



BUDGET AUTUMN 2018

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Further to the **invitation** published by HM Treasury on 7 September 2018, ICAEW Tax Faculty has the following suggestions for the government's forthcoming Budget.

There should be no new policy initiatives on tax at this time. Attention should instead be given to enabling would-be compliant taxpayers easily to fulfil their obligations and to understand their entitlements. Coping with HMRC's digital systems over the past few years has been made even more difficult by the number of policy changes.

This submission of 28 September 2018 has been prepared by the ICAEW Tax Faculty. Internationally recognised as a source of expertise, the Tax Faculty is a leading authority on taxation and is the voice of tax for ICAEW. It is responsible for making all submissions to the tax authorities on behalf of ICAEW, drawing upon the knowledge and experience of ICAEW's membership. The Tax Faculty's work is directly supported by over 130 active members, many of them well-known names in the tax world, who work across the complete spectrum of tax, both in practice and in business.

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EXECUTIVE SUMMARY

No new tax policy initiatives – improve operation of current tax system

1. There should be no new policy initiatives on tax at this time. Attention should instead be given to enabling would-be compliant taxpayers easily to fulfil their obligations and to understand their entitlements. Coping with HMRC's digital systems over the past few years has been made even more difficult by the number of policy changes.
2. As major points we recommend that attention should be given to:
 - a) Resolving the tax implications of Brexit;
 - b) Properly funding HMRC to ensure it collects the correct amount of tax as fairly and efficiently as possible. This would include publishing the right guidance at the right time and to designing, building, testing – and, when found to be wanting, correcting – its processes and IT so people can easily report and pay the right amount of tax;
 - c) HMRC improving its interaction with taxpayers and agents and placing greater reliance on the work of trusted agents; and
 - d) Reducing the speed with which new policy measures are introduced, as this would reduce the likelihood of mistakes in the legislation which need subsequently to be repaired, which in turn is undermining trust in the tax authorities.
3. More specifically:
 - a) *Tax policymaking requires* greater transparency to aid understanding and avoid legislative errors. Policies when first announced need to be explained in sufficient detail to enable everyone to understand exactly what is intended;
 - b) *Tax rates and allowances* need to be rationalised to eliminate distortions and cliff edges;
 - c) Rolling out *making tax digital (MTD) for VAT* in April 2019 is likely to prove impractical owing to software and businesses not being ready, let alone in some cases aware. Any penalty regime should be very light touch;
 - d) Practical problems with the *public sector off-payrolling* regime should be resolved as a priority and certainly before consideration is given to extending to the private sector, which it is not realistic to do until April 2020 and that only when the public sector problems have been addressed; and
 - e) *PAYE real time information (RTI)* processing by HMRC needs to be made fit for purpose to prevent further incorrect and different entries on HMRC's, employees' and employers' records.

GENERAL POINTS

4. There should be no new policy initiatives on tax at this time. Attention should instead be given to improving the operation and efficiency of the current tax system.
5. The number of policy changes over the past few years, together with the speed with which they have been implemented, have added to the complexity of the tax system, creating difficulties for taxpayers, agents and, in some cases, HMRC. We are totally supportive of the move to digitalise the operation of tax, but coping with HMRC's digital systems during a period of such rapid change has made it harder for would-be compliant taxpayers easily to fulfil their obligations and understand their entitlements. Recent examples include the calculation of tax due where the personal allowance interacts with the savings allowance and the dividend nil rate band, and understanding eligibility and claiming the transferable

marriage allowance. It should not be necessary to resort to IT to calculate a taxpayer's tax liability.

6. Continuing uncertainties arising from Brexit should be resolved before further policy changes are discussed.
7. HMRC is a revenue-collecting department and as such should be properly funded to ensure it collects the correct amount of tax as fairly and efficiently as possible. HMRC should be enabled to publish the right guidance for taxpayers and agents at the right time and to design, build, test and improve its processes and IT so people can easily report and pay the right amount of tax. HMRC systems still have too many processing errors and attention should be focused on correcting them.
8. HMRC should place greater reliance on the work of trusted agents. The manner in which the department interacts with taxpayers and agents needs review to make this process more efficient.
9. A reduction in new legislation would be of benefit to all. Recent errors in new legislation, due in part to its volume and the speed with which it has passed through Parliament, have had to be corrected in subsequent legislation, which in turn undermines trust in the tax authorities.

Pressures on business

10. Tax is not the only area where policy change puts pressure and costs onto business.
11. Continuing uncertainties arising from Brexit should be resolved before further policy changes are discussed. Although the policies may not be linked, the individuals and businesses affected should be shielded from as much unnecessary change as possible during this period. We note specifically that social security international bilateral agreements with other countries need to be in place for when the UK leaves the European Community.
12. Business is also having to absorb a significant number of recent changes as a result of the Base Erosion and Profit Shifting (BEPS) changes and the EU Anti Avoidance Directive (ATAD).

Tax policymaking

13. Greater transparency is needed when developing policy to aid understanding and avoid legislative errors.
14. The tax system is extremely complicated and much recent law has been written with a drafting style and approach that is extremely difficult to understand. We are concerned that the lessons of the Tax Law Rewrite project (which we supported) have been lost and we would welcome the opportunity to help revive them.
15. In 2011, the government published the **Tax consultation framework**, setting out proposals for improving the quality and effectiveness of tax consultations and committing to five stages of tax policy development and implementation, which we endorse:
 - Stage 1: Setting out objectives and identifying options
 - Stage 2: Determining the best option and developing a framework for implementation including detailed policy design.
 - Stage 3: Drafting legislation to effect the proposed change
 - Stage 4: Implementing and monitoring the change
 - Stage 5: Reviewing and evaluating the change.
16. Unfortunately, it is not always possible to relate the detail in the legislation to the original intent. A recent example of this is the legislation found at Part 4, Sch 8, Finance (No. 2) Act 2017, which is brief and relates to non-domiciliaries who have mixed fund accounts and have been using the remittance basis and who are now making cleansing transfers. There is a two-year window (6 April 2017 to 5 April 2019) during which these and the associated nomination can take place. The actual remittance of cleansed funds can happen at any time (so well outside of the two-year window). HMRC guidance has attempted to explain how the

legislation is intended to apply, but is aimed primarily at ordinary taxpayers. ICAEW and other tax bodies have since been helping to establish how the law is intended to apply in more complex situations.

Clear intention of Parliament

17. Our members agree to act in accordance with the *Professional Conduct in Relation to Taxation* (PCRT). In so doing they agree to abide by professional principles which include, for example, that members do not undertake transactions that are contrary to the clear intention of Parliament. It is an important safeguard in the public interest but it depends upon the intention of Parliament being made explicit and clearly communicated, both in the legislation enacted and in any accompanying explanatory notes.
18. It follows that when a policy is announced, it needs to be explained in sufficient detail to enable taxpayers, advisers, HMRC and parliamentary counsel (who will be tasked with drafting the legislation) to understand exactly what is intended. Draft legislation, guidance with examples, tax return calculation worksheets and software specifications all need to be developed alongside each other and published together for consultation. We are happy to help and support this work.

Amending legislation

19. Where draft legislation amends existing legislation, a tracked-changes version of the existing legislation that is being changed should be published alongside the draft amending legislation. This would help to avoid the need for legislation to be re-amended subsequently to correct mistakes.
20. A recent example is the optional remuneration arrangements (OpRA) for cars and vans provisions in s7 and Sch 2, Finance Act 2017 (see our representation on the proposed amended legislation submitted in August 2018 ([ICAEW REP 97/18](#)), which *inter alia* notes that the intended amendments introduce a new error).

Tax rates and allowances

21. The government should begin a review to rationalise tax and national insurance contribution (NIC) rates and allowances, with a view to eliminating differences to eliminate distortions and cliff edges. Pending such a review, we welcome the retention of Class 2 NIC.
22. Rates and allowances have evolved over time and the overall policy rationale needs to be reviewed, rationalised and explained.
23. Different rates of tax and NIC on different types of income encourage people to take their income in ways which may not benefit the UK economy or reflect policy intent. For example, earnings, savings income and dividends are all liable to income tax at different rates; earnings are subject to NIC whereas investment income is not; and self-employed earnings and income from employment are liable to NIC at different rates. Rationalising NIC rates, for example, would help remove distortions in the ways in which contractors are hired and, we believe, would reduce the need for off-payroll working rules.
24. High marginal income tax rates at certain levels of income create cliff-edges and discourage people from earning more than the thresholds. Examples are the high income child benefit charge at income of £50,000 and withdrawing the marriage allowance at the higher rate threshold and the personal allowance at £100,000. We believe that government wants to encourage economic activity, which we support, but these cliff-edges do the opposite.

Making tax digital (MTD) and existing digital reporting processes

25. We note that MTD for VAT is being rolled out from April 2019 but remain very concerned about whether this will be practical. Our recent survey of business revealed that around 40% of businesses are not aware of MTD and still fewer are ready for the change. Businesses and software developers need 18 months to change processes and develop and test

software. Many businesses will finalise infrastructure and IT budgets at least a year in advance.

26. While the number of MTD software products listed on GOV.UK continues to grow, we believe that HMRC should allow for a transition in which MTD is not mandatory until there is sufficient choice in terms of live, MTD-compliant software and bridging software. Businesses that are planning to move all their systems onto the same software platform need to know how and when their software will also incorporate income tax and corporation tax functionality. They then need time to adopt it voluntarily and be comfortable using it.
27. We suggest that businesses should be able to enter MTD at the start of an accounting year rather than the start of a VAT quarter; to do otherwise could increase errors.
28. It would be easy for HMRC to believe, mistakenly, there has been a high take-up of software accounting systems through extensive use of bridging software alone. For many, bridging software may be a temporary solution. Rather than having to make change twice in quick succession, it would be more productive to allow businesses sufficient time to choose from a range of suitable software, and then implement and test it properly.
29. If there is to be mandation, all businesses should be able to submit at least two quarters' returns before they are mandated.
30. The penalty regime should reflect the current limitations and be very light touch.

Off-payroll working and IR35

31. Problems already identified in the public sector off-payroll working regime should be resolved before consideration is given to extending the regime to the private sector.
32. The administration of the public sector off-payrolling rules is imposing huge admin burdens, with risks and costs being imposed on all stakeholders. Some of the specific problems are detailed below.
33. HMRC's check employment status tool (CEST) has a number of problems that need to be resolved. ICAEW Tax Faculty had a productive meeting with HMRC on 19 September 2018 about how they could be fixed so that CEST is fit for purpose, but funding is needed to fix them.
34. Some end clients and intermediaries are passing the costs of employer NIC and apprenticeship levy down the line to contractors. The responsibility for running a payroll for deemed employees, and therefore liability for employers' NIC and the apprenticeship levy, should be that of the organisation responsible for determining the contractors' employment status, i.e. the end client.
35. Few contractors understand their rights in relation to status decisions made about them by their end clients. The ability of contractors to appeal against their clients' and others' determinations of their employment status needs to be strengthened and publicised. HMRC needs resources so it can quickly and correctly determine contractors' employment status and provide timely and accurate guidance and expert telephone assistance to stakeholders.
36. Tax codes for deemed employees need to result in the right amount of tax being collected from the first payday. Current HMRC instructions tell deemed employers to deduct tax at basic rate which almost invariably results in the wrong amount of tax being accounted for via PAYE. This means that subsequent HMRC intervention is needed to collect the right amount of tax. We note that this problem is not new as it also applies to individuals with, for example, second jobs, those who begin to collect new pensions and, more recently, to pension drawdowns. It is time for these problems to be resolved, not just because many taxpayers are affected but because the problems are likely to increase in the future.
37. Deemed employers are unable to stop student loan start notices and auto-enrolment contributions from being automatically processed by computerised payrolls. HMRC itself is unable to distinguish deemed from real employees. HMRC needs to specify that payroll software must include the means to distinguish the two types of employee.

38. The VAT and expenses elements of contractors' fees frequently have to be internally accounted for and paid separately from the payrolled element of contractors' fees. This creates administrative burdens for all stakeholders.
39. Official guidance is still awaited on accounting in statutory accounts for contractors' fees.
40. In the private sector, awareness of a possible rule change for off-payroll working is low. For those that are aware, the prospect of a regime similar to that in the public sector being rolled out to the private sector is currently undermining business confidence.
41. Business processes need time to change. Corporate budgets for IT will already have been agreed for 2019. As noted above, businesses and software developers need 18 months to change processes and develop and test software.
42. Smaller businesses will need to be re-educated to understand and apply the new rules. For those also still learning new rules and procedures for GDPR, VAT and excise duties, the administrative burden will be considerable.
43. Finally, where contractors are placed on a payroll having formerly been treated as non-employees, HMRC should not seek to treat them as having been employees for past years retrospectively.
44. Given these problems, it is not realistic to extend the rules for the public sector to the private sector by April 2019 – in our view the earliest possible date would be April 2020 and that only when the above problems have been substantially addressed. For further information, see our letters dated 28 June 2018 ([ICAEW REP 73/18](#)) and 26 July 2018 ([ICAEW REP 91/18](#)) and our response of 9 August 2018 to HMRC's consultation ([ICAEW REP 94/18](#)).

PAYE in real time

45. We welcome the fact that the three-day late filing penalty relaxation for PAYE in real time was continued this year. Unfortunately, there are still major problems with the PAYE real time information (RTI) system.
46. Most of the RTI problems arise from HMRC misprocessing employer-submitted data and employer payments and from certain process/IT deficiencies, which result in incorrect and different entries on HMRC's, employees' and employers' records. Attempts to get mistakes on HMRC's records corrected impose disproportionate burdens and time costs on employers and their agents, while also taking up HMRC time.
47. We wrote to HMRC in February 2018 offering to help the department implement its RTI post-implementation review ([ICAEW REP 15/18](#)) and have followed this up in subsequent correspondence. HMRC's response has not been encouraging but we remain committed to trying to help resolve these problems.