



THE TAX ADMINISTRATION FRAMEWORK REVIEW: CREATING INNOVATIVE CHANGE THROUGH NEW LEGISLATIVE PILOTS

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ICAEW welcomes the opportunity to comment on the The Tax Administration Framework Review: Creating innovative change through new legislative pilots published by HMRC on 27 April 2023, a copy of which is available from this [link](#).

For questions on this response please contact ICAEW Tax Faculty at taxfac@icaew.com quoting ICAEW REP 69/23.

This response of 19 July 2023 has been prepared by the ICAEW Tax Faculty. Internationally recognised as a source of expertise, the ICAEW 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. ICAEW Tax Faculty's Ten Tenets for a Better Tax System, by which we benchmark the tax system and changes to it, are summarised in Appendix 1.

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KEY POINTS

1. Overall, we envisage significant practical and legislative challenges to HMRC introducing a sandbox approach to testing prospective rule and process changes. The relative lack of detail at this stage as to how this approach would be implemented in practice makes it difficult to determine whether these challenges could be successfully overcome but consider that they should not be underestimated.
2. It appears that implementation of a pilot system would involve additional costs for HMRC, agents and taxpayers. We believe that agents and taxpayers should not be financially disadvantaged by participating in a pilot such that any costs should be reimbursed (or at least contributed to). As HMRC's service levels are being put under increasing pressure, finding ways to reduce the administrative burden for all parties in participating in and administering the tax system seems like a more urgent priority.
3. We also note HMRC's assurances in previous stakeholder meetings that participation in pilots would not affect a taxpayer's tax liabilities, although it could affect the imposition of penalties, interest or deadlines for tax payments. We cannot see this assurance in the consultation document and would like to know whether HMRC still stands by this.
4. The overall premise of sandboxing (subjecting a discrete population to a different set of rules, and therefore potentially a different outcome) appears to be contrary to the responsibility of the Tax Assurance Commissioner and HMRC's code of governance for resolving disputes. How can HMRC address this issue?
5. We would appreciate clarification from HMRC as to how a pilot can be successfully implemented without considerable legislative time being taken up defining the rights and responsibilities of all those participating in the pilot. For example, how can a taxpayer involved in a pilot raise an appeal against a decision made by HMRC in relation to a matter being tested in the pilot?
6. It is particularly important that sandboxing enhances rather than replaces existing processes around scrutiny of legislative change, such as consultations and focus groups.

ANSWERS TO SPECIFIC QUESTIONS

Question 1: What benefits and challenges do you think piloting potential policy and process changes in this way would bring?

7. Of the four potential opportunities identified in paragraph 4.3 of the consultation document, we believe that the second and third (designing more effective policy and processes and providing a discrete testing ground) are the most likely to be achieved.
8. We believe that the first opportunity (carrying out multiple pilots at the same time) creates some risk. For example, how could HMRC effectively analyse results if it is carrying out more than one pilot at the same time involving the same (or some of the same) taxpayers? Would one element influence the outcome of another element?
9. We are not convinced that the fourth opportunity (re-use of data after the pilot) is likely to be such in practice.. The data would need to be given in any event (whether as part of the pilot or in a 'business as usual' context). We believe that this point merely seeks to address what might otherwise have been seen as an additional burden of participating in a pilot.
10. We note the use of sandboxes mentioned in paragraphs 3.2 and 3.3 of the consultation document in the financial technology sector for testing regulations and the IT sector to test APIs and digital sandboxes. It would have been useful if the document had included more

information on how these work and whether any lessons can be learned from them. We are unsure to what extent those lessons could be applied in the world of tax.

11. In addition to the challenges and risks listed in the consultation document, we have also identified the following areas of concern.

Costs

12. We are concerned that participation in the pilots would involve unreasonable costs for both taxpayers and their agents. Given that this is a test environment for HMRC's benefit, HMRC should arguably pay (or at least contribute to) these costs. Any costs not reimbursed should be tax deductible. How will HMRC compensate for time spent, which then diverts taxpayers from running their businesses? This could otherwise have an indirect impact on the UK economy.
13. There will also be a cost to HMRC in setting up sandboxes in terms of time and other resources. Does it have the resources it needs to design and implement each pilot and then analyse the outcomes arising from them? Given HMRC's current service level issues, it might be argued that successful administration of the current regime is a greater priority.

Subjecting taxpayers in the pilot to a different set of rules

14. This is a fundamental aspect of the sandboxing approach and as, HMRC identifies, it carries significant risk. We believe that this could lead to unfair outcomes as it would mean taxpayers in similar circumstances being subject to different tax/penalty/process 'results'. This appears contrary to the responsibility of the Tax Assurance Commissioner and HMRC's code of governance for resolving disputes.
15. Ideally, taxpayers should not be put in a worse position than if they were outside the pilot, but equally if they are given a more advantageous treatment, those outside the pilot may feel aggrieved. Either way, it could be difficult to manage legislative pilots in terms of public perception and acceptability.
16. We would also appreciate HMRC's confirmation as to how participants in a pilot would be able to claim redress as a result of making a complaint as to how HMRC has managed its affairs within the pilot.
17. We also seek confirmation from HMRC that its previously stated assurance that no participant in a pilot would suffer additional tax liabilities, interest or penalties would be honoured.

Potential confusion for taxpayers

18. Taxpayers will need to be able to understand the rules that apply to them while they are in the pilot. How will HMRC communicate this? Trust may be undermined if this is not explained clearly.
19. For example, would it be necessary to have two versions of HMRC's guidance on any related matters, one for those in the pilot and one for those who are not? Would it be necessary for the guidance applicable to pilot participants to be hidden behind some kind of secrecy wall to avoid confusion?

Intermediaries supporting taxpayers in a pilot

20. This could be a considerable problem for agents, as well as software houses depending on what is being piloted. A pilot may cause firms to need to re-train staff, possibly at considerable cost (eg, actual time preparing the training then lost chargeable time for those

being trained, plus time writing new policies/procedures). They would then spend more time advising their affected clients.

21. Agents will also need to manage the logistics of having some clients inside and some outside a particular pilot. As explained above, HMRC should pay any additional costs involved, but there will also be the opportunity cost of time spent etc. For example, if the pilot is of a different way of conducting a compliance check, agents may need to add extra layers of review to ensure that they are correctly advising clients.

Other practicalities

22. Currently if a taxpayer disagrees with an HMRC decision eg, to charge a penalty, it can appeal – asking for statutory review and/or Tribunal appeal. How would this work in a pilot? If the pilot ‘penalty rules’ (for example) are not statutory, how will a Tribunal be able to decide their case? Access to justice must be maintained for those in a pilot/legislative sandbox to avoid damaging trust in the tax system.
23. The results of a pilot may be skewed by the impact of external factors. HMRC should gather information on this from the participants and take it into account in the evaluation process. For example, the state of the economy, a taxpayer losing a major client, another pandemic etc.

Legislative burden

24. Ideally, if a discrete group of taxpayers is being subject to a different set of rules applicable to the rest of the population, those rules should be placed on the statute book if they are to have any legislative effect. This would tie up parliamentary time and could be unwieldy to introduce.
25. In earlier discussions with HMRC when this point was raised, the HMRC representative indicated that there may be a way for all pilots to be introduced through a single piece of legislation. We are yet to see what HMRC envisages here and therefore cannot comment on the likely success of this approach.

Question 2: What safeguards would you like to see in the operation of pilots conducted within the proposed approach?

26. It is important that relevant guidance is drafted and made easy to find on gov.uk. A version also needs to be easily accessed by the vulnerable/digitally excluded.
27. HMRC should consider up front how it will deal with things such as:
 - taxpayers being diagnosed with a serious illness after being placed in a pilot, the illness then meaning they can’t easily deal with their tax affairs, so they struggle to respond to the pilot;
 - Those with neurodiversity such as autism which can mean that the individuals find it hard to adapt to change. Will they get much enhanced support from the Extra Support Team?
28. A very important safeguard is the need to ensure that, just because HMRC concludes that a sandbox has been successful, the rules applicable to those in the sandbox do not become automatically applicable to the rest of the relevant population. Any prospective change should still be fully scrutinised through a formal consultation process and parliamentary debate.
29. Paragraph 4.7 of the consultation document refers to finding a random selection of participants or seeking volunteers. The problem of randomly selecting people is that the selection is rarely truly random. The people selected may not actually have something in

their tax affairs that the pilot is seeking to test eg, they may all file on time and therefore would not be helpful for testing a new late filing penalty.

30. If participants are volunteers, they may be predisposed to behave in a certain way which may skew the results of the pilot. If HMRC intends to profile taxpayers as part of a selection process then:
 - a) the profiling needs to not skew the results of the pilot; and
 - b) needs to ensure that it is not discriminatory (Public Sector Equality Duty/Equalities Act).
31. The slow progress that HMRC has seen in finding volunteers for the Making Tax Digital for Income Tax pilot, for example, shows that businesses can be resistant to change and HMRC may need to provide meaningful incentives (financial or otherwise) to encourage taxpayers to participate.

Question 3: In addition to the ‘showcase space’ outlined at paragraph 4.4., are there any other ways you would want to engage in the development of new policy, processes, and legislation?

32. Existing processes eg, consultations, working parties, focus groups have proved to be effective, especially where there is close collaboration between HMRC and other parties in designing the practical elements of the proposed changes eg, developing guidance and new taxpayer/agent interfaces. Looking at all these ‘nuts and bolts’ can help to ensure that there is sufficient time to rectify any issues found before the new system goes live.

Question 4: What areas of HMRC activity do you think would benefit from this type of approach?

33. It is difficult to identify which areas of HMRC activity could benefit, given the relative lack of detail about how sandboxing would work in the discussion document.
34. It seems likely that a sandbox testing a relatively small and discrete part of the rules would be more effective than one which was more wide-ranging. Compliance processes would also probably be more easily tested in this way than technical tax rules.

Question 5: What participant support and oversight would you like to see?

35. Most importantly, full support should be provided by HMRC’s Extra Support Team to all participants who are vulnerable. The team should be reaching out to affected taxpayers individually in advance of commencement of the related pilot, helping them understand the rules of the pilot and supporting them through it. Vulnerable persons include those with health, educational, language and other challenges.
36. HMRC is legally required to make reasonable adjustments (Public Sector Equality Duty) so this would need to be factored into the pilot and the evaluation of its results. Any costs incurred through participating in the pilots because of their vulnerability should be covered by the government.
37. Oversight should also be achieved by HMRC publishing the results of each pilot in the same way that it publishes outcomes of its consultation processes.

APPENDIX 1

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

The tax system should be:

1. **Statutory:** tax legislation should be enacted by statute and subject to proper democratic scrutiny by Parliament.
2. **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.
3. **Simple:** the tax rules should aim to be simple, understandable and clear in their objectives.
4. **Easy to collect and to calculate:** a person's tax liability should be easy to calculate and straightforward and cheap to collect.
5. **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.
6. **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.
7. **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.
8. **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.
9. **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.
10. **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>).