

## Call for evidence on the Tax Administration Framework Review: enquiry and assessment powers, penalties, safeguards

A Call for Evidence issued by HMRC  
Comments from ACCA to HMRC  
9<sup>th</sup> May 2024

### About ACCA:

ACCA (the Association of Chartered Certified Accountants) is the global professional body for professional accountants.

We're a thriving global community of **247,000** members and **526,000** future members based in **181** countries and regions, who work across a wide range of sectors and industries. We uphold the highest professional and ethical values.

We offer everyone everywhere the opportunity to experience a rewarding career in accountancy, finance, and management. Our qualifications and learning opportunities develop strategic business leaders, forward-thinking professionals with the financial, business, and digital expertise essential for the creation of sustainable organisations and flourishing societies.

Since 1904, being a force for public good has been embedded in our purpose. We believe that accountancy is a cornerstone profession of society and is vital in helping economies, organisations, and individuals to grow and prosper. It does this by creating robust trusted financial and business management, combating corruption, ensuring organisations are managed ethically, driving sustainability, and providing rewarding career opportunities.

And through our cutting-edge research, we lead the profession by answering today's questions and preparing for the future. We're a not-for-profit organisation. Find out more at [accaglobal.com](https://accaglobal.com)

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## ACCA response summary:

- ACCA believes that trust, transparency, and certainty lie at the heart of a healthy relationship between a tax authority, the taxpayers and the agents who interact with it<sup>1</sup>. A lack of investment in HMRCs staff and digital capabilities has, over time, damaged relationships between HMRC, compliant taxpayers, and the agents supporting them, with service standards at HMRC falling to an unacceptably low standard.
- Moving to a single set of powers across all taxes presents a number of opportunities, including simplification of the broader system, a principle ACCA has long supported. Taxpayers would have a clearer understanding of their rights and obligations, promoting fairness and equity in the tax system.
- HMRC service level improvement and effective communication are priorities for ACCA members. One of the greatest risks associated with not moving towards a single set of powers across all taxes is continuing poor service levels for taxpayers, causing significant challenges across a range of areas.
- While changes to assessment and enquiry powers are likely to lead to additional costs for HMRC, agents, and taxpayers – ACCA believes these costs should be viewed through the lens of potential longer-term benefits. Reduced complexity from a streamlined system would, in turn, translate to cost savings and increased efficiency<sup>2</sup>.
- We believe that where HMRC identifies risks which lead to suspicion of fraud or attacks on the tax system, it is more effective for HMRC to exercise existing measures such as Code of Practice 9 – which does not cause delays for all businesses but is instead specific to those consistently targeting the system.
- ACCA would support a move to simplify and adopt a consistent time based approach for all tax relief claims and enquiry periods. This would see some relief and enquiry periods extended, while others would be reduced. This consistency in approach would simplify the system and present efficiency gain opportunities for HMRC, agents and taxpayers.
- On behavioural based penalties ACCA favours a regime built on innocence in the knowledge that the majority taxpayers have taken reasonable care when navigating a complex tax regime especially areas that are infrequent for many taxpayers including Capital Gains Tax and Inheritance Tax.
- Inbuilt complexity in behavioural penalties present a range of challenges. A shift away from the current approach and towards a more modern approach such as the VAT points-based system would present a range of benefits, including greater efficiency and transparency.

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<sup>1</sup> <https://www.accaglobal.com/gb/en/professional-insights/global-profession/twelve-tenets-of-tax.html>

<sup>2</sup> <https://fundingthenation.org/>

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

ACCA believes that trust, transparency and certainty lie at the heart of a healthy relationship between a tax authority, the taxpayers and the agents who interact with it. A lack of investment in HMRCs staff and digital capabilities has, over time, damaged relationships between HMRC, compliant taxpayers, and the agents supporting them, with service standards at HMRC falling to an unacceptably low standard. As set out in our report Foundations for a Sound Tax System “Simplicity, certainty and stability... are the three cornerstones of a good tax system. Policy makers should consider them any time they plan to change the tax system. They are also the benchmarks by which taxpayers can assess the effectiveness of government in maintaining and improving tax systems.”<sup>3</sup>

Moving to a single set of powers across all taxes presents a number of opportunities to modernise the tax system, including simplification of the broader system, a principle ACCA has long supported. There are also a range of potential benefits. A consistent approach fosters greater clarity for all. Taxpayers would have a clearer understanding of their rights and obligations, promoting fairness and equity in the tax system. Consistency in procedures can build taxpayer trust and the knowledge that the same rules apply across all taxes could simplify communication and reduce uncertainty. Clear and comprehensive guidance from HMRC is crucial to accompany the new system. This guidance should be readily accessible to all. A phased implementation approach could allow for a smoother transition and reduce initial disruption. The new system to be scalable, technology-enabled, and proportionate. Ensuring the HMRC Charter principles<sup>4</sup> are upheld through such a transition is critical to building trust.

Service level improvement and effective communication are priorities for ACCA members. One of the greatest risks associated with not moving towards a single set of powers across all taxes is continuing poor service levels for taxpayers, causing significant challenges across a range of areas. ACCA members also continue to highlight challenges and frustration related to general tax disputes, such as in cases where HMRC systems show tax is due when all taxes have been paid by taxpayers but HMRC are seeking to claim money back from the taxpayer. The digital inefficiencies and lack of ability to resolve administrative tasks cause distress for taxpayers. A typical example that highlights the concern from a member: “It seems that the best approach is to allow the debt to be referred to a debt collection agency who you can then phone and get through immediately and they deal with the interaction with HMRC efficiently and get the problem resolved - totally ridiculous. I spoke with them... for a client and a 6 month dispute was resolved in 48 hours (taking 5 minutes of my time).”

With a tax system in such distress ACCA would also welcome a form of taxpayer redress to be built into the safeguards to ensure HMRC can be held accountable when the taxpayer needs certainty and has provided all the information requested by HMRC – this could be in the form of a loss of HMRC power, or a charge for the delay. This would increase the level of trust taxpayers would have in the system and in turn improve tax morale.

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<sup>3</sup> [https://www.accaglobal.com/gb/en/professional-insights/global-profession/foundations\\_tax.html](https://www.accaglobal.com/gb/en/professional-insights/global-profession/foundations_tax.html)

<sup>4</sup> <https://www.gov.uk/government/publications/hmrc-charter/the-hmrc-charter>

**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?**

There are a number of potential benefits of a more consistent and aligned model for assessment and enquiry provisions, which include the streamlining of processes, improved transparency, and enhanced efficiency for HMRC and all taxpayers. However, it is important to recognise that the existing HMRC approach has been shaped by a need to address a minority of non-compliant taxpayers. ACCA cautions against designing a system overly shaped by the actions of the worst players in the marketplace. The vast majority of taxpayers are honest and compliant, and the system must effectively and efficiently cater to their needs.

In this context, it may be worth considering whether HMRC already possesses a sufficiently comprehensive range of enquiry and assessment powers that are not currently fully utilised to address deliberately non-compliant taxpayers. There may be merit in exploring a separation of such powers from the core set of provisions applicable to compliant taxpayers. This would enable HMRC to target non-compliance effectively while maintaining a simpler and more efficient system for the majority. A more nuanced approach could achieve the benefits of consistency and alignment while minimising the burden on compliant taxpayers.

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

While changes to assessment and enquiry powers are likely to lead to additional costs for HMRC, agents, and taxpayers in the short term – including system development, training on new procedures, and familiarisation with any revised frameworks – ACCA believes these costs should be viewed through the lens of potential longer-term benefits. Reduced complexity from a streamlined system would, in turn, translate to cost savings and increased efficiency. Time spent navigating complex rules specific to each tax regime would be minimised. Standardised procedures could facilitate enhanced digitisation, streamline workflows, and further enhance productivity.

We encourage HMRC to conduct a thorough assessment of the potential cost implications as well as the potential return on investment and longer-term cost savings for all. As highlighted in response to question one, a phased implementation approach could not only allow for a smoother transition and reduce initial disruption, but mitigate risks related to the cost of changes to assessment and enquiry powers. The complexity of the existing regimes and their interactions with each other and the implications of digitalisation of significant elements of the assessment process mean that, however detailed the initial consultation and design process of any changes to the assessment and enquiry regime, there is a significant likelihood of unexpected inconsistencies coming to light. A phased implementation would also make it easier and cheaper to respond to these as part of the ongoing change process.

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

Code of Practice 9<sup>5</sup> sets out how the Fraud Investigation Service at HMRC carries out civil investigations in cases where fraud is suspected. We believe that where HMRC identifies risks in other areas which lead to suspicion of fraud, it is more effective for HMRC to exercise existing measures such as Code of Practice 9 – which does not cause delays for all businesses but is instead specific to those being targeted.

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

As detailed in response to questions one and two, we believe greater alignment in these areas presents a range of potential benefits including simplification and rebuilding of trust, in addition to improved efficiency and service levels.

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

ACCA would support a move to simplify and adopt a consistent time based approach across amendment powers and also for all tax relief claims and enquiry periods across all tax areas. This would see some relief and enquiry tax periods extended, while others would be reduced. This consistency in approach would simplify the system and present efficiency gain opportunities for HMRC, agents and taxpayers.

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

As detailed in response to earlier questions, ACCA believes that trust lies at the heart of a healthy relationship between a tax authority, the taxpayers and agents who interact with it. Greater alignment and consistency across the tax system presents a range of potential benefits by driving productivity and effectiveness in the tax system and improve service levels. A consistent approach fosters greater clarity for all. Taxpayers would have a clearer understanding of their rights and obligations, promoting fairness and equity in the tax system.

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

ACCA believes that reform in conditions for assessment will present a range of opportunities and benefits. The additional clarity and simplification would drive greater productivity and in

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<sup>5</sup> <https://www.gov.uk/government/publications/code-of-practice-9-where-hmrc-suspects-fraud-cop9>

turn improve service levels, both of which are key priorities. It is vital that a balance is achieved which protects the interests of all taxpayers, both those who might be subject to assessments raised by HMRC, and those who would share in the costs of making good revenue which might be foregone where HMRC are unable to raise an assessment on procedural grounds.

It is right that HMRC should not be precluded from raising an assessment where a taxpayer has sought to mislead by making a limited or ambiguous “white box” disclosure in a return. However, taxpayers’ should not have to second-guess the state of HMRC’s knowledge when considering their own tax affairs; nor should HMRC be able to rely on statements or internal guidance which it is not reasonable to expect a taxpayer to be aware of. Similarly, while it might be undesirable for taxpayers to escape their liabilities on purely technical procedural grounds where HMRC has conducted the case to the best of its abilities, aspects such as time limits and rules around correct service and terminology serve to protect taxpayers and allow for certainty and to enable them to understand the case against them and respond appropriately. There is a risk that HMRC might be seen as attempting to avoid the consequences of errors in its own process and conduct by seeking to maintain assessments where time limits are missed or incorrect assessments raised through no fault of the taxpayer.

**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?**

Given the complexity attached to the existing range of different periods for different types of claims or relief, ACCA would support the unification of dates for claims, reliefs, and credits. This could utilise either the tax year period, or an accounting period, to enable equitable treatment for all to be obtained.

There are a range of benefits of unification, including overall simplification and supporting HMRCs administration of claims, so they are uniform. This approach would also enhance clarity for taxpayers of their obligations and increase trust.

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

In order to ensure accessibility and fairness it is crucial to ensure all taxpayers have equal access to digital communication channels where HMRC is moving to enhance the use of digital communications. Security and safeguarding is also key to trust in the tax system, ensuring that taxpayers are provided with the information and awareness they need to identify legitimate HMRC communication is essential to prevent cyber attacks, phishing scams and fraud.

Use of email and mobile communications technology is nowhere near as mature as the physical postal network, and taxpayers, advisers and HMRC alike are all still settling on long term models. Imitation of correspondents, whether HMRC or the taxpayer, is in many ways

far easier with digital communications as email addresses and phone numbers are easier to update and spoof than physical correspondence addresses, and the scope to exploit compromised credentials in a short time frame far greater.

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

The current VAT system is an example of a more modern approach, is more targeted at regular and persistent defaulters, provides greater transparency being a points based system. An approach that uses a simple consistent single penalty approach across all taxes should be considered. However, penalties can be seen as disproportionate when little tax is due with many of our members highlighting examples of this kind. Our Foundations for a Sound Tax System research details core principles of simplicity certainty and stability. In ACCA's view these are the three cornerstones of a good tax system.

Behavioural based penalties offer certain benefits on driving change in behaviour, however they can result in inconsistent treatment, and lack clarity on decision making, which lead to additional friction between a tax authority, the taxpayers and agents who interact with it. ACCA favours a regime built on innocence in the reasonable assumption that the majority of taxpayers will have taken reasonable care when navigating a complex tax regime especially areas that are infrequent including Capital Gains Tax and Inheritance Tax.

HMRC should draw a clear distinction between regulatory penalties and "tax insufficiency" penalties. Where there is an identifiable loss of tax arising from a specific behaviour then the quantum of penalty should be related directly to the amount of tax loss, and should be consistent between heads of tax.

There are three broad categories of regulatory failure. Firstly, there is failure to comply with a specific reporting obligation, so HMRC is deprived of information which the taxpayer is under an explicit statutory obligation to supply. These may or may not have any impact on the tax due from the taxpayer (for example failure to submit a nil return). Secondly there are the failures to comply with a specific behavioural requirement, such as inappropriate use of non-dutiable fuel. These penalties relate to identifiable breaches of tax law which will have adversely affected the tax collected by the Exchequer. The third category of penalty relates to more general behavioural obligations, which may or may not directly impact the tax take, such as failure to keep records for income, corporation or value added tax.

In the case of penalties where there is a separate identifiable loss of tax arising from the specified behaviour, the continued existence of the penalty separate from the general "failure to pay tax" penalties should be carefully considered. It may be that there is a genuine case for the separate retention of the penalty, but in many cases it may be more appropriate to bring the penalty within the general regime. If the rationale behind the current fixed penalty is the difficulty of assessing tax or duty lost then the consequences should be different to cases where the duty is relatively small in individual cases, but the behaviour is considered so potentially harmful that the penalty has to serve as a deterrent (for example taxable use of duty free oil).

HMRC's chief executive, Jim Harra, said his department did not penalise taxpayers who were deemed to have taken "reasonable care".

"There are no penalties for innocent errors in your tax affairs," he told the public accounts committee. "If you take reasonable care, but nevertheless make a mistake, whilst you will be liable for the tax, and for interest ... you would not be liable for a penalty.

"But if your error was as a result of carelessness, then legislation says that a penalty could apply in those circumstances."

Feedback from Agents, highlighting taxpayer views continues to indicate that many find HMRC penalty calculation guidance overly complex and difficult to understand. With the information powers available to HMRC it is questionable looking forward if the prompted and unprompted distinction will be a significant distinction in the future or if the two routes should be just one with prompted incorporated into other behaviours. Navigating the number of ranges across the behaviour categories present a significant challenge.

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

Penalties can be imposed as a punishment or proposed as a deterrent. The extent to which taxpayers and society will in each case view them as appropriate or proportionate will depend upon a number of factors, such as the culpability of the recipient for being in a position where a penalty is due and the relative values of the penalty (both objectively and subjectively) and the behaviour which has given rise to the penalty.

### **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.**

Liabilities under regimes such as inheritance tax or HICBC arise involuntarily, and taxpayers have little or no choice in whether the law imposes obligations on them or not. Conversely, corporation tax arises as a result of the choice to conduct a business and to do so specifically through a legal form which falls within the charge to corporation tax. The assumption of liabilities under corporation tax is far more a voluntary act than the circumstances which result in filing of an income tax self assessment return to report HICBC or bank interest.

An area which is widely seen as unjust is the imposition of self assessment late filing penalties on individuals who are not actually taxpayers as their income falls below the level at which a liability would arise. While there may strictly be a statutory obligation to file the return, the objective value of that return to the Exchequer is nil, so it is hard to justify a monetary penalty, especially given the disproportionate hardship which they impose on individuals who, by definition, do not have much money to start with. The introduction of a cap on late filing penalties restricting them to the tax at stake where that amount is less than the fixed penalty (whatever that may from time to time be in the particular case) would avoid the tax authority pursuing the least well resourced in society for penalties whose impact on the well being of the recipient is out of all proportion to any benefit to the exchequer.



**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?**

One of the greatest challenges presented by the current set of behavioural penalties centres around the inbuilt complexity. A shift away from the current approach and towards a more modern approach such as the VAT points-based system would present a range of benefits, including greater efficiency and transparency. We would support an approach where this is combined with targeting of consistent defaulters through separate mechanisms.

To some extent, the existing complexity is a reflection of a tension in the regulatory penalty regime, created by HMRC's own principle of supporting "those who seek to comply but [coming] down hard on those who seek an unfair advantage through non-compliance". Fundamental to this principle is establishing the intentions of the taxpayer, but this requirement inevitably imposes on HMRC a far greater burden than operating a regime of 'strict liability' offences. This does not mean that the principle is wrong (far from it) but simply recognises that doing the right thing is not always the easy thing.

**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?**

Consistency of penalties is an important concept in supporting horizontal taxpayer equity; proportionality will enhance vertical equity. Fixed penalties conversely have the benefit of certainty and ease of operation, but risk disproportionate impacts on differing populations of taxpayer, especially in connection with business taxes. While tax geared penalties are not necessarily appropriate in regulatory situations, they have the advantage of proportionality as they will automatically be linked to the amount of money that the taxpayer should expect to be dealing with in respect of their tax affairs.

In order to reduce the incidence of disproportionate penalties while at the same time preserving some predictability for taxpayers as to the likely quantum of penalty in their particular circumstance, ACCA proposes penalties geared to the quantum of the subject matter of the tax for the individual taxpayer. So for example, where a penalty is imposed in connection with business taxes, the penalty could be based on the reported profits or turnover of the business. For transaction based taxes such as Stamp Duties and chargeable gains the baseline would be the value of the underlying asset/transaction.

The concept would be of particular value in "failure to keep records" cases, as HMRC clearly have some identifiable activity to which the penalty relates. If the records are so poor that the level of underlying taxable activity cannot be established to a sufficient level of accuracy or certainty then there is likely to have also been a significant underpayment of tax. The case will merit full investigation and review, with the appropriate sanctions for the underpaid tax at conclusion of the review. However, where the taxpayer has kept some records or made some returns (for example submitted accounts to Companies House or registered a transfer

of property at the land registry) but not complied with their obligations under tax law, it seems appropriate that the penalty be set as a percentage of the value of the activity giving rise to the obligation. While the level of penalty might not be absolutely determinable in advance there would at least be sufficient predictability to the level of penalty for it to be both fair and proportionate, and influence behaviour consistency across the whole population of taxpayers.

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

ACCA would favour a move towards a uniformed approach to penalties across the board, which is more strongly aligned with the points passed approach we currently have with VAT. This would not only increase certainty for taxpayers but also increase trust and transparency. If such a regime was to be instigated, ensuring it does not penalise innocent one-off errors, while also enabling tax authorities to deal appropriately with consistent defaulters would be crucial to success. As part of this move towards a uniformed approach, bringing all penalties and powers together in a consolidated act would also be beneficial.

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

The current system, relying on paper notices sent to a taxpayer's last known address, can lead to significant delays and confusion. The clarity and accessibility of penalty notices is key to enabling individuals to understand the reason for the penalty, the amount due and the options available for payment, appeal, or mitigation. Online calculators and interactive tools can support and empower taxpayers to both estimate potential penalties and understand the steps they should take to avoid future penalties.

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

Striking a balance between maintaining of deterrent effect of penalties and minimising administrative burden is crucial and so ACCA believes review and uprating cycle linked to the term of a parliament, is a reasonable approach. However, we believe this should also be linked to tax liability threshold review and uprating cycles. It provides both transparency and consistency to enable business to be able to adapt, while ensuring penalties remain effective. We would be wary of imposing a requirement for a uniform index linked increase in taxes and fixed penalties as we consider the penalty regime should reflect the risk base by UK tax authorities, and the profile of risk will vary between different heads of tax over time.

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

Our members continue to highlight challenges they face when seeking to resolve disputes with HMRC. Alternative Dispute Resolution provides a cost-effective resource efficient route to resolve disputes, it is not appropriate in all circumstances. One ACCA member has told us: “We have three cases going to ADR at the moment. It seems that’s only way you can speak to somebody. We have done three ADRs to date and win all three - outrageous waste of taxpayers money and damage to government credibility.” The core motivation in examples such as this, is to move cases forward, especially where repayments of tax is due, which in turn, increases cost for all concerned.

HMRC must invest in training for staff in order to ensure resource appropriate experts can take on case review while maintaining consistency, transparency and fairness. Greater investment in guidance is also needed, and guidance issued must reflect current caselaw. Improving adherence to established timelines is also critical – members continue to highlight examples of cases where information has been lost by HMRC or there has been a change in HMRC staff which has led to a different approach to resolution being taken.

### **ADR Questions (Q27 - Q29)**

In order to improve access to statutory reviews and ADR we believe there are a number of improvements which must be made including timeline review, enhanced transparency of decision, better training reviewers, and enhanced transparency on independence of reviewers.

Reviewers must possess a general understanding of the law and the necessary knowledge and skills relating to the out-of-court or judicial resolution, to be able to carry out their functions competently. They should discharge duties in a way that is unbiased as regards to both parties of a dispute while maintains impartiality by ensuring that their remuneration is not linked to the outcome of the alternative dispute resolution procedure. Reviewers should conduct the process with fairness to all parties and take particular care to ensure that all parties have adequate opportunities to be heard, to be involved in the process, and to seek and obtain legal or other counsel before finalising any resolution.

ACCA sees the benefit of a good ADR regime and we ourselves are a significant supporter and user of ADR. We believe it is a cost-effective solution for business that delivers savings for all concerned. Improvements across these areas could encourage greater voluntary take-up.