



Advice NI Response

The Tax Administration Framework Review: enquiry and assessment powers, penalties, safeguards

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Response from Advice NI

Advice NI is the membership organisation for the independent advice sector with nearly 70 members. Together with our members, we dealt with 260,974 enquiries in 2022-2023 on an extensive range of matters including benefits, housing, debt, consumer and employment issues. We operate within the Department for Communities vision and values for quality advice services; impartial, accessible, confidential, independent, effective, accountable and free.

Advice NI also delivers a range of advice services to the public including Welfare Benefits, Personal and Business Debt, Tax Credits and HMRC products/services and the EU Settlement Scheme. We offer a wide range of award-winning training focusing on the community and voluntary sector, which is both accredited and non-accredited.

Enquiry and assessment powers

Question 1: What are the potential opportunities, benefits, and risks of moving to a single set of powers across all taxes?

Opportunities

- i. HMRC could improve taxpayer understanding of the relevant powers by conducting a public awareness campaign linked to the changes, which would be simplified by only needing to explain a single set of powers.
- ii. Dispute and appeal processes could be strengthened by setting proper procedures and time limits for submission for both the taxpayer and HMRC.

Benefits

- iii. Taxpayers and representatives only need to understand a single set of powers to engage effectively with the tax system – from an advice-giving perspective, this makes it much easier to provide accurate information.

Risks

- iv. Lack of awareness could result in ineffective compliance by taxpayers, either creating additional administrative burden for HMRC or unfair penalties for taxpayers.

Question 2: What are the potential opportunities, benefits, and risks of moving to a model that gives greater consistency and alignment to the key assessment and enquiry provisions?

- i. Same as above.

Question 3: What are your views on any potential costs of changes to assessment and enquiry powers?

- i. Promoting to the public would need to be on a wide scale, which would presumably carry significant marketing costs.
- ii. Higher administrative burdens would apply in those areas where existing powers differ markedly from the new approach adopted. This could increase costs to the individual taxpayer by forcing them into engaging professional advice in areas where they have not previously needed to do so.

Question 4: Are there any circumstances or taxes where specific enquiry and assessment powers may be necessary?

No comment

Question 5: What would be the impact of greater alignment in the examples mentioned?

No comment

Question 6: Are there other potential gaps or mismatches that you think it would be beneficial to address?

No comment

Question 7: What are the merits and risks of HMRC introducing a consequential amendment power across periods and tax regimes?

Risks

- i. Could discourage compliance arising from concerns about the risk to the taxpayer of providing certain types of evidence – however, it is debateable whether this results in a higher administrative burden for HMRC if enquiry/assessment powers were likely needed in respect of the other period or regime.

Question 8: What are your views on the opportunities and merits of reform in this area?

- i. Shift from evidence-led to time-limited review would still need to be based on just legal principles, and with clearly established procedures – for example, a brief enquiry window followed by prompt reassessment by HMRC only where the evidence supports that course of action.
- ii. Essential that HMRC is sufficiently resourced to manage any expanded enquiry power, to ensure that further uncertainty is not created by lengthy assessment delays.
- iii. Taxpayers need to be given clear guidance about the type of evidence that would be most helpful to submit – this is especially important for individual taxpayers who may not be in a position to seek professional advice.

Question 9: What are the challenges relating to claims for relief and credits? How should reform to enquiry and assessment powers for reliefs and credits be approached?

No comment

Question 10: Are there specific issues relating to compliance activity that need to be considered as HMRC moves to greater use of digital communications?

- i. Protections need to be put in place to accommodate those who are digitally excluded – Advice NI has previously identified older people, migrants and those living in rural communities as particularly at risk of digital exclusion.
- ii. Concerns about scams may discourage taxpayers from compliance activity using digital channels.
- iii. Stakeholders need to be kept informed about HMRC communications so that they are able to provide accurate advice to taxpayers. A calendar of digital communications and touch points would be helpful in this regard.

Penalties

Question 11: Which types of non-compliance do you think should have common penalties applied consistently across HMRC's tax regimes?

No comment

Question 12: Are there tax regimes where a differentiated approach to certain penalties may be needed?

No comment

Question 13: Are there particular penalty regimes you think should be simplified? We would welcome views on why and how such penalty regimes might be reformed.

No comment

Question 14: What are the potential benefits and challenges of moving away from the current set of behavioural penalties? What alternative models should be explored?

- i. Penalties based on clear rules are preferred, as discretion and interpretation on the part of the decision maker is shown to be the source of greatest uncertainty and unfairness in such systems. For example, it is unclear how HMRC will be able to distinguish clearly between deliberate and non-deliberate behaviour.

Question 15: What alternatives to the current model of penalty suspension do you think should be explored?

No comment

Question 16: What merits and challenges would making fixed penalties more proportional to a taxpayer's income, resources, or tax liability present? Are there other models that should be considered?

- i. Recognition of taxpayers' relative capacity to pay would be especially welcome in respect of those taxpayers with much smaller financial resources. We would encourage HMRC to consider hardship rules – there is a significant risk for certain taxpayers that they could be forced into debt and destitution by tax penalties.

Question 17: Do you agree that penalty escalation could help to address instances of continued and repeated non-compliance? What challenges could this present?

- i. We agree that the general principle of escalation is appropriate and can support proportionality.
- ii. Rules should allow for correction by the taxpayer where they can provide good reasons for previous non-compliance – e.g. misadvice.

Question 18: Are there particular models of penalty escalation you think should be considered, and why?

No comment

Question 19: Are there specific behaviours and situations that you think penalties could help to address, and why?

No comment

Question 20: Where could HMRC communicate in a more timely or effective manner with taxpayers about penalties?

- i. Use of digital transformation opportunities is encouraged, and previous experience shows that individual taxpayers are well-placed to take advantage of improvements in this area due to exhibiting a higher-than-average level of digital capability. Digital communication channels have other advantages – less likely to be missed by the recipient, contact details can be retained despite other changes.

Question 21: Would you support the regular uprating of fixed penalties for inflation? What challenges would this present for you?

Safeguards

Question 22: What are the merits and challenges of aligning the appeals process with either the direct or indirect taxes approach?

- i. Direct tax approach provides opportunities for swifter resolution of disputes, which is preferred for most taxpayers – appeal delays have been a significant problem in all areas. However, HMRC would need to ensure that sufficient qualified decision makers are able to manage the reviews required. Also need to avoid risk of rubber-stamping previous determinations, which would undermine trust in decision making.

- ii. Essential that the right to independent review through appeal is retained, as this is also crucial to the development of relevant case law.

Question 23: Are there other examples of appeals processes for direct and indirect taxes that could be considered as an alternative approach and why?

No comment

Question 24: What are the merits of aligning payment requirements across regimes where a liability is disputed, and a tribunal appeal is made?

No comment

Question 25: Are there specific circumstances where you think the existing differences across regimes are important or desirable to maintain?

No comment

Question 26: How can HMRC improve access to statutory reviews and ADR? Are there ways to encourage voluntary take-up of these you think we should explore and why?

- i. Work with tax advice providers to improve understanding of statutory review and ADR – tax issues are more difficult for individual taxpayers to self-manage.

Question 27: What are the merits and challenges of increasing take-up of statutory reviews and ADR with a 'recommendation and opt out' approach?

- i. Agree that this approach is appropriate in cases where appeals are raised, in line with views expressed above in response to question 22.
- ii. HMRC could use this as an opportunity to ensure that taxpayers have accessed to appropriate independent advice.
- iii. Maintenance and extension of existing community and voluntary funding would be strongly encouraged to support individual taxpayers with navigating this system – lack of free, independent advice would fail to safeguard less well-off taxpayers.

Question 28: What are your views on the possibility of mandating statutory reviews in certain circumstances?

- i. We agree that this approach would be appropriate in the types of straightforward cases indicated.

Question 29: Are there specific circumstances where you think it would be appropriate or inappropriate to mandate statutory reviews?

No comment

Question 30: Would you have any concerns if HMRC were to withdraw the option of statutory review in some cases?

No comment

Question 31: Are there other areas you think would benefit from alternative appeals channels (for example, digital)?

- i. We would take the view that providing all taxpayers with multiple options for lodging appeals constitutes the fairest system.



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