

## **Tax reform tensions: a balancing act**

*Nick McLeman explores the tension between efficiency and safeguards in the UK's tax administration reforms*

In February of this year, I was pleased to have been asked to join the Contentious Tax Group's (CTG) committee, leading on the group's engagement with HMRC. I have since had the opportunity to utilise this role to work with HMRC on behalf of the Group to help shape proposals to make the UK tax system easier for taxpayers and agents to engage with. Specifically, via directly inputting into the Tax Administration Framework Review's (TAFR) ongoing consultation into HMRC's enquiry and assessment powers, penalties and safeguards.

The TAFR was established in the Government's 10-year Tax Administration Strategy with the aim of delivering long-term reform, ensuring that legislation, guidance and processes surrounding UK tax administration are suitable to develop and deliver the UK's future tax system. This current consultation is the continuation of almost two decades' work attempting to simplify and improve the UK's tax system.

### **The powers review**

The 'Review of HMRC's Powers, Deterrents, and Safeguards' (also known as the 'Powers Review') ran from 2005 to 2012. The Powers Review identified a set of principles to assist shaping the design of powers, obligations, sanctions and safeguards within the tax system.

These principles include 'providing certainty and appropriate safeguards for taxpayers', and to 'be as simple and transparent as possible', among others.

HMRC considers the principles developed as part of the Powers Review to remain relevant in the current day, and any reform proposals generated by the current consultation will be guided by these principles.

### **The evaluation**

The Government built on the Powers Review with the 'Evaluation of HMRC's implementation of powers, obligations, and safeguards introduced since 2012', which was published in 2021.

Responses to the evaluation's initial call for evidence highlighted a number of themes concerning HMRC's powers, including:

- that HMRC's enquiry and assessment powers were too complex and would benefit from simplification.
- the view that asymmetries between HMRC's powers and taxpayers' rights contribute to a perception that the tax administration framework is unfair,
- that HMRC's approach should continue to be tailored to taxpayer behaviour,
- the use of discretion to ensure interventions are proportionate,

- the perception that dispute resolution mechanisms are disproportionately expensive, potentially barring taxpayers from challenging HMRC,
- the potential to strengthen safeguards for taxpayers that follow HMRC's guidance,
- broad agreement that greater transparency could help reassure taxpayers that they are being treated fairly and that HMRC used its powers consistently.

The 2021 consultation highlighted support for reforming HMRC's powers, penalties and safeguards.

It is evident that a number of the above bullet points remain in point and so the current TAFR consultation seeks continues this dialogue, incorporating feedback received through the Powers Review and subsequent evaluation.

### **TAFR's consultation**

The TAFR consultation has an extremely broad remit, covering all aspects of HMRC's enquiry and assessment powers, penalties, and taxpayer safeguards. An initial call for evidence ran for 12 weeks, from 15 February 2024 to 9 May 2024, and invited comment from interested parties in relation to 22 potential reform opportunities. Whilst these reform opportunities were provided as initial ideas to guide the conversation, no area of HMRC's enquiry and assessment powers, penalties, and taxpayer safeguards was off-the-table to discuss.

TAFR held several stakeholder discussions as part of the consultation proceed attended by representatives of governing bodies such as ATT and CIOT, as well as other interested parties such as TaxAid, the Contentious Tax Group and representatives of accounting and advisory practices.

The consultation team were happy to engage with interested parties outside of these stakeholder discussions and I was lucky enough to arrange a bespoke session between CTG members and HMRC in order to discuss specific feedback and concerns.

The full consultation document, linked below and available on the Gov.uk website, focussed on the following key areas included:

- Evaluating the consolidation and simplification of HMRC's powers across various tax regimes.
- Exploring simplification of penalties and considering increased alignment of penalties across different penalty regimes.
- Improving processes for direct and indirect tax appeals, and expanding the use of statutory reviews and Alternative Dispute Resolution.

The CTG's full response to the TAFR consultation may be read at <https://tinyurl.com/29d9w2b7>

The primary concerns of our response may be summarised as follows:

- Taxpayer safeguards

Whilst the aims of the consultation do appear to arise from a genuine desire to improve HMRC's efficiency and taxpayer's interactions with the UK tax system, some

of the proposed reform opportunities appeared to be wholly misguided. Some proposals indicate that HMRC may be seeking to erode taxpayer safeguards. One such proposal was the potential withdrawal of a taxpayer's right to statutory review in cases where taxpayers are seen to be 'exploiting safeguards' such as Counter-Avoidance assessments provide much concern for the erosion of taxpayer safeguards.

Additionally, another reform opportunity highlighted HMRC's concerns that whitespace section of a tax return may be exploited to limit HMRC's application of discovery provisions. These concerns and the reform opportunity proposed as a result appear to be wholly misguided.

It is the CTG's view that the driving factor behind taxpayers voluntarily providing additional information within the aforementioned spaces of their personal tax return is so that, should HMRC not open a formal enquiry into their return within the prevailing time limits, assurance is gained as to the finality of the tax liability for said period (of course, provided complete and accurate information is provided as required by s29 TMA 1970).

Should the principle of finality be weakened such that this assurance can no longer be provided, there would be no reason for such additional information to be provided to HMRC voluntarily. Such a change would instead dissuade taxpayers from providing additional information as the only outcome for doing so would be potentially negative, impacting HMRC's ability to effectively risk potential cases. Strong feedback was provided by all parties to the stakeholder discussions to HMRC here and it is hoped that consideration of such negative reform opportunities has ceased.

- Consistent powers across tax regimes

Our experience suggests that whilst there may be opportunities for enhancement, the current system contains many components that function effectively and contribute positively to the compliance landscape. The current systems are well-known by tax professionals and a strong change would require much time to adjust. Incremental changes, rather than a full-scale change, would be easier to implement. It is, however, acknowledged that HMRC's implementation of certain aspects of the framework may be lacking such that powers are not utilised evenly or fairly, leading to inefficiencies and inequality in the current tax system. For example, HMRC's uneven application of suspension as regard to careless inaccuracy penalties. Care is therefore required for HMRC to ensure any new powers are implemented fairly and consistently across the department.

- Modernising administration and communication

HMRC's move to the greater use of digital communications is a welcome adaptation to the modern world. However, policy and internal guidance remains inconsistent between parts of HMRC. Feedback has been provided to improve HMRC's handling of email protocol and temporary agent authority.

- Penalties and interest

Amendments to the current penalty system, such as proportional penalties based on income, and further penalty escalation for continued non-compliance, are explored in the consultation. Whilst these amendments may appear to be palatable, there are inherent challenges in designing a fair penalty system. The wealth of current case law may also become irrelevant should sweeping changes affect penalty legislation. One proposed reform opportunity is to uprate fixed penalties on an annual basis with inflation, such as late filing penalties. The CTG is cautious about the implementation of such a change, noting potential public perception issues if taxpayer benefits are not similarly adjusted.

- **Implementation challenges**

HMRC's ability to effectively implement reforms are in question due to declining standards in quality, customer service, budget, and training quality over the past five years, as acknowledged in The Committee of Public Accounts' report of 28 February 2024. It has therefore been strongly advised that resourcing issues are considered and addressed in full before the implementation of any reforms.

### **What next?**

Once TAFR have the opportunity to fully digest the verbal and written responses it received to the consultation, it is expected that further discussions will then be held as regards determining the best options available, and the framework for implementation.

It is the perfect time for the new Government to drive and support changes to HMRC's powers in order to improve their ability to tackle the UK tax gap. However, careful consideration needs to be given to ensure that full resource implications are known and manageable. Taxpayer safeguards are important to maintain, and incremental, well-considered reforms may be more easily implementable rather than broad, sweeping changes.

As the result of this consultation has the ability to impact our day-to-day roles in supporting clients, I would suggest a reading of both the consultation document and the CTG's response. I am certainly interested in continuing the ongoing conversation with HMRC's consultation team and assisting with the development of reforms once HMRC's ideas begin to materialise into draft policy.

HMRC's call for evidence document may be read at <https://tinyurl.com/2ywba8v6>

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