

**HM Revenue & Customs (HMRC) Call for evidence:
Amendments to tax returns
Response from the Low Incomes Tax Reform Group (LITRG)**

1 Executive Summary

- 1.1 We are pleased to be able to contribute to this call for evidence on amendments to tax returns. Our comments are based upon our own experiences of supporting low-income taxpayers, and on information received from the two front-line tax charities – TaxAid¹ and Tax Help for Older People² (hereinafter referred to as ‘the tax charities’).
- 1.2 Low-income taxpayers need to make amendments to tax returns for various reasons, but at the root of almost all cases is a failure to understand or be able to cope with the tax system. Often such problems are perpetuated over several years, so taking corrective action is not usually a case of simply amending a single year’s return. Having to follow a different process (which may depend on various factors, such as whether or not a Self Assessment tax return has been filed, whether such a return is in time for an amendment or whether the tax impact is positive or negative) can complicate the process.
- 1.3 The tax charities find that it is not the process of making amendments that is difficult; the significantly greater challenge is in identifying the correct figures to report.
- 1.4 Once the tax charities have identified that amendments are necessary, they are able to consult with a specialist HMRC team on the cases that they deal with, which can be difficult.

¹ www.taxaid.org.uk

² www.taxvol.org.uk

This is very effective in easing the process. It is important to note, therefore, that the tax charities' experience as intermediaries is not representative of unrepresented taxpayers. In fact, they frequently find that the taxpayers they deal with would simply not have been able to take the required action alone – this is often why they have approached the charity in the first place.

- 1.5 This submission also highlights that being able to make amendments in an aligned or single process across taxes is unlikely to be of great benefit to those on low incomes. In fact, it is far more likely that mistakes made in a Self Assessment tax return might mean the individual has also made errors in tax credits or welfare benefits income that has been declared. It would therefore be beneficial to review and improve how the systems of HMRC and the Department for Work and Pensions (DWP) interact in this respect and ensure that Self Assessment taxpayers who are also benefits claimants can access appropriate guidance.
- 1.6 Finally, we are concerned that an exclusively digital channel for tax return amendments would prevent digitally excluded taxpayers from being able to comply. Offline channels (such as telephone and paper) must therefore be maintained for those who need them.

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 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 Question 1: Which taxes do you submit returns for? How do you make amendments for each tax?

- 3.1 ***Which taxes do you submit returns for?***

- 3.1.1 We do not submit tax returns ourselves, as we do not directly assist members of the public in their dealings with HMRC. We do, however, reach millions of people a year through our website guidance (a total of almost 5 million users in 2018). Via our websites, we receive regular contact from low-income taxpayers in respect of issues they encounter with the tax system and with welfare benefits – both those that are administered by HMRC, and other benefits that interact with the tax system.
- 3.1.2 We also maintain a close relationship with the two tax charities that directly help members of the public with their tax affairs. In preparing this response, we have sought their input and we quote their experiences and evidence (based upon their review of a sample of 50 cases, 25 from each charity) where appropriate.
- 3.1.3 Our main involvement in terms of tax returns referred to in this call for evidence is in respect of Self Assessment and repayment claims (usually made by submission of form R40) for individuals. Our comments therefore relate largely to these matters.
- 3.1.4 However, given our contact with the public mentioned at 3.1.1 above, we are also keen in making this submission to flag up instances where the tax system interacts with welfare benefits. Although further action by a tax credits or universal credit claimant in respect of those benefits is not strictly necessary as a result of amending their tax return, it might be that the same omission from the return was made in respect of a credits or benefits claim. The individual might therefore wonder whether they should similarly correct those claims. We are not aware that individuals in such circumstances are assisted or even prompted to make such a consideration.

3.2 ***How do you make amendments for each tax?***

- 3.2.1 As noted above, we do not make amendments ourselves. Instead, we direct enquirers to sources of information and guidance that will help them to make amendments personally. Alternatively, we might suggest they seek help from either a paid professional adviser¹ (if they can afford it); or from HMRC's Needs Enhanced Support service or the tax charities, if they are within the remit of these services.
- 3.2.2 For low-income taxpayers who end up seeking advice from the tax charities, it is often too late for the taxpayer to make an amendment in the normal Self Assessment time limits, described at paragraphs 2.5 to 2.7 of the call for evidence paper.
- 3.2.3 This is almost always because the taxpayer has not understood the issue that requires correction and it is only when they have sought the tax charities' help – for example, because they are in tax debt or HMRC have asked them to correct their return – that their affairs are reviewed and amended.

¹ Comments on CIOT members' experiences were gauged via a member survey, conducted jointly with the Association of Taxation Technicians and can be found in their respective responses to this call for evidence.

3.2.4 As the taxpayer's incorrect past action has frequently resulted in an excessive tax charge, the 'amendment' therefore needs to be sought by an overpayment relief claim.¹ Even these time limits are regularly exceeded and often a request has to be made to HMRC for the acceptance of a late overpayment relief claim. A claim for special relief might also be necessary in certain circumstances.² If tax has been under-assessed, a disclosure has to be made as appropriate. Therefore, if a taxpayer is out of time for a normal amendment to a Self Assessment tax return, they must first determine the tax impact of the correction. This may not be always straightforward to determine.

3.2.5 The sample of 50 cases reviewed by the tax charities revealed four in which overpayment relief claims and amendments to returns were made simultaneously – i.e. the 'in-date' returns were corrected via the Self Assessment amendment process, and the earlier years were dealt with via overpayment relief claims. A further six cases included late overpayment relief claims which were made due to compelling personal circumstances (domestic abuse, homelessness and severe mental health issues – see also 4.3.5 below).

3.3 ***Non-Self Assessment cases***

3.3.1 Our comments in this submission relate largely to taxpayers who are within Self Assessment. However, non-Self Assessment taxpayers also need to know how to correct their tax affairs.

3.3.2 An individual might make a repayment claim (for example, using form R40) which they later realise is incorrect or incomplete and needs to be amended. Yet, at present, we can find no guidance for members of the public on what they should do if they have realised they made a mistake on form R40. The guidance notes on the form³ do not say what to do (except to note that if the claim has been made on an interim basis, final figures may be required after the tax year end).

3.3.3 It would therefore be helpful if HMRC could clarify the process and provide guidance so that unrepresented taxpayers would know what to do when faced with such a situation.

4 **Question 2: What are your reasons for making amendments?**

4.1 On our website, we provide information on how a taxpayer can amend a Self Assessment return.⁴ While we do not give tax advice members of the public, we do respond to queries

¹ TMA 1970, Sch 1AB, para 1

² TMA 1970, Sch 1AB, para 3A

³ See <https://www.gov.uk/government/publications/income-tax-claim-for-repayment-of-tax-deducted-from-savings-and-investments-r40>

⁴ <https://www.litrg.org.uk/tax-guides/self-employment/how-do-i-pay-tax-self-employed-income#toc-what-if-i-make-a-mistake-on-my-return->

that are submitted to our websites and direct them to sources of further guidance (both on our own website and in other places, for example on GOV.UK) as appropriate.

4.2 ***Claims made via amendments to tax returns***

- 4.2.1 In the context of tax return amendments, the most relevant enquiries we receive via our websites relate to loss claims and how such claims are to be made. For example, people contact us asking how they make claims to offset trading losses against other income. If they have already filed their Self Assessment return for the year in which the loss arose but have not claimed in the return to offset that loss, they will need to file an amendment to the return.
- 4.2.2 The tax charities find a high incidence of an election not having been made for the so-called 'marriage allowance' ('transferable tax allowance' per the legislation¹) and therefore amendments to in-date returns are made to claim it. These cases tend to involve older taxpayers, most likely because one member of the couple has been the main earner during their working lives and has pension income above their personal allowance, whereas the other partner has income below the personal allowance (perhaps because they were the main carer for children).

4.3 ***Returns having been completed incorrectly***

- 4.3.1 The cases seen by the tax charities reveal a mix of reasons for returns having been completed incorrectly. When a tax debt becomes difficult, taxpayers call the tax charities for help and mistakes are identified. Often, particularly amongst the younger and self-employed populations, the tax problem might not be dealt with (and indeed accumulate further) for a number of years due to life circumstances such as those listed at 4.3.5 below.
- 4.3.2 Although the question is not specifically asked in the call for evidence, in terms of considering why amendments have to be made, it should be noted that the tax charities find it is more common for a tax liability to have been overstated than understated. Of 50 cases reviewed, 28 had overstated their liability compared to 11 who had understated it (there was insufficient information on the remaining 11 cases). The average overstatement in liability was £1,386 compared to £761 as an average understatement.
- 4.3.3 The incidence and quantum of tax overstatements is highest where taxpayers enter employment income or self-employment income incorrectly on their tax returns. This might be, for example, taxpayers in the construction industry scheme (CIS) who do not enter the tax deduction, or where they enter their income based upon the amounts on their bank statements and not from certificates (so again do not include the tax paid). Or it might be that the same self-employment income has mistakenly been entered on both the employment pages and the self-employment pages and the error repeated year-on-year.

¹ ITA 2007, s 55B

The tax charities found 13 cases of confusing self-employment with employment out of their reviewed sample of 50.

4.3.4 Other examples of the types of errors that were made in the tax charities' sample were:

- a) CIS subcontractor entering net pay and tax on a Self Assessment return, not the gross pay.
- b) Completion of a paper tax return but entering the figures for one year on another year's form.
- c) Multiple errors made by a self-employed Romanian who was trying to complete his own returns.
- d) A self-employed taxpayer who had received Jobseekers Allowance (JSA) for a short period had entered the incorrect amount of JSA, overstating it by over £10,000.
- e) Entering the wrong figures in the wrong boxes of the return, or not completing certain information at all; for example, a self-employed taxpayer was found to have entered only expenses on his tax return.
- f) A taxpayer who had worked abroad for part of the year did not understand his French payslips properly to enter the correct figures.
- g) A tax return submitted with estimates by an accountant during a period of ill-health of the taxpayer. However, the taxpayer's health did not improve so they were unable to pay the accountant's fee and as a result the amendments needed to the estimate were not picked up.
- h) Confusion on whether savings income needs to be reported on tax returns and if so, how and where to report it. This issue is compounded by the requirement to report savings income even if it is within an individual's so-called 'personal savings allowance' (which is really a nil rate of tax); it is counter-intuitive to do so as many taxpayers simply consider such income 'exempt'.

4.3.5 Examples of reasons that these issues are not resolved within 'normal' time limits are:

- a) Homelessness, and consequent problems in HMRC contacting the taxpayer. For example, an individual with depression was living in a tent, with changing correspondence address and was therefore slow to pick up the issue until enforcement of debt arising from error finally became a problem.
- b) Another taxpayer was living with Post Traumatic Stress Disorder.
- c) Literacy or numeracy issues.
- d) English not being the taxpayer's first language, further compounded by a lack of understanding of the UK tax system.
- e) Life events (such as illness or bereavement) or an accumulation of difficult circumstances (for example domestic abuse) to contend with. Specific examples include one taxpayer who was living in a hostel with his wife and child, being supported by his mother, while trying to resolve the tax issues of earlier years. In another case, an individual's tax debt had risen to over £15,000 before he sought help because he had been coping with supporting his wife who was suffering from cancer. When enforcement was no longer avoidable, he took action.

- f) Lack of access to help or inadequate help being received when sought. For example, a taxpayer sought help from HMRC on completion of foreign pages, but this did not enable him to correctly complete the return.

- 4.3.6 Addressing the above issues – lack of understanding of the tax system, confusion when completing forms, low literacy levels, pressing personal problems/adverse life events taking priority, unaffordability or lack of access to sufficient help, physical or mental ill-health – is completely aside from the process of amending returns. Changing how tax return amendments are made will not in itself obviate the need for support for taxpayers who encounter these difficulties.
- 4.3.7 Some of the problems might be prevented from arising by simplifying tax return processes and forms and ensuring people have the support they need up front, rather than trying to sort them out sometimes many years later, when the problem has been compounded and the person is in tax debt.
- 4.3.8 However, it is unlikely that all taxpayers' problems could be resolved, even with simplifying processes. In the tax charities' experience, those who are struggling due to literacy/language issues or other problems highlighted in the above examples are unlikely to be able to get the information reported to HMRC even on a second attempt, regardless of the amendment method. Therefore, continuing to pave the way for taxpayers to set matters straight when they are in a position to do so is essential – see our comments in answer to question 3 relating to how the tax charities interact with HMRC on difficult cases.

4.4 ***HMRC have not corrected returns which they know to be incorrect***

- 4.4.1 Under TMA 1970, s9ZB, HMRC have power to amend certain errors on Self Assessment tax returns. These include:

- '(a) obvious errors or omissions in the return (whether errors of principle, arithmetical mistakes or otherwise), and

- (b) anything else in the return that the officer has reason to believe is incorrect in the light of information available to the officer.'

- 4.4.2 In some of the example cases quoted by the tax charities, HMRC could have identified that the taxpayer's return was incorrect (such as incorrect CIS or JSA figures being reported). The need for an amendment to be made would have been avoided had HMRC corrected these figures automatically. It would therefore reduce the number of cases where amendments are required if HMRC could correct tax returns to take account of such information they are already in receipt of.
- 4.4.3 To some extent, pre-population of known data onto returns might in future reduce errors of this nature provided there are clear instructions to the taxpayer as to their responsibility to check the data, and how they can do so. HMRC are already doing this to some degree, with pre-population of PAYE and state pension data. However, that data is not always correct,

and it is dangerously easy for the taxpayer to assume that figures pre-populated by HMRC must be right.

- 4.4.4 For example, in one case we are aware of, the taxpayer's employment income had been pre-populated on his 2017/18 return, but the tax refunded in the year was not shown. Had the taxpayer not realised this omission by comparing the pre-populated data to his P60, it would have resulted in an underpayment of tax.

5 **Question 3: Do you find it easy to make amendments to returns? Is the process complicated? How long does it take?**

- 5.1 Following on from our comments above, the tax charities' experience is that they have no problems with the mechanics of making amendments to returns or in taking the appropriate alternative course of corrective action if the deadline to make an amendment has passed.
- 5.2 If an amendment to a return for an obvious error (of the type that HMRC might make as in 4.4.1 above) can be made by the deadline for amendment, the tax charities usually make this via HMRC's Voluntary Sector Taxes Resolution Service (VSTRS).¹ As VSTRS can make the amendment in real time, this is efficient for the taxpayer, the charities and HMRC alike as it avoids unnecessary paperwork and delays in sending information to HMRC, awaiting a response, checking the outcome and so forth. Cases suitable for such correction include: where a pensioner had declared 100% of a foreign pension as taxable (instead of 90%, as it was up until 5 April 2017); a person has entered the net amount of employment income instead of the gross; or a contractor who has entered the incorrect CIS income on their tax return.
- 5.3 This is not to say that the process of helping people to make amendments is straightforward. Even for the more obvious errors of the type referred to above, it is frequently challenging to decipher what the correct number or entry should have been. It is therefore extremely helpful for the tax charities to be able to engage with HMRC via VSTRS to go through cases.
- 5.4 For example, in overpayment relief cases, claims are almost always submitted by the tax charities following calls made to VSTRS, i.e. the claims are made in cooperation with HMRC and are therefore successful. Such claims could be much more time-consuming to handle for all concerned without this facility.
- 5.5 It should therefore be noted that the existence of the VSTRS facility for the tax charities means that these findings should not be taken as representative of the experience of **unrepresented** taxpayers. Indeed, the experience of the tax charities is that those who are unrepresented are unlikely to have even identified their tax problem for themselves, let alone been able to rectify it.

¹ See: <https://www.gov.uk/hmrc-internal-manuals/debt-management-and-banking/dmbm512015>

6 Question 4: If you submit amendments for different taxes, are there any (or elements of any) that are easier or more difficult than others?

6.1 We have no specific comments here.

7 Question 5: How long does it take to get a response from HMRC?

7.1 As noted in answer to question 3, the tax charities find it straightforward to get a quick response from HMRC given the existence of VSTRS. This is therefore an important facility to maintain so as to best serve taxpayers in often very difficult circumstances who might have tax errors stretching back over a number of years.

7.2 As noted in our answer to question 4, we reiterate that the existence of the VSTRS facility for the tax charities means that these findings are not representative of the experience of **unrepresented** taxpayers.

8 Question 6: What is your interaction like with HMRC when you make an amendment?

8.1 See our answer to question 5 above – the tax charities' interaction with HMRC is very good, as it is channelled via the dedicated VSTRS team, who are familiar with the types of cases they deal with.

8.2 As noted in our answer to question 4, we reiterate that the existence of the VSTRS facility for the tax charities means that these findings are not representative of the experience of **unrepresented** taxpayers.

9 Question 7: Is there anything about the current amendments processes that cause you difficulty?

9.1 In terms of potential difficulties with processes to amend Self Assessment returns, one area of difficulty is that low-income taxpayers might also be claimants of tax credits or welfare benefits (especially universal credit). If the taxpayer needs to amend their Self Assessment return, for example because they have declared too little income, it might be that the correct figure would have altered their tax credits or universal credit award.

9.2 For tax credits, an amendment to a Self Assessment tax return could perhaps trigger a tax credits enquiry (Tax Credits Act 2002, s19) if it is within the time limit, or if information comes to light outside the time limit HMRC 'may' decide to revise a tax credits claim using

discovery powers (Tax Credits Act 2002, s20).¹ For the purposes of a TCA 2002, s19 enquiry, the time limit follows the Self Assessment enquiry time limit for those taxpayers who are required to file a return. Where the amendment is made by the filing deadline, the time limit for enquiries into the amendment is therefore one year from the date the amendment was made. For amendments made after the filing deadline, HMRC have one year from the next quarter day (i.e. 31 January, 30 April, 31 July or 31 October) to enquire into the amendment.

- 9.3 By way of example, let us say that Joe files his 2017/18 tax return on 23 January 2019. At the same time, he gives final notice of his tax credits income to HMRC for 2017/18, for which he had originally given an estimated figure at the renewal date. He later realises he has omitted an invoice for £500 and amends his 2017/18 return on 25 February 2019. HMRC have until 30 April 2020 to open a tax enquiry into ‘matters to which the amendment relates or which are affected by the amendment’.² Similarly, as TCA 2002, s19(4)(a) refers to ‘the day on which the return becomes final’, a tax credits enquiry can also be raised in that same period.
- 9.4 As Joe’s tax credit award has already been finalised, there are only limited grounds for it to be re-opened and changed. It appears that there is no legal requirement compelling Joe to contact HMRC again to mention the £500 omission for tax credits purposes, although he could be subject to a penalty for giving incorrect information in the first place if HMRC could show he was negligent in doing so. The only option open to Joe to force correction of his tax credit award would be to file a late appeal (which may or may not be accepted). Otherwise, he should just wait to see if the amendment to his Self Assessment return triggers a tax credits enquiry. However, the online guidance for self-employed tax credits claimants makes no mention of this situation.³ In the absence of confirmation that he does not need to take action himself, Joe might be worried that he should be doing something.
- 9.5 Although tax credits are to be gradually phased out in the move to universal credit, there will continue to be some tax credits claimants up until the completion of the ‘managed migration’ exercise. We understand that current plans are for this to be completed by December 2023.⁴
- 9.6 For universal credit, there is less direct connection between the income a claimant declares and their tax return (as the rules for determining income are different and the assessment period for universal credit is monthly as compared to annual assessment for income tax). It is therefore difficult to see how any adjustment made by a self-employed person to their Self

¹ See also HMRC’s Claimant Compliance Manual, CCM12000 et seq: <https://www.gov.uk/hmrc-internal-manuals/claimant-compliance-manual/ccm12000>

² TMA 1970, s 9A(5)

³ See <https://www.gov.uk/guidance/tax-credits-working-out-income#self-employed-people>

⁴ See <https://revenuebenefits.org.uk/blog/round-up-of-recent-universal-credit-announcements>

Assessment could automatically flow into a correction to the universal credit claim (or indeed vice versa).

- 9.7 Nevertheless, it is of course possible that Joe in the previous example has omitted to include the £500 of income from both his tax return and a universal credit assessment period. It would therefore be helpful for there to be some guidance at the point of amending a tax return to direct people to whether or not they need to do anything: a) to identify whether or not the amendment they have made impacts on a universal credit claim; and b) if so, to understand how to rectify it.
- 9.8 The current public-facing universal credit guidance¹ we have found is not particularly helpful on the subject of income being incorrectly reported. It does not clearly guide a claimant as to what to do if they have made a mistake. As it is currently worded, it might even *deter* people from correcting a mistake, given that it threatens court action or a penalty ‘if you give wrong information’.²
- 9.9 We therefore suggest that when developing future tax return amendments processes, HMRC should work closely with the Department for Work and Pensions to ensure that there are appropriate links between both departments’ guidance on taking corrective action. We would be pleased to meet to discuss this issue further.

10 Question 8: What possible benefits might there be to a consistent amendments process across taxes?

- 10.1 For the low-income taxpayer, it is far more likely that interactions between tax and benefits will be relevant than multiple taxes. See our answer to question 7 above for further comments about the possibilities of improving links between HMRC and the DWP to guide people on such issues.

¹ See: <https://www.gov.uk/universal-credit/changes-of-circumstances>

² By contrast, the DWP’s ‘Advice for decision making: staff guide’, *Chapter D1: Overpayments, recoverability, adjustments, civil penalties and recoupment* (in particular D1009, D1272-1273), says that a civil penalty (a fixed £50) only applies where a person has been both negligent *and* has not taken reasonable steps to correct the error, see <https://www.gov.uk/government/publications/advice-for-decision-making-staff-guide>. Claimants who have made a simple mistake and wish to put it right need not therefore be immediately threatened with being taken to court.

11 Question 9: Do you think having one consistent way to amend all returns will result in savings for businesses? If so, please provide details e.g. simpler process, reduced contact with HMRC etc.

11.1 For the low-income taxpayer, a consistent process across all taxes is unlikely to be of significant benefit. Some consistency in guidance and processes between tax and welfare benefits might, however, be beneficial. See our answer to question 7.

12 Question 10: How would you prefer to make amendments to returns?

12.1 LITRG does not have direct engagement with taxpayers to make return amendments. The tax charities we refer to above prefer to liaise with HMRC's dedicated VSTRS team as regards the (often very difficult) cases that they see. That initial contact paves the way for amendments or other corrective action to be made as appropriate.

13 Question 11: How do you feel about a future single digital amendment process for all taxes?

13.1 For many taxpayers, we can see an advantage to having a digital amendment process; however, we do not believe this should be mandatory as not all taxpayers are digitally included. Digital exclusion is an ongoing problem for people on low incomes. Affordability, age profile and those living in rural areas with poor access are amongst the reasons for this¹ and the problem is unlikely to ever disappear completely such that everyone is digitally included.

13.2 'Offline' alternatives therefore need to be preserved, with taxpayers continuing to be able to make some straightforward amendments by way of a telephone call to HMRC, and paper amendments remaining possible for paper Self Assessment filers.

14 Question 12: Do you think being able to amend returns digitally will result in savings for businesses? If so, please provide details e.g. simpler process, reduced contact with HMRC etc.

14.1 See our answer to question 11 – those taxpayers who are not digitally included will not see any savings. Offline alternatives must remain available.

¹ See for example the Digital Exclusion Heatmap: <http://heatmap.thetechpartnership.com/about-heatmap/> and <http://heatmap.thetechpartnership.com/>

15 Question 13: If you needed to make an amendment that covers multiple taxes (e.g. correcting IT and VAT) how would you see that working in future? Would you prefer to do each tax separately, or all in one?

- 15.1 As mentioned above, low-income taxpayers are unlikely to need to amend multiple taxes together. As noted in our answer to question 7, it is far more likely that they would also need to correct a welfare benefits income declaration at the same time as amending a Self Assessment tax return.

LITRG
01 February 2019