

**The tax administration framework: Supporting a 21st century tax system
Call for evidence
Response from the Low Incomes Tax Reform Group (LITRG)**

1 Executive Summary

- 1.1 We welcome the opportunity to input into this call for evidence. We broadly support reform of the tax administration system and are pleased to see HMRC seeking a wide range of engagement and being willing to gather ideas from stakeholders.
- 1.2 That said, it will be important to quickly gather responses and start to draw out a roadmap for reform. Longer term goals need to be set out and planned for, but with the route to achieving them via incremental change being clear.
- 1.3 Given the length of this response, reflective of the broad range of consultation questions, we do not attempt to summarise here. Our response is structured so as to give introductory thoughts first, with further detail in answer to the more specific questions later on. Due to the overlapping nature of various sections of the response, there is some repetition.
- 1.4 We have also responded separately to the call for evidence on timely payment¹ and the two responses should be cross-referenced or read together as appropriate.
- 1.5 We look forward to continuing engagement with HMRC as this work develops.

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

¹ <https://www.litrg.org.uk/latest-news/submissions/210712-timely-payment>

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 Introduction

- 3.1 Our response to this call for evidence focuses on low-income, unrepresented taxpayers and their experiences with the tax system. It draws and builds on our report 'A better deal for the low-income taxpayer' where we set out 7 principles for the tax system that should be firmly lodged in the minds of those designing and managing the tax system.¹
- 3.2 Before answering the specific questions in the chapters, we think it is helpful to start by drawing out some general themes relating to how we think HMRC should approach this work, based upon our contact with low-income, unrepresented taxpayers and experience of the issues they face.
- 3.3 ***Simplification of the tax rules***
- 3.3.1 We note that tax rules themselves are not within scope of the tax administration framework review, however we think that this work should encompass some consideration of how simplification of the system could help improve its administration.
- 3.3.2 For example, underlying many different problematic issues in the tax system (including false self-employment, the use of intermediaries like umbrella companies, off payroll working and the gig economy) lies employment status, where a more certain and simpler system – for both individuals and businesses to navigate – is desperately needed. Yet, three years after the government consulted on whether to legislate to improve the clarity of the employment status tests and whether to align the employment status regimes for both tax and employment law purposes, the consultation is still labelled as 'we are analysing your feedback'². The government must address this issue (and others like it) to bring about the

¹ See <https://www.litrg.org.uk/latest-news/reports/201204-better-deal-low-income-taxpayer>, published December 2020

² <https://www.gov.uk/government/consultations/employment-status>

long term, sustainable change that is needed for a better, more robust and coherent tax system. Moreover, by doing so, they would save considerable administrative effort all round.

3.3.3 While we do not attempt to list here all areas of tax law that are complex and confusing for the low-income and unrepresented populations, other examples of particularly problematic areas are where the principle of independent taxation has been departed from – such as the high income child benefit charge and the transferable tax allowance for married couples.

3.3.4 Similarly, the introduction in recent years of the personal savings allowance and dividend allowance (not in reality ‘allowances’ at all but rather nil rate bands of tax) have caused seemingly unnecessary confusion for taxpayers and problems for HMRC in terms of implementation. We refer to these issues further in recent publications.¹

3.3.5 At the very least, it would be helpful to identify as part of this review any tax policy areas of priority for reform (that is, those that cause HMRC and taxpayers the greatest difficulties in terms of administration) and for HMRC to put forward recommendations to HM Treasury for separate consultation on areas that could benefit from being changed.

3.4 ***Design for low-income user needs from the outset***

3.4.1 The prospect of significant change in how the tax system is administered presents an opportunity to ensure that the system is designed for all from the outset, rather than starting out with a plan that suits the majority and attempting to ‘fix’ issues for the minority afterwards.

3.4.2 Problems arise as a result of the latter approach which could be avoided if envisaged at the outset and planned for, rather than having to bolt on adjustments afterwards. One illustration we can give for this is the introduction of mandatory electronic filing of VAT returns, which resulted in litigation given the lack of reasonable adjustments for older and disabled people.² Another is the creation of the short tax return after the introduction of Self Assessment.

3.4.3 While we have always been generally supportive of greater digitalisation of the tax system, this has to be done at a steady pace and with sufficient resources. Moving too fast, or putting in place systems that do not meet user needs, risks damaging trust. However, if design for everyone is followed from the outset it would likely lead to better quality non-

¹ A better deal for the low-income taxpayer: <https://www.litrg.org.uk/latest-news/reports/201204-better-deal-low-income-taxpayer> - see full report, page 13, for a discussion on the complexity of using the term ‘allowance’ in different ways. See also our Budget 2021 briefing for a discussion of the problems with the high income child benefit charge: <https://www.litrg.org.uk/latest-news/submissions/210114-budget-representation-2021-high-income-child-benefit-charge>

² LITRG was involved in supporting taxpayers in *LH Bishop & Others v HMRC* [2013] UKFTT 522 (TC): <https://www.bailii.org/uk/cases/UKFTT/TC/2013/TC02910.html>

digital arrangements. For example, how can the benefits of Making Tax Digital (MTD), such as nudges to claim reliefs, be replicated in a non-digital channel?

- 3.4.4 Both the digitally excluded and the digitally challenged need to be catered for as part of the system's design. While comparing the use of digital technology now to, say, 10 years ago, there is some reason to be optimistic that the population of digitally excluded taxpayers might be shrinking over time. However, it is important that HMRC recognise, that even amongst people who may be a more IT savvy, there is a difference between basic usage such as being able to send emails or make online purchases, and undertaking more complex or involved tasks/transactions and being truly comfortable and confident online.
- 3.4.5 Also, at the low-income end it seems improbable that the issue will disappear altogether – for example, as people age they might have neither the will, the ability, nor the financial resources to keep pace with changing technology, so might become digitally excluded over time. Another example is if people become seriously ill or disabled and then have difficulty managing their affairs, whether for the long term or a particular period of time. It is important to recognise that experiencing problems transacting digitally may not be permanent and may change as this query to the LITRG website shows:
- “I am been off from work from September 2019, Suffering from very high depression. That's affect my daily routine. It's also caused me to become suicidal. Therefore I couldn't work or manage my normal income I would like if you guys can help me , to check if am eligible to a tax refund and Also the backdated one from September, I would really appreciate if I can get a help from you guys, I try to do it online but because of my diagnose it's way too hard for me to do it and concentrate on it.”
- 3.4.6 For the low-income population in particular, how HMRC help and support people is equally central to any changes as modernising legislation or systems. Wherever possible, people should be enabled to deal with their tax affairs independently rather than, for example, expected to rely on support from, or share private financial information with, friends and family. Seeking assistance (from friends and family, for example) should be a matter of personal choice rather than one of necessity.¹
- 3.4.7 In designing digital systems, HMRC should learn from past experience. For example, when implementing the Self Employment Income Support Scheme (SEISS), we understand that most people could engage with the digital system but there were more calls to the helpline

¹ See for example *LH Bishop*, as above, which at para 749, refers to enforced reliance on friends and family as being a breach of Article 8 (right to respect for private and family life) of the European Convention on Human Rights: “in so far as the obligation to file online forces an appellant to use their friends and family to file online on their behalf, or to use the computer of their friend or family member, I consider that this is a breach of A8 without justification” (see <https://www.bailii.org/uk/cases/UKFTT/TC/2013/TC02910.html>).

than HMRC expected. It would therefore be useful to understand why people were calling and consider what this means for implementing other new systems.

3.5 ***Third party software / HMRC having their own systems***

- 3.5.1 Following on from the above, we have some concerns about the precedent set with Making Tax Digital for HMRC not to offer their own software for people to meet their tax obligations. We have consistently said that we believe it is essential for HMRC to offer direct access to the system without people having to use third party software, which adds another layer in the process and potentially creates confusion when individuals have to choose a system or product. Free third party software is also likely to have limitations meaning that those who cannot afford to pay might miss out on some of the key advantages of digitalisation. Software providers might also only offer a free trial period or try to upsell better versions of their software to users of the free versions, meaning potential disruption and distraction for those merely trying to meet their obligations.
- 3.5.2 HMRC will need to set out a clear plan for engagement with taxpayers for the future, otherwise there would seem to be a risk that people could have to engage ‘piecemeal’ with the system, giving them a disjointed experience. This could in some ways prove to be a retrograde step from Self Assessment being a single, annual, ‘all in one place’ process.

3.6 ***HMRC’s approach to mandating online filing versus encouraging its use***

- 3.6.1 In the call for evidence, HMRC note that some businesses have switched to online services such as online banking, online invoicing systems etc and it seems to suggest that MTD and real time payments is just a natural extension of this. However, we think it is one thing for businesses and individuals to choose to engage online with certain services and to have done this naturally over time at a pace to suit them, but quite another to mandate online interaction with HMRC within a set timescale.
- 3.6.2 In this respect, we would highlight two points: (a) the underlying complexity of tax as against online banking, say, is very different – being able to transact digitally does not remove the need for support and guidance for the task in hand; and (b) people are often worried about interacting with HMRC and getting their taxes right – for example, getting your tax wrong can give rise to penalties.
- 3.6.3 We therefore suggest that building trust in HMRC systems and making them easy to access and use is a better approach than mandating people to use them. People will naturally migrate to them if they are fit for purpose in this way, as happened with online Self Assessment.

3.7 ***Ensuring HMRC deliver on Charter commitments/customer service***

- 3.7.1 HMRC want to build trust in the tax administration system. We think that this can be helped by continuing the good work already started to embed the Charter at the heart of their working and to ‘test’ any proposals for change against the principles in the Charter.

3.7.2 Trust takes a long time to build but conversely can be quickly lost. For example, HMRC have recently put in very welcome effort into redesigning debt letters encouraging taxpayers to get in touch to agree payment terms, however individuals have then struggled to get through to HMRC on the telephone to follow up on the letter. Efforts to engage taxpayers and build trust therefore need to be done looking at the whole customer journey.

3.7.3 Getting the basics right, such as ensuring data and forms (such as tax returns and claims) are processed correctly and in a timely fashion is also key to building trust. Continuing to review issues causing complaints is important in this respect.

3.8 ***Help the helpers***

3.8.1 Notwithstanding the above point that people should be enabled, where possible, to meet their tax obligations independently, there will always be some who need help – either from friends and family, HMRC, the tax charities or other advisers acting pro bono. The system therefore needs to cater for them and be made as easy as possible to use. It is in HMRC's interests to smooth processes for those who support taxpayers, for example by allowing pro bono advisers access to dummy system and publishing up to date screen shots of questions in online systems.¹ Ensuring people are helped to get things right in the first place cuts down on contact with HMRC and the need to unpick problems when things have gone wrong.

3.9 ***Interactions with other systems***

3.9.1 For those claiming welfare benefits, interactions with those systems and other government departments are an important consideration, particularly with the ever-greater use of data sharing across government. Interactions of the tax system with other systems therefore need to be considered as part of any changes.

3.9.2 For example, the interaction of the tax system with universal credit (UC) is vital. Changes to the payment regime would impact on UC claimants, particularly the self-employed.

3.9.3 Equally, HMRC (together with the DWP) might consider whether, as part of any changes, there is any way the tax system can better serve UC claimants. At present, for example, UC claimants must notify the DWP if they receive a tax refund so that it can be taken into account in their claim. Perhaps in future, HMRC could notify DWP of tax refunds automatically (in a similar way to the sharing of PAYE RTI data)?

3.9.4 Another system reliant on tax administration is collection of student loan repayments. These do not appear to be mentioned in this initial call for evidence, but consideration of them will be an important factor in any proposed changes and more detailed consultation.

¹ As suggested in our paper 'A better deal for the low-income taxpayer' – see page 36 of full document: <https://www.litrg.org.uk/latest-news/reports/201204-better-deal-low-income-taxpayer>

3.10 **Scams**

- 3.10.1 In the last year¹, queries received to our website referring to tax scams have increased by 50% as compared to the previous year.² This indicates that there has been a worrying rise in such activity.
- 3.10.2 The plague of such scams is undermining trust in the tax system and perhaps in particular people's willingness to engage with HMRC via digital channels. HMRC should therefore keep tackling these scams as a priority – for example, working with Ofcom as in the past³ – and ensure security is a priority in any changes (though caution is needed to ensure that tighter security does not block people out of the system – as we discuss elsewhere in this response). HMRC could also do more to raise awareness of scams, for example highlighting in all correspondence information they publish on how to recognise genuine contact.⁴
- 3.10.3 It should also be noted that those who have fallen victim to scams might need additional help and support, or alternative channels of engagement if they lose trust in digital systems as a result.
- 3.10.4 Although not 'scams' as such, we are also concerned about a rise in companies targeting unrepresented taxpayers to assist them in their dealings with the tax system, the most common is in relation to tax refunds. Whilst it is entirely legitimate for people to choose to appoint a company to claim a refund on their behalf, it is important that this is a fully informed choice, and that the individual understands the fees involved. Many people do not understand they can claim refunds directly from HMRC at no cost, or do not know how to do so. It is incumbent on HMRC to do more to help people know what they can claim. We have also raised recent concerns about deeds/letters of assignment being used by these companies in respect of other refunds that they have not helped arrange. This is a consumer protection issue that needs urgent attention. The introduction of MTD opens up even more opportunities for scams and for companies to find ways to target low-paid individuals to sell paid products that may not be necessary. All of this erodes people's trust in HMRC and the tax system.⁵

¹ Mid-June 2020 to mid-June 2021.

² Mid-June 2019 to mid-June 2020.

³ Eg <https://www.gov.uk/government/news/controls-prevent-phone-fraudsters-spoofing-hmrc>

⁴ <https://www.gov.uk/guidance/check-a-list-of-genuine-hmrc-contacts>

⁵ See also our 25 June 2021 press release: <https://www.litrg.org.uk/latest-news/news/210625-press-release-litrg-concern-growing-complaints-about-tax-refund-companies>

Chapter 2: Reviewing the tax administration framework

4 Q1. Are there reforms which HMRC should focus on for the framework review? Which changes should we prioritise to drive improvements in the taxpayer experience?

- 4.1 We welcome the focus of this question on improvements in the taxpayer experience. In recent years, a lot of HMRC's activity across both tax and tax credits has been focused on reducing the tax gap and collecting more tax. Whilst this is of course entirely legitimate, HMRC's Charter promise is to work with people to get their tax right. This means ensuring people are also claiming any reliefs they may be entitled to and not over-paying tax. There is less focus on this aspect and this is something that must be addressed in order to build trust in the tax system – especially given that with greater use of data in their possession in future, HMRC will be better placed than ever before to spot where for example a claim could have been made. And indeed there will be an expectation that HMRC puts as much effort into using data for this purpose as for collecting more tax.
- 4.2 We think that the following points are key to any significant reforms in tax administration.
- 4.3 ***HMRC must continue to address and fix problems with the existing system even if working towards longer term and more radical change***
- 4.3.1 There is a need to separate out issues that are causing people problems today and whether there is anything that can be done to address these now rather than wait for a 'new system' to alleviate them. Any new system will take time to design and implement, so in the meantime, if things are not working well, the trust HMRC are seeking to build will be lost (or not start to be regained).
- 4.3.2 One recent example of this is in relation to the use of disguised remuneration schemes by umbrella companies to pay workers. We have been pressing HMRC to take urgent action on these schemes to prevent the continued exposure of low-income workers to these schemes.¹ While this might be tied up with wider questions of regulation for engagers of labour, we feel that HMRC should be using existing powers to tackle the issues in the meantime.
- 4.3.3 We might also give here the comparison with tax credits moving to UC. In anticipation of the move, investment in tax credits was reduced with the consequence that issues have been perpetuated in the old system and no real improvements have been made. Given that we are now several years beyond the initial anticipated date for all claimants to be moved from tax credits to UC, we think that some important lessons should be learned from taking this approach.

¹ Our March 2021 report on Labour Market Intermediaries sets out the issues:
<https://www.litrg.org.uk/latest-news/reports/210324-labour-market-intermediaries>

4.4 **Responsibility**

- 4.4.1 One of the most urgent reforms required in the tax system is redefining the lines of responsibility. Self Assessment and the principle of notifying HMRC of liability to tax currently place the onus very much on the individual to ensure that their tax is correct.
- 4.4.2 In reality, however, given that tax is so complicated and that people are not schooled in their obligations, this expectation is largely unrealistic. Moreover, the ever greater use of data and pre-population does bring into question whether the balance of responsibility is correct. Although HMRC may be clear in various parts of the system where responsibility lies, this is not always made clear to taxpayers and the increasing use of data and pre-population presents mixed messages to taxpayers about their responsibilities.
- 4.4.3 We also find that HMRC processes do not always follow the legal position. For example, the correct operation of PAYE is the responsibility of the employer. In the event of tax being underpaid, the employer should be issued with a determination under regulation 80 of the PAYE Regulations.¹ HMRC should only pursue the employee for an under-deduction if the employee has colluded in the under-deduction or HMRC have otherwise determined that the employer's error was made in good faith. In those two situations, HMRC should issue a regulation 72 determination to the employee, against which the employee can appeal. In practice, however, employees are issued P800 calculations showing an underpayment of tax without HMRC having determined whether the cause of the underpayment was employer error and no regulation 72 determination is made. Unrepresented taxpayers would usually not understand how the underpayment arose and in some cases, the underpayment will be 'coded out' automatically for collection. This denies the taxpayer an understanding of how the underpayment arose and the ability to challenge it. HMRC's systems should be changed to evaluate how an underpayment has arisen (for example, an employer has operated an incorrect code) and issue the determination to the employer by default, rather than the employee.
- 4.4.4 Here it is important too for HMRC to recognise the position of the taxpayer relative to that of HMRC (or to a third party data provider). The balance of power and resource is weighted heavily in HMRC's favour. There is some acknowledgement of this, for example within the penalty regime for inaccuracies in a document where a taxpayer can be judged to have taken reasonable care on the basis of their own individual circumstances. However, more could be done across the board – from data accuracy, to appropriateness/proportionality of penalties to resolving disputes/appeals to recognise the imbalance of resource between HMRC and the individual.
- 4.4.5 It is therefore welcome that page 10 of the call for evidence notes that the review aims to provide a clear division of responsibilities between the individual and the state. The OTS

¹ SI 2003/2682

recently published their third-party data report¹ which recognised the concerns LITRG had raised about this issue previously and recommended a broadly based consultation about the balance of responsibilities between data providers, software providers, agents, taxpayers and HMRC and the extent to which it is reasonable for taxpayers to rely on the data provided. We think this would be a welcome first step.

4.4.6 In any such delineation, it is important (as noted above) not to omit the role of third parties. It is also essential to clarify issues surrounding personal responsibility for one's tax affairs where a 'trusted helper' is involved. We suggest that HMRC revisit the OTS 'Life Events' report, Chapter 5.²

4.5 ***Better use of data***

4.5.1 We discuss use of data fully in response to Chapter 5 of the call for evidence, however we wish to emphasise here three points as a matter of priority for improvements.

4.5.2 First, the main principle with using data should be to use it early to aid compliance and that people are paying the right amount of tax from the start, rather than use it later in the process to discover underpaid tax (and potentially penalise people for mistakes) or require people to make claims to get refunds.

4.5.3 Second, HMRC must make improvements in the transparency of data held about a taxpayer. We think that trust would be built if people were able to more easily³ see a copy of data HMRC hold and understand what it has been used for. By comparison, we think it's interesting to compare how other companies manage data transparency. We understand, for example, that Facebook now allows you to download a copy of all of your information fairly simply and easily. Perhaps HMRC, with joined up systems, would similarly be able to implement such functionality. This could replicate the Subject Access Request, but as an automated process (though maintaining an offline channel for the digitally excluded).

4.5.4 Third, and importantly, HMRC should prioritise making best use of existing data that they hold before seeking to collect additional data. There is much that can be done to help people get their tax right (including claiming tax that might be owed to them) by matching data and nudging taxpayers in the right direction. Two examples of this are: using Construction Industry Scheme payments data and matching it to subcontractors' Self Assessment returns; and matching together data about deceased taxpayers with the records of their bereaved spouse or civil partner to ensure that the survivor's PAYE tax codes are correct and that they have claimed any residual married couple's allowance or transferable tax allowance for married couples. As noted above, in our experience, HMRC are currently better at matching

¹ See OTS 'Third Party Data report', July 2021, Page 12

² See OTS 'Taxation and life events', October 2019, Chapter 5, para 5.52ff:
<https://www.gov.uk/government/publications/ots-life-events-review-simplifying-tax-for-individuals>

³ That is, without having to submit a Subject Access Request.

data where it identifies non-compliance and an underpayment of tax than where it might benefit the taxpayer. This mode of operation, together with any legislation that currently stymies use of data in this way, need to be changed in order to build trust that the system is fair and even-handed.

4.5.5 We were pleased to see these three points also appear in the recent OTS third party data report and we generally support the associated recommendations made by the OTS.

4.6 ***Improve PAYE***

4.6.1 For many people, PAYE works well, however there is scope to consider improvements. A surprising number of people still seem to be caught out by the Starter Checklist and in particular the problem of ticking box A instead of box C where it is a second job, meaning double personal allowances are given. Where HMRC have real time information about a person's pay and taxes, it seems that if this issue arises HMRC should be able to rectify it quickly such that a significant tax underpayment is avoided.

4.6.2 However, such 'dynamic' coding seems to have stalled and we think that better use could be made of data in-year to reduce the need for end of year reconciliations. For example, HMRC should be able to use RTI data to carry out monthly mini reconciliations of taxpayers' position in-year and consequent re-coding, rather than waiting until after the tax year. We discussed other points on PAYE coding in our paper, A better deal for the low-income taxpayer.¹

4.6.3 Similarly, and referring back to our comments above about considering areas of simplification in the legislation itself, we outlined in that paper how coding is made overly complex by the operation of marriage allowance and married couple's allowance as tax credits rather than in the same way as the personal allowance. The PAYE code displays these as extra allowances thus giving a misleading impression which in some situations (such as the taxation of state pension lump sums) can create unexpected tax liabilities.

4.7 ***Make greater use of Simple Assessment***

4.7.1 Leading on from our comments above about better use of data, for the sake of simpler interactions between HMRC and taxpayers, HMRC could extend the scope of Simple Assessment. It should be possible to give more prominence to Simple Assessment in the digital age so that Self Assessment becomes exceptional over time.

4.7.2 For this to be possible, HMRC do, however, need to address issues with Simple Assessment. For example, we understand there have recently been a number of issues where it has thrown up interactions with the P800 process, with tax paid after a P800 calculation being refunded to a taxpayer and then being re-assessed under Simple Assessment. Similarly, taxpayers have had tax mistakenly refunded via Simple Assessment when they are already in

¹ See pages 22-23 of the full version: <https://www.litrg.org.uk/latest-news/reports/201204-better-deal-low-income-taxpayer>

Self Assessment, further indicating that HMRC's systems do not 'talk to each other' as one might expect. Such anomalies again damage trust in HMRC's systems.

4.8 ***Guidance and taxpayers' ability to rely on it***

4.8.1 Unrepresented taxpayers rely more heavily on GOV.UK guidance than represented taxpayers. Guidance is critical in terms of helping people ensure they pay the right amount of tax and for building trust in the tax system. Good guidance will reduce contact from taxpayers needing to check their position. We continue to have serious concerns about the standard of GOV.UK guidance, including that it:

- is over-simplified such that it is misleading/wrong in parts.
- uses key terminology inconsistently.
- is aimed at the majority, but lacks detail
- is not sufficiently joined up across tax and benefits/other areas
- does not provide the previously promised second layer of more detailed guidance in many areas

4.8.2 Although some steps have been taken recently to improve things in the guidance space – for example by implementing OTS recommendations¹ to appoint a Head of Guidance and setting up a guidance strategy forum – much more work is needed.

4.8.3 Having simple, easy to understand guidance is important but so is having accurate and comprehensive guidance. Whilst guidance cannot cater for every complexity or circumstance, at the very least it should be clear that it does not present the full picture or that there might be exceptions. At present GOV.UK does not do this.

4.8.4 There are examples we can give where a taxpayer should be able to find information for a relatively common scenario that are not covered on GOV.UK. This is particularly so in relation to the tax, NIC and tax credit treatment of coronavirus related payments.

4.8.5 There are also examples where GOV.UK tries to explain complex tax legislation in a simple way such that it is misleading and wrong. This can have serious financial consequences.²

¹ See the OTS report 'Guidance for taxpayers: a vision for the future' 2018

https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/746076/OTS_Guidance_for_taxpayers_041018.pdf

² For example, we have seen people incurring unexpected 20% tax liabilities on pre-6 April 2016 state pension lump sums as they thought they were a non-taxpayer. In reality, they have technically been basic rate taxpayers, but they were benefiting from either nil rate bands of tax on savings or dividend income, or from a tax credit received as a result of the transferable tax allowance for married couples. GOV.UK guidance does not make this clear – see for example: <https://www.gov.uk/apply-tax-free-interest-on-savings>. Given that these lump sums can be tens of thousands of pounds, the unexpected tax bill can be a significant shock for those affected.

- 4.8.6 There is also now a blurred line between guidance and advice. The recent removal of static guidance in favour of interactive tools is a worrying development. The tools, whilst helpful, do not always match the legislation, do not give sufficient explanation of the questions and direct people to take (or refrain from taking) a specific course of action based on their own individual circumstances.
- 4.8.7 We think interactive tools firmly fall into the advice category, yet the GOV.UK disclaimer states that the site does not give advice. The disclaimer also says no guarantees are provided that the information on the website will be current, accurate or complete. As if that is not worrying enough, it then says 'You should get professional or specialist advice before doing anything on the basis of the content'¹. Given that HMRC often direct people to GOV.UK in the first instance, it is extremely concerning that people are told they cannot act on the basis of the information on GOV.UK if they cannot afford such advice – this is in breach of the HMRC Charter commitment to help people get things right and must be looked at urgently.
- 4.8.8 In addition, HMRC now have many other channels for taxpayers to obtain guidance and advice –videos/webinars, GOV.UK written guidance, Twitter, forums, via correspondence, helplines and webchat. Extra support is given to some people.
- 4.8.9 If people rely on answers they are given as a result of engaging with HMRC via these channels and later find out the information or answers they received was wrong, trust in the system is damaged or lost. It is currently unclear to what extent people can rely on guidance and advice through these channels. HMRC's written statement on reliance is not specific enough on these interactions and is from 2009. It must be revised and updated as soon as possible to make the position clear for all taxpayer interactions, as well as address the conflict between HMRC's statement and the wider GOV.UK disclaimer.
- 4.8.10 One example we have seen recently on Twitter is pasted below:

@HMRCcustomers when you dispose of a property post probate at more than stated value - how do 3 x beneficiaries pay CGT?

3:07 PM · Jun 24, 2021 · Twitter for iPhone

¹ <https://www.gov.uk/help/terms-conditions>

HMRC Customer Support  @HMRCcustomers · 2h ...

Replying to

Thanks for waiting

If the property is sold by the estate before it is distributed the estate pays the capital gains tax. If the property is distributed each beneficiary will need to declare their 1/3 share. 1/2

HMRC Customer Support  @HMRCcustomers · 2h ...

Replying to

The disposal will need to be declared online within 30 days of the contracts being exchanged. Steve 2/2

4.8.11 First, we note that the adviser did not check what type of ‘property’ was being referred to in the query. The 30 day rule for reporting the disposal and paying capital gains tax only applies to residential property, not other property such as commercial land or buildings. Second, the answer (even if it is a residential property) is incorrect, as the 30 day deadline is by reference to **completion** of the transaction, not exchange of contracts.¹ While exchange and completion can be simultaneous, that is not always the case. A taxpayer relying on the above answers could therefore have been misled on more than one count.

4.8.12 The OTS recommended that HMRC consult on reliance on guidance.² We understand that HMRC have rolled this issue into the framework review. We feel the issues of reliance on guidance should be addressed as a matter of urgency via its own consultation as soon as is possible.

4.9 *Gig economy workers/worker status issues*

4.9.1 As stated previously, many problems with tax administration flow directly from worker status issues. While it is beyond the scope of this response to discuss these in detail, we think it is a matter of priority that a means of taxing gig economy workers, other than through the full rigours of Self Assessment, is identified and implemented sooner rather than later. For a start, in absence of a ‘test case’ from HMRC, it is not at all certain that these workers are genuinely ‘self-employed’ for tax purposes. However even if they are, they are often subordinate, dependent and derive all or most of their income from one engager. From an administrative point of view, many of these are workers could benefit from the certainty of having their taxes collected for them by their engager.

¹ Though, confusingly, the date of exchange is still the date of disposal for CGT purposes – which is relevant for determining which tax year the gain falls in.

² OTS guidance review: <https://www.gov.uk/government/publications/ots-guidance-review-update-paper>

4.9.2 The tax administration system is also important more broadly in relation to worker status, and we think that it should be a priority for HMRC to do more to tackle ‘false self-employment’. By this we mean workers, often those on low incomes, who are told that they have to work on a self-employed basis when in reality their terms of engagement bear all the hallmarks of employment. The primary reasons for this are to keep costs down for the engager – avoiding employer responsibilities such as the operation of PAYE and payment of class 1 secondary NIC.¹ – and to avoid having to comply with employment law responsibilities such as providing paid holiday and sick pay.

4.10 ***Consider the merits of consolidating taxes management legislation***

4.10.1 While we think that the Taxes Management Act 1970 (TMA) could benefit from updating and consolidating with other administrative legislation in various Finance Acts, the timing of reviewing the legislation needs careful consideration.

4.10.2 For example, it would be necessary to first take some firm decisions on the balance of responsibility and whether HMRC might move away from the principle of Self Assessment to one of pre-population for agreement by the taxpayer.

4.10.3 In this respect, we recall that an attempt was made to review TMA around 15 years ago, but this was abandoned, as the powers review was in progress and it was felt to be an impossible task to consolidate an enactment while substantially amending it.

5 **Q2. Where is the tax administration framework creating challenges to the trust that taxpayers place in the tax system and HMRC’s administration of it? How could the framework be reformed to address these challenges?**

5.1 ***Legislation/processes/guidance need to match***

5.1.1 Digital systems can provide government with the opportunity to be helpful in terms of taking data from one source and using it for another purpose. While this is welcome in many respects, it brings us back to the point about responsibility discussed above in that HMRC’s (or other government processes) use of data in this way needs to match the legislation. It is not helpful if HMRC and government generally give the impression that they are taking data for one purpose and using it for another but the individual remains ultimately responsible if those internal processes fall down (and indeed then end up in debt or with a penalty).

5.1.2 For example, HMRC and DWP introduced a notification system between the two departments so that HMRC Tax Credits Office are notified when a qualifying disability benefit is awarded or stopped by DWP for a tax credit claimant. HMRC use this information to add or remove appropriate disability elements in the individual’s current tax credit award.

¹ We discuss tackling false self-employment further on page 26 of our December 2020 report, ‘A better deal for the low-income taxpayer’: <https://www.litrg.org.uk/latest-news/reports/201204-better-deal-low-income-taxpayer>

5.1.3 However, when it fails, the claimant has no avenue for redress because the requirement to notify these changes rests with them under the legislation. Such occurrences do not help HMRC to build trust.

5.2 ***Lack of information/progress updates***

5.2.1 We receive quite regular contact from people who have submitted forms or correspondence to HMRC but not received a reply. We are aware that HMRC have a 'Where's my reply' service, however it might be that matters could be improved by HMRC's systems being more transparent – with correspondence uploaded to an individual's digital account on receipt and progress updates being available without having to contact HMRC.

5.2.2 Take, for example, these enquiries we have received recently:

"I was just reading your advice on simple assessment bills. I had one out of the blue in November telling me I owed nearly £5k. I wrote to HMRC immediately requesting time to pay as it related to a pension payment mistake where [my pension company] deducted the wrong amount of tax. As of today 18/2 I've had no reply. I finally got through to someone by phone after hours of being placed on hold..."

"Not heard anything about my R40 submittance? Please respond." [from someone thinking LITRG was HMRC]

"[HMRC] acknowledged my appeal on 7 April 2020 and agreed to postpone collection of tax assessed. I have heard nothing about this since. Is there a time limit within which my appeal should be resolved?"

5.2.3 It would seem that taxpayers also expect to be able to contact HMRC, and get a response, via email. We often get queries, such as the middle one above, from which it is apparent that the correspondent thinks they are contacting HMRC (even though we make it very clear on our contact page¹ that we are not HMRC). Use of email would improve response times, as it would cut out postal delays. HMRC could manage email traffic by switching some staff from call handling, as increased use of other channels should reduce call numbers. Email can also be a very important method of communication for people with mental health conditions who don't feel able to talk on the telephone. See, for example, the following query received to our website

"I have severe anxiety disorder. My dyslexia has gotten worse I think as nothing the words say make sense and the forms are scary and confusing. Please help me I can't talk on the phone as even the mention of it is literally making me feel sick and my stomach is stinging....I can't call them due to the anxiety and cant email or message them as they don't have anyway. The twitter handle expects you to say everything public and then just says call us. I am scared and at my wits end, can you help?"

¹ <https://www.litrg.org.uk/contact-us>

5.3 *Processing errors*

- 5.3.1 Failure to process forms correctly and in a timely fashion can, from queries we see, undermine trust. For instance, we understand that paper Self Assessment returns are processed manually, and we know of cases where there have been processing mistakes (repeated year on year) where figures have been input incorrectly or missed off the tax calculation received by the taxpayer. Greater checks¹ should be put in place to ensure this does not happen.
- 5.3.2 We are also aware of paper filers not receiving all pages they require for completion of their Self Assessment tax return and having to request them year on year. The improvement of systems to make better use of data should, as a priority, remove such omissions from the system. For example, a paper Self Assessment filer who reported self-employment income in the previous tax year and who did not declare a cessation of trade should automatically receive those pages for the next year. Similarly, an online filer might be prompted that last year they reported self-employment income without declaring a cessation of trade, so the system should flag that HMRC are expecting them to return such income again for the next tax year.

5.4 *Assumption of acceptance*

- 5.4.1 One of the problems with Self Assessment is that mistakes can be perpetuated for years and that HMRC not querying a return is perceived by many taxpayers as them having accepted it. Take for example the following query received to our website:

“I've been self employed for nearly 20 years as a CIS painter and decorator and have always paid my taxes. For the past 8 years I've been doing my own online **and have had no problem receiving rebates**. I've accidentally filled in employment section and ticked the wrong box somewhere and because of this I've fallen through the cracks [of SEISS/coronavirus support].”

(Bold emphasis added.)

- 5.4.2 As discussed elsewhere, we think the answer to the above in future is that HMRC should make greater use of data to cross-check people's returns or claims at an early stage, so that problems are picked up and dealt with much sooner.

¹ It might even be that some automated checks could be set up to make sure that what comes out at the end of the processing bears some similarity to what was on the original paper return – as a minimum ensuring that all pages of the submitted return have been uploaded so that it is impossible to miss off a whole source of income.

6 Q3. Do you agree that these are the right overarching objectives to guide this review or do you believe there are others it should consider? Do you feel that some of these objectives are more important than others?

6.1 *LITRG's principles for the tax system*

6.1.1 In December 2020, we published 'A better deal for the low-income taxpayer',¹ which set out that the tax system should be: clear and up to date; simple, equitable, just, accessible and responsive; joined up; and inclusive. These are of course challenging principles and inevitably on occasion there will be conflicts between them, as well as tensions with the overarching aim of the tax system – to bring in the money that government needs to deliver public services and its other goals.

6.1.2 These principles bear much similarity to the principles set out on page 12 of the call for evidence. It is difficult to say whether any one is more important than another as it can depend on the context of the matter under consideration. For example, in the context of ensuring fairness for taxpayers, it might be necessary to have some complexity but then the administration of the tax system could be made to 'feel' easier by putting in place good systems which help people to comply.

6.1.3 We comment below on each of the principles set out in the call for evidence.

6.2 *Certainty and safeguards*

6.2.1 This is an extremely important principle. As we have outlined previously, taxpayers need certainty (we describe this as clarity) about their obligations and their responsibilities, and about the balance of responsibility between them, the state and any third parties.

6.2.2 Safeguards are also essential and we stress that any change in tax administration systems should maintain and, where possible, strengthen those safeguards. Essential to this, as discussed earlier, is to recognise the imbalance of resources between HMRC and the taxpayer – particularly in respect of the low-income, unrepresented population.

6.3 *Flexibility*

6.3.1 This principle needs to encompass flexibility to deal with further devolution. We have already seen how devolution such as Scottish income tax creates challenges within the system, such as how to identify Scottish taxpayers and ensure those paying tax at devolved rates benefit from the correct rate of relief on pension contributions and Gift Aid donations.

¹ See <https://www.litrg.org.uk/latest-news/reports/201204-better-deal-low-income-taxpayer>

- 6.3.2 Flexibility also needs to encompass HMRC being able to work in partnership with other bodies, such as the new Single Enforcement Body on pressing labour market issues which can often involve pay and tax. The labour market is constantly evolving. HMRC's understanding of that market needs to evolve at pace in order to keep up with trends (for example, the shift in use of disguised remuneration schemes – with them being targeted at lower income workers in order for the supply chain to profit higher up) and tackle bad practice.
- 6.3.3 To deliver on such flexibility, HMRC cannot work in silos, either within the department itself or externally. There is therefore a need for significant cultural change, at a faster pace, in HMRC in order that they can work effectively and successfully.
- 6.3.4 ***Making it easy to get tax right and hard to get it wrong***
- 6.3.5 This is an important principle. However, we are concerned that people who do still get things wrong (for example, by getting the wrong answer from an HMRC interactive tool – perhaps by having misunderstood what was being asked in one of the questions) will be penalised if there is a perception that they should have got things right as HMRC feel they have 'made it easy' to comply. The concept of innocent mistakes must not therefore be lost.
- 6.3.6 We have also discussed with HMRC on several occasions how HMRC user testing of guidance, interactive tools and systems needs to be carried out in such a way as to determine whether the user did get to the right answer – rather than focusing on whether they felt the system to be easy to use. It is perfectly possible that users might think a system is user-friendly, but unless their responses/use of the system are independently verified as being correct, the testing could miss people inadvertently misinterpreting the question.
- 6.4 ***Helping build trust – being fair and even-handed***
- 6.4.1 We have noted in other areas of this response that there is an imbalance currently in responsibility and in the amount of resource, time and effort HMRC put into tackling non-compliance and avoidance on a large scale and instead collecting tax from the individual. For example, low-income workers who have been unwittingly involved in tax avoidance schemes (by virtue of being paid through disguised remuneration by their umbrella company) are left to pay whereas in reality the benefit of the scheme is experienced by those higher up in labour market supply chains.
- 6.4.2 As discussed earlier, HMRC sometimes act contrary to their own Regulations, pursuing the employee rather than the employer. Not only is this incorrect, but administratively, it must be far less easy to chase large numbers of employees rather than just deal with the single employer. Furthermore, HMRC continuing to focus their activity on the worker (even though what sits behind a disguised remuneration scheme is effectively a PAYE failure on behalf of the umbrella company) means there is no real incentive for the umbrella companies to stop using these schemes to pay people. HMRC's efforts are therefore not only piecemeal and inefficient but are ill-targeted and are compounding the problem.

6.4.3 We also draw attention to the points we made in earlier paragraphs that ensuring people pay the right amount of tax from the start should be the goal in all aspects of HMRC's work. This includes claiming any reliefs or other allowances that they may be entitled to. Without this focus, it will be hard to build trust.

6.5 ***Simplicity and transparency***

6.5.1 We have commented elsewhere in this response on the importance of transparency when using third party data and on transparency of service (see above under the heading 'lack of information/progress updates').

6.5.2 Simplicity can come in multiple forms and its merits can depend on whether it is in reference to the legislation, guidance explaining the legislation and HMRC's processes. All three are important, but what is essential (again, as referred to elsewhere in this response) is that they match. For example, confusion and complexity result where the guidance says something different to the legislation.

6.6 ***Reduce costs for taxpayers and drive down costs to the Exchequer***

6.6.1 Cost saving is important, but the government must recognise that savings for the Exchequer can take time to materialise and that in fact if there is to be major reform to tax administration, the short term costs are likely to rise.

7 **Q4. How could the review ensure the best coverage of viewpoints and expertise from those who depend upon the tax administration framework? Are there particular models of consultation engagement or collaboration that could work well?**

7.1 ***The need for a clear plan***

7.1.1 We think it is important to develop a clear plan or roadmap for reform at an early stage (covering the long term reforms as well as shorter term reforms) and make key decisions such as changing the tax year end before embarking on further steps. Stakeholders are willing to engage with HMRC on reforms on the basis they want to help improve the tax system, however they have limited time available and may be relying on the goodwill of input from volunteers. After this initial stage of broad engagement to gather ideas, it will therefore be necessary to develop areas of priority on which more focused input can be obtained.

7.2 ***Effective engagement – continuity of staff***

7.2.1 Engagement with government can become frustrating where there are frequent staff changes. With a major and longer term plan such as the tax administration review, it is essential that there is continuity of staff to see the work through.

7.3 ***Holistic design***

7.3.1 We have found that change is delivered best when it is considered in the round up front. For example, it was welcome that in early engagement with HMRC on SEISS grants, stakeholders

were brought together with representatives from policy, operations and communications teams. This meant that if a particular aspect of the scheme might cause problems in its delivery, this could be identified early, preventing problems from arising later on.

7.4 ***Equalities issue and impact assessments***

7.4.1 Page 33 of the call for evidence notes that equalities issues and other impacts have not yet been considered as the tax administration review has not progressed to specific recommendations.

7.4.2 We would stress the need to consider any issues fully as soon as specific proposals are made, and that this should be done as part of external consultation (not just be considered internally).

7.5 ***Models of engagement***

7.5.1 Models of consultation engagement that have worked well in the past in LITRG's experience and that of its volunteers include the Self Assessment and powers review consultations (1990s and 2006-2012 respectively). Another example is Direct Recovery of Debt where, following concerns being raised in consultation,¹ we were able to engage positively with HMRC to ensure safeguards were put in place for vulnerable taxpayers.²

7.5.2 We also recall that the development of 'Your Charter' (now renamed) was done in consultation with a wide range of stakeholders and individuals and we attended a number of workshop events from which HMRC gathered a variety of feedback. The recent HMRC Charter consultation similarly went well, as there was real engagement from HMRC and they made changes based on consultation responses, so stakeholders felt they were listened to and inputting was worthwhile.

7.5.3 In terms of a model for this particular project, we also note that the recent SEISS expert panel has operated particularly well. One of the key features of the panel is the level of trust and confidentiality that exists – it means that things have been shared at very early stages and input sought.

7.5.4 We think there is merit in HMRC setting up a similar panel, with representatives covering the whole taxpayer population, that can provide feedback, challenge and ideas at an early stage, on a confidential basis, to support this work and the roadmap.

7.5.5 It is also important that HMRC speak to, and learn from, taxpayers directly. HMRC will already have a rich source of data in the form of complaints, to help understand the areas that cause people problems. We know that HMRC already ask for customer insight when

¹ See <https://www.litrg.org.uk/latest-news/submissions/140729-direct-recovery-debt-litrg-response>

² See for example: <https://www.litrg.org.uk/latest-news/news/151009-direct-recovery-debt-finance-bill-amendment-will-protect-vulnerable>

products are designed, and many research reports have been commissioned which include user research. It may be that some more innovative thinking is needed in this area to engage ordinary taxpayers with this review work.

8 Q5. Are there other international examples or models of tax administration that could inform this review of the UK's tax administration framework?

8.1 *The tax year end*

8.1.1 We have not specifically researched international examples or models of tax administration.

8.1.2 However, we would note that the UK's 5 April tax year end (not even being a complete calendar month) is unusual if compared to tax systems internationally. We therefore suggest there is merit in reviewing the tax year end and note that the OTS is exploring the potential for moving it to either 31 March or 31 December.¹

8.1.3 We would caution though that moving the tax year end might not, for many people, result in any radical simplification if the system itself remains complex.

Chapter 3: Ensuring consistent obligations for people to enter and exit the tax system

9 General comments about this chapter

9.1 *International issues*

9.1.1 The concept of 'entering' and 'exiting' the tax system is extremely important in the context of foreign nationals – for example, migrants who come to the UK to work. As the HMRC paper does not mention the international aspects of entering and exiting the tax system, we wish to first highlight some fundamental considerations.

9.1.2 In terms of entry, migrants who arrive in the UK no longer complete a P86 (Arrival) form (instead their tax record is created only when an RTI submission is made on their behalf, or they otherwise register for Self Assessment). There is no 'marker' for their arrival, as such, which is regrettable as this is a missed opportunity to help set their UK tax 'antennae'.

9.1.3 Additionally, HMRC do not provide any information to migrant workers in their own language – a short introductory guide to the UK tax system used to be available in many

¹ <https://www.gov.uk/government/publications/ots-to-explore-potential-for-moving-the-end-of-the-tax-year>

different languages¹, but HMRC removed them. We understand this is because it was thought that it did not help people to integrate.

- 9.1.4 In our view, such a guide would save considerable effort all round. It may help migrants understand their obligations upon arrival (and so help them stay compliant) but could also help break down any perceptions that they might have about the UK establishment (that could be based on their experiences in their home countries). This could encourage migrants to think of HMRC as helpful and not frightening, and to seek help with a tax problem at an early stage, before it escalates.
- 9.1.5 It is of note that some High Volume Repayment Agents (HVRA) seem to market heavily towards migrant workers – who, perhaps because they have English as a second language or due to cultural differences, do not feel comfortable approaching HMRC directly. We are also aware that different migrant communities are often served by ‘tax advisers’ who help them in their dealings with HMRC. They may not have any specific UK tax knowledge but maybe have some relevant skills or will simply just have more experience of the UK tax system, better English, or are considered wise by those they represent.
- 9.1.6 In a global market, and particularly in the post-Brexit world where we understand non-EU seasonal worker schemes may be the norm (with workers recruited from countries like Moldova, Ukraine, Russia etc.), migrant workers should not feel that they have no choice but to use intermediaries (who may or may not be reliable).
- 9.1.7 In terms of exiting the tax system, the P85 form needs an overhaul to ensure that the process for notifying HMRC of leaving the UK is easier and clearer².
- 9.1.8 HMRC also need to put some guidance on the form to help migrants understand how to ‘cash’ any tax refund cheques they are due once they have left the UK as this is a major issue. See, for example, this query sent to our website:

“Dear Mr. Mrs, Hope you can help me. I have a pension from my husband, he was english. You sent me a repayment of income Tax cheque to my addres in Brazil, in 2019. I was unable to deposit the cheque in my bank account here in Brazil. How could you help me? Thank you.”

- 9.1.9 All of this will encourage completion rates of the P85 form which will benefit HMRC as they will have more accurate information as to people’s circumstances and whereabouts (which feeds into what we say at in answer to question 6 below).

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<https://webarchive.nationalarchives.gov.uk/20110617022057/http://www.hmrc.gov.uk///migrantworkers/index.htm>

² We explain further in our submission on international tax debt: <https://www.litrg.org.uk/latest-news/submissions/210616-helping-taxpayers-offshore-tax-and-international-tax-debt>

- 9.1.10 Further work is also required to raise awareness among migrants to the UK who return to their home country and whose Self Assessment records are not closed down properly¹. This can mean late filing penalties are accrued unnecessarily, which can cause great distress and unnecessary contact to both HMRC and the tax charities. As one taxpayer recently wrote to us:

“I started to work on my own in 2012 as a cleaning lady, and [HMRC] advised me to pay [tax] and so I did until May 2013. I asked her to close [my record] because I returned to [my home country] to take care of my son who had... surgery.... I know that I signed the request to close the activity.... But unfortunately, it did not happen... [and when I returned from overseas, I] received a bill and another letter charging a fine of 1600.00 for not having paid those years that was not here. What [do] I do, I work a few hours, 2 hours a day and I cannot afford. Thank you for your attention and help.”

9.2 *Domestic issues*

- 9.2.1 People who are born, live and work in the UK do not enter and exit the tax system per se, but they might enter and exit parts of it – for example Self Assessment, PAYE for employers, or VAT.
- 9.2.2 Before we answer the questions, we want to make a general comment about most people’s first interaction with the tax system – when they take their first job.
- 9.2.3 There is much that could be said about improving people’s experience at the time of this first interaction – for example, HMRC could improve the starter checklist process, particularly where there is a NINO missing. We also discuss later in this response how HMRC could more quickly identify when errors have been made in the starter process.
- 9.2.4 However, the wider, overriding issue is that most people understand little about our tax system. Historically there has not been any tax education in the school curriculum; even now, tax education is variable. Developing tax literacy (particularly about basic income tax obligations and key processes) before people’s first interaction with the tax system, is essential to equip people for navigating the system².
- 9.2.5 Overall, the call for evidence suggests a more consistent and standardised approach to registration across taxes and duties. Many businesses do not come into being with a ‘big bang’ – that is, they usually do not need to register for Self Assessment/PAYE for employers and VAT all once when they first start up. Rather, they tend to engage with different parts of

¹ Of course, this issue goes wider than just migrants leaving the UK and can affect any business that has ceased trading.

² See our recent submission to the APPG on financial education for further thoughts: <https://www.litrg.org.uk/latest-news/submissions/210623-appg-young-people-rapid-inquiry-primary-school-aged-financial-education>

the system incrementally as their business grows. Nevertheless, streamlining and simplifying the different **processes** for registration into those different parts of the system (whenever that may occur) is a high-level principle that should be adopted into the new framework.

- 9.2.6 At the moment, for example, to register for Self Assessment, you can phone HMRC, fill out one of two forms (CWF1 or SA1) through the HMRC's online services portal or fill out one of the two forms onscreen to print and post. To deregister, you can either call HMRC or, if you are self-employed, can complete a standalone form which seems to be emailed in¹, which is branded in the old HMRC colours, and which seems to disappear into a black hole with no ability to save a copy of the submission and no acknowledgement of receipt from HMRC. This is less than ideal, given you need to deregister from self-employment to prevent overpayment of Class 2 NIC and it is not clear whether HMRC will always action self-employment deregistration from the entry of a cessation date (or a white space note²) on a tax return alone.
- 9.2.7 A single, clean, simple, digital portal through which all the registrations (and deregistration) are made, where taxpayers do not need to enter the same basic information over and over, would be helpful. At the moment it can seem there are multiple different options, which although understandable (as they have been bolted on, as the system and digital capability has evolved), are confusing and off-putting. It is, of course, vital that an option is kept for the digitally excluded.
- 9.2.8 It should also be possible, as now, to register for any associated online services (e.g. Self Assessment online services, if you are registering as self-employed) or any special schemes (for example, Construction Industry Scheme (CIS) if you are registering as self-employed) at the same time. Problems and confusion can currently arise however, where you are already registered for Self Assessment, say, and then you need to register for CIS or Self Assessment online services later on³, so improvements are possible.
- 9.2.9 Quirks in the system whereby, for example, you need multiple Government Gateway IDs to access HMRC online services accounts to manage your affairs, need to be tidied up. For example, sole traders who may already have an HMRC online services account for Self Assessment in their capacity as an individual also need to hold an HMRC online services account as an organisation in order to register for PAYE for Employers or VAT.

¹ <https://www.tax.service.gov.uk/shortforms/form/CeaseTrading>

² Indeed, it would appear that HMRC's computer systems do not tend to read white space notes at all, so it is important that HMRC urgently identify a means of reading them and actioning any instructions or requests given. *Tooth v HMRC*, eg: <https://www.supremecourt.uk/press-summary/uksc-2019-0136.html>

³ As we explain in our news article: <https://www.litrg.org.uk/latest-news/news/181228-filing-your-tax-return-online-first-time-be-clear-registration-process>

10 Q6. What are the key challenges with the current legislative provisions relating to the identification and registration of taxpayers?

- 10.1 One of the main key challenges is that, as we understand it, there are no clear current legislative provisions relating to the identification of taxpayers.
- 10.2 If you are born, live and work in the UK, you usually get your National Insurance number (NINO) automatically at age 16 (although, as this is connected to a child benefit claim having been made, there will be an issue with non-issuance of NINOs in the future as some parents do not claim child benefit because of the high income child benefit charge¹). It is possible to apply for a Unique Taxpayer Reference (UTR) number at any point, by filling out a form. Until recently, there were no front-end checks on identity² – any checks there are mainly seem to come at the back end, causing problems like we have seen recently with delays to repayment claims because of security concerns etc.³
- 10.3 There are, however, identity checks when people want to sign up and use HMRC’s online services, either through the Government Gateway or Verify. Verify does not work well and in fact, we understand the project is being abandoned⁴. The Government Gateway is better but can still prove challenging for some, for example those without a current valid UK passport or driving licence, as numerous posts on internet forums show⁵. This can effectively exclude people from being able to transact easily and quickly with HMRC and does not help people pay their taxes. This recent query into our mailbox demonstrates this:
- “I have a Gibraltar passport so cannot fill the form in to register for tax so I can do a tax return, All I want to do is to declare my income and I cannot do it.”
- 10.4 Any new system of taxpayer identification needs to take into account how people can identify themselves where they have neither a passport nor a driving licence. If identification is more difficult for those without these documents, there could be equality concerns, as they might be, for example: older people (if, perhaps due to health, are no longer able to drive and have no need to renew a passport as they have no plans to travel); young people (who have not learned to drive and have not acquired their own adult passport); low-income people who cannot afford a passport and have not been able to afford to learn to drive/have

¹ As explained by the OTS: <https://www.gov.uk/government/publications/ots-life-events-review-simplifying-tax-for-individuals>

² From 15 June, we understand HMRC will be making new checks on KANA and Online Tax Registration Service (OTRS) and HMRC short forms (KANA forms) by asking for two forms of identification.

³ <https://www.litrg.org.uk/latest-news/news/210331-hmrc-tax-refund-identity-checks>

⁴ <https://questions-statements.parliament.uk/written-statements/detail/2021-04-27/hcws942>

⁵ <https://community.hmrc.gov.uk/forums/customerforums/sa/067c366e-a884-ea11-99e6-00155d9c871e>

their own vehicle. A provisional driving licence is not usually acceptable as identification, as we understand it. This is a wider government consideration than HMRC, but it seems that there really needs to be a cost-free means of obtaining photographic identification to help people to access both public and private services.

- 10.5 In short, a fundamental part of administering taxes is taxpayer identification (and numbering, although it is worth saying it is not really clear why we need both the NINO and UTR in the UK system) as it underpins key administrative processes associated with filing, payment, assessment and collection. Good identification procedures should also help cut down on fraudulent attacks on the system.
- 10.6 HMRC need to develop a single, well-maintained database of registered taxpayers which allows a whole-of-taxpayer-view for HMRC staff, where the information contained in it is adequate for the purposes of effective communication with taxpayers and with well-documented procedures for updating the information, so it is as accurate as possible.
- 10.7 In terms of the legislative provisions in relation to registration, we observe that they are limited (neither the legislation nor any regulations really specify who must file a tax return – the legislation basically says anyone who has been issued with a s8 TMA 1970 notice which has not been withdrawn, must file¹). Instead HMRC have considerable freedom to set the criteria for who they think should be in the Self Assessment population². Unfortunately, HMRC's criteria, their processes, their simplified guidance and their interactive checking tool do not always match. This should be changed to ensure greater certainty for all individuals as to if and when it is necessary to register for Self Assessment in the first place. The distinction between notifying chargeability (which, in practice, can actually be done by phoning HMRC and telling them of the income) and registering to complete a tax return online should also be clarified.
- 10.8 We appreciate that HMRC generally seek to minimise the number of taxpayers required to file tax returns, but it is probably possible for HMRC to take out even more – e.g., people with minimal overseas bank interest, where the income falls under the personal allowance or personal savings allowance. Currently we understand that many of these people are forced to prepare a tax return with all the difficulties that this brings (although it is of note that for overseas income, the GOV.UK tool³ answer as to whether you need to complete a tax return in these circumstances, does seem to hinge on whether there is tax to pay). While we appreciate HMRC might like visibility over such income, it would be a major simplification if HMRC's Self Assessment criteria state that such people only needed to file a tax return when there was tax to pay.

¹ <https://www.gov.uk/hmrc-internal-manuals/self-assessment-legal-framework/salf210>

² <https://www.gov.uk/hmrc-internal-manuals/self-assessment-manual/sam100060>

³ <https://www.gov.uk/check-if-you-need-tax-return>

11 Q7. What benefits of the current legislation should be preserved?

- 11.1 The Simple Assessment power introduced in Schedule 23, Finance Act 2016¹ was welcome. As we understand it, there are two groups who no longer have to go into Self Assessment: pensioners who receive a state pension of more than their personal allowance and who have no PAYE source of income; and PAYE taxpayers (not in Self Assessment for any other reason) who receive a P800 tax calculation showing an underpayment which cannot be collected by an adjustment to a tax code (and which is not paid voluntarily). As discussed earlier in this response, the use of Simple Assessment should be expanded.
- 11.2 This needs to be accompanied by greater clarity and communication from HMRC about the responsibility of the taxpayer to check the figures on their Simple Assessment tax calculations and to notify any discrepancies or untaxed income. The importance of checking the information and not assuming its accuracy is not well understood by unrepresented taxpayers.
- 11.3 Under the harmonised penalty regime introduced in Schedule 41 Finance Act 2008², the penalty for failure to notify is based on potential lost revenue. If there is no potential lost revenue, there is no penalty.
- 11.4 Under this provision, the consequences for many unrepresented taxpayers for not notifying (or not notifying on time) are often nil, which is vital given HMRC's default stance that ignorance of the law is not generally a reasonable excuse (though we acknowledge HMRC's re-write of their internal guidance on this point, to take account of case law which indicates that ignorance of the law **can** be a reasonable excuse, depending on the taxpayer's circumstances³). This safety net is useful from both a practical and principled perspective and should be preserved.
- 11.5 Given the problem highlighted previously of people not effectively deregistering from self-employment, HMRC should also keep the ability to withdraw the requirement to complete a Self Assessment return if the criteria are not met⁴. This is a vital safeguard that improves experiences as it releases people (for example, those whose trading income ends up being below the trading allowance) from the administrative burden of completing a Self Assessment return for the year in question and also means that any associated late filing penalties can be abated. As it is so useful, HMRC should ensure they are applying the rule as widely and flexibly as possible. It is not clear in this respect why there is a need for this rule

¹ <https://www.legislation.gov.uk/ukpga/2016/24/schedule/23>

² <https://www.legislation.gov.uk/ukpga/2008/9/schedule/41>

³

https://assets.publishing.service.gov.uk/media/5af9caf440f0b622d18b2e86/Christine_Perrin_v_HMR_C.pdf

⁴ <https://www.legislation.gov.uk/ukpga/2013/29/schedule/51/enacted>

to be strictly time limited to being used within two years from the end of the relevant year of assessment, except in 'exceptional circumstances'. In situations, such as that discussed elsewhere where someone has gone abroad and not correctly closed down their Self Assessment record, it would seem useful for HMRC to apply the withdrawal to earlier years. HMRC should also do a programme of specific outreach work to ensure people are aware of this provision, as it could help 'cleanse' a good number of taxpayer records.

12 Q8. What likely changes and developments will the framework need to handle? What are the key priorities for framework reform in the area of identification and registration of taxpayers?

12.1 Here are just a few changes and developments the framework will need to handle:

12.2 *People and businesses are becoming more internationally mobile*

12.2.1 The world economy has experienced a period of intense global integration. People sometimes travel to work in different countries these days. Furthermore, information technology and communications, including the development of the internet, mean there are probably increasing situations of people working from Bolivia, say, for a UK company and never setting foot in the UK.

12.2.2 The points we made in earlier about migrant workers are relevant here. Furthermore, HMRC need to provide some general information to employers on the use of international individuals in their business and how to deal with people with no NINOs etc as this seems set to become more common.

12.3 *Employment is becoming more flexible*

12.3.1 In recent times, there has been a drive to make the UK labour market more flexible. This has provided many people with the opportunity to make some money but has also provided some additional leeway for some to exploit vulnerable workers.

12.3.2 We would like to highlight the ease with which people can enter parts of the UK tax system and the scope that this leaves for abuse of both workers and the system. For example, the fact that anyone can register for self-employment (even where they are not genuinely self-employed) and get a UTR must surely be fuelling the use of 'false self-employment'¹. There have also recently been exposés of the mini umbrella company fraud² and the use of multiple, and continually changing companies as employers. It seems to us that this fraud

¹ We understand that HMRC have been concerned with this regarding the SEISS 4 and 5 grants and so have been doing pre-validation checks whereby potential claimants have to prove they are actually in business i.e. provide bank statements etc before they can claim the grants.

² <https://www.gov.uk/guidance/mini-umbrella-company-fraud>

could be dealt with (or at least much reduced) if new employer registration applications were scrutinised before registering them.

12.4 ***Our population is ageing***

12.4.1 Better health is creating an increase in life expectancy in many countries around the world. Together with falling birth rates, this is contributing to an ageing population. The system needs to be well geared to handling bereavement situations and those who become unable to manage their own tax affairs.

12.4.2 HMRC need to ensure their processes upon someone's death are as seamless as possible and that they do not add to an already difficult time for those dealing with the situation. It is unacceptable, for example, for HMRC to address correspondence to the deceased person (an example of which we have seen from March 2021¹), or make things so complicated for the survivor, that it adds to their distress at an already difficult time. To build trust in the tax system, HMRC need to get these basics right.

12.4.3 The OTS's life events report² also raised the difficulties people can have with registering a Power of Attorney (POA) with HMRC. From our own experiences, from people writing into us and from threads that we have found on web forums discussing HMRC and POAs³, it is clear that people are very confused as to HMRC's processes: e.g. HMRC have no obvious point of contact, there is confusion over how POAs fit with trusted helper and 64-8 processes, and it is not clear whether the POA gets noted across all HMRC's functions/heads of tax etc. HMRC processes could be improved where there is either an informal helper or where there is a POA in place. For example, HMRC's systems should be joined up for there to be a once and done notification for POA.

12.5 ***Further devolution***

12.5.1 It is possible that we will see further devolution of tax powers, and also possibly the devolution of more tax powers to local authorities. In order to make devolution work properly, it is crucial that taxpayers' place of residence is correctly identified so that they pay tax in the right jurisdiction. For example, HMRC is currently responsible for deciding who is a

¹ The deceased's executor had registered the estate to file a Self Assessment tax return. Instead of writing to the executor, the letter confirming set up of the estate's SA record was addressed to the deceased individual, the salutation reading "Dear XXXX deceased", with the letter then written addressing the deceased in the second person.

² See chapter 5:

https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/838130/Taxation_and_life_events_Oct_2019.pdf

³ For example, <https://forum.alzheimers.org.uk/threads/power-of-attorney-notifying-hmrc.112137/> and <https://forum.alzheimers.org.uk/threads/completing-a-tax-return-to-hmrc-as-lasting-power-of-attorney.111242/>

Scottish or Welsh taxpayer (and by default, who is a 'rest of UK' taxpayer). In broad terms, Scottish and Welsh taxpayers are categorised by where they live.¹

12.5.2 The Scottish experience has shown that HMRC's attempt to classify Scottish taxpayers has not been without difficulty². This, must, undoubtedly be due to data quality – while people's addresses may be correct under the RTI system for example, their address in another system may be different. As we stated earlier, HMRC need one joined up system so that conflicts in information they hold are minimised. This feeds into the bigger point we made earlier – that people need to be properly identified when they register with HMRC.

13 Q9. Are the current approaches to the timing of registration still appropriate, or are there opportunities for reform?

13.1 In reality, different taxes and duties need different approaches to the timing of registration because they are trying to do different things and have different policy objectives. The timing of registration cannot and should not be constrained by the desire for more consistency and simplicity.

13.2 Having said that, we do think that there is a case for looking at the timing of registration within individual taxes and duties. For example, in Self Assessment, we think there is too much of a time lag between the end of the tax year in which the taxable activity starts and the deadline for notifying. HMRC seem to be inclined to look at bringing forward obligations, which is a good idea as long as people know they need to do something. The key is good guidance and communication.

13.3 In general, HMRC should do more to ensure that people are aware of their obligations and how to meet them. It is not good enough to passively post information on GOV.UK and hope people find it. As soon as people register as a sole trader, for example, HMRC should send them information that they can refer to about other regimes their business might need to enter at some point, for example PAYE or VAT. Ideally, this would be in some kind of formal, hard copy, welcome pack that people can put somewhere safe and refer back to. The problem with communication via soft copy guides sent out by email is that it is a very informal way of communicating, the seriousness of the subject may be missed, or indeed, the email may be overlooked altogether due to the volume of emails that people now generally receive on a daily basis.

13.4 It is also essential that HMRC use the data they have in-house (or from third parties) more actively to identify when someone might have tripped a registration requirement, so that

¹ By virtue of the definitions at s.80D Scotland Act 1998 as amended by the Scotland Act 2012 and in Wales, at s.116E Government of Wales Act 2006 as inserted by the Wales Act 2014.

² And this has been compounded by the fact that there is no box to self-assess your Scottish (or Welsh) residence status on a Self Assessment return.

the onus is not always solely on the taxpayer. For example, through the RTI system, HMRC should have details of a person's income. They also administer child benefit, so have details of any claims made. By marrying up these two datasets, they should be able to identify when someone has tripped the HICBC for example, and prompt them to register for Self Assessment, rather than letting people fall into non-compliance.

Chapter 4: Improving the way tax liabilities are calculated and assessed

14 Q10. What key issues relating to the way tax liability is established arise within the existing legislative provisions?

14.1 *Simplifying the underlying rules*

14.1.1 As noted in our introductory comments, the tax system can be complex to understand, especially for low-income unrepresented taxpayers. Ways to simplify the tax system, wherever possible, in a way that is fair and inclusive to all in society are to be welcomed.

14.1.2 Examples of the complexity in establishing a correct tax liability include a lack of understanding about the high income child benefit charge (HICBC), electing to use the cash basis (when anecdotal evidence suggests most low income self-employed use a version of the cash basis anyway), the calculation of overlap profits and understanding when these can be relieved in future trading years.

14.1.3 We reiterate, as earlier, that while changing the underlying rules might be considered out of scope of this review, that HMRC should attempt to highlight areas of particular complexity which cause difficulties in administering tax and put forward suggestions for how the law could be simplified to in turn make administration simpler and more cost effective.

14.2 *Division of responsibility and clarity of responsibility with different methods of tax 'assessment'*

14.2.1 As noted elsewhere in this response, there needs to be a clear and well-understood division of responsibility between government (HMRC) and the taxpayer regarding how a tax liability is established. Recent changes such as the use of pre-population or third-party data can sometimes result in complexities and confusion¹. While the use of this information can be helpful and may simplify tax affairs, it prompts an important discussion about greater reliance on data potentially altering the taxpayer's responsibility within the current legislation.

¹ See our response to the OTS Third Party Data Reporting Review – Call for Evidence <https://www.litr.org.uk/sites/default/files/files/210330-LITRG-response-OTS-Third-Party-Data-Reporting-Review.pdf>

- 14.2.2 Taxpayers can be confused about the different methods of assessment for tax liabilities, for example, P800 or Simple Assessment or Self Assessment and consequently what their corresponding responsibilities are.
- 14.2.3 In most instances HMRC's default position seems to be that individual taxpayers are responsible for **everything** (including their employer's errors and deficiencies in Simple Assessments). This position needs review from both a principled and practical perspective.
- 14.2.4 For example, as we said in our December 2020 paper,¹ it is vital that we come up with a way of taxing those in the gig economy in a way that does not rely so heavily on Self Assessment. The well recognised problem is that we have a very complex system, not really designed to collect tax from people with potentially multiple, low value, income streams who do not understand what they are doing or afford professional help. In these situations, where there is non-compliance or under-reporting, is it correct to simply say that it is solely the taxpayer's responsibility?
- 14.2.5 In most employment situations, the law actually says that HMRC should collect tax underpayments from the employer². This is effectively a means of enforcing the payment of PAYE and says that the employer will remain liable for the tax that should previously have been accounted for to HMRC but for whatever reason was not paid. Nevertheless, in our experience there seems to have been a shift in responsibility towards the individual taxpayer. For example (and as also discussed earlier in this paper), in the case of umbrella companies using disguised remuneration schemes to pay workers (who may not know they are being paid this way), HMRC appear to be directing their attention towards the employee rather than the actual umbrella companies. This seems to be targeting the wrong party and risks undermining trust in HMRC and the tax system.
- 14.3 ***Assumption that a lack of challenge means a tax position is 'accepted'***
- 14.3.1 Again, as discussed earlier (but an important factor in establishing liability so revisited here) is that there is a common misunderstanding amongst taxpayers that if they have not heard from HMRC then their tax liability must be correct. The recent Self-Employment Income Support Scheme (SEISS) grants have highlighted an issue of some Construction Industry Scheme (CIS) workers completing their Self Assessment tax returns incorrectly as employed and not as self-employed. This has resulted in the calculation and assessment of their tax liabilities (in particular, their self-employed National Insurance contributions (NIC)) being incorrect. However, better use of data would have enabled HMRC to potentially identify these errors. We discuss this further in answer to question 18 below.

¹ See A better deal for the low-income taxpayer, full version, page 21: <https://www.litrg.org.uk/latest-news/reports/201204-better-deal-low-income-taxpayer>

² Section 80 The Income Tax (Pay As You Earn) Regulations 2003

14.4 ***Particular issues for couples***

14.4.1 As also mentioned in our introductory comments, in our experience, there can be further confusion from unrepresented taxpayers regarding the way a tax liability is calculated when there are interactions involving joint income. Examples include the calculation of the HICBC, the transferable marriage allowance and self-employment losses if there is a joint tax credits claim. This review should consider how areas of the current tax system which use joint household income could be simplified especially with a move towards a single digital account and further use of third party data.

14.5 ***Basis periods***

14.5.1 There may be a case to simplify the tax system by moving an unincorporated business's basis period to align with the current tax year (as per Box 4.1¹) and we would be happy to be involved in any further discussions on this proposal. However, any changes should be thoroughly researched and backed up with evidence showing benefits both to the taxpayer and HMRC, as well as identifying any potential new problems at an early stage. As departing from generally accepted accounting principles will bring its own complexities, an optional default year of 31 March may be preferable to a mandatory accounting date (as discussed further in answer to question 13). For example, for businesses which do not use a 31 March accounting year end, the alignment of basis periods with the tax year would involve apportioning the (known) profits of the preceding accounting period and the (unknown) profits of the current period, with later adjustments, and that would be anything but a simplification.

15 **Q11. What benefits of the current legislation should be preserved?**

15.1 ***A choice of means of engagement with the tax system – e.g. paper returns***

15.1.1 Under current legislation, the taxpayer has a choice in a number of areas regarding the calculation and assessment of their tax liabilities. It is important that these choices remain and there should be further detailed consultation on any changes to the current legislation which remove choices from the taxpayer. An example of this is the possible restriction in the use of paper tax returns with the move to an enhanced digital tax system. We think that future systems should be designed such that those who currently engage on paper can continue to do so. If, for example, those who are (and are fully capable of) filing paper annual tax returns are predominantly older people or those with other protected characteristics, HMRC could see a legal challenge on equalities grounds if they are 'designed out' of any new system.

¹ Box 4.1 Page 19 The tax administration framework: Supporting a 21st century tax system: https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/972148/The_tax_administration_framework_Supporting_a_21st_century_tax_system_-_call_for_evidence.pdf

15.1.2 HMRC should continue to provide a ‘fit for purpose’ means for all unrepresented taxpayers to notify and calculate tax liabilities including filing a tax return. We believe the move to a digital tax framework should not result in taxpayers having to source and pay for third party software, for example if paper tax returns are restricted then it would be unfair on taxpayers to have to purchase software to file partnership or trust tax returns.

15.2 *Preserving taxpayer safeguards*

15.2.1 The current taxpayer safeguards relating to HMRC’s compliance powers for determinations, corrections, information powers and discovery assessments must be retained.¹ The increasing use of pre-population and third party data will mean HMRC have more information at their disposal and it is important that this information is used appropriately. We discuss use of data more fully later in this response.

15.3 *Timing of claims and elections*

15.3.1 Most claims and elections are made as part of completing the tax return. Whilst there are some benefits in moving to a ‘real-time’ process for making claims and elections, sometimes the benefit of hindsight is needed before making such decisions. For example, when deciding if the cash basis or accruals basis would be most appropriate for a self-employed business, it may be advantageous to consider it at the end of the accounting year in case there are losses or significant interest and finance costs.

15.3.2 It would therefore be useful to retain the ability to make relevant claims and elections as part of the tax return process (or other annual process which might supersede the current tax return), as well as providing the option of making them during the tax year – perhaps as part of the single digital account.

16 **Q12. What likely changes and developments will the framework need to handle? What are the key priorities for framework reform in the area of calculating and assessing tax liabilities?**

16.1 *What likely changes and developments will the framework need to handle?*

16.1.1 The framework will need to be sufficiently flexible to handle potential future changes to the calculation and assessment of tax liabilities such as the possible alignment of the income tax and NIC thresholds, introduction of new taxes either UK-wide or in the devolved administrations, and possible changes to the tax year². Also, it must be able to handle

¹ As discussed in our response to MTD: Tax Administration consultation in 2016, see : <https://www.litrg.org.uk/sites/default/files/files/161107-LITRG-response-MTD-tax-administration-FINAL.pdf>

² The OTS is exploring potential for moving the end of the tax year: <https://www.gov.uk/government/publications/ots-to-explore-potential-for-moving-the-end-of-the-tax-year>

general trends in people's lives which consequently affect their tax position. Examples include people changing jobs more frequently, couples living together, marrying or divorcing, accidental landlords, the growth of the gig economy and multiple part-time jobs or self-employment businesses.

- 16.1.2 The increasing use of third party data by HMRC should result in developments to the current system. HMRC need to inform taxpayers what data they have, how it is being used and explain how taxpayers have a responsibility to check this information and crucially what taxpayers need to do if they consider any third party data to be incorrect. HMRC will need to develop its discovery provisions with the increasing access to third party data. As discussed earlier in this response, the general principle should be to ensure tax assessments are correct as early as possible in the process rather than leaving matching data until much later on and discovering additional tax. Unrepresented taxpayers can suffer significant distress and financial difficulty if tax debts are allowed to accrue over time. This can include those on middle incomes who have failed to understand and notify liability to the high income child benefit charge, for whom unexpected tax liabilities (and potential penalties) can amount to several thousand pounds. See for example this query received very recently to our website:

“I desperately need your help and advice in the HMRC wanting to back date charges for child benefit [sic] payments of which I stopped [sic] receiving in 2019 as I now earn over the threshold ! I'm depressed and upset and can't afford it . My income increased gradually and for the previous years didn't know and wasn't informed about the changes please help.”

- 16.1.3 As HMRC will not be providing any software to enable taxpayers to follow the MTD for income tax regime, they will be relying on software, which may not be always reliable as in the case of the Post Office IT accounts scandal¹, which will be assisting with the calculation and assessment of tax liabilities that they will not ultimately control. For example, this lack of HMRC control may result in less authority in implementing timescales to make changes to the tax system because the software companies will not be under the direction of government policy in the same way HMRC online services are. A potential consequence to this may be a longer lead time to change tax policies which need to be administered through MTD software.

16.2 ***What are the key priorities for framework reform in the area of calculating and assessing tax liabilities?***

- 16.2.1 It is imperative that complete plans relating to the ambitious timeframe for MTD are fully explained so that businesses and landlords can understand how this fundamental change will affect how their tax liabilities are calculated and assessed. For example, will these individuals still need to complete a Self Assessment tax return if they only have income reported under the MTD requirements or all their other taxable income is reported to HMRC

¹ See, for example, this BBC report 'Post Office scandal: What the Horizon saga is all about': <https://www.bbc.co.uk/news/business-56718036>

by third parties, such as PAYE sources? Any changes should ensure that this mandatory system provides benefits to both the taxpayer as well as HMRC.

- 16.2.2 As noted above, MTD will rely on third-party software, over which HMRC will have no direct control. HMRC's role in preventing scams when using third party software should be considered. For example, scam activity is on the rise (as discussed earlier in this response) and taxpayers will need to be clear on how they can obtain legitimate software, such that they do not fall victim to a scammer and submit private data to them thinking they are HMRC. Similarly, even if a taxpayer finds legitimate software via GOV.UK, it is not clear what responsibility HMRC have to monitor approved packages to ensure they are secure.
- 16.2.3 Alongside any changes such as the introduction of single digital account which may benefit a sizeable proportion of taxpayers, HMRC must prioritise the services for taxpayers who are unable or not confident to use digital services.

17 Q13. How could tax return obligations and processes be updated? What should a 'tax return' look like in a digital tax system?

17.1 *How could tax return obligations and processes be updated?*

- 17.1.1 A single digital account is an opportunity to provide most taxpayers with an individually tailored list of dates and information, including filing deadlines, payment deadlines, tax losses carried forward. A reasonable alternative for those unable to use the digital account must also be provided.
- 17.1.2 To assist in calculating and assessing tax liabilities it would be a useful feature if information could be added to a taxpayer's digital tax return during the current tax year, for example by including bank interest when an account is closed as this way the taxpayer would be less likely to forget to report the income compared to a number of months later, or self-employment profits if trade ceases during the tax year. This opportunity to provide more real time information should be optional but could have benefits for the taxpayer, such as in the cessation of trade example the single digital account could prompt the taxpayer to inform HMRC through the digital account so that the Class 2 NIC position is calculated correctly.
- 17.1.3 The single digital account should also record all claims and elections the taxpayer has made such as overlap relief. As mentioned under question 11 above, the claims and elections processes should enable real time claims and show the tax position of potential claims such as the interaction with losses based on MTD returns. The use of nudges to suggest other claims which the taxpayer could use maybe helpful to unrepresented taxpayers who may not otherwise be aware of them. It is important that there is an opportunity for claims and elections (where appropriate) to be made or amended after the end of the tax year when the taxpayer has a complete picture of their tax position.

- 17.1.4 As explained in the LITRG report ‘A better deal for the low-income taxpayer’¹ we consider an optional default year-end of 31 March would be easier for new self-employed businesses. By updating the tax return processes for this, it should reduce overlap profits which would simplify the calculation and assessment of tax liabilities. However, there are other complexities to consider such as choosing between the cash basis and accruals basis and how to utilise tax losses so although an optional default year-end may be a simplification there are many other tax decisions which the unrepresented self-employed taxpayer should be aware of.
- 17.1.5 The process for amending tax returns where an error has been uncovered which affects a number of tax years is currently resolved by using different processes, for example you can only amend a tax return within a fixed time limit. If outside this time limit then, depending on the taxpayers’ position, either disclose the additional tax liability or claim overpayment relief. It would be simpler if this could be updated to having one streamlined process.
- 17.2 ***What should a ‘tax return’ look like in a digital tax system?***
- 17.2.1 The ‘tax return’ should be easy to use with clear guidance which is sufficiently detailed to enable the taxpayer to make informed decisions where appropriate. Taxpayers would benefit from nudges and prompts within the digital tax return to increase their tax awareness and make informed decisions with respect to claims and elections or any allowances they may be entitled to, such as the property income allowance.
- 17.2.2 We think HMRC should provide better guidance and assistance to unrepresented taxpayers so that they report their offshore income accurately rather than potentially just using prompts to disclose overseas income². Also, the system should be aligned with state benefits wherever possible, for example aligning the self-employed tax and universal credit rules³.
- 17.2.3 We anticipate that any significant changes to the tax system such as real time ‘estimated’ calculations of tax liabilities based on quarterly MTD returns will require sufficient investment in an IT system which can enable a holistic approach to an individual’s or business’s tax position.

¹ See LITRG’s A better deal for the low-income taxpayer’ Pages 21-22

<https://www.litrg.org.uk/sites/default/files/files/LITRG-A-better-deal-for-the-low-income-taxpayer-2020.pdf>

² See LITRG’s response to HMRC’s discussion document ‘Helping taxpayers to get offshore tax right’:

<https://www.litrg.org.uk/latest-news/submissions/210616-helping-taxpayers-offshore-tax-and-international-tax-debt>

³ See LITRG’s report Self-employed claimants of universal credit – lifting the burdens:

<https://www.litrg.org.uk/sites/default/files/Self%20Employment%20report%20FINAL%20for%20release.pdf>

17.2.4 A 'tax return' in a digital tax system should include the information HMRC has received from third parties, with sufficient detail for the taxpayer to understand where this data has come from, and an accessible easy-to-use system to enable the taxpayer to challenge any incorrect information. However, we are concerned that the increasing use of third party data and pre-population, which can be beneficial for both HMRC and the taxpayer, will result in an expectation by the taxpayer that they have a reduced responsibility or level of engagement in checking their tax position. As discussed elsewhere in this response, responsibilities therefore need to be reconsidered and clearly set out.

18 Q14. How could HMRC better establish tax liability in future, to help build trust in a tax system that people see as fair and even-handed?

18.1 *Help the taxpayer to claim all they are due*

18.1.1 HMRC must focus on getting things right in a way which benefits both the taxpayer and HMRC¹. It is often relatively small acts which build trust in larger systems. For example, there could be greater focus on what tax reliefs taxpayers may claim and this could be addressed by including a drop-down menu in the single digital account showing all possible reliefs in respective categories such as employment professional subscriptions.

18.2 *A smooth transition*

18.2.1 Any transitional rules which form part of moving to a new tax system must be viewed as fair to the taxpayer; for example, if there were to be a loss of overlap relief because of moving the basis periods to align to the tax year, this would be perceived as unfair by affected taxpayers and could erode trust in HMRC's new approach.

18.2.2 We consider that any changes to the tax system should be fully tested before being implemented. There will be an expectation from taxpayers that digital services, such as the single digital account, should be timely and accurate. Errors such as missing employment records for taxpayers with multiple employments will undermine trust and engagement with HMRC. Trust in digital systems must include protection wherever possible from scams, which are becoming more sophisticated and prevalent.

18.3 *Providing taxpayers with certainty*

18.3.1 To build a trusted tax system, taxpayers need to have confidence that their tax return, including that the 'Additional information – white space' has been checked by HMRC (HMRC has confirmed that this is not always the case)², otherwise genuine errors could continue to

¹ As per HMRC Charter :<https://www.gov.uk/government/publications/hmrc-charter/the-hmrc-charter>) which states 'We'll help you meet your tax responsibilities and make sure you get any benefits, tax credits, refunds or other support you can claim.'

² *Tooth v HMRC* [2021] UKSC 17 - <https://www.supremecourt.uk/cases/uksc-2019-0136.html>

be made in future years. This is a particular concern for low-income taxpayers who are unable to afford professional tax advice but can still have complicated tax affairs.

- 18.3.2 The development of a more ‘real-time’ digital system will bring an expectation that there will be certainty sooner in regard to an individual’s tax position. In order to build a trusted tax system with clearer certainty for taxpayers, it will be necessary to consider amending some tax policies on the time limits for assessing tax liabilities such as the 12-year time limit for assessment of offshore liabilities¹.

Chapter 5: Using data and information to make tax compliance effortless for the majority

19 General comments about this chapter

- 19.1 The Office of Tax Simplification (OTS) recently published their report on third party data². We recommend that HMRC also look at our response to the OTS call for evidence.³ We are generally supportive of the recommendations made by the OTS, and many of them support earlier LITRG recommendations especially around transparency of data and ensuring there is an appropriate mechanism for taxpayers to query or amend data. We note that the OTS recommend a roadmap to set out the stages in which greater use of third party data will be made, both to improve the way existing sources of data are provided and used, and to add further sources of third party data, and how this will be implemented. We agree a roadmap approach is the right one, and this fits with our suggestion for an overall reform roadmap with key stages highlighted along it. We feel strongly that HMRC should ensure they improve existing sources of data and deal with the transparency and responsibility points before they add more sources of third party data.

20 Q15. What key issues do the current legislative provisions relating to the provision and use of data and information present?

20.1 *Pre-population*

- 20.1.1 Under current legislative provisions there is already some use of pre-population, which could probably be usefully extended in due course. The use of pre-population does however pose

¹ See LITRGs response to Extension of offshore time limits- Consultation on draft clause 33, Finance Bill 2018-2019: <https://www.litrg.org.uk/sites/default/files/180830-LITRG-response-Extension-offshore-time-limits-FINAL.pdf>

² OTS report – Third party data https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/997582/Third_party_data_report.pdf - This report was published just as this response was being finalised, therefore we do not refer to it in any detail throughout the remainder of this response.

³ <https://www.litrg.org.uk/latest-news/submissions/210331-office-tax-simplification-third-party-data-reporting-review-call>

questions that are not always dealt with satisfactorily at the moment, in particular, how to resolve data gaps and inaccuracies in pre-populated data. For example, HMRC pre-populate some P800s with information from banks and building societies. However, we have received queries over recent years from taxpayers whose P800s show vastly inflated figures for bank interest.

Example¹

“Have just received a P800. It says I owe £676. I say this is £16.33. This is because [HMRC] cannot calculate the tax on my savings interest accurately... Every year I spend many hours working things out and then checking HMRC’s mistakes, trying to correct them by the Web & phone... The P800 ... gives no indication how some of the figures are arrived at.”

20.1.2 This often seems to have arisen because data has been entered in the wrong data field by HMRC. It is therefore important that data systems prevent the conflation of actual and estimated figures. The legislation needs to provide taxpayers with a simple way of challenging such data. At present, people can be sent around in circles when trying to resolve queries, as this note very recently received to our website clearly demonstrates:

“My building society gave incorrect interest income to HMRC £1045.00 instead of £500.00. I phoned them told of the mistake & warned not to give the wrong information to HMRC... the BS apologised but are saying they didn't give this or any information to HMRC... I am a PAYE taxpayer do not fill in tax forms & have never informed HMRC of either my investments or interest income [and] they have never asked. The BS insists THEY do not supply this information implying that I am lying or have a significant memory loss. I am over 80 but intelligent competent & internet savvy. The whole thing is distressing. Could you confirm that indeed HMRC obtain this information directly from banks & BS?”

20.2 **Record-keeping**

20.2.1 There is a mismatch in the legislation in relation to record-keeping and time limits for compliance checks / claims and elections etc. The taxpayer is generally not required to retain statutory records (which are incidentally not well-defined) for as long a time period as the tax years are open. An individual taxpayer, who is not self-employed, can destroy their statutory records 22 months after the end of the tax year, but in fact they can make claims in relation to that tax year for up to four years after the end of the tax year; both the taxpayer and HMRC can make a (self) assessment in respect of that tax year for up to four years after the end of the tax year. Inevitably this mismatch causes problems, as it means taxpayers may no longer have the required records to demonstrate the accuracy of their figures. In a

¹ We have provided details of other examples in our response to the OTS call for evidence. See paragraphs 6.1 – 6.7: <https://www.litrg.org.uk/latest-news/submissions/210331-office-tax-simplification-third-party-data-reporting-review-call>

modern tax administration system, we would expect such time periods to align; this will help to ensure fairness for the taxpayer.

20.2.2 In addition, s12B(5) TMA 1970 provides for a £3,000 penalty where a taxpayer fails to keep the records necessary to make a complete return for the relevant period. This seems to be rarely used in practice, as when there is an error in a tax return, the penalties provided for by Sch 24 FA 2007 are used in preference. We suggest the £3,000 penalty for failure to keep adequate records could be repealed, due to its apparent obsolescence.

20.3 *Further examples*

20.3.1 In general, it is important that legislation underpins tax administration processes and systems. Currently there are some gaps or mismatches. For example, taxpayers require payslips in order to obtain certain information in relation to their tax and NIC position. Employers are required by employment law (not tax law) to provide a payslip. Despite the tax relevance of payslips, if employers fail to provide a payslip, the employee has no recourse through tax law or HMRC. Instead, they would have to pursue their employer through the Employment Tribunal, which is unrealistic as a remedy. An historic mismatch relates to Extra Statutory Concession A19: not all items of data in HMRC's possession have always been treated as such for the purposes of determining whether or not the concession is available; the P14, for example, has only been accepted as information in HMRC's possession since 6 April 2013.¹

21 **Q16. What benefits of the current legislation should be preserved?**

21.1 The existing legislation provides HMRC with good access to taxpayer data for compliance purposes.

21.2 Insofar as the current legislation allows pre-population, replaying data to taxpayers is helpful, whether that is in the Personal Tax Account or through the pre-population of tax forms.

22 **Q17. What likely changes and developments will the framework need to handle? What are the key priorities for framework reform in the area of data and information?**

22.1 We agree that smarter use of third party data has the potential to improve the taxpayer experience, and we support the principle of using third party data to do so. Nevertheless, there are some issues that need to be resolved as HMRC seek to increase their use of third party data and pre-population.

22.2 As mentioned previously, we think that one of the key priorities for framework reform should be to review the balance of responsibilities between taxpayer and tax authority in the light of the use of pre-population. This should consider specifically the question of whether the balance within the current framework (for example, Self Assessment imposes a

¹ <https://www.gov.uk/hmrc-internal-manuals/payee-manual/payee95055>

responsibility on the taxpayer to ensure their tax position is accurate and complete) will continue to be appropriate as HMRC move to a model of collecting and using more data from third parties rather than directly from the taxpayer.

- 22.3 In addition, the framework will need to adapt to cope with the likely psychological and behavioural impacts on taxpayers of using more third party data and pre-population.¹ This is likely to result in less engagement with the tax system and a decrease in taxpayers' abilities to understand and check their tax calculations and liabilities. It will therefore be necessary to consider how to improve taxpayer engagement and understanding, particularly if it is decided that the ultimate responsibility for the accuracy of the tax position should continue to fall on the taxpayer. This is especially important given that the general public's understanding and awareness of the tax system is currently quite low.² In addition, many taxpayers assume that government documents and figures are correct and complete, so if they receive a tax form that is pre-populated or a P800 tax calculation, their automatic assumption is that all the figures are valid and all the required data is included.
- 22.4 While recognising the benefits that pre-population and the smarter use of third party data may have for the taxpayer, we also note that HMRC undoubtedly hope that an additional benefit will be improved compliance. There is a potential tension between these two objectives, in the sense that changes to the administration framework that may be viewed as improving compliance may not improve, or may prove to the detriment of, the taxpayer experience. Conversely, we would observe that making changes that improve the taxpayer experience is likely to be beneficial to the achievement of both aims. Changes to the tax administration framework that make it easier for the taxpayer to contact HMRC, to challenge HMRC and obtain a response from HMRC are likely to generate more taxpayer trust in HMRC and therefore better compliance. Similarly, use of data that results in HMRC prompting taxpayers to say, consider whether or not they need to register for VAT or, if a Scottish taxpayer, whether or not they can claim additional tax relief on their relief at source pension contributions, will help to engender trust in taxpayers and also improve compliance.

¹ See research published by the Tax Administration Research Centre and carried out by Miguel Fonseca and Shaun Grimshaw:

https://tarc.exeter.ac.uk/media/universityofexeter/businessschool/documents/centres/tarc/publications/discussionpapers/Fonseca_&_Grimshaw_Sept15.pdf and https://tarc.exeter.ac.uk/media/universityofexeter/businessschool/documents/centres/tarc/research/TARC_21_-_Behavioural_Impact_of_Pre-populating_Self-assessment_Forms.pdf

² This is demonstrated by the results of UK wide Tax Education Gap survey in 2019 (<https://www2.deloitte.com/uk/en/pages/tax/articles/tax-education-gap.html>) and the results of three polls commissioned by the CIOT in 2018, 2019 and 2021 (<https://www.tax.org.uk/one-third-of-scots-unaware-of-holyrood-s-tax-changes-as-tax-and-accountancy-bodies-call-for-increased-awareness-of-devolved-taxes-in-new-parliament>)

23 Q18. What principles should govern HMRC's collection, use and onward transmission/sharing of taxpayer data?

- 23.1 We are looking at this from primarily a tax perspective. We are aware that there are no doubt other, wider data protection issues that other stakeholders may comment on.
- 23.2 The key principle is that HMRC should collect, use and share taxpayer data in order to help taxpayers get their tax position correct in the first place. Thus, data must not just be viewed as a means to ensuring compliance and minimising the tax gap; it should also be viewed as a means of making the taxpayer experience better – in terms of efficiency, simplicity and benefiting from all the exemptions, reliefs, allowances and deductions to which they are entitled.
- 23.3 Collection of data (especially data collected from individual taxpayers) should be once and done. It should not be necessary for an individual to contact more than one part of HMRC¹ to update their address details for example. When HMRC gather data from taxpayers and third parties, they should take into account the time and cost burden that is required in providing that data.
- 23.4 It is important that there is an obligation on HMRC to use the data they collect/have in their possession in a timely fashion. There have been various examples in recent years of where this has not happened. Instead, HMRC have apparently 'sat' on taxpayer data, and then approached taxpayers for tax and penalties a number of years after the data came into their possession. This is the case with the high income child benefit charge, the loan charge and also data relating to offshore income.
- 23.5 It appears to be the case that HMRC's internal systems do not always 'talk' to each other or match data that is held in different systems in the manner in which the general public might expect. During the coronavirus pandemic, a number of construction workers who receive their income under the Construction Industry Scheme (CIS) have missed out on receiving government support. We, and TaxAid, received a number of queries from CIS workers who had been filing Self Assessment tax returns and declaring their CIS income as employment income; they are, however, self-employed. As they have declared their income incorrectly, they appear to have no self-employment profits and as such, are unable to benefit from the Self-employment Income Support Scheme (SEISS). We wrote to HMRC about this issue, as we think some of the responsibility in this situation falls on HMRC. This is because we think that on receiving a tax return from a CIS worker that places the CIS income in the employment pages, HMRC have sufficient data in their possession to allow them to either correct the tax return² or to open a compliance check, with a view to the taxpayer rectifying

¹ There appears to be a particular problem with the current system in that it seems to be necessary to inform both HMRC (tax) and HMRC (tax credits) of certain changes.

² S. 9ZB TMA 1970 gives HMRC the powers, although not the obligation, to correct obvious errors or omissions in a Self Assessment tax return.

their tax position. This is because two data inconsistencies arise (I & II; III & IV) with a check provided by point V:

- I. CIS information has been reported directly to HMRC by a contractor (or contractors) on behalf of the taxpayer, yet
- II. no trading profits have been reported by the taxpayer on their Self Assessment tax return.
- III. No RTI information has been reported to HMRC by any employer for that taxpayer, or Class 1 National Insurance paid, yet
- IV. the taxpayer has reported employment income on their Self Assessment tax return.
- V. The gross amount of employment income reported on the Self Assessment tax return matches the total gross amount of trading income reported to HMRC under the CIS scheme (from one or more contractors).

23.6 We understand that HMRC's databases do not allow HMRC to spot these two mismatches. It is therefore essential that going forward, HMRC ensure that they have IT systems that allow them to make full and timely use of the data they collect. This will mean that, in cases such as this, where it appears reasonable to expect HMRC to use the data in their possession to deal with an incorrect tax return, they will be able to do so, and in a timely manner.

23.7 In this regard, another principle should therefore be to make better and more timely use of the data that HMRC already collect or have access to, by making improvements to IT systems to enable better matching processes, rather than simply looking to collect more and more data.

23.8 It is also important that there is a clear division of rights and responsibilities between HMRC, the taxpayer and third parties. There should be a careful balance between the powers of HMRC and the rights of taxpayers. In respect of taxpayers, HMRC must be transparent – about the data they collect, use and share; and how they use that data. Moreover, HMRC must make the taxpayer's rights and responsibilities clear in respect of that data – that they have to check it; how to check it (against their own records); how to query it; how to challenge it. Even if the data has originated from a third party source, when it is presented to the taxpayer by an official government department, they will generally assume that the pre-populated data is accurate. Historically, third party data was limited to that sent by the taxpayer's employer, who has a clear legal obligation to provide accurate information – this strengthens the impression in the taxpayer's mind that the pre-populated data is accurate (and complete).

23.9 HMRC's rights and responsibilities should include to be able to collect data required for compliance purposes and the purpose of helping taxpayers to get their tax right first time, but also to respond quickly to taxpayer queries and challenges and to provide explanations and breakdowns to assist taxpayers in carrying out their data responsibilities. Third party rights and responsibilities should include having to provide data that is reasonably required by HMRC, within a reasonable timeframe and to ensure its accuracy. They also must respond in a timely fashion to HMRC queries. Currently employers have responsibilities in relation to

the accuracy of data they provide to HMRC about employees – there needs to be similar provision in respect of other third parties providing taxpayer data to HMRC.

- 23.10 There needs to be transparency about the data that HMRC holds, and taxpayers must be able to view complete details of such data. This is also the case for digitally excluded taxpayers. By complete details, we mean that, say in relation to bank interest, taxpayers should be able to see full breakdowns by bank account of the total interest figure. If HMRC use data for risk profiling, the taxpayer should be able to request sight of such data and challenge it.
- 23.11 In situations where third party data has prompted HMRC to issue an enquiry or a compliance intervention (like around offshore income and the worldwide disclosure facility), we think HMRC should be more willing to share the third party data with taxpayers to help resolve the problem swiftly and easily. At the moment this does not always happen.
- 23.12 For example, it would appear that many people have not returned the ‘correct’ amount of loan income on their 2018/19 ‘loan charge’ tax returns (which is understandable in some cases for several complex reasons beyond the scope of this response). HMRC’s way of dealing with this is to issue enquiries asking people to check their records, rather than simply tell people what they know from the third party data they hold. It is quite likely (again, for many complex reasons that we will not go into here), that people simply do not have the records, information or insight to give HMRC any more information than that which they have already returned. This then leads to a deadlock.
- 23.13 Presumably the data HMRC hold that has been used to identify people as being affected by the loan charge is good quality. What is the likelihood that the people have loan charge issues beyond the data that HMRC hold? If it is negligible, then if HMRC were willing to share the data with taxpayers it would save considerable effort all round.
- 23.14 We understand that HMRC might be reluctant to share the data held on the assumption that the taxpayer would then limit their cooperation to that which they know HMRC have uncovered. But for the vast majority of people, the risk of this happening should hopefully be sufficiently low to allow for a more collaborative and transparent approach.

24 Q19. What additional safeguards would be needed for taxpayers and third parties if the role of third parties/intermediaries was expanded?

- 24.1 We agree that expanding the use of third party data and improvements to the way in which data is used provides an opportunity to make things easier for the taxpayer. In doing so, it is essential that HMRC provide effective routes for taxpayers to query and challenge third party data, such that not only can correct data (whether from the taxpayer or another source) replace incorrect data, but also the taxpayer is able to fully understand the data. It should be easy for taxpayers to initiate a query or a challenge, and the process itself should not be complex. Queries and challenges must be dealt with in a timely fashion. One example of good practice currently is the process by which a taxpayer can correct incorrect tax codes

through the Personal Tax Account.¹ We provide a number of examples of the problems caused by data errors in our response to the OTS call for evidence.²

- 24.2 It is important that taxpayers are not caught between different arms of government or between HMRC and third parties as regards inaccurate or incomplete data. Bearing in mind that the third party–taxpayer relationship and the HMRC–taxpayer relationship are very unbalanced, if taxpayers wish to query or challenge data that affects their tax liability, we think they should not be told to contact their employer or another third party to resolve the data query.³ We suggest there should be an HMRC-supported escalation route where the taxpayer encounters difficulty in challenging the data. We also think it should be possible for the taxpayer to ask HMRC to suspend collection of a tax liability, or put a change to a PAYE code on hold, pending resolution of the data challenge.
- 24.3 In line with HMRC’s Charter, it is important that HMRC treat taxpayers who wish to query or challenge data as though they are telling the truth, unless they have good reason to think otherwise.⁴ Currently, it appears that, despite the undertakings in the Charter and the fact that no source of data is inherently more trustworthy than another, HMRC place more value on data that they receive from third parties or other government departments than they do on data that they receive from the actual taxpayer.
- 24.4 It would be ideal if all third parties had to provide taxpayers with a copy of the data that they provide to HMRC. If there is a requirement to do this in a timely manner, it would have the potential to assist with the process for queries and challenges in respect of data. Thus banks should have to provide details of the interest data they have provided to HMRC, and DWP should have to provide a P60 equivalent in respect of all DWP benefits, including the state pension. More broadly, taxpayers should have the right to view and obtain a transcript of data provided to HMRC and held by HMRC. Consideration would need to be given as to the timing of provision of data to taxpayers and HMRC and how to communicate the taxpayer’s right to challenge it. It would be ideal if third parties providing similar types of data (for example, banks providing bank interest data) were required to provide the data to both HMRC and the taxpayer in consistent formats. This would make it easier for HMRC to use the data and for the taxpayer to check the data. Much could be read across here from DWP

¹ Although it is not clear to us how many taxpayers make use of (or indeed are aware of) this facility, rather than contacting HMRC by telephone to amend their tax code.

² Paragraphs 5.1 – 5.4: <https://www.litrg.org.uk/latest-news/submissions/210331-office-tax-simplification-third-party-data-reporting-review-call>

³ We note that HMRC tell employees who wish to challenge RTI data to contact the employer – this is not always possible – they may no longer be employed there / they may not know who the supposed employer is / they may be on bad terms.

⁴ See under the heading ‘Treating you fairly’: <https://www.gov.uk/government/publications/hmrc-charter/the-hmrc-charter>

consultation on simpler annual benefit statements for defined contribution pensions, with regulations being put in place to ensure that pension providers deliver the same information in a largely standardised, short format.¹ Many of the principles are the same in terms of third party data being copied to taxpayers in a simple, standardised format.

- 24.5 We think taxpayers should have a right of veto over information provided by third parties where it affects their individual income tax liability. Currently, for a taxpayer not in Self Assessment, the only statutory mechanism available is to register for Self Assessment for the sole purpose of asserting what they believe to be the correct figure. If HMRC then ‘correct’ the assessment under s. 9ZB TMA 1980, the taxpayer can appeal.
- 24.6 If more use is to be made of third party data it is essential that there is a means of uniquely identifying each taxpayer such that the data can be correctly matched with the individual. Although National Insurance numbers (NINOs) are not universal, it would appear that they are the most obvious solution. We note some issues in respect of this in our response to the OTS call for evidence.²
- 24.7 Increased use of data and sharing of data raises concerns about data security.³ It is essential that taxpayers are able to trust HMRC in relation to the data they collect, retain and use. Safeguarding processes need to be in place to eliminate (as far as possible) the chance of data being shared with the wrong taxpayer. Some data is shared between government departments. If a taxpayer challenges the accuracy of data that more than one government department uses, there need to be procedures to ensure that the potentially incorrect nature of that data is noted by all relevant government departments to minimise the proliferation of errors. The taxpayer should not have to challenge each government department separately in relation to the same inaccuracy.⁴

¹ See consultation <https://www.gov.uk/government/consultations/simpler-annual-benefit-statements-for-workplace-pensions/outcome/government-response-simpler-annual-pension-benefit-statements> and draft regulations/guidance <https://www.gov.uk/government/consultations/simpler-annual-benefit-statements-draft-regulations-and-statutory-guidance>

² Paragraphs 10.1 – 10.3: <https://www.litrg.org.uk/latest-news/submissions/210331-office-tax-simplification-third-party-data-reporting-review-call>

³ In this context, staff need to keep taxpayer data secure. Headlines such as “HMRC sacks hundreds of officers for failing to protect taxpayer data” (The Daily Telegraph, 26 June 2021) do little to inspire confidence. <https://www.telegraph.co.uk/tax/news/hmrc-sacks-hundreds-officers-failing-protect-taxpayer-data/>

⁴ For example, it is unclear whether, where RTI data that has been passed to DWP for UC purposes proves to be incorrect, HMRC communicate the change in the RTI data to DWP automatically.

- 24.8 Safeguards should be objective. We note that in the current Finance Bill, there is provision in relation to Financial Institution Notices.¹ We have raised concerns that the new provisions remove appropriate safeguards, since as drafted there will be no prior approval by the taxpayer or a tribunal required and also no right of appeal against the notices. The only ‘safeguard’ appears to be that “the information ... is, in the reasonable opinion of the officer giving the notice, of a kind that it would be onerous for the institution to provide or produce.” We do not think that HMRC officer opinions about what is reasonable constitute adequate safeguards. Wherever there is a decision by HMRC or an obligation placed on a taxpayer (or third party) by HMRC, there should be a right of appeal.

Chapter 6: Tax payments and repayments

25 General comments about this chapter

- 25.1 We note the chapter is called ‘tax payments and repayments’ but then the questions are heavily skewed towards ‘payments’. For those we represent, getting a repayment from HMRC is likely to be as important and relevant as making a payment. In order to build trust, HMRC should put as much onus on getting the repayment system right.
- 25.2 Currently the two main hurdles low paid employees face in trying to make a tax refund claim are: complexity of the rules (especially around employment expenses); and the fact the process for claiming a refund isn't as clear and simple as it could be. This leads to people turning to, and sometimes getting caught out by, tax refund companies. On an urgent basis, and separate to the longer term work required to overhaul the repayments regime, HMRC need to clamp down on unscrupulous tax refund companies².
- 25.3 Please note we have submitted a detailed response to the call for evidence on Timely Payments.³ We highlight some of the broader issues below.

26 Q20. What key issues do the current legislative provisions relating to payments present?

- 26.1 We believe there is a general lack of understanding of the current payments system, particularly among many who are on low income and/or vulnerable. Although there may be an awareness of when payments need to be made, the amount that is due to be paid on the due date is often not clear to taxpayers in these groups. Many are shocked when they realise

¹ Clause 122 Finance (no. 2) Bill 2021, Financial Institution Notices: <https://www.litrg.org.uk/latest-news/submissions/210506-finance-bill-2021-briefings>. We note this is now Clause 126 of Finance (formerly Finance (No. 2)) Bill 2021.

². Not all tax refund companies are unscrupulous. It is entirely legitimate for people to exercise freedom of choice to use a tax refund company, but this must be an informed choice with a full understanding of the terms and conditions including any fees.

³ <https://www.litrg.org.uk/latest-news/submissions/210712-timely-payment>

they have to pay some money in advance towards their next tax bill by way of payments on account.

- 26.2 Furthermore, those who find themselves on the borderline of the payments on account regime, and so sometimes need to make payments on account for one tax year and then don't need to make them for a later year, often find it very difficult to understand what they need to pay.
- 26.3 With regard to payments on account, we find that many taxpayers do not understand that they can claim to reduce payments on account if their tax bill is likely to be less than the previous tax year's bill, on which the payments on account are based. If they are unrepresented and so are not advised about this option, they then struggle to pay payments on account that are incorrect and excessive from profits which have fallen. Often they may find themselves in debt which proves to be incorrect when the tax return is submitted and the associated payments on account recalculated.
- 26.4 Managing cash flow to make two payments of tax six months apart is a challenge for some. A due date for tax payments of 31 January, being shortly after Christmas, can exacerbate cash flow difficulties.
- 26.5 For some newly self-employed taxpayers, the length of time between starting a business and the first tax bill becoming due may cause difficulties in budgeting, particularly when the first tax payment also includes a payment on account for the following tax year.
- 26.6 For those in PAYE, where the correct amount of tax has not been collected in-year, there are also difficulties. Paying your tax should be straightforward, but when it comes to a P800 bill, sometimes it isn't that easy – even when you have the funds and want to make payment. For example, if HMRC cannot collect the debt through a person's tax code, for example because they no longer have a PAYE source of income or because they have left the country, HMRC is likely to ask them to settle the tax due by making a direct 'voluntary' payment and will send out a payslip. The person can then use the payslip to make payment by cheque, postal order or bankers draft through the post.
- 26.7 This seems very restrictive in the digital age and can make it very difficult for some people to pay, even if they want to. But HMRC's systems are just not set up to deal with other methods for P800 debts, such as payment via online banking, at the moment. This needs to be changed.
- 27 Q21. Are there any particular benefits of the current legislation that should be preserved?**
- 27.1 Payment dates for tax payments under Self Assessment (31 January and 31 July) are generally reasonably well known. Initially basing payments on account on the previous year's tax liability also gives a degree of certainty as to the amount that is due for payment in good time (provided the tax return is completed and submitted on time). However it is clearly not a 'real time' basis for payments.

27.2 Although people can pay in a more 'real time' manner via a Budget Payment Plan which is intended to help you spread out your tax bill, this option is easily overlooked, mainly because it is not very well publicised by HMRC. See for example this query received to our website in June 2021:

"I am Self Employed, and was wondering if there is a way I can make monthly payments towards my future tax bill to take the sting off the end of the year tax bill? I didn't see an option for it on my account and wasn't sure if I just add credit on my account that stays there until I file my taxes? any Info given would be much appreciated thank you!"

27.3 One person's challenge might be another person's advantage. For those who are newly self-employed, the delay in their first tax payment becoming due can be advantageous as it can allow them to build up their business and meet the inevitable expenses of doing so without restricted cash flow due to paying estimated tax bills. It can be difficult to forecast taxable profits with any degree of accuracy in the early years of a business and often tax bills may be fairly modest for the first couple of years, particularly for a business with significant expenditure in the beginning. Therefore consideration should be given to protecting cash flow for business start-ups in some way so that some benefit can be obtained by those who would find it helpful.

27.4 HMRC should preserve their online service which means you can now apply to set up a Self Assessment payment plan online. People who cannot afford to pay their Self Assessment bill and also may not want to or feel able to speak to anyone at HMRC, may find this option very valuable. Non payment of a single tax bill can very easily snowball into a bigger problem and this option may help people remain compliant and get back on track with their payment of taxes more quickly.

28 Q22. What benefits could a single/reduced set of payment rules, applied across the taxes, bring?

28.1 The benefit of a single/reduced set of rules across all taxes is one of simplicity which in turn aids understanding and therefore compliance with the rules. For those who have to deal with more than one tax, such as those running a small business, the more consistency there is across taxes the better.

28.2 This should be coupled with an easy way to make payments, and a consistent penalty regime which also applies across all the taxes where there is non-payment.

28.3 We are strongly in favour of the personal tax account and single digital tax account (PTA/SDTA) being developed further so that payments can be made through them. As these are secure accounts following taxpayer verification of identity etc, protection against fraud is already in place. Further security measures can be added on to provide enhanced protection if needed.

28.4 Ideally the PTA/SDTA should record all liabilities that the taxpayer and their business may have, so for example the account would show income tax, PAYE and VAT liabilities becoming

due and also any amounts that have become overdue. If secure payments are made via these accounts they can then be allocated by either HMRC or by the taxpayer against whatever liabilities are arising.

28.5 It seems likely that under any cumulative payments regime where payments are made throughout the tax year there is likely to be a corresponding increase in in-year repayments. HMRC will need to deal with these in a timely manner. Paying in a timely manner must work both ways to foster the trust in the tax system that HMRC want to create. We envisage that the PTA/SDTA would be used to claim and process in-year refunds requested by the taxpayer, with paper or telephone options being available for those with problems accessing digital services.

29 Q23. What likely changes and developments will the framework need to handle? What are the key priorities for framework reform in relation to payments?

29.1 The self-employed are likely to be the biggest cohort of taxpayers to be affected significantly by a new timely payments regime. Modern working patterns are significantly different to what they were many years ago and the self-employed landscape is now made up of a variety of casual self-employment, gig economy work, part time self-employment and employment, and those moving in and out of self-employment on a regular basis. Therefore changes to the framework must ensure that it is a better fit with modern working patterns than is currently the case in many instances, in particular the gig economy.

29.2 However, clearer legislation around employment status would be important in this context as in our experience many workers get dragged into self-employment situations incorrectly. This is usually due to employers misunderstanding or misinterpreting the employment status rules or deliberately flouting the rules, to avoid paying employer National Insurance and comply with employment law requirements in relation to employees. If status determinations were dealt with properly, HMRC could get a better handle on how big the genuinely self-employed population is and focus its efforts accordingly.

29.3 PAYE is generally considered to be a relatively successful way of collecting tax because it is withheld at source, although it can place a large burden on employers, especially the smallest employers with no in-house administrative support. Consideration should be given to other ways in which tax can be withheld at source by third parties which would improve collection and allow more real time payments. This might include DWP withholding tax from state pension and taxable benefits such as carers allowance (and the equivalent in the devolved administrations).

29.4 It might also include digital platforms operating withholding arrangements, for gig economy workers. In our view it is vital that we come up with a way of taxing those in the gig economy in a way that doesn't rely so heavily on Self Assessment.

29.5 As everyone involved in working for digital platforms is already digitally engaged due to the nature of the work, this should be straightforward to implement (although a flat rate CIS type model might be an 'easier' sell to the platforms rather than a self-employed PAYE type

model). There might also be scope to vary the rate of tax deducted by platforms depending on the type of work, in a similar way to how the VAT Flat Rate Scheme works according to industry sector.

- 29.6 However from a practical perspective it is clear that any new payments system will be heavily dependent on IT systems. Presumably these will need to be designed and built from scratch and will need to be fully integrated with other HMRC systems. There will inevitably be a significant cost for such a project, and a dependence on delivery of the IT on time. Control of costs and delivery of IT projects would be fundamental to any new regime being a success. Further, the framework will need to provide alternative means of dealing with various payment processes for the digitally excluded.
- 29.7 The framework should also set out how support will be provided for those who need assistance to deal with their tax affairs in a predominantly digital way.

Chapter 7: Building in effective methods of verification, sanctions and safeguards to promote compliance

30 Q24. What key issues do the current legislative provisions relating to powers, sanctions and safeguards present?

30.1 *Imbalance of power between taxpayer and state*

- 30.1.1 We observe that the balance of power between the taxpayer and HMRC tends to drift in favour of HMRC. While we recognise that HMRC sometimes need new powers to be able to carry out their functions effectively in challenging emerging forms of tax avoidance, we find that they can be poorly targeted and the safeguards inadequate. The result is that vulnerable and unrepresented taxpayers can find themselves in the firing line of powers which were designed with serial tax evaders in mind, and which take no account of the fact that the expertise and resources of unrepresented taxpayers are simply no match for those of HMRC.
- 30.1.2 For example, under HMRC's strategy to tackle offshore tax non-compliance, the introduction of the Requirement to Correct in 2017 sees taxpayers face penalties of up to 200% of the unpaid tax, regardless of whether the non-disclosure of the offshore income was deliberate.¹ The only shield a taxpayer has against these penalties is to argue a reasonable excuse for the failure, but a successful appeal on these grounds requires awareness, action and a coherently-argued case. The unrepresented taxpayer can fail to have any one or more of these. Even when all three are present, the success of the appeal can to some extent (pre-

¹ A taxpayer who receives a 'nudge letter' from HMRC regarding their overseas income is likely to face penalties of at least 150% of the unpaid tax. HMRC typically do not accept ignorance of the law as a reasonable excuse defence against these penalties, although the point has not yet been tested in the courts in the context of these penalties.

Tribunal stage) rely on the HMRC officer making (or reviewing) the decision being sympathetic and applying the correct legal tests. More broadly, HMRC have acknowledged that there is work to be done in ensuring fairness and consistency in this regard by updating their internal Compliance Handbook.¹ We think this should be paired with better public-facing guidance on the topic so that whenever a reasonable excuse genuinely exists in the circumstances of the case, taxpayers are always empowered to make an appeal, and that appeal is successful. However, it would be preferable for both HMRC and the taxpayer in such a situation not to have faced the penalty in the first place.

30.1.3 Another example is that, in 2019, the time limit for HMRC to assess UK tax on offshore income and gains was extended to 12 years, even in cases where a taxpayer has taken reasonable care.² Here we see an example of a ‘reasonableness’ safeguard introduced alongside a new power.³ To us, this type of subjective safeguard – although statutory – is potentially of less value to an unrepresented taxpayer than a ‘hard’ safeguard such as a limit on the percentage of a penalty which can be charged, or number of years which may be assessed in certain circumstances. While we are not arguing that such safeguards should be dispensed with, the point is that HMRC make the judgment themselves about whether their own action is reasonable – a question which they would almost inevitably conclude in the affirmative. A statutory review might be worthwhile here, but without further work to highlight the benefits of such a review it is easy to see how a taxpayer might be discouraged from the idea of asking HMRC to ‘mark their own homework’.⁴ We also appreciate that taxpayers can appeal to an independent tribunal if they feel that an action is unreasonable, but again this requires awareness, action and a coherently-argued case – not to mention a significant investment of time, cost (especially if representation is sought) and a fair amount of courage to challenge a government authority. It is easy to see how unrepresented taxpayers do not get this far – and so the safeguard is effectively rendered ineffective.

30.1.4 Finally, on occasion we see HMRC taking non-statutory positions in their favour in relation to their powers. For example, HMRC’s guidance on Failure to Correct penalties states they will

¹ Commitment 16 of the HMRC’s Powers and Safeguards Evaluation, February 2021, https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/958474/Evaluation_of_HMRC_s_implementation_of_powers_obligations_and_safeguards_introduced_since_2012.pdf

² <https://www.gov.uk/government/publications/extension-of-offshore-time-limits-for-the-assessment-of-tax/extension-of-offshore-time-limits-for-income-tax-capital-gains-tax-and-inheritance-tax>

³ S36A(7) TMA 1970 prevents the extended time limits from applying if, before the time limit that would otherwise apply for making the assessment, HMRC received relevant overseas information on the basis of which HMRC could *reasonably* have been expected to become aware of the lost tax, and it was *reasonable* to expect the assessment to be made before that time limit.

⁴ We acknowledge HMRC’s work in this area in answer to question 25 below.

not accept a penalty percentage of less than 150% where the disclosure has been prompted by HMRC.¹ However, although this statutory distinction exists in other penalty regimes, it does not feature in the Requirement to Correct legislation. A similar example can be found in HMRC's approach to calculating the reduction for inaccuracy penalties: the minimum penalty is increased by 10% if the unpaid tax is more than three years old.² We encourage HMRC to refrain from introducing such non-statutory positions as part of the new penalty framework.

30.2 *Timely and effective use of existing powers*

30.2.1 Despite the recent Supreme Court judgment in *Tooth v HMRC* which dismissed 'staleness' as a valid legal concept,³ we feel that HMRC has an obligation to use their powers to collect tax in a timely manner and apply consistent resource (as part of a risk-based approach) in this effort. Not doing so can lead to all sorts of issues for unrepresented taxpayers.

30.2.2 For example, the First-tier tribunal continues to see a steady stream of cases where PAYE taxpayers have not disclosed their liability to the high income child benefit charge because of lack of awareness. In many cases, HMRC are making the assessment several years after the liability first arose, meaning that the assessments are often several thousand pounds – a potentially unaffordable sum for those who, although on a 'high' income, may have large outgoings and no savings. The child benefit which the charge is designed to claw back has, of course, already been spent.

30.2.3 More recently, we have seen cases of Construction Industry Scheme workers being denied grants under the Self-Employment Income Support Scheme because they have reported their income as employment income rather than self-employment income in their Self Assessment tax returns. This is an understandable error, given the withholding regime which applies under CIS. Some taxpayers in this position appear to have been making the error for several years, potentially leading to unfillable gaps in their National Insurance record. As discussed earlier, we are surprised that HMRC did not identify the multiple data inconsistencies in these cases and use their enquiry powers to identify and correct this error sooner, to prevent the consequences proliferating.

30.2.4 Perhaps the most egregious example is the disguised remuneration loan charge. This was introduced as a mechanism to collect tax up to 20 years old (although was later amended following the Morse review) and which technically could have been assessed on a much timelier basis. The loan charge can be a life-changing tax and has been hugely controversial. It was introduced without a full analysis of the affected population or likely impacts, and

¹ <https://www.gov.uk/guidance/requirement-to-correct-tax-due-on-offshore-assets#penalties-and-other-sanctions-for-not-correcting-on-or-before-30-september-2018>

² <https://www.gov.uk/hmrc-internal-manuals/compliance-handbook/ch82465>

³ <https://www.supremecourt.uk/cases/uksc-2019-0136.html>

charities like TaxAid have seen cases of lower-income taxpayers affected by the charge who had no personal avoidance motive whatsoever. We urge HMRC to ensure that the circumstances leading to the introduction of the loan charge never repeat themselves in a modern administration framework.

- 30.2.5 Rooted in the same ground as the loan charge, there is a current issue with people being paid through disguised remuneration, often unknowingly. Underneath disguised remuneration is PAYE non-compliance on behalf of the employer. This is a space in which HMRC's powers are underused. When it is a question of how to allocate debt collection resources most efficiently, it seems to us that HMRC sometimes fail to pursue employers for PAYE debt because it is easier to pursue the taxpayer instead. The result is that a culture of PAYE avoidance exists among some employers. Not only is employer's National Insurance not being collected, but taxpayers end up with P800 debts which should never have arisen in the first place and may not be affordable by the time they come to light. To discourage this, we would like to see HMRC be much more explicit and transparent in their use of powers to tackle employer non-compliance – for example, by publishing statistics on PAYE audits and employment status reviews.
- 30.2.6 Furthermore, if the debt is not correct, taxpayers can have particular difficulty in correcting it: HMRC direct them to the employer, but communication with the employer may have broken down or otherwise the employer may refuse to correct it. It cannot be right for HMRC to expect the taxpayer to take on the employer when (as discussed earlier in this response) the law is clear that this is HMRC's responsibility. The taxpayer can have very little power or influence over their (potentially former) employer, just as with HMRC; they are the weakest of the three parties.

30.3 ***New powers being mis-sold***

30.3.1 The loan charge is also an example of a power which can be argued to have been 'mis-sold' to Parliament, based on a misunderstanding of the affected population and the likely impacts. Another example of a mis-sold power can be found in the 2021 Finance Bill and relates to HMRC's ability to issue statutory demands for information from banks about taxpayers.¹ These 'Financial Institution Notices', unlike existing third-party information notices:

- do not require approval from the taxpayer or an independent tribunal to be issued;
- can be issued for the purposes of debt collection as well as checking a taxpayer's tax position; and
- do not carry a right of appeal.

30.3.2 LITRG considers that the introduction of these powers lacks justification, because the evidence shows that the tribunal process is not a significant cause of delays in obtaining information from financial institutions. The main safeguard for the taxpayer against this

¹ Clause 126, Finance Bill 2021

power is also of the ‘reasonableness’ type, as we discussed earlier – so HMRC are playing judge and jury in a matter of their own interest. We argued that the relevant clause in the Finance Bill be dropped.¹

30.3.3 More broadly, we would strongly discourage HMRC from introducing new powers which lack properly evidenced and objective justification

31 Q25. What benefits of the current legislation should be preserved?

31.1 *Appealable decisions*

31.1.1 As a general point, the fact that a taxpayer can appeal most decisions by HMRC is a principle which ought to be preserved. Furthermore, the ability to request a statutory review of any such decision is also a positive one. We support HMRC’s work in improving awareness and take-up of the statutory review process, to reduce the administrative burden on all parties involved in an appeal to the tribunal.² A similar point can be made about the Alternative Dispute Resolution process – though with the increased use of third-party data we wonder if the scope of this needs to be extended to somehow manage disputes between HMRC, the taxpayer and the third-party over data accuracy, perhaps involving some kind of ombudsman.

31.1.2 However, guidance needs to be improved so that taxpayers better understand their options when it comes to appealable decisions. Unrepresented taxpayers can also struggle with the appeals process and terminology, which puts them at an immediate disadvantage against HMRC in a tribunal. Clearly, HMRC have limited scope to assist taxpayers directly in the appeals process – but they can help to explain the process and ensure that taxpayers are pointed to sources of independent assistance like TaxAid.

31.2 *Non-appealable decisions*

31.2.1 Non-appealable decisions by HMRC are clearly a less desirable feature of a modern tax system. Taxpayers only have two options if they object to such a decision: to complain, or seek a judicial review. However, the costs of judicial review make it prohibitive for those on a low income unless they can receive pro bono support. The complaints process is therefore the only route to challenge, for example, the non-application of an Extra-Statutory Concession. The fact that such a route exists at all is positive, though it is important that HMRC handle all complaints consistently and fairly. The Adjudicator’s role is also constrained from challenging HMRC’s policies and procedures. We therefore believe there is a strong

¹ <https://www.litrg.org.uk/sites/default/files/files/LITRG-Finance-bill-briefing-2021-Clause-122-Financial-Institution-Notices.pdf>

² Commitment 15, HMRC’s Powers and Safeguards Evaluation, February 2021

case for a cost-free accessible alternative to judicial review as well as introducing appeal rights to certain decisions where they do not currently exist.¹

32 Q26. What likely changes and developments will the framework need to handle? What are the key priorities for framework reform to support taxpayers to get their tax right and deter non-compliance?

32.1 *Greater use of third-party data and pre-population*

32.1.1 If HMRC and taxpayers place greater reliance on data from third parties, then this should be matched with a shift in the responsibility to get the data correct. And where the responsibility shifts, so should the regime of sanctions which applies. As suggested elsewhere, we think it is necessary to review some of the fundamental principles which underpin the existing landscape, such as the taxpayer being ultimately responsible for ensuring their tax affairs are correct. We discuss this issue in detail in our response to the Office of Tax Simplification's call for evidence into third party data reporting.²

32.2 *Digitalisation*

32.2.1 There seems to be a perception held by those designing a digital-by-default system that once you can engage digitally, you continue to be able to do so for life. But we have an ageing population, and those who might be able to engage digitally currently may not be able to do so in future or in a consistent manner as technology 'overtakes' them. In addition, people who are usually digitally capable may find themselves temporarily unable to deal with HMRC digitally, for example due to a health condition (see for example the web query we received set out in paragraph 5.2.3 above). If taxpayers fall into non-compliance because they are unable to keep up with the latest HMRC app or multi-factor authentication processes or are temporarily unable to transact digitally, for example, they need to be accommodated within the legislation

32.2.2 The use of electronic communications also calls into question certain legal responsibilities. HMRC issue electronic legal notices with the taxpayer's consent, but is it fair that the taxpayer can receive late-filing penalties if they never actually saw such an email in their inbox (perhaps it was picked up by a spam filter, or just overlooked against the volume of other emails)? We would encourage a review into whether the legislative framework around this point is fit for purpose. For example, it may be appropriate to require digital proof that electronic communications have been opened for them to be treated as 'served on the taxpayer'. In the personal tax account, the system could force confirmation that certain legal notices have been read (rather like electronic acceptance of terms and conditions) before

¹ See also <https://www.litrg.org.uk/sites/default/files/180531-LITRG-response-treasury-committee-tax-disputes-LITRG-FINAL.pdf>

² <https://www.litrg.org.uk/latest-news/submissions/210331-office-tax-simplification-third-party-data-reporting-review-call>

the taxpayer can continue. Furthermore, if they haven't been viewed after a certain period, then perhaps HMRC's systems could automatically generate a paper version of the notice to be issued by post.

33 Q27. What principles should govern HMRC powers, sanctions, and safeguards, to build trust in the tax system?

33.1 We support the principles used in the 2005-12 Review of HMRC's Powers, Deterrents and Safeguards. All these principles – especially those relating to proportionate powers and accessible safeguards – are particularly important to unrepresented taxpayers.

33.2 If HMRC wish to build trust in the tax system, they should operate their powers while cognisant of the fact that their resources vastly outweigh those of the individual taxpayer – and ensure that they use those resources to ensure that their powers are targeted more effectively. Effective targeting applies both to HMRC's implementation of existing powers as well as the introduction of any new powers. For taxpayers who make non-deliberate errors, we feel there is scope for HMRC to provide more assistance such that a fair outcome is reached. HMRC are already doing good work in connection with this – for example, through their grant-in-aid funding and the Extra Support Team – and we encourage this to continue.

34 Q28. How should the framework maintain consistency and fairness between taxpayers and groups of taxpayers, while also providing HMRC with appropriate discretion to enable them to take account of individual taxpayers' circumstances and wider concepts of fairness?

34.1.1 The solution to this question largely comes down to good guidance for both HMRC staff and taxpayers, with plenty of case studies where appropriate. As mentioned previously, the work being undertaken as part of the Powers and Safeguards Evaluation on reasonable excuse and other areas is positive, and we encourage this to be viewed as an ongoing exercise. For HMRC, if inconsistent treatment is being applied then there is an additional point around education and training among their staff.

34.1.2 We also support the work of HMRC's Guidance Strategy Forum in this area – but (as discussed earlier in this response) there are difficult questions around the extent to which taxpayers can rely on HMRC's guidance, which require attention. To reiterate some of our earlier points here, where HMRC are addressing taxpayer queries via channels such as Twitter and online forums, we feel that the assistance provided can be more in the nature of advice than guidance. The dividing line is blurred, of course – and we would not want HMRC to stop helping unrepresented taxpayers for fear of the repercussions of misleading them. But if a taxpayer relies on this to their detriment, what recourse do they have? HMRC should ensure that such guidance-cum-advice carries a health warning, or accept that reliance upon it indemnifies the taxpayer (or at least provides them with a reasonable excuse defence to any penalties). Otherwise, if HMRC later backtrack from something which the taxpayer has relied upon, it undermines the trust they are seeking to build.

- 34.1.3 There are areas of the tax system where discretion is appropriate. One example is HMRC's requirement to consider whether special circumstances exist to warrant a reduction in penalties, or in offering suspension of penalties. However, some cases at the tribunal demonstrate that HMRC do not always consider special circumstances consistently,¹ or ask the right questions of the taxpayer to determine it. Suspension of penalties might be considered more widely as a tool to encourage compliance. On occasion suspension is denied because no conditions can be imposed during a suspension period to improve future compliance, because the original penalty arose out of failure to comply with a one-off obligation.² This does not feel right, although we recognise that the penalty reform work moves in a positive direction in this context by aiming not to penalise occasional non-compliance.
- 34.1.4 A final point relates to whether HMRC staff members' key performance indicators (KPIs) and other incentives are aligned with the objectives of being consistent and fair, and applying discretion where this would reduce the tax take. We understand that HMRC are moving away from having KPIs entirely focussed on yield – but nevertheless there would appear to be a tension between these two aims.

Chapter 8: Further Suggestions

35 Q29. Are there any further suggestions that you have for how the Tax Administration Framework could be reformed?

- 35.1 No further comments.

LITRG
July 2021

¹ For example, see *Pokorowski v HMRC* [2019] UKFTT 86 (TC)

² Though we acknowledge the improvements HMRC have made in their internal guidance on this point (for example, at CH83133) to allow for a suspension condition to prevent an underlying failure or weakness in record-keeping – even if the penalty arose out of a one-off failure.