

**Consultation: The Tax Administration Framework Review –
Creating innovative change through new legislative pilots
Response from the Low Incomes Tax Reform Group (LITRG)**

1 Executive Summary

- 1.1 We are pleased to make this submission to HMRC’s consultation on creating innovative change through new ‘legislative pilots’ (referred to hereinafter as sandboxes). LITRG has contributed to the discussions to date on this topic, via the Tax Administration Framework Review Forum, and this submission summarises our thoughts on how the proposals might affect unrepresented taxpayers who are unable to afford paid advice.
- 1.2 We recognise the potential benefits of the use of sandboxes on a conceptual level, as they may help smooth out the introduction of new tax policy by identifying potential issues earlier.
- 1.3 However, we are concerned that implementing and operating sandboxes in practice presents a number of challenges which do not have easy solutions. For example, sandbox participation must require taxpayer consent, which might mean that population of sandbox participants is too small and/or not representative enough for HMRC to draw useful conclusions. It is difficult to see how HMRC will ensure fairness between sandbox participants and non-participants. Given the current demand on HMRC’s resources, we are also sceptical whether HMRC has the necessary resource to provide appropriate support to sandbox participants, especially if they are unrepresented.

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 General comments

- 3.1 We acknowledge that HMRC have gone to some effort to describe the concept of a sandbox to external stakeholders, including what the proposals might look like in practice. Indeed, HMRC have confirmed that discussions are at a very early stage, and that one possible outcome is that work on developing sandboxes is abandoned if the project is not found to be feasible.
- 3.2 HMRC's working definition of a sandbox is "a temporary environment where HMRC could conduct tests of new policy and processes which suspend, implement and/or harmonise legal obligations. This could be for a distinct group of people or sector for a defined period of time and would be accompanied by appropriate safeguards and guidance".
- 3.3 We understand the key distinction between a sandbox and an existing pilot scheme is that a sandbox disapplies certain existing legislative provisions so that the participant does not need to comply with them at the same time as the specific obligations within the sandbox. We acknowledge that there are some benefits to this approach, because it allows HMRC to test elements of new processes which are only possible within a live environment (such as the payment of liabilities) and does not place concurrent burdens on the taxpayer.
- 3.4 More broadly, we accept that a sandbox allows HMRC greater flexibility in testing new policy and processes and that this can help identify potential issues before that policy or processes is rolled out more generally. This might especially be the case for more significant changes to the tax system, rather than small tweaks to the existing rules.
- 3.5 However, there are a number of sandbox parameters which are problematic. These need to be resolved before the sandbox concept has a chance of being successfully implemented. The most significant of these is the question of whether participation is voluntary or mandatory. We understand that HMRC are considering a range of possibilities on this, and we agree that participation on an entirely voluntary basis will necessarily come with a degree of self-selection bias. In addition, reliance on voluntary participation may mean that HMRC are not able to recruit sufficient numbers to the sandbox in order to generate statistically significant findings.
- 3.6 On the other hand, mandatory participation might be viewed as tantamount to treating a section of the population differently without their consent. It would also appear to run contrary to HMRC's Charter commitment to treat taxpayers fairly. Yet, we can see the argument that in very limited circumstances mandatory participation might be the only way that to ensure that the sandbox participants represented the general population. This is only likely to be suitable for a policy was

definitely going to progress in a broadly similar form and where ultimately the whole population will be affected, as opposed to a policy/change which was simply an ‘idea’ at the sandbox testing phase. Where mandatory participation is in point, robust support and controls would be essential.

- 3.7 One compromise to mitigate the issues presented by relying on volunteers to come forward is to randomly invite enough taxpayers (or intermediaries) to participate in the sandbox on a voluntary basis (i.e. not an ‘opt out’, but an ‘opt in’). The invitee population might be statistically adjusted, to compensate for the bias expected in the kind of taxpayer who might be willing to accept the invitation. For example, if HMRC think that certain taxpayers are less likely to accept the invitation, they could invite more of that type of taxpayer to participate. This would mean the sandbox participants might be more representative of the relevant population.
- 3.8 Sandbox participation might even be opened up to the general population, and from those who express an interest, a statistically-adjusted sample might be selected. This would also go some way to addressing the issue of fairness by allowing every taxpayer some chance of participation, should they wish to do so.
- 3.9 The second issue is concerned with how sandbox participants are treated compared with the rest of the population. We understand it is HMRC’s intention that participants’ tax liabilities would not be different by virtue of being ‘in’ a sandbox. There is then the question of penalties and interest – is it fair to penalise sandbox participants with increased penalties and interest (for example, if the due date of payment for tax is earlier within the sandbox) compared with non-participants? We suggest not, though this may impact the usefulness of the findings of the sandbox as there would not be a financial incentive for different behaviour and it would not mirror how the sandbox rules might work in the ‘real world’. Taxpayers are unlikely to voluntarily participate in a sandbox if it comes with a risk that they might suffer increased liabilities as a result.
- 3.10 We suggest that, if HMRC were to proceed with the use of sandboxes, HMRC considers as a legal safeguard the principle that participants would be protected against increased tax, penalties and interest compared with the position if they were outside the sandbox. This would of course involve a ‘shadow’ calculation for each participant of the hypothetical position outside the sandbox, so that such financial detriment could be quantified and compensated for.¹ HMRC should be legally responsible for such issuing such a calculation. Taxpayers should not need to rely on HMRC’s discretionary collection and management powers to ensure they are not financially disadvantaged.
- 3.11 Such a safeguard would not be a perfect solution, however. HMRC would need to consult on this in more detail. For example, a taxpayer might still have taken action (or not, as the case may be) as a result of a genuine misunderstanding of what is required of them in the sandbox environment – leading not just to a penalty under the terms of the sandbox but also a ‘shadow’ penalty under usual rules. For example, a taxpayer might mistakenly believe that the deadline for an obligation is later in

¹ Parallels might be drawn here with the “transitional protection” provided to tax credit claimants who are moved to universal credit under the managed migration process: <https://revenuebenefits.org.uk/universal-credit/guidance/entitlement-to-uc/transitional-protection/#Transitional%20protection%20-%20managed%20migration>

the sandbox environment than outside it. Such a taxpayer may have otherwise complied with their usual legal obligations if they were not in the sandbox, because they would have been familiar with them. It is not clear how such a taxpayer should be protected, if at all. HMRC might risk-assess each proposed sandbox to identify whether it is feasible that taxpayers would inadvertently put themselves in a worse position in this way, with a clear process for the taxpayer to appeal and for HMRC to set aside penalties on these grounds.

- 3.12 In addition, if a sandbox environment is *favourable* to the taxpayer, it also raises questions of fairness from the perspective of those who were not selected or invited to participate (if participation were restricted to a certain section of the population). On the other hand, any favourable treatment might be viewed as compensation for taking part – and a slight skew in outcomes may be inevitable given that sandbox rules will be different.
- 3.13 Even with the above suggested safeguard, sandbox participants are likely to suffer additional costs in terms of time, software, and other administrative burdens to (a) familiarise themselves with the new policy or process within the sandbox and (b) equip themselves with the tools to comply with them. This means that sandboxes are much better suited to policy or processes which have been decided to be going ahead in a broadly similar form, so that the taxpayer investment in understand the new policy or process is not wasted. HMRC should also ensure that the guidance for sandbox-participants is effective so that they understand what is required of them with the minimum effort and confusion, following the principles set out in our recent report, *Good guidance*.¹
- 3.14 We also feel that taxpayers should be permitted to exit the sandbox environment at any time after they have entered it, so that they are treated under normal rules instead. Such treatment might be effective from the point of the request, or otherwise backdated to the point that the taxpayer first entered the sandbox. Depending on the parameters of the sandbox in question, the transition to both enter and exit the sandbox will need careful consideration.
- 3.15 Finally, HMRC should not underestimate the degree of ‘hand-holding’ support which may be required for sandbox participants who are unrepresented. This may require a resource which is not scalable to the wider population if the sandbox policy or process is rolled out generally. Also, this population currently relies on publicly available guidance and pro bono support from friends, family and the tax charities to help them comply with their tax obligations. These sources of pro bono support may not be familiar with the sandbox ‘rules’ and may not have the time or technical capability to assist the sandbox participant. This can mean that unrepresented taxpayers may be more likely to fall foul of these rules if they are misadvised or cannot obtain appropriate support. It may also mean that they are under-represented in the participant population, so issues related to unrepresented taxpayers are less likely to come to light.
- 3.16 To alleviate the above, HMRC might consider providing dedicated support for each sandbox so that participants have a clear route for obtaining help should they need it. This could take the form of a

¹ <https://www.litrg.org.uk/latest-news/reports/230404-good-guidance—importance-effective-guidance-unrepresented-taxpayers>

dedicated email address and helpline number (for those unable to transact digitally). This would also provide HMRC with a useful source of feedback during the period the sandbox is live.

- 3.17 It follows that the simpler the proposed policy or process which is to be tested in a sandbox, the lesser the risk. Thus, HMRC's example of relaxing the requirement to populate a certain box in a tax return (if we have understood the example in paragraph 5.1 correctly) may seem innocuous, but creating a legislative framework for that kind of testing may be over-engineered.
- 3.18 At the other end of the spectrum, something akin to accelerated capital gains tax reporting for property disposals would clearly be far more complicated, and therefore much higher risk, but at the same time the benefits of sandbox-testing this kind of policy may be greater. It may be the case that the overlap between what provides a worthwhile benefit, but while having an acceptable level of risk, is so slim that the effort involved in creating a legislative and ethical framework for sandboxes is not justified.

LITRG
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