friends or family for assistance), like that available for those requiring a paper SA100.¹⁴ This should be a separately staffed helpline that will ensure taxpayers can bypass the extensive waiting times on the usual helplines.
- 3.4.5. This 'touch point' of contact with certain customers may bring additional benefits in terms of having a deeper understanding of why certain taxpayers are not willing or able to interact with HMRC digitally. This could be a useful method of data collection for HMRC and perhaps enable the collection of more useful data around those who are still using paper forms.
- 3.5. ***Question 4: How can HMRC encourage more PAYE taxpayers to open digital tax accounts to help automate the repayment process?***
- 3.5.1. The focus here must be on making the process easy. Clearly, as already mentioned, Government Gateway access should be addressed/improved to ensure that as many taxpayers who are willing and capable of opening a digital tax account are able to do so.

¹⁴ Self assessment order line: <https://www.gov.uk/government/organisations/hm-revenue-customs/contact/self-assessment-forms-ordering>

- 3.5.2. A simplified process to open a digital tax account must still be robust, secure and must not play into the hands of scammers. We appreciate this is a difficult balance to achieve.
- 3.5.3. We note that the discussion document mentions that HMRC intend to alter their approach to repayments, in an effort to move away from payable orders. We think this is a logical step, particularly given the rapid closing of bank branches, which can make the paying in of payable orders difficult for some customers.
- 3.5.4. That is not to say that issuing a payable order is not still appropriate in some cases (for instance, migrants who have left the UK), and as such, it is important that HMRC have up-to-date address details for taxpayers to ensure that payable orders reach people. Having accurate address details for taxpayers will have further synergies with other essential postal communications, such as debt management. The issue of up-to-date addresses for taxpayers is discussed further in paragraph 4.2.13.
- 3.5.5. The discussion document notes (at paragraph 2.24) that there may be some consideration of PAYE overpayments being repaid into the taxpayer's 'salary account'. We are unclear precisely what is meant by this, but assume this could mean that repayments are made via the taxpayer's employer/pension provider. While we agree that this could be an effective method of automation, it strikes us that this may be very problematic to achieve. If this is a desired method, then this would need to be consulted on, in conjunction with employers, payroll representative bodies and taxpayers themselves/other stakeholders.
- 3.5.6. The suggestion of dealing with tax refunds via a mobile banking app does sound an interesting proposition, but we would like HMRC to provide more information on the process in order to comment on it further.
- 3.5.7. It is our view that **HMRC should focus efforts on making taxpayers aware that creating a digital tax account is the quickest and easiest method of receiving their tax refund.** A targeted campaign aimed at taxpayers who are due refunds but do not currently have a digital tax account, in conjunction with a simplified process, would seem a suitable approach. The aim should be to ensure taxpayers see their digital tax account as a standard method of understanding and dealing with their tax affairs, and they should be encouraged to set this up at the very earliest stage. For example, when a person gets their first job and completes a starter checklist, could this be a useful touch point to let the taxpayer know about the benefits of having a digital tax account. Clearly, the benefit to taxpayers will be more wide reaching than simply claiming refunds. We will be happy to provide commentary and feedback on any improvements that HMRC develop in this space.
- 3.5.8. Finally, we are aware that people sometimes sign-up for an account and then do not use it for some time and later have difficulty logging back in (for example, because they have lost their details, changed mobile phone or for some other reason). It is important that there is clear guidance on what to do in these situations to make it as easy as possible for people to access them again.
- 3.6. ***Question 5: What safeguards should be in place for any new data HMRC collects?***
- 3.6.1. We agree that safeguarding should be of paramount importance when collecting taxpayer data – this is essential to ensure that HMRC are seen to be a trusted and modern tax administration.

3.6.2. **Taxpayers must be able to access the data held by HMRC and must have the ability to change the data if it is inaccurate.** We also would suggest that HMRC must not be able to change any data held without the taxpayer knowing where the new data has come from or without the taxpayer having a route to challenge the data if it is not correct. Not only is this important to ensure the data is accurate, but it is also necessary to alert the taxpayer to any potential identify fraud. Such systems seem to be standard practice in wider digital transactions and would therefore be similarly expected of HMRC. For example, when logging into an account from a new device, an alert might go out to the individual's mobile and/or email address, asking 'was this you?', with similar notifications when a password or other sensitive account data is changed.

4. Pay As You Earn (PAYE)

4.1. *General comments*

4.1.1. As working patterns have changed, existing PAYE processes work less well for a growing number of taxpayers. There are often significant costs for individual taxpayers when they have to telephone HMRC on numerous occasions to try to resolve PAYE issues. **We would therefore recommend that, within their digital focus in relation to PAYE, HMRC give priority to ensuring that there are digital routes to allow customers to self-serve where appropriate.**

4.1.2. There can be frustration for taxpayers when they try to amend data, and HMRC systems reverse the change because there is a data clash between the information provided by the taxpayer and a third party (such as a bank or employer). There needs to be a clear route for taxpayers to follow when this happens, so that they do not end up stuck in a loop, unable to correct their own tax information. **We recommend that there should be a clear method of challenging pre-populated information for taxpayers, so that they understand what the position is – whether their challenge and new information has been accepted or not, and if not why not.**

4.2. ***Question 6: What specific processes or data points could be simplified to speed up information flow between employers, employees and HMRC when employees have a change of circumstance, while maintaining quality of data and keeping information secure?***

4.2.1. There are a number of areas within the PAYE system where improvements could be made. We make a number of recommendations below in respect of processes and pain points that particularly affect unrepresented taxpayers.

4.2.2. Pensions flexibility – when pensioners withdraw money under the pensions flexibility rules, often an emergency tax code is applied, resulting in an over-deduction of tax.¹⁵ Although it is possible to apply for an in-year refund, the process is complex it is not always clear which form to use. Otherwise, affected pensioners either have to apply for a refund of tax after the year end or wait for HMRC to reconcile their tax records and issue a repayment. The current system means that pensioners may suffer cashflow problems and generates a significant number of tax refund claims that HMRC have to process. **We recommend the exploration of how data and digital systems can**

¹⁵ <https://www.bbc.co.uk/news/business-65398736>

be used to ensure that more appropriate PAYE codes are applied to flexible pension withdrawals.

This would help to reduce the cashflow problem for pensioners and reduce the number of refund claims HMRC have to process and the accompanying customer contact that this generates.

- 4.2.3. Taxable welfare benefits – benefits such as Carer's Allowance, new style Employment and Support Allowance, Jobseekers' Allowance and the state pension do not fit into the standard PAYE structure. The Department for Work and Pensions (DWP) is not obliged to apply a tax code to these benefits even though they are taxable. This creates complexity for some recipients, where their total taxable income exceeds the Personal Allowance, but it is not possible for all the tax due to be collected through PAYE. This means that some people are forced into Self Assessment in order to allow HMRC to collect the tax that is due, but otherwise their tax affairs are quite simple.¹⁶ **We recommend that there is an overhaul such that the DWP has to apply PAYE to all taxable benefits.**¹⁷ This would reduce the numbers filing Self Assessment tax returns, and would likely also mean a reduction in customer contact. At the very least, HMRC should work with DWP to ensure that they have the information they need to accurately code out taxable benefits in real time. This may involve new data flows, such as for Carer's Allowance.
- 4.2.4. P45 and student loans – the P45 indicates to a new employer whether they need to make deductions in respect of student loan repayments. However, there are a number of different student loan plan types, and the P45 does not provide this level of detail, meaning that many employers follow an initial assumption that plan 1 is in point. This can lead to the employer using the wrong threshold and making incorrect deductions in respect of the employee. **We recommend that changes are made to the P45 format, such that it is possible for the new employer to identify which student loan plan is in point.**
- 4.2.5. Dynamic coding and irregular income – HMRC systems use RTI data to automatically adjust PAYE tax codes for employees during the tax year. The aim is to reduce the number of over- and under-payments of income tax. However, the system does not distinguish between regular payments of salary and irregular bonuses. This can lead to an overestimate of total employment income for the year – this results in an incorrect PAYE code and an overpayment of tax. This leads to the need for a tax refund claim by the employee and / or a reconciliation resulting in a refund by HMRC. It is possible for an affected employee to update their estimated income, using their Personal Tax Account or by telephoning HMRC. However, this relies on the taxpayer checking their updated PAYE code and taking action, and it is not clear that when updating your estimated income your tax code may change. We also have concerns that if a taxpayer amends the PAYE code following a dynamic coding adjustment, HMRC then simply readjust the PAYE code. **We recommend that HMRC explore methods of improving RTI data such that it is possible to identify irregular payments for which the**

¹⁶ We recognise the Simple Assessment is intended to provide part of the solution here – for example, where the state pension exceeds the personal allowance – and we recommend that this is rolled out more widely (see paragraph 6.4.3).

¹⁷ See page 23, A Better Deal for the Low Income Taxpayer (2020) – <https://www.litrg.org.uk/latest-news/reports/201204-better-deal-low-income-taxpayer>

PAYE code should not be adjusted. There should also be a clear route for taxpayers to challenge dynamic coding adjustments to avoid a cycle of repetitive changes by the taxpayer and HMRC.

- 4.2.6. PAYE coding notices – significant improvements have been made to the guidance for PAYE coding notices and the notices themselves over the past few years. Nevertheless, it is often difficult for the taxpayer to understand their PAYE codes and the PAYE coding notice, particularly where they have multiple sources of PAYE income. **We have previously recommended that using the full number for net allowances would help to make PAYE coding notices easier to understand.¹⁸ We recommend that HMRC develop a visual representation of a taxpayer's sources of PAYE income and the tax code that is in operation against each source of income in the Personal Tax Account / Single Customer Account.** This would make it easier for taxpayers to spot problems with their PAYE codes, for example, if their Personal Allowance has been allocated incorrectly. **HMRC should also give consideration to other possible means of communicating to taxpayers how their PAYE income is being taxed** – for example, a communication setting out the information HMRC have, the information that has been used by HMRC to work out the tax code, and asking if the taxpayer has any other income or expenses that might affect the calculation of their tax.
- 4.2.7. Starter checklists and PAYE coding – the Starter Checklist does not give the employee the opportunity to say that their new job is not their only job, but is their higher paid (main) job, so they would like to opt to have their Personal Allowance allocated against it rather than the existing job. If you have an ongoing employment, you generally have to tick Box C on the Starter Checklist. This results in a BR code, meaning the employee will pay income tax at a flat rate of 20% on the income from their main employment. The only option is for the employee to then telephone HMRC and ask them to reallocate the Personal Allowance. This problem, which drives telephone contact with HMRC, is only likely to grow assuming that more people might find themselves with multiple employments and therefore be in a situation where they may need to reallocate their Personal Allowance. This is the root cause of many PAYE over- or underpayments. **We recommend that HMRC develop functionality allowing the employee to request the reallocation of their Personal Allowance through the Personal Tax Account / Single Customer Account.**
- 4.2.8. Reporting of changes to PAYE code in Personal Tax Account – it is, in theory, possible to use the Personal Tax Account to advise HMRC of changes that affect your PAYE code.¹⁹ Currently, this can be rather troublesome. This is in part because the wording is rather confusing and in part because it is not possible to tell immediately whether you have been successful and what effect the change has had on the PAYE code. As previously brought to the attention of the Individual Stakeholder Forum, the journey to get to the part of the Personal Tax Account where you can amend the PAYE code is unclear. This is particularly the case when trying to make a claim for tax relief through the PAYE

¹⁸ Page 14, A Better Deal for the Low Income Taxpayer (2020) – <https://www.litrg.org.uk/latest-news/reports/201204-better-deal-low-income-taxpayer>

¹⁹ It would be useful if HMRC might publish statistics of how many taxpayers use the Personal Tax Account to notify HMRC of such a change. This might justify investment of resource to improve the service, while the Single Customer Account is in development.

code. The individual must use the 'Check your tax-free amount' link to access the facility to 'Add a missing allowance or tax relief'. It is also unclear how this facility interacts or fits with the P87 process. A taxpayer might be unsure which approach they need to use. **We recommend that HMRC develop guidance to accompany this facility and ensure the location of the facility and journey to reach it are intuitive and clear.**

- 4.2.9. RTI data use – we are aware of an issue for monthly payrolls where an employee leaves part-way through a pay period, but the employer does not notify them as being a leaver until the next full payment submission (FPS) – in line with the rules. If they start a new employment in the meantime, HMRC systems still show them as having a live employment – this means HMRC systems overwrite the correct PAYE code with a BR code. A separate issue is that some individuals with multiple employments can receive too much Personal Allowance in a tax year – this is often because they have incorrectly ticked Box A or B on the Starter Checklist when taking on a new employment, meaning that they are given a PAYE code of 1257L for more than one employment. This generally results in a significant underpayment of income tax during the course of the tax year, potentially causing affected employees severe financial hardship once HMRC have reconciled their tax position and issued a large and unexpected tax bill. These problems suggest that use of RTI data is patchy and inconsistent, and that it is often used incorrectly. **We recommend that there should be a process for checking new starter PAYE codes against existing RTI data. All HMRC operational staff should receive training to ensure that they fully understand it, and follow it.**
- 4.2.10. **The Starter Checklist should perhaps be made mandatory in circumstances where the employee does not have a P45.** In many instances, employees starting new jobs do not have a P45 and do not provide a Starter Checklist – the employer does not chase for it either. Making it mandatory for the employer to collect starter information might help ensure that employees do not end up with multiple Personal Allowances or no Personal Allowance at all in the PAYE codes.
- 4.2.11. Pensions under net pay arrangements – as announced in the Spring Budget 2023, new section 193A is being introduced into the Finance Act 2004.²⁰ This measure places a duty on HMRC to make top-up payments directly to eligible individuals – these will be individuals who save into an occupational pension under net pay arrangements, but whose total taxable income is below the Personal Allowance. This measure is due to come into force for the tax year 2024/25, and payments are to be made as soon as possible after the end of the tax year in which the pension contribution is paid. HMRC should be capable of identifying affected individuals. It is then a case of contacting them and asking them for their bank details to enable HMRC to make the payments. **HMRC should ensure that the system and process to put this policy into operation are as efficient as possible, and that it draws on up-to-date sources of data.**
- 4.2.12. In-year coding adjustments – **we recommend that HMRC always should provide clear and full explanations to the taxpayer of in-year coding adjustments.** The guidance notes are not always sufficient. If the taxpayer has submitted a Self Assessment tax return that has triggered the

²⁰ <https://www.gov.uk/government/publications/pensions-relief-relating-to-net-pay-arrangements/relief-relating-to-net-pay-arrangements>

adjustment, this explanation should accompany the notification. Likewise, if the information that has triggered the adjustment has come from a third party source, that should be explained to the taxpayer. Large, unexplained adjustments lead to customer confusion and drive customer contact over HMRC telephone lines.

- 4.2.13. Taxpayer addresses – HMRC's information on taxpayer addresses is not always up-to-date or complete. We understand that address data is stored on different systems and in different formats depending on the source of the data and the recipient part of HMRC. This has been demonstrated by problems in accurately and comprehensively identifying Scottish taxpayers when powers over the Scottish rate of income tax were devolved (2016/17). **We recommend that HMRC standardise the format in which they store taxpayer addresses.** A process is needed to help ensure that address data is up-to-date – considerations can include whether there is a source for which such data is mandatory that could be legitimately shared with HMRC or whether there should be some form of mandate. For example, employee address data might be made mandatory via RTI, and HMRC might cross-check this information against their own records. In case of discrepancy, the taxpayer should be invited to check their address held with HMRC is correct (in case the RTI data itself is wrong).
- 4.2.14. Data about changes of circumstances – currently HMRC only accept certain information in relation to employment and changes of circumstances from employers; similarly, employers can only change PAYE codes when notified by HMRC. It might be worth exploring whether information could be accepted from other sources, in particular the employee, in certain circumstances. If this were the case, HMRC would have to carry out reasonableness checks and ensure that duplicate records are not created, for example.
- 4.3. **Question 7: In what ways could advances in Information Technology allow for an alternative to the tax code or more real time interaction between employer, employee and HMRC to ensure that tax and employee NICs deductions keep pace with changes as efficiently as possible?**
- 4.3.1. The consultation document notes at paragraph 1.10 that there are some elements of the PAYE regime where taxpayers currently make greater use of non-digital channels. Examples are given of PAYE coding notices and repayments.
- 4.3.2. In the case of PAYE coding notices, this could be the result of a number of factors including:
- The complexity of PAYE coding notices meaning unrepresented taxpayers find it difficult to self-serve using digital channels – it is better to speak to an HMRC officer.
 - There are some PAYE coding notice issues that (it appears) can only be resolved by telephoning HMRC, such as requesting that the Personal Allowance is reallocated against a different source of PAYE income or ensuring that benefits in kind relating to a previous employment are removed from the new PAYE code.
- 4.3.3. In the case of repayments, this could in large part be due to the fact that many taxpayers are targeted by high volume repayment agents (HVRAs) and submit their repayment claim forms with their assistance. These HVRAs often submit paper forms, such as the paper P87 on behalf of their

customers. The online versions of the repayment forms R40 and P87 are behind the Government Gateway, so it is not possible to use the online version if you use an agent.

- 4.3.4. HMRC make use of dynamic coding in-year and use a one-off event / receipt of income / reduction in income to change the PAYE code. There is often repeated changing of a code by the taxpayer and HMRC due to clashes in the data possessed by each party.
- 4.3.5. In relation to the Single Customer Account, we think that the initial focus as regards PAYE coding notices should be on ensuring that issues that it is not currently possible to resolve online (noted above) are included. For example, it should be possible to request a reallocation of the Personal Allowance against the most appropriate PAYE source of income through the Single Customer Account.
- 4.3.6. The Single Customer Account will be key to encourage greater engagement and real time interaction. The use of visual aids might make it easier to explain issues and processes to taxpayers and encourage engagement. Additional functionality in the HMRC app might also encourage greater engagement from digitally able taxpayers.
- 4.3.7. In relation to repayments, HMRC need to do more to raise awareness among taxpayers of the fact that they might be eligible to claim a tax refund and what refunds they can claim. They should make more use of the internet and social media to do this. HMRC also need to do more to make it easier for customers to self-serve, whether online or on paper, and provide them with clear guidance to help them be confident to do so. They also need to automate tax refunds as far as possible – and do this in a timely manner, if this is to result in reduced customer contact.
- 4.3.8. We understand that in thinking about possible alternatives to the tax code, HMRC have certain principles that any proposal must match, including that it must be suitable for the majority of PAYE taxpayers. We think that it is important that in developing any alternatives, HMRC conduct research with PAYE taxpayers to establish what would work well for them.
- 4.3.9. In terms of meeting the principle of being suitable for the majority of PAYE taxpayers, we note that, in part because of PAYE, current understanding of and engagement with the tax system is not particularly high. Therefore, if a solution required more active engagement of PAYE taxpayers (without increasing telephone demand on HMRC), it would be essential to develop a program of taxpayer education and ensure clear guidance were available. In such a case, HMRC would still have to play a key role – carrying out reasonableness checks and also ensuring that those who do not want to engage or find it difficult to do so are not left behind.
- 4.3.10. The question posed also raises whether existing processes might be entirely rethought, taking advantage of advances in Information Technology. Two examples of this might include: employers processing tax relief for employment expenses through the payroll, and for HMRC to calculate in real-time the amount of tax which should be deducted from an employee's pay (based on all information held on that taxpayer at that point in time), rather than issuing a tax code for the employer to use to calculate the tax. We would be very happy to explore these options with HMRC in more detail if required.

4.3.11. One final point in relation to any PAYE changes, where they affect tax codes and therefore net pay, is that DWP use RTI data to get earnings data in order to calculate universal credit awards. It is therefore important that HMRC are aware of this potential interaction and speak to DWP colleagues at appropriate points.

5. Income Tax Self Assessment (ITSA)²¹

5.1. **Question 8: Would you support a change to require new ITSA registrations to be made online, with a digital by default approach to subsequent notices to file, and a requirement for annual returns to be delivered digitally?**

5.1.1. General comments

What is 'registration'?

5.1.2. We begin our comments in this section by observing a mismatch between the language and processes referred to by HMRC and the obligations which a taxpayer has under sections 7 and 8 of the Taxes Management Act (TMA) 1970.²² We expand on this further in our submission to HMRC's call for evidence on *Income Tax Self Assessment registration for the self-employed and landlords*, paragraphs 4.1 onwards (these points are relevant to all taxpayers who interact with the Self Assessment system, not just those in receipt of trading or property income).²³ This mismatch is problematic because it demonstrates that HMRC's thinking on this topic is disjointed from the law. As a general principle, this should be avoided.

5.1.3. However, given the broad scope of the Tax Administration Framework Review we understand that the legislative structure of sections 7 and 8 TMA 1970 are also being considered. Thus, when this discussion document refers to 'requirements', it is assumed that HMRC are implying a change in the law to make this a legal obligation on the taxpayer – even if currently HMRC may routinely refer to a 'requirement' which is not in fact a legal requirement at all. **HMRC shouldn't 'require' a taxpayer to do things beyond what the law itself requires.**

5.1.4. One key example is where an individual has no obligation to notify chargeability under section 7 TMA 1970 and they have not been issued with a tax return to complete under section 8 TMA 1970, yet because they may have trading income in excess of the trading allowance, or total taxable

²¹ Owing to time restraints we have restricted our comments in this section to cases falling outside the parameters for Making Tax Digital for ITSA.

²² Section 7 refers to an individual's obligation to notify HMRC of his or her liability to tax in certain circumstances. Section 8 refers to an individual's obligation to file a tax return with HMRC (in response to a notice under that section). The two obligations are legally distinct and are associated with entirely separate penalty regimes.

²³ <https://www.litrg.org.uk/latest-news/submissions/220404-income-tax-self-assessment-registration-self-employed-and-landlords>

income in excess of £100,000,²⁴ in HMRC's eyes they are 'required' to file a Self Assessment tax return "to provide a mechanism to report income, pay tax and manage complex affairs where HMRC need more information".²⁵

- 5.1.5. In our comments below, we interpret the concept of 'registration' under TMA 1970 as it stands currently to mean any of the possible mechanisms by which a taxpayer will satisfy an obligation under section 7 TMA 1970, or otherwise that they notify HMRC they meet HMRC's ITSA criteria (even if no section 7 obligation exists), in response to which HMRC will create a Unique Taxpayer Reference (if one does not already exist) and issue a notice to file a Self Assessment tax return under section 8. The taxpayer (or non-taxpayer, as the case may be) usually achieves this registration by one of the methods set out on GOV.UK,²⁶ with a suite of different options depending on whether or not the taxpayer is self-employed, or a partner in a partnership.
- 5.1.6. **Our first observation is that trying to understand what 'registration' means in legislative terms is actually quite complex. We recommend this is addressed in line with HMRC's simplification agenda.** For example, a taxpayer who might have previously filed Self Assessment tax returns many years ago (and therefore has already been issued with a UTR) may consider that they have already 'registered' for Self Assessment and they have no obligation to do anything further if they need to file a Self Assessment tax return in a later year. This would be a mistake under the current law: a section 7 obligation may exist if a section 8 notice has not been issued, notwithstanding the fact that a UTR already exists for that taxpayer. The taxpayer would then be exposed to late notification penalties if any tax owed for that year is not paid by the due date. In this case, GOV.UK refers to the concept of 'registering again' – but this is conceptually a little odd.
- 5.1.7. There is also a mismatch between what section 7 technically requires and what HMRC ask of a taxpayer in order to fulfil that obligation. Section 7(1)(a) says that a person who falls within that subsection must "give notice to an officer of the Board that he is [chargeable to income tax or capital gains tax for any year of assessment]". Section 7 is not prescriptive about how that notice may be given, so a taxpayer might, for example, fulfil their legal obligation by telephoning HMRC or writing a letter.
- 5.1.8. This makes sense: HMRC do not want taxpayers to file a Self Assessment tax return unnecessarily if the tax liability can be determined and collected some other way, such as by coding out or Simple Assessment. It can be useful for HMRC to have this flexibility. For example, the question of whether a liability can be coded out might require a conversation between the taxpayer and HMRC as regards whether they expect sufficient PAYE income in the future, or whether an income source is fixed or

²⁴ Increasing to £150,000 from 2023/24, per Agent Update 108

(<https://www.gov.uk/government/publications/agent-update-issue-108/issue-108-of-agent-update>)

²⁵ <https://www.gov.uk/government/consultations/simplifying-and-modernising-hmrcs-income-tax-services-through-the-tax-administration-framework/discussion-document-simplifying-and-modernising-hmrcs-income-tax-services-through-the-tax-administration-framework#annex-itsa-criteria-table>

²⁶ <https://www.gov.uk/register-for-self-assessment>

variable. A computerised system which automatically issues tax returns in this situation would not be of benefit to HMRC or the taxpayer. **The flexibility for HMRC not to issue a return should be retained in any legislative reform, and there should be clear guidance on what taxpayers can expect as regards how a liability may be collected, depending on the situation.**

- 5.1.9. Self-employed individuals face an additional 'registration' requirement in relation to Class 2 National Insurance contributions. Section 11A of the Social Security Contributions and Benefits Act 1992 treats Class 2 as income tax for various parts of the Taxes Management Act 1970, so the registration processes should be aligned. Indeed, the registration usually occurs simultaneously when a person who starts a new trade completes form CWF1 (or its online equivalent).
- 5.1.10. However, Class 2 registration can be problematic for two main reasons: first, the HMRC systems which track liability to Class 2 NIC are separate from the Self Assessment systems. This means that someone who already files Self Assessment tax returns must make a counter-intuitive, non-statutory and standalone registration for Class 2 NIC (usually by telephone) in order to avoid a self-assessed liability to Class 2 NIC being automatically removed when the tax return is submitted. Because the concept of 'registration' is somewhat nebulous, a taxpayer may easily fall into this trap. Indeed, **there is no prompt or guidance on the main GOV.UK page about registering for Self Assessment to cover the situation where a person starts a new trade and is already filing Self Assessment tax returns for some other reason.**²⁷ **We recommend that the process for such individuals is reviewed and improved.**
- 5.1.11. Second, the registration requires the individual to assert their 'start date' for self-employment. This can be difficult to determine – especially when someone slowly transitions from making money from a hobby into commencing a trade. The confusion is compounded for those on low incomes if, in the early years of trading, the income is exempt from income tax under the trading allowance provisions. If a person decides they have commenced trading on 1 February and has gross trading income in Year 1 of less than the trading allowance, but they expect gross income of more than the trading allowance in Year 2, should they declare their start date as 1 February of Year 1 or 6 April of Year 2? Should they provide the same date for tax and Class 2 NIC purposes, or different dates? GOV.UK provides no answers. **We recommend that the guidance on registration is reviewed from the perspective of individuals commencing a new trade with trading income for initial years within the trading allowance.**²⁸
- 5.1.12. Construction Industry Scheme (CIS) workers face a third registration requirement when starting CIS work. Again, this is normally achieved alongside registrations for Self Assessment and Class 2 NIC if a person has not filed a tax return before, but depending on the person's circumstances then a standalone registration may be necessary. We understand that CIS registration is not in scope of this

²⁷ <https://www.gov.uk/register-for-self-assessment/self-employed>

²⁸ We understand that HMRC are carrying out a 2-year review of its guidance provision for small businesses, as part of which this point will be covered.

discussion document, but it is important to bear in mind the holistic picture that a person is likely to think of 'registering with HMRC' as one process.

- 5.1.13. **If 'registration' in any sense is to be made a legal requirement, online or otherwise, then it must first be well-defined what exactly is meant by the term.** This question goes beyond reform of HMRC's ITSA criteria, for that is simply a question of understanding *who* HMRC would want to be registered. It is unfortunate that the discussion document makes no attempt at defining registration, as we have done above (see paragraph 5.1.5).
- 5.1.14. **At least in the context of the current system of Self Assessment, we would not support a requirement for new ITSA registrations to be made online.** As the discussion document points out, most taxpayers would register online in any case. So HMRC's proposed changes should be considered from the perspective of all those who currently choose *not* to register online. Some of this group may register with HMRC by non-digital means even though they may be equally content to register digitally. For these taxpayers, a requirement for online registration is unlikely to cause any practical issue.
- 5.1.15. We are then left with the group of taxpayers who choose to register through non-digital means because they prefer to do so or they are unable (or struggle) to register digitally. For these taxpayers, the solution is to make digital methods of registration more attractive and accessible (in particular, making it easier for taxpayers who find it difficult or impossible to satisfy the Government Gateway identification requirements) rather than making the non-digital methods more inaccessible or simply unavailable. The latter approach would be likely exacerbate the frustration experienced by individuals who are unable, or find it difficult, to transact digitally with HMRC.
- 5.1.16. There may be psychological reasons which may help explain why some taxpayers prefer to register on paper – for example, filling in a paper form might feel more 'official' and commensurate with compliance of a legal obligation. It may be beneficial, therefore, to raise awareness that registering online has equivalent legal significance. It may also be the case that if online access is only via a smartphone, people find it difficult and off-putting to complete a detailed form such as the tax return. Taxpayers may also find it easier to deal with HMRC on paper for record-keeping purposes.
- 5.1.17. The discussion document states that before implementing any changes, HMRC would ensure that there was "a high level of taxpayer satisfaction with the digital registration service, and alternative services for the digitally excluded and for those groups to whom HMRC does not provide a service to file online".²⁹ We are pleased to read this commitment, but we would point out that 'high user satisfaction' does not necessarily equate to correct or accurate completion of a particular task – i.e. in the case of registration for ITSA, it does not necessarily mean that the right people are registering, or that they are registering correctly (for example, for the correct tax year – see comments above regarding the start date of a new trade). We suggest that HMRC undertakes a post-implementation review on this point after any change to ensure that any changes do not lead to taxpayers registering for Self Assessment unnecessarily or incorrectly.

²⁹ Paragraph 4.5

- 5.1.18. In addition, **we would stress that the alternative services for the digitally excluded are given suitable prominence in the relevant guidance.**³⁰ As already discussed, 'hiding' the non-digital routes in an attempt to encourage digital interaction from the wider population simply makes the user journey more difficult and frustrating for the digitally excluded. If HMRC introduce a legal requirement to register for ITSA digitally, then it is unclear how the digitally excluded are expected to demonstrate their circumstances in order to be granted exemption from that legal requirement. Such an exemption would presumably need to be set out in law, perhaps along the same lines as the current digitally excluded exemption for Making Tax Digital for Income Tax Self Assessment.³¹
- 5.1.19. As mentioned at paragraph 3.1.8, we would also encourage HMRC to prioritise making an online journey possible for those who wish to transact digitally but cannot currently.

Digital by default notices to file

- 5.1.20. The second part of this proposal is that if a taxpayer registers online then HMRC will take a digital by default approach to subsequent notices to file. It is important to recognise that a notice to file is a legal document and, under current law, the fact it has been served creates a legal requirement on the individual to file that return. Importantly, that legal obligation exists even if the taxpayer does not in fact owe any tax for that year or meet HMRC's ITSA criteria (either of which might lead the taxpayer to think that they do not need to file a return) – and accordingly the taxpayer will face penalties if the tax return is not submitted by the statutory deadline.
- 5.1.21. A digital by default approach is one where the notice is served on the taxpayer digitally *even if they have not actively chosen to receive it digitally*. **It does not feel appropriate that such an important document is issued digitally without the taxpayer having asked for that to be the case:** the risk is that if the taxpayer has not actively chosen to receive this notice digitally then they may not be expecting it digitally. This might especially be the case if the taxpayer has received other communications from HMRC in the post prior to that point (such as confirmation of their UTR). Therefore, the email notification of the notice may be missed, or go to a person's spam inbox, or may be more easily forgotten – all of which may lead to penalties for non-compliance with that notice and ultimately more HMRC resource to resolve.
- 5.1.22. A physical notice issued in the post reduces these risks. If HMRC persist with a digital by default approach, the legal significance of a digital notice to file would need to be made extremely clear to the taxpayer, as should the option to opt out of digital notices to file if a taxpayer prefers it. We would advise against HMRC making the option to opt out difficult to find. An alternative and preferable solution might be, rather than to make notices to file digital by default, for HMRC to first explain the legal significance of a notice to file and then ask a mandatory question in the online

³⁰ See also our comments at paragraph 3.1.12 onwards regarding the definition of a digitally excluded taxpayer.

³¹ SI 2021/1076, reg 20

registration process about whether a taxpayer would prefer to receive them digitally or via the post (i.e. without any default either way).

- 5.1.23. Where digital notices to file are issued, **HMRC would need to carefully consider how they might be able to demonstrate that a notice has been properly and fairly served on a taxpayer** (as mentioned previously in paragraph 3.1.22). On this point, simply accessing the relevant screen in the Personal Tax Account, or opening an email, may be insufficient. It would be preferable to take advantage of the fact notices are served digitally and instead ask the taxpayer to actively confirm they have understood the contents of the notice and its legal significance. Taxpayers might also be asked to confirm that they agree and understand the notice, in a similar way to how consumers are asked to accept terms and conditions of services provided online. The relevant legal provisions concerned with whether or not a digital notice has been validly served may need updating.³²

Mandatory online filing of tax returns

- 5.1.24. The final part of the proposal is a further requirement for annual returns to be delivered digitally if a person has registered for ITSA digitally. While we agree with HMRC in their comment in paragraph 4.2 that if a particular taxpayer files their tax return online then they should be able to register digitally, it is not a particularly helpful observation because, of course, such an individual has already registered. The logic does not necessarily work the other way round: HMRC cannot assume that if a person is capable of completing a relatively simple form to *register* for Self Assessment, then they are necessarily capable of filing their Self Assessment tax return online.
- 5.1.25. There are a number of issues, many of which resonating with the themes discussed earlier. First, and most significantly, there is the relative complexity of the forms. Beyond the provision of personal details, the registration form simply asks for the reason for registration and the date it applies from. By contrast, the tax return itself is a much longer set of much more complex questions, with multiple different sections, some of which may require a huge amount work to understand the correct figures to return or whether or not to tick a particular box. Completion of the tax return online therefore requires a vastly greater digital capability which simply cannot be inferred from the fact that the taxpayer has demonstrated they can answer a few very simple questions about their circumstances.
- 5.1.26. Second, it is quite possible that the digital registration is done by someone other than the taxpayer, such as a friend or family member. This person may not be willing or able to assist the taxpayer in the completion of the return when the time comes.
- 5.1.27. Third, HMRC should recognise that digital capability can change over time – so even if someone is digitally capable at the point they register, they may no longer be by the time they come to submit

³² Regulation 9(1)(b) of the Income and Corporation Taxes (Electronic Communications) Regulations 2003 effectively states that authorised electronic communications (including a section 8 notice to file) are presumed to be delivered (unless the contrary is proved) simply if it recorded as such on HMRC's computer system. Although this is analogous to section 7 of the Interpretation Act 1978 (which also does not require any confirmation of receipt by the recipient), it may not be suitable for certain electronic communications in the longer term.

their tax return – which may be up to 22 months later. Digital capability may also change from tax year to tax year.

- 5.1.28. Fourth, a taxpayer may not have a suitable device for the completion of a tax return online, which in practice would usually require a laptop or desktop computer, or possibly a tablet, rather than a mobile phone. The registration may have been completed using a mobile phone, and the person may never have owned any other device capable of accessing the internet and on which they might feasibly complete their tax return. Or, they might have owned such a device when registering but no longer own it or it is no longer functioning by the time they need to complete a tax return.³³
- 5.1.29. More generally, it can be easier for taxpayers to have a better overall 'sense' of the return, and what they are 'returning' on it, when it is submitted on paper. The human brain can better comprehend technical and complex documents when they are on paper rather than on screen, because we can make spatial associations between the information and its position on a page, and the position of that page within the overall document. This helps us retain information, which in turn helps us process it.³⁴ The design of the paper return, with its use of colour and clear differentiation of different sections and supplementary pages, also assists with this comprehension. It follows that it is more difficult to review for overall correctness and completeness when a tax return is completed online, so there might be a *greater* likelihood of errors/omissions for some taxpayers. Although it is possible to review a PDF copy of the populated SA100 (and any associated supplementary pages) prior to submission, there are accessibility issues with PDF documents on smaller screens, and the taxpayer may not have the facility to print it (or at least not in colour).
- 5.1.30. There are also issues when filing a return using HMRC's portal which are avoided when filing on paper. When filing online, it is not very clear what exactly, legally speaking, is being submitted – is it the taxpayer's answers to the set of questions posed by the portal, or is it the automatic mapping of these answers to the questions on the SA100 form (and any supplementary pages)? The distinction is important because the questions asked by the portal do not match the questions on the SA100 exactly. You also cannot directly edit the SA100 which is submitted. Occasionally, it is difficult (or perhaps impossible) to engineer a 'tick' in a certain box because you cannot find out how to do so (boxes 2 and 3 on page TR6, regarding coding out underpayments, are examples). Finally, when filing online, taxpayers can still fall foul of failing to press 'submit' once they have completed the answers to all the questions.
- 5.1.31. For all these reasons, we believe that **the taxpayer's existing right to submit a paper return should be retained – regardless of the method of registration.** Indeed, making it a requirement for tax returns to be filed online if a taxpayer has registered online may even have the effect of *discouraging* online registrations – which is contrary to HMRC's aims.

³³ See also our earlier comments on digitally exclusion because of the lack of a suitable device.

³⁴ See <https://www.gov.uk/government/publications/govuk-content-principles-conventions-and-research-background/govuk-content-principles-conventions-and-research-background>

5.2. **Question 9: How much notice would taxpayers and agents need for this change, and how could HMRC best communicate it?**

- 5.2.1. As mentioned above, we would not support the proposals put forward in question 8. However, if they are to go ahead in some form, we would urge that taxpayers are given as much notice as possible – a minimum of two years.
- 5.2.2. Requiring new ITSA registrations to be made online could be communicated fairly straightforwardly on the relevant pages on GOV.UK. However, as mentioned above we would encourage HMRC to ensure that the non-digital alternative routes, including a clear explanation of the circumstances in which a taxpayer may be permitted to use them, are not 'hidden' in any way.
- 5.2.3. Please refer to our comments above at paragraph 5.1.20 onwards regarding communications on a digital by default notice to file.
- 5.2.4. A requirement for annual returns to be delivered digitally would be the most major change. If this is introduced, HMRC need to make it absolutely clear at the registration stage that making an online registration will oblige a taxpayer to make all subsequent tax return filings online, and that this can be avoided if the taxpayer considers they meet the relevant digital exclusion conditions and that they register instead by non-digital means.

6. **The ITSA criteria and opportunities for reform**

- 6.1. We set out our comments in this situation on the broad themes identified in the discussion document, rather than under separate question headings.

6.2. **Legislative alignment**

- 6.2.1. One of the main issues in connection with the current ITSA criteria is the lack of alignment with the legislation (specifically section 7 TMA). It is not satisfactory for HMRC to state that taxpayers 'need to file tax returns' in circumstances where the law places no obligation on an individual to either notify liability (if they fall outside section 7, but within the ITSA criteria) or to file a return (if they have not received a notice under section 8). This is contrary to GOV.UK's style guide, which suggests that the phrase 'need to' should be used (only) for legal requirements.³⁵ The discussion document itself seems similarly confused: paragraph 4.13 uses the word 'need', 4.15 says 'should', and 4.15 just says 'asked to'.
- 6.2.2. The inconsistent use of language in public guidance hinders the taxpayer's ability to properly understand how the law in sections 7 and 8 actually works, and accordingly risks taxpayers ending up in one of the following situations:
- Registering for ITSA and filing a tax return when they do not 'need' to (in a legal sense), meaning unnecessary burdens for the taxpayer and for HMRC in the preparation and processing of that

³⁵ <https://www.gov.uk/guidance/content-design/writing-for-gov-uk>

return;

- Not filing a tax return when a section 8 notice has been issued but they fall outside the ITSA criteria, leading to late submission penalties being charged which could be avoided. Those in this situation are encouraged not to file a tax return by HMRC's *Check if you need to send a Self Assessment tax return* tool (see paragraph 6.3.12). These taxpayers can ask HMRC to withdraw the notice to file on the grounds of not being within the ITSA criteria, which has the effect of automatically cancelling any late submission penalties which may have been charged, but this is not widely appreciated.

6.2.3. They also potentially fall into a trap whereby if a late return is submitted then the penalties are crystallised and can only be appealed if there is a valid reasonable excuse for the late submission. It is not clear whether HMRC will accept simply falling outside the ITSA criteria as a reasonable excuse of itself (see paragraph 6.7.4) – even if it were, the onus is still on the taxpayer to appeal the penalties on time and clearly set out the grounds of claim. Such an appeal would require an understanding of why penalties had been issued even though the tool might have told a taxpayer they didn't need to file a tax return – an understanding which is hindered by oversimplification of what it means to 'need to file a return'.

6.3. *Guidance*

6.3.1. Guidance is equally as important. Not only should this be accurate (and faithfully reflect the legal obligations placed on individuals by the law), but as HMRC rightly point out, it should be easy to find, easy to navigate and simple to understand. We discuss guidance in depth in our *Good guidance* report.³⁶ In the context of ITSA registration, see in particular page 36 on the property income reporting thresholds and page 50 on the *Check if you need to send a Self Assessment tax return* tool.

6.3.2. As we explain in the report, aside from being clear, guidance needs to be consistent and up-to-date. On the page which hosts the SA1 form, for example, there is still an out-of-date and incorrect reference to taxpayers who "have taxable foreign income of more than £300 a year".³⁷ The *Check if you need to send a Self Assessment tax return* tool refers to whether tax is owed on foreign income – yet there is no link to guidance on how to navigate double tax treaties or the remittance basis rules to work out whether that might be the case. HMRC's manuals refer to whether or not foreign income wholly consists of dividend income falling within the dividend allowance, but make no reference to the case where foreign income consists of savings income falling within the personal savings allowance. We understand anecdotally that HMRC advisers are themselves inconsistent, perhaps as a result of the above referenced page on GOV.UK, about whether small amounts of

³⁶ <https://www.litrg.org.uk/latest-news/reports/230404-good-guidance---importance-effective-guidance-unrepresented-taxpayers>

³⁷ <https://www.gov.uk/government/publications/self-assessment-register-for-self-assessment-and-get-a-tax-return-sa1>

foreign income (such as foreign savings income) can be coded out if there is a UK tax liability on that income.

- 6.3.3. In reforming taxpayer guidance in this area, we feel **HMRC's first priority should be ensuring that the *Check if you need to send a Self Assessment tax return* is aligned with a taxpayer's legal obligations.** Based on the existing sections 7 and 8 TMA, in order to address the issue of taxpayers falling outside the ITSA criteria potentially being misled, there should be a specific question which asks whether a notice to file has been issued. **If a section 8 notice has been issued, but the taxpayer falls outside the ITSA criteria, then the taxpayer should be advised clearly that (a) because they have received a notice to file, they have a legal obligation to file the return, but (b) because they fall outside the ITSA criteria, they can ask HMRC to withdraw that notice and they would then no longer need to file the return.** In addition, taxpayers should be advised clearly that if they are late in sending that return, the withdrawal of the notice will have effect to cancel any late submission penalties.
- 6.3.4. Individuals who fall within the ITSA criteria but who have not received a notice to file are currently advised 'You need to send a Self Assessment tax return'. **If that individual has an obligation to notify liability under section 7 TMA, then they should instead be told the ways in which they can satisfy that specific obligation, when they need to do it, and what happens if they don't.**
- 6.3.5. At paragraph 4.25 of the discussion document, HMRC mention as a possible opportunity for reform 'more transparency in guidance about the role each criterion plays in how HMRC administers the tax system'. The changes in the second bullet also aim to ensure that 'over time taxpayers collectively become more familiar with and understand better the purpose of the ITSA criteria'. While such transparency might be useful for those involved in tax policy, we do not think that taxpayers care so much about the role or purpose of each criterion – they are more concerned with the simple question of what they are required to do and how to do it.
- 6.3.6. In navigating the ITSA criteria themselves using the tool, **we would prefer greater clarity over what measure of 'income' should be used against the various thresholds.** In addition, some questions force selection of only one option when both might apply. For example, the question on property income states:

7. How much did you get from UK property or land?

To work this out, add up your total income from property or land and deduct any allowable expenses - for example, maintenance and repair costs.

- Less than £2,500
- £2,500 or more (or more than £10,000 before expenses)

- 6.3.7. It is not clear which answer you should select if you have, for example, £12,000 of gross income and £10,000 of deductible expenses. Intuitively, one might select the first radio button (you can only select one). The tool would then conclude that a tax return is not required, yet the ITSA criteria say

that such an individual should nevertheless file a return by virtue of the fact that gross income would be more than £10,000, notwithstanding the fact that net income may be less than £2,500. The question also fails to highlight the non-deductibility of mortgage interest (or capital repayments) in calculating the rental profit.

6.3.8. On the £10,000 threshold for savings and investments, the question states:

8. Did you get more than £10,000 from dividends or savings and investments?

Income from savings and investments includes:

- savings interest
- money from bare trusts
- interest in possession trusts

- Yes, I got more than £10,000 from savings and investments
- Yes, I got more than £10,000 from share dividends
- No

6.3.9. It is not clear from this question whether non-taxable interest, such as interest from ISAs, needs to be included in the £10,000 test. Taxpayers may also be confused about whether the income to be tested is net or gross, or whether gains from cryptoassets investments need to be included.

6.3.10. The following question is severely lacking in guidance to help taxpayers understand whether tax might be payable (or repayable, as the case may be):

9. Do you need to pay tax on any of the following?

- Income from a trust
- Income from outside the UK
- £2,500 or more in commission or cash in hand payments
- A payment or charge on a private pension
- A Self-Employment Income Support Scheme (SEISS) grant
- None of these

6.3.11. It also does not make sense here that taxpayers can only select one of the answers when more than one might be applicable.

6.3.12. **We would like to see greater transparency from HMRC on the extent to which taxpayers can rely on the output from this tool.** In particular, if the tool's conclusion is that a tax return is not 'needed'

(but a section 8 notice had been issued), would that form the basis of a reasonable excuse claim against late submission penalties for that return, if the reason for the delay was that the taxpayer had been told in clear, bold typeface 'You do not need to send a Self Assessment tax return'?

Check if you need to send a Self Assessment tax return

You do not need to send a Self Assessment tax return

Based on your answers, you do not need to send a return for 2022 to 2023.

You can still [send a return](#) to:

- prove you're self-employed, for example to claim Tax-Free Childcare or Maternity Allowance
- claim tax relief on work-related expenses above £2,500
- [voluntarily pay Class 2 National Insurance contributions](#) - you'll need enough contributions to claim some benefits and the State Pension

If HMRC has told you to send a return

You must tell HM Revenue and Customs (HMRC) that you're not sending a return. You may have to [pay a penalty](#) if you do not tell HMRC before the [Self Assessment deadline](#).

Contact HMRC:

- [online using HMRC's digital assistant](#)
- by [filing in an online form](#) - you'll need a Government Gateway account
- [by phone or post](#)

If you had untaxed income

You must tell HMRC if you had:

- more than £2,000 income from share dividends
- between £1,000 and £2,500 in any other untaxed income, such as commission or money from renting out a property

You do not need to send a return for this. You can either:

- [check your Income Tax](#) and go to 'Tell us about a change'
- [call HMRC](#)

6.3.13. As mentioned above, if taxpayers take one thing away from this conclusion page, it will be the phrase in the biggest and boldest font. It is quite possible that taxpayers may not read the section 'If HMRC has told you to send a return', or otherwise mistakenly conclude that it does not apply to them if they do not remember receiving a notice to file (perhaps nine months previously) or connect the fact that they had received that piece of paper in the post with the idea that HMRC have told that person to send a return.

6.3.14. **A further improvement to the tool would be a clear instruction to the taxpayer to print or otherwise save the output of the tool (along with the taxpayer inputs) so they have it in case of a later dispute.**

6.4. *IT systems and thresholds*

6.4.1. The reported issues of HMRC's IT systems and thresholds feel of lesser relative importance, though of course they are important issues in their own right. The thresholds within the ITSA criteria are sometimes linked to legislative provisions – for example, the £1,000 trading allowance or the £100,000 point at which the personal allowance is phased out (though in the latter case, we observe that it is not clear whether the £100,000 threshold is intended to refer to total taxable income or

adjusted net income). There is an argument for uprating of (and/or simplifying) the other thresholds (i.e. the £2,500 limit for coding out via PAYE, the £10,000 threshold for savings and investment income - including dividend income, and the reporting thresholds for property income).

- 6.4.2. On HMRC's IT systems, we agree that there are issues with the coding out of income because of estimates rolled forward from previous years and that these issues need to be addressed.
- 6.4.3. **We would like to see greater use of Simple Assessment in certain cases**, such as where PAYE taxpayers are liable to a high income child benefit charge equal to 100% of the child benefit received, or where coding out via PAYE is not practical or desired by the taxpayer. In the former case, the completion of a Self Assessment tax return feels especially pointless when the charge is coded out via PAYE anyway. Simple Assessment might also be used in some cases where the PAYE taxpayer who is liable to the high income child benefit charge has adjusted net income between £50,000 and £60,000.³⁸
- 6.4.4. In fact, taxpayers liable to the high income child benefit charge who have already paid that charge via an adjustment to their tax code do not seem to fall within HMRC's own policy objectives for categories of taxpayer who should be within Self Assessment. We also observe that, while someone liable to the charge has a statutory obligation to notify liability under section 7, HMRC do not necessarily need to issue a s8 notice to that taxpayer in order to manage that liability – though we understand they invariably do.
- 6.4.5. We agree with HMRC's suggestions under 'IT systems' (third bullet of paragraph 4.25). **In particular, we urge HMRC to explore alternative solutions for those who do not fall within the ITSA criteria but have 'other reasons' for being in SA, in order to avoid the burden of filling in a Self Assessment tax return.** In particular, low income sole traders wanting to maintain their National Insurance record (either voluntarily, or if they have profits between the Small Profits Threshold and Lower Profits Limit and are therefore treated as having paid Class 2 NIC) should be given an alternative to completing a full Self Assessment return. Alternatively, someone with relatively simple affairs (e.g. PAYE taxpayers liable to the high income child benefit charge, or a small amount of foreign savings income), or someone falling outside the ITSA criteria but wanting to record a self-employment or capital loss, should not need to face complicated questions in a Self Assessment tax return about matters such as pensions savings tax charges or tax avoidance schemes.
- 6.4.6. **One potential solution for these groups may lie in a revival of the 'short' tax return.** It appears from GOV.UK that while the short tax return still exists, you can only use it if HMRC ask you to, and furthermore it only exists in paper form.³⁹ Anyone filing online must therefore face the full gamut of questions which can daunt and perplex an unrepresented taxpayer with relatively simple affairs.

³⁸ In this situation, the Simple Assessment would need to be clear what action is required of the taxpayer in case of taxable income having been omitted from the calculation, or if there were any deductions from adjusted net income which had not been accounted for.

³⁹ <https://www.gov.uk/self-assessment-tax-return-forms>

Having a simpler version on the online form may also assist HMRC in encouraging taxpayers to file online.

6.5. *Awareness of the ITSA criteria*

- 6.5.1. One of the main issues not explicitly listed in the discussion document is taxpayer awareness of the ITSA criteria. While taxpayers commencing a new trade may naturally consider registering with HMRC as part of that process, other taxpayers do not always make the connection between a change of personal circumstances and potentially having to file a Self Assessment tax return as a result. This is especially true of PAYE taxpayers, who generally feel that because HMRC are aware of all of their income then there cannot be a need to file a tax return as well. In this respect, HMRC have had well-documented challenges about raising awareness of the high income child benefit charge, with many taxpayers having failed to notify their liability to it.
- 6.5.2. For taxpayers earning over £100,000 a year – while clearly not a concern for those we represent – we understand that HMRC would normally issue a section 8 notice automatically in response to RTI data which indicated earnings above this level. Raising awareness for this group may therefore not be a priority.
- 6.5.3. Someone with savings income around the £10,000 level is not prompted to think that they might need to check if they fall within the ITSA criteria. However, with HMRC receiving information on bank interest directly from banks, they might automatically issue a tax return to individuals where the data indicates savings income of at least this level.
- 6.5.4. A trickier issue, as we explain in our submission on ITSA registration for the self-employed and landlords,⁴⁰ is where taxpayers do not recognise that there is a potential tax consequence to an activity (e.g. those in receipt of 'hobby' income or income from certain online activities and social media, 'accidental landlords', and those in receipt of income from renting out part of their property or from other assets, such as their car)⁴¹. In this regard, HMRC should work with platforms to ensure that they are highlighting the potential tax consequences to the user of the various activities. Individuals who earn money directly without using any kind of platform will need to be targeted by more general awareness-raising and publicity.⁴²
- 6.5.5. **We would therefore like to see 'raising awareness' as an additional opportunity for reform.** Guidance can play this role to some degree,⁴³ but there are opportunities to raise awareness at various taxpayer touchpoints which should be exploited (for employees, this might be coding notices

⁴⁰ <https://www.litrg.org.uk/latest-news/submissions/220404-income-tax-self-assessment-registration-self-employed-and-landlords>

⁴¹ See paragraphs 4.3.15 et seq of our previous submission.

⁴² There is some guidance at <https://www.gov.uk/government/publications/selling-online-and-paying-taxes>, but this needs improvement. We have already highlighted our concerns regarding this page to HMRC.

⁴³ See page 11 of our *Good Guidance* report.

or P60 forms). In the context of the high income child benefit charge, we note HMRC already do this on the child benefit application form. This is positive, but only effective for the simplest of cases. Individuals may instead come to be affected by the charge by a change in personal circumstances (e.g. a change in income or relationship status), so raising awareness for this group is more challenging.

6.6. *'Unnecessary' filings*

- 6.6.1. In paragraph 4.22 of the discussion document, HMRC say they are keen to understand why taxpayers who do not meet the criteria exercise the right to send a tax return even though they don't have a liability. Of course, if a taxpayer has received a notice under section 8, then they have a legal obligation to file that return regardless of their circumstances. The question then becomes: why do these taxpayers file a tax return instead of asking HMRC to withdraw the notice to file?
- 6.6.2. The answer to that partly lies in a lack of awareness about the ability to get a notice withdrawn.⁴⁴ But also, taxpayers may file a tax return for a given year for reasons other than tax – for example, as proof of work history or for finance applications. Otherwise, whether or not a section 8 notice has been issued, taxpayers might feel like they wish to file a tax return simply in the name of transparency (to avoid any accusation from the State that they are hiding an income source), or to assert what they feel to be correct (in case the taxpayer does not trust third party reporting to HMRC), or perhaps it may be easier for a taxpayer to file a tax return on an annual basis rather than to ask for a notice to be withdrawn for years where the relevant income sources happen to be under a certain threshold.
- 6.6.3. In addition, some taxpayers may also file a tax return to ensure their PAYE deductions are accurate. The automatic reconciliation process can take some time, so if a taxpayer feels they are entitled to a refund then the filing of a tax return can mean they get this refund quicker.

6.7. *Legislative change*

- 6.7.1. Regarding potential legislative change, **we cautiously agree that codifying the ITSA criteria would be one option to achieve the alignment we are arguing for.** This would achieve greater certainty and simplicity, which are two of HMRC's stated objectives. We agree that secondary and tertiary legislation can be used to retain flexibility should HMRC wish to adjust the criteria in future.
- 6.7.2. **However, another option to achieve that alignment would be to simplify the ITSA criteria so that it matches the existing obligations under section 7 TMA.** This would mean that HMRC wouldn't be asking people to file tax returns when they do not have any (further) tax to pay via Self Assessment. We appreciate that HMRC currently consider certain taxpayers who do not owe any (further) tax

⁴⁴ The paper notice to file just directs taxpayers to the GOV.UK tool. But it is somewhat a chicken and egg situation: how are taxpayers supposed to know that they might not meet HMRC's criteria and should therefore use the tool to find out? It would be useful for the notice to file to set out some of the more common situations, e.g. where the only reason the person registered was where they were starting a trade, but the gross income from that trade in the relevant year is less than the trading allowance.

liability via Self Assessment should nevertheless file a return. We understand this is a risk-based policy decision. However, **we would encourage further consultation on whether it is appropriate for such taxpayers to be in Self Assessment.** It places a potentially unfair and unnecessary burden on them, and HMRC, which is beyond what the law requires and for no Exchequer gain.

- 6.7.3. The legislative option of having the obligation to file returns directly attached to codified criteria may be a possibility for the future. However, that would appear to expose the taxpayer to the late submission penalty regime (and with it, a certainty of financial penalties, beginning with the initial £100 automatic late submission penalty) in the case where the taxpayer is unaware that their circumstances fall within any codified criteria. Suitable safeguards would need to be introduced for this situation. The current regime avoids this, because the failure to notify penalty is instead calculated as a percentage of the potential lost revenue by the due date – thus if there is no tax owed, there can be no penalty. This is an important safeguard for lower-income taxpayers.
- 6.7.4. **Another option for legislative change which would be of benefit to lower-income taxpayers would be for HMRC to have the option to withdraw a section 8 notice *after* a tax return has been filed.** This is currently prevented by section 8B(3)(a) of the TMA 1970, but the rationale for that is not clear. Currently, a person who does not meet the ITSA criteria but who files a tax return late can only appeal against the penalties if they have a reasonable excuse. But it is unclear whether not meeting the ITSA criteria is, in general and by itself, grounds for such a reasonable excuse. Therefore, a taxpayer who shouldn't (in HMRC's eyes) have filed a tax return in the first place for a given year is financially penalised for complying with the s8 notice as opposed to asking HMRC to withdraw it. This does not feel right. Alternatively, HMRC (or the law) might state that falling outside the ITSA criteria would, by itself, be grounds for a reasonable excuse claim against late submission penalties.

LITRG

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