



## AMENDMENTS TO TAX RETURNS

Issued 4 February 2019

ICAEW welcomes the opportunity to respond to the [Call for Evidence: Amendments to tax returns](#) published by HM Revenue & Customs (HMRC) on 7 November 2018.

This response of 6 February 2019 has been prepared on behalf of ICAEW by the Tax Faculty. Internationally recognised as a source of expertise, ICAEW Tax Faculty is a leading authority on taxation. It is responsible for making submissions to tax authorities on behalf of ICAEW and does this with support from over 130 volunteers, many of whom are well-known names in the tax world. Appendix 1 sets out the ICAEW Tax Faculty's Ten Tenets for a Better Tax System, by which we benchmark proposals for changes to the tax system.

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## MAJOR POINTS

1. ICAEW welcomes the opportunity to respond to the Call for Evidence: Amendments to tax returns.
2. We support the government's ambition for an amendments process that is simple and transparent, while noting that it is the complexity of the underlying tax rules which often makes an amendment necessary, particularly where the original tax return was prepared by a non tax professional.
3. In straightforward cases, we would expect a system which allows (or requires in the case of VAT) digital filing, requires subsequent in time amendments by the same method (which software must be able to facilitate), which retains an audit trail of such amendments, and which HMRC can override to allow late amendments by exception where necessary.
4. We do not consider it possible at this time to implement a digital method of correction that works for all tax returns and all taxes.
5. Any digital solution must also accommodate the digitally assisted and excluded, which will mean that amendments must also be possible on paper or by telephone.
6. It is important that taxpayer rights are neither diluted nor limited as a result of any changes following this call for evidence. In particular
  - the ability of taxpayers to protect themselves from discovery assessments
  - the ability to make unprompted disclosures
  - the availability of overpayment relief. In the case of overpayment relief, extending the right to amend tax returns to within the four year overpayment relief window would be an administrative simplification.

## GENERAL COMMENTS

7. In straightforward cases, we would expect a system which allows (or requires in the case of VAT) digital filing, requires subsequent in time amendments by the same method (which software must be able to facilitate), which retains an audit trail showing such amendments, and which HMRC can override to allow late amendments by exception where necessary.
8. We do not consider it possible at this time to implement a digital method of correction that works for all tax returns and all taxes.
9. Any digital solution must also accommodate the digitally assisted and excluded, which will mean that amendments must also be possible on paper or by telephone. If these options are kept open for all, there will be no need to make specific additional provision for such cases. ICAEW does not support mandation of any aspect of digitalisation, but believes the business case will lead taxpayers to prefer a digital alternative where it is appropriate and is more efficient. This also extends to amendments.
10. We support the government's ambition for an amendments process that is simple and transparent, while noting that it is the complexity of the underlying tax rules which often makes an amendment necessary.
11. While the different ways of making further amendments might cause confusion, a greater cause is often the lack of a clear audit trail to follow through amendments once they are made.
12. It should be possible to attach a digital explanation or letter to any amendment to give any necessary explanation.
13. Online amendments should generate an automated receipt identifying the taxpayer, period and return type.
14. We support the view that taking over clients is a problematic time in any agent process, particularly where this occurs in the middle of an amendment or the new agent identifies that an amendment is required to a return that they did not file.

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- the ability of taxpayers to protect themselves from discovery assessments
  - the ability to make unprompted disclosures
  - the availability of overpayment relief. In the case of overpayment relief, extending the right to amend tax returns to within the four year overpayment relief window would be an administrative simplification.

**We hosted an online quiz between December 2018 and January 2019 to gather further evidence from our members which is set out in the following comments.**

## **RESPONSES TO SPECIFIC QUESTIONS**

### ***Question 1: Which taxes do you submit returns for? How do you make amendments for each tax?***

16. Our members make amendments for all taxes and returns. The respondents to our quiz, as well as those who submitted comments to ICAEW directly, made specific reference to submitting income tax returns and corporation tax returns, with around 70% also submitting VAT returns.
17. Amendments to returns for both income tax and corporation tax which were originally submitted online are predominantly made online. However, a significant minority of 10-20% still make amendments to these on paper and in writing.
18. Amendments to income tax returns originally submitted on paper, are usually made in writing, with around half that number again resubmitting the full return on paper.
19. Although for UK income tax purposes it is generally sufficient to just amend a figure by writing to HMRC and telling them the adjustment, for expatriate self assessment tax returns, sending HMRC an entirely new SA Tax Return ensures that all the details flow through the tax return and calculation.
20. Maintaining flexibility is key. Members tell us although they prefer to use digital where this is possible, in other, more complex cases, an explanation on paper can be clearer.

### ***Question 2: What are your reasons for making amendments?***

21. Certain amendments have to be made after the filing deadline because the information required is not known by that filing deadline, for example claiming foreign tax credits. The final foreign tax due cannot always be finalised by the deadline. Most countries have a calendar year tax year and therefore the foreign tax for the period 1 January 2018 to 5 April 2018 will not be known until after the 2018 calendar year tax return is filed. This is unlikely to be finalised before the 31 January 2019 filing deadline for a 2018 foreign tax return.
22. Another example where amended returns need to be filed is where individuals have to be non-resident for the complete tax year after the tax year in which split year treatment is claimed. For example, if an individual claimed split year on their 2017/2018 tax return and then returns to the UK in March 2019 the 2018/2019 tax return may need amendment because split year treatment would no longer apply.

### **Out of time amendments**

23. It would be helpful if the deadline for amending self assessment tax returns electronically could be extended to allow for these cases to be submitted electronically. The current one year cut off does not give sufficient time for these types of amendments which depend on the time limits of the overseas country.
24. We would go further and suggest that where any claim can be made up to four years after a year of assessment, the claim should be able to be made by amending a tax return online in that four year period.

25. In addition, sometimes a return must be amended outside of the statutory limits. For example, an amendment in HMRC's favour to align with information filed with a non-UK regulator. It would be helpful to have a list of standard reasons set in guidance which would be acceptable for filing an out of date amendment which could be easily accepted/rejected by HMRC. For example
- where there is an enquiry, HMRC can check that changes it has approved have been correctly processed. This ensures that the taxpayers own records will be correct going forward and also HMRC avoids the cost of making the amendment
  - where HMRC accepts that an out of time change needs to be made for another reason.
26. Almost all of our respondents said they made amendments to correct omissions of income (including items received post filing the return on forms P11D) and also to correct omissions from expenses. Many also make amendments to replace estimates with actual figures.
27. The other common reasons given were:
- To make claims for reliefs, including carried back losses, EIS relief and gift aid
  - To reflect changes in circumstances, for example to report cessation of trade
  - Accounting adjustments, eg, those required by GAAP or on change of accounting date
  - To report a chargeable gain
  - To reclassify income on the return
  - To report a high income child benefit charge or pension payment.

***Question 3: Do you find it easy to make amendments to returns? Is the process complicated? How long does it take?***

28. The process of submitting an amendment to a self assessment tax return for income tax or corporation tax is usually straightforward although recalculating the liabilities and ensuring that all the dependent adjustments are made can be complicated.
29. The general view of our members was that it is easier to make amendments online, but there are instances where they have to be made on paper.
30. Specific circumstances where amendments have to be made on paper are:
- Where the client or previous agent submitted the tax return on paper
  - Where the client or previous agent used different software. Not all software packages will allow resubmission by the new agent using a different package
  - Overpayment relief claims can only be made on paper
  - Unless extremely low value, then VAT amendments will usually be on form VAT652 in order to make sure that no discovery assessments can be raised for things corrected in a subsequent VAT return
  - Where an agent is asked to submit returns relating to several years of unreported income to assist a new client. Partly because of the historical nature but also because of the need to establish unprompted disclosure, it is essential to write to HMRC. The penalty structure drives some paper correspondence, as it's not possible to submit free-form correspondence to HMRC (apart from getting agreement to email correspondence during an on-going enquiry).
31. If the amended return can be filed online, the amendment process is usually very straightforward.
32. If a paper return and explanatory letter need to be filed, the taxpayer is usually much more wary of making the amendment, and the submission process is accordingly more complex. There is also an additional mechanical issue that the filer must make a complete and accurate copy, and storing it correctly must be done manually. Online filing software would keep the requisite records automatically.
33. Filing online can be problematic where automated rejection systems apply, incorrectly. For example, corporation tax returns where the period of accounts is not the same as the tax return period often cannot be amended online, even when they are within the amendment window. Also, where the return requires large attachments to explain the amendment and the resulting submission package is too large.

34. The time to make an amendment can be broken down into time to:
- Identify the error;
  - Identify the correct tax treatment;
  - Identify the cause of the error and update systems if appropriate;
  - Review the return for other potential errors;
  - Consider any potential actions to ameliorate the position;
  - Persuade the taxpayer to correct the error;
  - Arrange financing for the additional tax due;
  - Prepare the amended return (hard or soft copy);
  - Approve and file the return;
  - Identifying HMRC's response and informing the client.
35. Very little of this time is usually related to the mechanical process of filing the return. Filing paper returns can have a significant time component as minor adjustments can require forms to be re-written repeatedly – some agents are also reluctant to send in amended returns that have clearly been adjusted in the process (different hand-writing on different pages, slightly differently coloured pages due to use of different printers, etc) as these may imply a lack of professional care which increases the amendment time.

***Question 4: If you submit amendments for different taxes, are there any (or elements of any) that are easier or more difficult than others?***

36. **Overpayment relief claims** Overpayment relief claims are more difficult than the process of simply amending self assessment returns online. The ability to amend tax returns within the four year overpayment relief window would simplify the process.
37. **Payroll returns** It has been more difficult to amend figures for payroll where HMRC systems show something different to the employer's payroll. We welcome the recent announcement to replace the earlier year update for RTI returns. This process had been difficult because the employer/agent needed to know what figure HMRC's records showed before these could be amended. This sometimes required employers to send incorrect data to fix HMRC errors.
38. **Stamp Duty** amendments are difficult, partly due to company law issues regarding corrections to share certificates and partly to the paper-intensive requirements for exempt transfers by the stamp office.

***Question 5: How long does it take to get a response from HMRC?***

39. This varies from a few weeks to several months. Occasionally there is no response at all and a letter of complaint is needed.

***Question 6: What is your interaction like with HMRC when you make an amendment?***

40. Generally there is no active interaction. An online amendment gets an online acknowledgement.
41. If the online amendment results in a repayment, it is very often necessary to chase for the repayment by phone or request it separately through HMRC's portal once the SA system has updated and shows the overpayment.
42. Paper amendments get a paper response once the matter has been attended to by HMRC, although this can be delayed. There isn't usually a problem with the content of the written response although the inclusion of prescribed sentences in HMRC correspondence can appear unnecessarily aggressive to those who may be unused to making amendments, and these can often be inappropriate.
43. Where an amendment is made following an enquiry by HMRC the interaction tends to be professional and constructive.

**Question 7: Is there anything about the current amendments processes that cause you difficulty?**

44. The time allowed for submitting amended self assessment tax returns is too short.
45. Other difficulties are caused by inability to
  - amend online where paper returns have been submitted by clients/previous agents.
  - amend online where different third party software has been used by previous agent.
  - send free-form correspondence to HMRC digitally, including pdf attachments.
46. The need to make overpayment relief claims going back further than one tax year.

**Question 8: What possible benefits might there be to a consistent amendments process across taxes?**

47. It would be simpler to have just one amendment process, but as tax administration varies between taxes, this would need a close consideration of the underlying tax rules.
48. A consistent process would remove anomalies with different time limits applying to different returns/taxes.
49. Ideally all amendments should be possible by electronic submission, but digital should not be compulsory.
50. If an error required an amendment to more than one tax or return, a single process would be easier, but it seems unlikely that this could be achieved through a single submission. HMRC has different computer systems which do not easily share information.
51. Where different members of staff make returns for different taxes, there would be little benefit from one process across all taxes.
52. Returns that are 'out of time' should be possible by means of submission subject to HMRC acceptance on the grounds either that the amendment would increase the tax or exercise of HMRC's discretion (which is very rare).
53. **Payroll** There would be benefits from having a common process between income tax and class 1 national insurance contributions for employees.
54. **VAT** The ability to amend VAT returns could improve cash flow to the Treasury as there would be no need to wait for the next return. This would also reduce the need for HMRC intervention, which sometimes occurs before the next VAT return is filed.

**Question 9: Do you think having one consistent way to amend all returns will result in savings for businesses? If so, please provide details eg simpler process, reduced contact with HMRC etc.**

55. If there was just one set of rules to determine whether an amendment could be made for different taxes, this could save time. If it was just one process to notify a different figure, then this could also save time. This does however require HMRC systems to be able to reliably make amendments across all taxes.
56. We also note that an amendment to income or expenses, might also have an impact on tax credits receivable. Unless DWP systems could also be amended, there would be little overall savings.

**Question 10: How would you prefer to make amendments to returns?**

57. Online submission of amended returns, processed automatically on a process now, challenge later basis would be best, provided there is an accessible paper option where that is easier. Choice is important to our members.

**Question 11: How do you feel about a future single digital amendment process for all taxes?**

58. We believe the tax system is too complex for this to be practical. The tax system will need simplifying considerably before this should be attempted.

59. Further, the vision here is unclear. A single piece of software, to be used for all amended submissions regardless of which tax, seems implausible until all the original returns are submitted this way.
60. It is more important to devote any spare resources to building systems where agents can access and do online all that their clients can.

**Question 12: Do you think being able to amend returns digitally will result in savings for businesses? If so, please provide details e.g. simpler process, reduced contact with HMRC etc.**

61. It is already possible to amend self assessment tax returns digitally and therefore we do not understand what extra benefits would be gained. Lengthening the amendment period for electronic amendments would be beneficial.

**Question 13: If you needed to make an amendment that covers multiple taxes (e.g. correcting IT and VAT) how would you see that working in future? Would you prefer to do each tax separately, or all in one?**

62. The tax system is too complicated to be understood by one person and consequently we think separate processes are a necessity. Although we see little benefit from consistency between VAT and IT we believe it would be benefit for employees to be able to deal with both tax and employee NIC on the one tax return. We believe that separate claims shouldn't be needed for an employee's income tax and an employee's National Insurance.

#### Comments received on amendments to other returns

63. **Non Resident CGT returns** It would be better if there was a digital return (like the self assessment return) rather than a digital form. In addition it would be useful if the figures could flow through to the self assessment return for self assessment purposes .
64. When you amend an NRCGT return you need the previous tax return's reference and the time taken to get this is very variable and can take months. Unlike ATED returns you cannot amend the prior figures, you have to start afresh.
65. **ATED returns** You can amend the previous income tax return but not the previous corporation tax return. Although both are ATED returns income tax and corporation tax are different systems. It would be helpful to have a standardised approach.
66. **Expatriate self assessment tax returns** Sending HMRC a complete new self assessment return is best practice, to ensure that all the details flow correctly through the tax return and calculation.
67. **Payroll** The questions in the consultation document refer to tax. We can see benefits if employees were able to claim refunds and make amendments to their tax and national insurance in one step. We would like to see it possible to amend Class 1 national insurance on the employee's tax return. This would of course require amendments to the Class 1 National Insurance rules.
68. **Off payroll working** When the off-payroll regime is extended from the public into the private sector in 2020, we would like one claim mechanism to deal with the contractor's tax and NIC and also the engager's employer National Insurance.
69. **Payrolling benefits in kind** There appears to be a mismatch between HMRC's guidance to employers regarding the payrolling of benefits in kind and the legal responsibility of the employee to make a correct self assessment Tax return. HMRC guidance at <https://www.gov.uk/guidance/payrolling-changes-affecting-benefits-and-expenses#carryforward> states:

***“Carrying forward a change to the next tax year***

*If you've made your final FPS, you can carry forward the amount that hasn't been payrolled to the next tax year. Add the amount still to be payrolled to the first wage payment in the next*

*tax year. If any change means the taxable amount has reduced, the employee will pay less tax or get a refund.*

*For self assessment, HMRC will accept the figures reported by the employee, where they agree with the employer's action to carry forward the benefit payrolled in the following tax year.*

*Class 1A National Insurance contributions payable on the benefit can't be carried forward to the next tax year. These are payable by 19 July after the tax year end."*

While this may be a practical solution, the self assessment rules should be amended to reflect this treatment.

## APPENDIX 1

### ICAEW TAX FACULTY'S TEN TENETS FOR A BETTER TAX SYSTEM

The tax system should be:

- **Statutory:** tax legislation should be enacted by statute and subject to proper democratic scrutiny by Parliament.
- **Certain:** in virtually all circumstances the application of the tax rules should be certain. It should not normally be necessary for anyone to resort to the courts in order to resolve how the rules operate in relation to his or her tax affairs.
- **Simple:** the tax rules should aim to be simple, understandable and clear in their objectives.
- **Easy to collect and to calculate:** a person's tax liability should be easy to calculate and straightforward and cheap to collect.
- **Properly targeted:** when anti-avoidance legislation is passed, due regard should be had to maintaining the simplicity and certainty of the tax system by targeting it to close specific loopholes.
- **Constant:** Changes to the underlying rules should be kept to a minimum. There should be a justifiable economic and/or social basis for any change to the tax rules and this justification should be made public and the underlying policy made clear.
- **Subject to proper consultation:** other than in exceptional circumstances, the Government should allow adequate time for both the drafting of tax legislation and full consultation on it.
- **Regularly reviewed:** the tax rules should be subject to a regular public review to determine their continuing relevance and whether their original justification has been realised. If a tax rule is no longer relevant, then it should be repealed.
- **Fair and reasonable:** the revenue authorities have a duty to exercise their powers reasonably. There should be a right of appeal to an independent tribunal against all their decisions.
- **Competitive:** tax rules and rates should be framed so as to encourage investment, capital and trade in and with the UK.

These are explained in more detail in our discussion document published in October 1999 as TAXGUIDE 4/99 (see <https://goo.gl/x6UjJ5>).