

# Summary of the New Management Act workshops February/ March 2006

## General issues

### Registration and notification

### Returns and self assessments

### Payment and repayment

### Assessments

### Claims

### Time limits

### Appeals

### Miscellaneous

**The views recorded below are those put to us in the workshops. We have included them all in the interests of transparency and open consultation. Their inclusion should not be taken as meaning that HMC accepts or agrees with them.**

## General issues

1. Delegates expressed a wide range of views at the workshops. Some were directly relevant to the project, and are shown in the detailed summaries that follow. Some were not directly relevant, but have been recorded and passed on within HMRC. Some of the cross cutting issues that arose in our discussions are set out in this section.

### Scope of the NMA

2. Delegates held a variety of views about the scope of the NMA project. VAT was seen as fundamentally different from ITSA and CTSA with its roots in European law, and so some felt there should be separate direct and indirect management acts. Others thought the NMA should include everything that passes through payroll (for example the Construction Industry Scheme (CIS), the Collection of Student Loans (CSL) and statutory payments). Others again thought Tax Credits should be included as they saw the opportunity to align Tax Credits and direct taxes.

3. We explain the thinking behind the scope of the NMA project in the introduction.

### Complexity of legislation.

4. There was a strong feeling that greater harmonisation and simplification was a goal worth pursuing, where it made sense to do so. Many made the point that the tax system was inherently complex, and that simplification required root and branch change. In particular, some felt aligning PAYE & NICs would significantly simplify both administration and substance.

5. Different rules can make administration more complicated - for example the treatment of Employment Related Securities. But some delegates felt it was debatable whether there would always be benefit in aligning the administration of disparate systems.

### HMRC advice

6. Both self assessment and VAT requires taxpayers to calculate their tax, but delegates felt that there is a lack of appropriate advice:

- Booklets are too detailed and do not always follow case law.
- It can be difficult to establish current guidance. The HMRC website says the guidance has changed without giving details and so many taxpayers subscribe to a more detailed service.

- Help-lines get things wrong: while they are good at supplying a general answer they are not geared up to answer technical questions, and when they do the answers are often wrong. This makes completing returns difficult which contributes to unnecessary interventions.
- Taxpayers and their representatives should be able to contact HMRC by e-mail.
- Statements of Account were considered generally incomprehensible.

7. We have passed these comments on within HMRC.

### **IT Infrastructure**

8. IT systems need to be able to support the legislation, but often the infrastructure makes it impossible to apply the legislation in the way that it was intended. Examples were:

- The impact of failing computer systems during end of year return periods and January filing deadlines.
- partnership returns - many instances of incorrectly issued penalty notices and determinations when returns and information already received.

9. In order for 'e' taxation to have credibility and user confidence, the IT infrastructure should be fully resourced both financially and technically.

## **Registration and Notification**

### **Background to this workshop**

10. Delegates were asked to think not only about legislative requirements but also to consider proposals arising out of HMRC's work to develop a "whole customer view". The whole customer view proposals include a unified registration system which would allow customers (or their agents) to manage their registrations through a single system and a number of channels (including online). This would mean that HMRC would not have to ask customers to provide the same information each time they wished to register for a new regime.

### **Making clear what is required**

11. Both the legislation and any new framework for registration should be clear about a person's obligations and rights. The legislation should provide an explanation of the circumstances in which a person needs to register, for what schemes and at what times. An integrated registration system for a number of taxes would allow an application for one tax to trigger a reminder to the customer about other obligations, ensuring there is less risk of a failure to notify.

12. However, it was not always clear when further notification was required. One example was whether a person registered for Class 2 NICs knew whether they needed to notify for ITSA or Tax Credits purposes.

13. HMRC needed to be aware of the differing needs of different customers. A small business will have less time (and motivation) to read and digest literature and may need a more direct approach. Large corporates may require more detailed guidance, particularly on when they need to register a tax presence in the UK. Generally registration issues applying to international business could be better explained both through guidance and through legislation.

14. More could be done to improve the quality of guidance and support HMRC offers to businesses, and to communicate the taxpayer's obligations to notify/register. The loss of Business Support Teams and visits to VAT traders in their first 12 months of business contributed to a lack of awareness amongst small businesses about their obligations.

15. While some people felt that the quality and availability of local advice was most important, others felt that a single, central point for registrations should be established so that people are given consistent information by HMRC.

16. One suggestion was that any new HMRC registration system should be part of a “one stop shop” linked to the requirements placed on businesses by other bodies (for example, compliance with Health and Safety regulations). This was felt to be consistent with the Hampton Review principles.

### **The role of agents**

17. There was broad agreement that any registration system should aim to incorporate an agent’s details and their authorisation to act for that customer. But delegates saw practical problems with implementing this – for instance, a client may appoint different agents for different aspects of its business.

18. It was noted that most small businesses use agents for initial registration and change of circumstances and saw this as money well spent. Businesses do this partly because they find existing HMRC processes intimidating but also because they believe HMRC will view information provided by an agent as having more credibility.

### **Forms and channels**

19. There were a number of practical suggestions to make registration forms easier to complete:

- Forms should not ask for unnecessary information: minimal information should be requested at the start.
- It should be possible to complete forms partially, with other information being added as it comes to hand. This recognises the reality that the person filling in the form will not always have all the information from the outset.
- Key questions on a form should be marked with an asterisk. However, others felt that asterisked entries blocked the partial completion of forms and nothing should be made mandatory unless it really needs to be.
- HMRC should pre-populate registration forms where possible. This was seen as offering real benefits to customers.

20. Some felt that the principle should be that HMRC would accept information in whatever form the customer wanted to provide it. There was a strong view that online registration should not be mandatory, and that it would be wrong for HMRC to assume that all businesses are computer literate. HMRC should help businesses that were not online by making facilities available in its offices to allow customers to register online.

21. Views on a unified procedure for registration were generally supportive but there were aspects of the current system – particularly the distinctions between regimes – that people did not want to lose:

- Many businesses are within ITSA but are not VAT-registered or do not have employees, so a registration for ITSA should not also automatically trigger VAT or PAYE registration.
- Different sized companies have different needs: whilst a small business might want to fill in a single form to cover more than one scheme, a large company with separate tax departments would find that difficult.
- Similarly, separate forms for registration for different schemes work well for the Big 4 accountancy firms and alignment into a single form would not be welcomed by them.

22. But people did see benefits in having a central core of information – what one person described as an “information account” – kept up-to-date and which taxpayers could add information to as it became available. It could be adapted to offer “smart” guidance to users, so that, for example, someone taking on their first employee and registering for PAYE could be offered targeted advice. But there would have to be limits on who could access the information – for instance partnership information should be available to individual partners, but other partners’ details should not.

23. Some delegates felt that HMRC risked losing the goodwill of its customers if it asked for information that was not seen as relevant to registration.

24. And there was a general plea that the customer’s requirements – rather than HMRC’s – should be the primary driver for the design of any new registration system.

25. One delegate suggested that a notification to any Officer of Revenue & Customs was sufficient to fulfil the statutory requirement for all taxes so there was in fact no need to give information more than once.

#### **Time limits for notification**

26. Some delegates suggested that, just as business welcomes the spread of dates for payment and for return filing, they would not welcome having to register for everything all at once. Others suggested that time limits should be aligned and extended – for instance, a company should have 15 months to notify. But others felt that 30 days would be acceptable for existing businesses.

27. Generally it was felt that any shortening of time limits would be positive for HMRC but detrimental for business.

#### **Changes of circumstance**

28. Accurate data was seen as important to smooth administration. The lack of an obligation on companies to inform HMRC of changes relevant to CTSA meant HMRC held out-of-date information and often proceeded wrongly because of it.

#### **Refusing Registration**

29. Taxpayers faced problems where registration was refused. It was felt to be wrong that HMRC could, in effect, prevent someone setting up in business by withholding a VAT number or a CIS certificate. If stringent conditions must be set because of perceived risk, they should be tailored to the situation and not impossible to meet. For example, monthly or even fortnightly VAT returns would be more acceptable than HMRC requiring a business to provide a deposit payment that it cannot afford.

#### **Trusts**

30. Trusts and trustees should be considered separately within the registration process, as this would provide more clarity for both taxpayers and agents.

#### **Stumbling blocks**

31. Some delegates identified potential stumbling blocks that might prevent alignment of registration and notification requirements.

- A basic problem was that the entity being registered was not the same across different schemes – the taxpayer for direct tax is different from the “taxable person” for VAT.
- Status issues were an area that could hamper the integration or unification of registration processes and legislation, as it would be wrong for HMRC to impose an obligation to register on a person who genuinely can’t tell whether or not he is liable to register. The present procedures for establishing status were described as “uncertain” and “complex”.

HMRC's Employment Status Indicator would only remedy this if no penalty arose where someone uses the ESI and later finds the decision is wrong.

### **Costs and benefits**

32. There were differing views on the costs and benefits to taxpayers and their agents of introducing a unified system of registration. Some felt that the costs and benefits would be minimal – because saving an accountant five minutes per transaction was not a big impact – but that there would be a substantial goodwill benefit to HMRC. Other delegates felt there would be real benefits to small businesses.

### **Regime-specific comments**

33. The following points were made on the operation of the registration and notification obligations in relation to specific schemes:

#### **(a) ITSA**

Generally the efforts made by HMRC to move people out of ITSA were praised, but with a number of caveats:

- Once a person was in ITSA it was very difficult to get out.
- Follow-up letters sent to people who have been taken out of ITSA were badly worded and could be seen as threatening because they referred to penalties that could apply where people didn't notify future liabilities.
- The £15,000 ITSA threshold below which the taxpayer only had to submit a three-line account should be raised and brought closer to the VAT registration threshold. This would reduce burdens on business. However, other delegates felt that increasing the £15,000 threshold would cause problems because it might encourage traders not to keep records as carefully as they otherwise would.

#### **(b) CTSA**

A number of points were raised about the links between HMRC and Companies House:

- It was generally felt that there would be benefits both to business and to HMRC if Companies House data fed automatically into HMRC's systems.
- HMRC should use the trading address of a newly registered company rather than the registered address when sending correspondence. Using the latter meant correspondence often went to solicitors or accountants and had to be forwarded to the business, causing delays.
- Companies House should require a correspondence address when registering a company, which again could feed into HMRC systems. One delegate thought this might cause problems with legal service of documents although it did not seem to cause a problem that VAT registration forms ask for the principal place of business.

There should be additional boxes on the CTSA registration form to enable people filling it in to register for VAT and PAYE (and not just to request another form).

#### **(c) VAT**

There was general dissatisfaction with HMRC delay in the processing VAT registration. While people recognised the need for risk assessment, particularly to prevent Missing Trader Intra-Community (MTIC) fraud, there was a widely shared view that the failure rate for initial VAT applications was too high and that reducing delays would represent real gains to business. A number of suggestions were made to speed up the processing of VAT registrations:

- HMRC should issue provisional VAT registration numbers in cases where registration was delayed.
- HMRC should refer to money-laundering checks made by banks as a way of speeding up the process.
- No VAT refunds should be payable during the first 12 months of trading, which would allow the generality of VAT applications to be processed more quickly. But others took the view that would have an adverse impact on the cashflow of many businesses.

The online VAT registration process was generally felt to work well and was identified as a good example of a customer-focussed approach.

VAT groups were discussed and the following points were made:

- Creating a VAT group was not possible without changing VAT number. This led to costly and time-consuming changes to letterheads and computer systems.
- HMRC have 90 days to agree or refuse a VAT grouping request, creating an unacceptably long period of uncertainty for business.
- Although HMRC treats different parts of a group as different employers for PAYE purposes, this is not mirrored for VAT purposes and is anomalous.

The paper VAT registration form (VAT1) was considered too long and catered for too many different sorts of entity (individual, partnership, etc.) In some cases, company names are too long to fit on the form. It should be redesigned, along the lines of the ITSA forms, to reflect the needs of the entity which is registering.

VAT deregistration was generally felt to work well, with the final return being easily distinguishable from the normal return.

One delegate suggested redesigning the VAT system so that everyone is automatically registered for VAT and issued with a number but gets a relief until their taxable turnover reaches the VAT threshold. At that point they would start accounting for VAT but would not be able to use their VAT number until they reached that point.

#### **(d) PAYE/NICs**

PAYE registration was felt to work well as it was currently set up and delegates generally did not want to see the introduction of a legislative requirement to register for PAYE.

One specific problem that was highlighted was the fact that HMRC automatically allocates a PAYE reference number as part of CTSA registration even when the company has no remunerated employees. This leads to companies being issued with reminders for remittances that are not due.

There were different views about the ease of cancelling a PAYE scheme – with some delegates saying it was difficult while others said that, in their experience, the deregistration process for PAYE worked well. The fact that there is no standard form for closing a PAYE scheme is a problem as HMRC handles forms more reliably than letters.

Some delegates with personal experience of registering as self-employed (for Class 2 NICs) found the system easy to use. But others felt that there were problems with registration. This was not so much to do with the procedure but because people were often unaware of the requirement. This was exacerbated when people enter self-employment gradually – for instance, when a hobby turns into a business over time and an individual might not realise that the trigger for notification had been reached. Because

the self-employed often start informally and fail to notify it was unfortunate that their first encounter with HMRC could be a negative one where they are charged a penalty.

### **Summary of views where alignment possible and desirable**

34. There were two contrasting high-level views taken by delegates. On the one hand, some argued that there should be a move towards some sort of single registration – so that notification for VAT could also be treated, for instance, as a notification for CTSA or for PAYE. Others felt quite strongly that notifications needed to be kept separate because of the different needs of different businesses. The overall message was that HMRC should not look for a one-size-fits-all solution and should not seek alignment for its own sake.

35. There was general agreement that there should be more clarity around the taxpayer's rights and responsibilities when notifying and registering for all schemes – both in legislation and in guidance. Much could be achieved by HMRC publicising and explaining obligations better.

36. Most delegates supported the idea of a unified registration system or “information account” that people could use to manage their registrations if they wished. Agents should also be able to use this on behalf of clients. But HMRC should be careful to ask only for information that they genuinely need for registration purposes. And there should not be a presumption that all businesses are online and computer literate – HMRC must continue to make other channels available, particularly paper forms.

## **Returns and self assessments**

### **Simplicity vs. complexity**

37. Most rules for returns covering the core schemes should be similar because the underlying concepts are the same. But there are differences:

- Both ITSA & CTSA returns were seen as being generally time consuming and complicated, but the CTSA return is better than the ITSA return as a customer focused tool for data transmission.
- There was general consensus that the VAT return is a relatively uncomplicated form, evidenced by the fact that many traders complete their own returns. The main complicating factor stems from the application of ‘partial exemption’ provisions but this does not apply to all traders.
- Shorter periods are more appropriate for a transaction based tax like VAT. There could be different returns: a basic short tax return for the majority of simple transactions plus a longer one if needed for complex transactions with longer time scales. HMRC would need to weigh compliance costs against tax take.

### **Filing dates and incentives**

(The workshops were held before Lord Carter of Coles delivered his report on online services.)

38. The majority view held that the biggest issue with ITSA is the January filing peak. Most delegates agreed that a solution would be to move to electronic filing (which currently worked well) but many were against HMRC mandating this. Any move to such a system would need generous transitional measures and an option for those taxpayers who are unable to use electronic filing. The benefits of online filing for both direct and indirect taxes should be made more apparent.

39. Many delegates thought that there should be incentives for filing returns to combat the January peak with one advocating the use of more stringent penalties for late filing. However, the majority in favour of incentives agreed that information and guidance on these measures should be straightforward and transparent to avoid any complication or confusion in application.

40. As an alternative to incentives many delegates suggested a change of filing date. A number of suggestions were made including 31 March year-end to coincide with current year-ends or staggered filing as applied within VAT. A further suggestion was that for those with only UK income – employment, interest, and sole traders – there should be an earlier filing date

41. Practitioners frequently had difficulty in obtaining supporting documentation from clients (in particular final accounts for CTSA returns) and this delayed signing off returns. A possible solution in these cases if draft accounts were not acceptable could be the relaxation of the filing dates.

42. A related filing date issue mentioned by many delegates concerned processing errors, with a perception that insufficient cross-checks are made by HMRC to see if returns have been processed correctly.

43. A specific query raised referred to Welsh language returns which are sent out 2 months after standard tax returns despite having the same filing date. An equivalent extension to the filing date was proposed.

#### **Design of the return**

44. Many delegates criticised the design of the SA tax return, although they acknowledged that HMRC were improving it with the Short Tax Return being a step in the right direction. The return was however generally perceived as supporting HMRC risk assessment rather than being customer focused.

46. The Capital Gains (CG) pages were seen as complex and unhelpful as they could not be filed online. In addition the ITSA help sheet was criticised for lack of information for unrepresented taxpayers.

47. Many delegates suggested that a major improvement to the SA return forms would be the ability to attach additional documentation in order to provide explanations where required.

48. Two delegates suggested that applying the VAT summary sheet to the Corporation Tax return would be a significant improvement, showing a summary of the amount owed supported by the accounts.

49. The VAT return is simple because it is a calculation. However, improvements could be made if all businesses were required to return ‘total input tax’ on the return. This figure is derived from the VAT account which is already in statute and could result in more accurate risk assessment.

#### **Certainty**

50. Strong representations were made by a number of delegates for ‘certainty’ when submitting return forms. As above, many held the view that this could be provided by the submission of additional information to inform HMRC how judgement had been exercised relating to the treatment of certain items. This would serve to reduce unnecessary enquiries and would also offer the taxpayer some protection in relation to future enquiries.

### **Information requirements**

51. There was a minority view that much of the information on SA returns is required solely for statistical purposes. If the information was strictly required, this should be clearly explained which would help the general taxpayer to understand its purpose and intent. Elements of the return were criticised as placing unnecessary burdens on business.

52. One delegate suggested that legislative information requirements should be the same for all trading income, whether Income Tax or Corporation Tax.

### **Declarations**

53. There is inconsistency in the declaration (and who makes it) for different returns. The VAT declaration asks the person signing the return to say that it is 'true and complete'. Direct taxes require a declaration that the return is 'to the best of his knowledge correct and complete' and there are specific provisions for nominated partners. Concern was also raised at the inconsistency between schemes of sanctions for false declarations.

### **Tax calculation**

54. A number of representations were made regarding the complexity of calculating direct tax liability, in particular the length and design of the form.

### **Accounts**

55. There was a general view that Standard Accounts Information (SAI) is meaningless for ITSA taxpayers. As the smallest business will complete basic accounts (for reasons other than tax) it is seen as duplicating work to transfer these figures to the categories within the SAI. This often leads to inconsistencies across business sectors which in turn result in increased enquiries. If accounts were submitted as standard, in a number of cases this would remove the need for enquiries.

### **Amendments**

56. Within both direct and indirect tax there should be a way for a taxpayer to correct something without relying on HMRC to open an enquiry, such as an informal route to resolve issues outside enquiries into ITSA returns, while at the same time protecting both party's rights.

57. The SA returns amendment process needs to reflect commercial reality and business practice better. The current disparities include more time allowed to amend a return post an enquiry and the ability for an agent to sign a return for a client in addition to amending a return as now.

58. The VAT process for making amendments was seen as working well. There were a few representations to increase the amendment threshold and to relax the process for voluntary disclosure.

### **Time limits**

59. There were mixed views on current direct and indirect tax filing dates. Some viewed the SA time limits as being sufficient while others supported a move to a shorter filing date. There was however, consensus that current sanctions (particularly the size of the late filing penalties) were not a deterrent to late filing. It was generally felt that before any changes were considered HMRC would need a better understanding of the sequential preparation of accounts and computations.

60. Partnerships, trusts, etc have consistent difficulty in obtaining information from third parties and would be disadvantaged if time limits were shortened. A possible solution would be a staggered timetable which could be split between complex and non-complex cases or reflect compliance history.

61. One delegate suggested that incentives for early filing should be introduced although it was acknowledged that this had already been carried out in both direct and indirect tax fields.

### **Scheme Specific**

62. The following points were made in relation to specific schemes:

#### **(a) ITSA**

##### **Partnerships**

- It could be difficult to complete partnership returns on time because the reporting dates for investment income for partnerships differs from reporting dates for other income. Representations were made for every source to be due on the same date.
- Current statute provides that a nominated partner has responsibility for receiving, delivering and completing a return on behalf of the partnership. However, this limits the ability of the partnership to file or appeal on time if the nominated partner is absent. In today's business climate there should be scope to create flexibility to reflect what happens in practice.

#### **(b) CTSA**

##### **Loss Relief**

The main CTSA concern relates to the process of claiming loss relief, specifically to the risk of missing the statutory time limit. The two-year time limit and 30-day amendment period do not reflect commercial reality particularly in the case of a large group of companies.

##### **Companies House Consultation**

A number of representations were also made relating to consultation proposing aligning Companies House and CT filing dates. The general perception was that there would be problems complying with the reduced filing dates especially for large companies and groups who need time to collate and calculate complex tax computations.

#### **(c) VAT**

The VAT return has a greater customer focus than the SA return as it is seen as requiring only relevant information. However, this can lead to difficulties if the taxpayer wishes to provide additional information, for example if a taxpayer wishes to explain an unexpected repayment, which then triggers a risk assessment. A self-assessment return approach that has a useful white space could resolve this.

Other VAT return improvements might include:

- additional boxes as nine are too few for HMRC to undertake effective risk assessment;
- a "total input tax incurred by business" box, which is particularly relevant for partial exempt businesses.

A more detailed return might apply to traders over a certain size (say with turnover of over £300,000) to resolve the disparity of using the same return for both a major bank and a small local trade.

Voluntary disclosure issues were raised by a number of delegates: in particular the need for greater consistency in the information HMRC required, better case handling and particularly avoiding delays which impact on a trader's cashflow.

A quarterly VAT return can be preferable to an annual one, because it imposes discipline on the trader. It was also suggested that VAT monthly returns should be encouraged.

#### **(d) PAYE/NICs**

##### **General**

The number of 'return' forms and their different deadlines create undue burdens on employers. The majority of forms are seen as obsolete with information requirements more easily submitted through mainstream returns or subsumed within one form. This is particularly relevant for multiple employments, students, and absences from the UK.

Coding errors were seen as a major issue by employers. A related criticism is the complexity of the system. Any delays or inaccuracies by HMRC in issuing codes have a significant impact on payroll processing and end of year underpayments

One delegate suggested that there should be a special exemption (along the lines of Gift Aid) for those subscribing to professional associations/publications, etc. without the need to complete a tax return. A customer focused option could be a simple form designed for claiming certain basic reliefs.

A number of delegates called for a stricter enquiry procedure along the lines of that applicable under SA, for example the right of appeal to the Commissioners if all the required information is supplied. A number of examples were cited highlighting what was perceived to be unreasonable delay in dealing with status enquiries, unauthorised third party interviews, etc.

##### **Summary of views where alignment possible and desirable**

63. There was general agreement that so far as possible a new Management Act would need to provide consistency in the provisions for notices, time limits, and claims within a return for all the different heads of duty. The legislation should be fit for purpose and reflect the reality of the process as well as the needs of the department. It should have discretion and ensure that customers are aware of their rights and obligations

64. The legislation should provide a framework for what is in the return. The rights and obligations of the taxpayer should be legislated for, but there must also be room for administrative easements.

65. Alignment of the core schemes would be more beneficial to small businesses than to large businesses, which often have separate tax departments. However, it was acknowledged that scope for alignment existed not just across the schemes but within the specific codes. Many delegates were concerned that insufficient consideration of the scheme differences would result in alignment for alignment's sake.

##### **Declarations and Intermediaries**

66. Some delegates suggested that the direct tax declaration is preferable to the declaration for indirect tax. There was a general view that consistency between direct and indirect schemes would help to remove some of the cultural differences across the department particularly in dealing with intermediaries.

##### **31 January Filing Peak**

67. A number of delegates were attracted to the possibility of staggered filing dates. A number of permutations were suggested which would help to reduce the 31 January filing

peak. Other suggestions were business specific including, for example, putting unincorporated businesses onto a CT-type filing regime, with returns filed 12 months after the accounting date thereby leaving pensioners and employees in SA.

### **Receipts**

68. It was unsatisfactory that HMRC do not issue receipts for all returns particularly as they are issued for Corporation Tax returns. This is a particular complaint for small business.

### **SAI/Information Requirements**

69. There was general agreement that it would be better if accounts were required for ITSA as well as for CTSA. Different requirements should reflect different types of business, not merely differences in legal entity. Delegates recognised that sending in accounts could only avert a later “discovery” if attention was drawn to key points. If accounts were sent in with ITSA returns, there should be fewer “easy” questions, and better targeted enquiries.

70. Uniform information requirements between ITSA and CTSA could reduce borderline issues which distort the decision to incorporate or disincorporate. If large sole traders are required to submit their accounts, then the same principle should apply to small companies with the ability to complete a three-line account.

71. A number of delegates raised the issue of large partnerships that cannot file online because no attachments can be sent online. This was seen as unacceptable.

72. Most delegates agreed that taxpayers should not be asked to provide information which is not directly relevant to their tax affairs but did acknowledge that wider information is a useful risk assessment tool.

73. Many delegates agreed that while the three-line accounts saved on complexity for small and unrepresented taxpayers, the turnover threshold does not reflect commercial reality. VAT simplified schemes allow a much larger turnover (e.g. the Cash Accounting Scheme) and this could be an area for alignment.

74. One delegate suggested adopting the Dutch taxation model – one business number issued by a Chamber of Commerce and one form for all heads of tax. UK tax could then have one business form for VAT, ITSA, CTSA, PAYE, etc.

## **Payment and repayment**

### **General**

75. As a general principle, it was argued that it should not cost the compliant to pay tax.

76. Different definitions and their use across the regimes caused real problems and the opportunity should be taken to align terminology wherever possible. Of paramount importance were the definitions of large, medium and small (businesses and employers) across these core regimes, as it was these definitions that determined what payments were required to be made, how and when.

### **Due Dates for Payment**

77. A variety of views were expressed regarding due dates for payment across the core regimes, covering the current rules through to ideas for simplifying matters, as follows:

- There should be a unified tax payment system based on regular payments for all taxpayers.

- December/January is a pinch point for many businesses, with payments of both VAT and CT due as well as income tax. HMRC should consider staggering payments for direct tax along the lines of the VAT regime, where each business is allocated a set of quarterly payment dates upon registration.
- The same payment and repayment system should apply across these taxes for everyone, without exception; such a system could be based on a simple regime of reasonable monthly payments, with more use being made of automatic set off by HMRC (following the insolvency model). It was generally accepted that it is neither possible nor desirable to align all due dates, and a system of regular payments would not require this.

78. There was a general request that where the payment due date was not a bank working day, rather than moving it back to the previous working day as now, HMRC move it forward to the next working day. (This applies in all instances at the moment, including when the due date falls on a Bank Holiday and for those receiving the 7-day extension to the due date for using VAT online).

### **Cleared funds**

79. Delegates considered when the duty to pay was discharged – should this be when a cheque is sent/payment authorised or upon receipt of cleared funds, as applies for most financial transactions in the business world? Cleared funds by the due date is currently a legislative requirement under the VAT and electronic payment regimes, and many felt HMRC ought to extend this across the board, particularly to include all PAYE payments. A suitable quid pro quo for such a change could be to calculate repayment interest to the date payment is actually made rather than the date it is authorised internally by HMRC, as now.

80. There was a minority view against the imposition of a cleared funds requirement, mainly because people are used to thinking that the due date is the date by which they must get a cheque to HMRC. Several delegates emphasised that cash flow is everything to small and medium-sized business and most pay their PAYE liabilities a few days after the due date, and any move to cleared funds by the due date would have a big impact on these businesses' cash flow. Additionally, local HMRC offices are able to secure special clearance for amounts over £55,000, meaning HMRC receives value for such sums before the traditional 3-day bank turnaround time, but not necessarily on the due date.

81. Hand in hand with this debate went the issue of effective dates of payment, which some felt should be covered by a general rule, rather than the various dates applicable now that depend on both on the method of payment and type of tax being settled.

### **Payment Methods**

82. The discussion in this area covered the perceived benefits of paying by cheque, through to the ease and security of electronic payment set up on HMRC's system.

83. Delegates reported the taxpayer view that paying by cheque gave them more control over payments, and definite cash flow benefits. Credit smoothes the curve and all businesses juggle credit and cash, and most delegates would welcome payment by credit card, stating that many taxpayers would be prepared to pay any fees levied by the card provider. The one concern raised was whether transfer of debt from the Government to credit card companies was a good thing, both for UK business and citizens.

85. The use of other payment options should be explored, including loyalty reward schemes and properly targeted incentives to encourage early filing/payment.

86. Some delegates felt the e-payment regime had been hastily implemented. HMRC should now work on stabilising the IT system and promoting its use to those capable of using it because it is simple and secure, and avoids incurring unnecessary interest and

penalties/surcharge. One problem is that businesses tend to use the last known reference to make their next payment and this leads to misallocation (especially within PAYE). HMRC must recognise that this is how businesses operate and adjust its specifications accordingly. HMRC also need to recognise that electronic payment (as a practical option) is alien to many elderly taxpayers and small businesses.

### **Repayments**

87. There was a general perception that HMRC was slow to make repayments, although the move to electronic communications has improved this. There is no clear framework showing how the repayment system works, how it is applied in practice, or how to make the appropriate claim.

88. It was generally felt that repayments should automatically follow receipt of returns, and this general principle should replace the current disparate rules across the core schemes. For example, HMRC do not make VAT repayments until all outstanding returns and payments are received; PAYE repayments can be deducted from the next month's payment; CTSA repayments have to be claimed, whereas ITSA repayments are usually made automatically.

### **Regime-specific comments**

89. The following points were made on the operation of the payment and repayment regimes across the core schemes:

#### **(a) ITSA**

The payment on account (POA) system is difficult to understand, especially for new entrants to ITSA, and the sum below which POAs are not required is too low (£500 for each payment) and should be reviewed. The payment date should be separated from the filing date, but if not then taxpayers should be able to send cheques with the return. It is unclear to many individuals that 31 January is the deadline for receipt of the balancing payment as well as the first POA for the next year.

Several delegates mentioned the fact that it was inequitable that those with investment income (that will be coded out in following year) effectively pay tax (through the ITSA POA system) on that income before it is legally due.

#### **(b) CTSA**

Group Payment Arrangements (GPAs) are welcome, but the time limit for advising which companies are to be included should be extended to the first payment date rather than prior to start of the accounting period.

It is a common misconception that Quarterly Instalment Payments (QIPs) only apply to large businesses; they can also apply to small companies in a group, or small groups of companies. For these smaller companies the interest charged and the fact that there is no automatic refund until after the normal due date (9 months and one day after the end of the accounting period) can cause difficulties.

There was a suggestion that QIPs might be based on a company's previous year's liability rather than an estimate of current year's profits and should exclude CT on chargeable gains (as ITSA does). Alternative suggestions were that companies be given the choice of basing QIPs on either their previous or current year profits (as in USA), and that estimates should be allowed for all four instalments.

#### **(c) VAT**

The cash accounting scheme for small and medium businesses was popular and VAT online works well, and the 7-day extension to the payment date for those using this

system is welcome. However, delegates felt that different treatment for different traders is inherently unfair. For example, large traders paying under the VAT payments on account regime do not get the 7-day extension, and those on monthly schemes pay their VAT earlier than other traders. There was widespread agreement that the penalties for late payment were disproportionate to the offence.

Delegates confirmed that instalment payments are generally popular, but there was some experience of misallocation and consequent interest charges. Interest is generally difficult to predict for VAT as exposure to tax can happen if one invoice is missed or misallocated.

It was suggested that HMRC staff need a better commercial understanding of business. This would particularly help them:

- when deciding whether and in what amount to request security before accepting a VAT registration,
- in cases of disputed default surcharge, and
- to understand the impact delays in making repayments can have on small business.

It was unfortunate that the checks built into the VAT repayment system treat the compliant majority as fraudulent; building compliance history into the process could help speed up repayments for the compliant.<sup>1</sup>

#### **(d) PAYE/NICs**

Discussion of the PAYE/NICs payment system focussed on due dates, the annual earnings period for directors and the difficulties in getting repayments from HMRC.

The PAYE due dates were antiquated and should be changed to coincide with the calendar year. HMRC should consider reducing the number of payment dates within the regime (not just the monthly due dates but also those for Class 1A and 1B NICs). One delegate suggested due dates should be 60 days after the end of the period, so aligning them with those applicable in the business world.

The calculation of Class 1A NICs is time consuming and has to be made close to the due date. One view was therefore that HMRC should allow an extra month for payment, but several delegates thought HMRC should payroll Class 1A NICs, the long term benefits of which would be worth the short term challenges of adapting IT systems. Class 1A NICs payments are often not identified or correctly allocated by HMRC (because they are paid in with the regular month six sum); many employers then receive incorrect late payment penalties and have to go to the time and trouble of convincing HMRC to discharge these.

Large employers generally have robust pay and expenses systems in place, and are able to adapt to the frequently changing rules; their main problems tend to be dealing with expatriates.

The annual earnings period (AEP) for directors' NICs was seen as an anachronism that should be abolished. Its application means that net pay for directors fluctuates throughout the year. Although with the director's agreement the AEP does not have to be applied to his salary, there is no opt out in the first year, so HMRC should review the position for new directors.

---

<sup>1</sup> Compliance history is one of a number of factors taken into account in determining whether a particular repayment return is selected for verification.

A specific anomaly was outlined regarding accounting for bonuses and NICs. For CT purposes a company must pay bonuses within 9 months of the end of the accounting period if they are to be deducted from that period's profits. As NICs are due on pay received in a particular period regardless of when the item was earned, the bonus payment cannot be carried back for inclusion in the previous year's pay (the period in which it was earned) for NICs purposes. HMRC should look at this to see if there is any way of reallocating such payments for NICs purposes.

One delegate felt that the compliance tests for the Construction Industry Scheme (CIS) were too strict and unnecessarily move contractors/subcontractors out of CIS, so leading to business failures. Several delegates mentioned the cash flow problems caused to business through their inability to set CIS deductions suffered against payments due under PAYE until after year end.

There was some discussion around deferment of NICs, which involves a long and complicated annual application form. Some asked that deferment should last indefinitely (as in France), or at least for 3 years (in line with the Small Earnings Exception from NICs). It was generally agreed that directors should be able to defer Class 1 NICs where they hold more than one directorship in order to avoid regular refunds of NICs paid above the annual maximum. HMRC should also make it clear to individuals that they are able to apply to defer both Class 4 NICs and Class 2 NICs where they are both employed and self-employed.

HMRC was criticised as being slow at working out and making NICs repayments. Claiming back PAYE repayments can be time-consuming, even for simple arithmetical errors. Some employers will forego repayments due to the time and resource involved, as well as the perceived greater risk of a subsequent compliance review. Delegates also said it can be very difficult for non-ITSA taxpayers with income coded out and pensioners with dividend income to get money back from HMRC. Delegates felt that retrospective set-off should be available where status is disputed once the correct class of NICs due was agreed with HMRC, and the taxpayer's allocation of monies, not HMRC's, should be default position.

### **Interest**

90. All delegates felt there should be a fair balance between what HMRC pays and is owed. Interest should not be punitive, as penalties exist to address non-compliance, and interest should be charged across the board (on all taxes) in the same way, at the same time and at the same rate. Some called for mirrored rates for interest charged and paid by HMRC, set at base rate, but others thought this was not a reflection of commercial practice.

91. There was a call for a proper appeal procedure against interest, as for surcharge and penalties, and for an alignment of terminology across regimes, which should include calling surcharge a penalty.

92. Regime-specific comments included:

- a call for the interest provisions for companies paying by quarterly instalments under CTSA to also apply to individuals making payments on account under ITSA
- the VAT default surcharge regime allows purging too quickly (after 12 months).

### **Single Account**

93. A single tax account with HMRC would benefit taxpayers and HMRC, and it was suggested that, despite current IT and cost constraints, the introduction of a single account should be clearly factored in to HMRC's medium-term plans.

94. Delegates stated that business works on monthly accounts, which cover any number of invoices, yet HMRC requires payment for each tax separately which leads to unnecessary business costs. A single account would protect the Exchequer from fluctuations in revenue and could work as follows:

- annual statement of taxes
- pay monthly based on 1/12 of total due previous year
- no interest if these payments made on time
- statement issued 30 days after year end showing any balancing payment due and new monthly payments for next year
- rules needed for changing amount of monthly payment if turnover falls/increases by certain percentage.

95. HMRC could set up inhibits to protect certain areas of tax and would need to find a way of dealing with disputed tax due. The application of interest would need to be consistent and should be based on commercial restitution; transitional issues would need to be considered.

96. The benefits of a single account would include:

- reduced administration costs and improved clarity of the payment and repayment process
- encouragement of good business sense and credit control procedures, especially for small and new business
- real time risk analysis for HMRC and enhanced credibility with business
- access to automatic flexibility for businesses in temporary difficulty
- removal of the need for different parts of HMRC/systems to talk to one another
- automatic offsetting of payments
- removal of some of the mismatches between treatment of individuals and companies.

97. A quid pro quo for providing a single account should be interest on interest for HMRC. A single account would require more frequent statements of account and should include a facility for taxpayers to withdraw money from the account and/or claim repayment at any time

98. Another option discussed was a single account into which taxpayers could pay when it suits them; this would include retention of current statutory due dates with taxpayers able to make early payments, and would particularly help self-employed taxpayers better manage their tax affairs. Such an account would operate in a similar way to a bank/building society deposit account, with interest being charged when in deficit at a due date and being paid when in credit. This would allow overpayments to flow across taxes, and could apply equally well to groups; a single payment could be made for the group across all taxes, similar to the current payments made by VAT groups.

## **Assessments**

### **General**

99. Various points were made:

- The pragmatic direct tax approach to time limits, assessments and late claims should be extended to VAT, which was generally seen as less flexible. Some delegates were concerned that HMRC is becoming more restrictive in the way it works, with less discretion over settlements, uncertainty over when a penalty arises, no PAYE local agreements, etc.
- Terminology needs to be used consistently across all five schemes - for example “assessments” and “claims”. “Business” does not mean the same for VAT and direct tax.

- One view was that indirect taxes are very different because fundamentally they are European law. Another view was that although there is uncertainty over the extent to which we can bring together VAT and direct tax administration, the European law constraints relate to the framework and therefore there is a degree of flexibility in terms of arranging the detail.
- Some thought it was desirable to align VAT and direct tax powers, but that it was necessary to look at the costs of compliance including costs to HMRC (e.g. for both VAT and PAYE assessments are issued for minor sums).

100. Delegates suggested that the benefits of alignment would be difficult to quantify, either for HMRC or business.

### **Making Assessments**

101. Various points were made concerning the making of assessments:

- There should be one generic assessment rather than discovery assessments, determinations, etc.
- Certainty is needed over when an assessment is made - the date on the assessment or the date the taxpayer receives the form.
- The VAT assessment process needs modernising.
- There was a perception that appealing against a VAT assessment means a fight while a direct tax appeal normally provides an opportunity to settle by agreement.
- Assessment systems generally work well for compliant taxpayers with relatively simple affairs: it is the fringe issues which cause problems (for example the Enterprise Investment Scheme (EIS) rules and rollover relief, valuations and areas that require judgement). So there was doubt that changing the assessment procedures would help. Certainty is vital in a self-assessment regime. If the rules are unclear, the taxpayer must ask HMRC, but HMRC response is to say "it's self assessment - take a view".
- Increased exchange of information across direct and indirect taxes requires consistency and clarity in defining terms, particularly 'evidence of the facts', 'best judgement', and discovery.
- There was no consensus on the issue of 'single point of contact' or 'single visit' both of which could allow a defence for the taxpayer against 'discovery'. If one part of HMRC found something wrong this should trigger the time limit for all taxes. The single visit was thought to be resource intensive for both small and large businesses in terms of staff and costs.

### **Practice generally prevailing (PGP)**

102. There is a need for clarity over what PGP actually means. The delegates suggested that the ex-IR view is that it meant practice generally accepted by IR. If it were clearer there might be a case for it to apply to all direct tax claims, not just error/mistake claims. But underlying practice is not always clear e.g. in the case of fast moving accounting standards where there is also accountancy practice involved. And there is no remedy if the PGP is wrong.

103. Conceptually PGP could apply to VAT although it may not be permissible under EU law. There would be an extra dimension – would it be the overseas prevailing practice that was relevant? If so, it would be necessary to take account of the time it takes for practice to be disseminated in multi-national companies.

104. Disputes sometimes arise over advice given by HMRC. The Sheldon Principle which applies for VAT and requires HMRC to stand by advice given in writing and to only change the advice prospectively should be legislated.

### **Duty of fairness**

105. HMRC should consider the statutory duty on Canada's Revenue Commissioners to apply the spirit of the legislation to the benefit of individuals caught out by circumstances. This would be preferable to current PGP. HMRC do not pay sufficient attention to Working Together Issue 8 (ITSA enquiries).

### **Discovery**

106. The case law on discovery needs to be consolidated into the legislation. Practitioners are now reasonably happy with the Statement of Practice (SP) issued in respect of the Veltema case but SPs should be incorporated into NMA

### **“Best judgement” versus “opinion”**

107. Some delegates wanted to see a return to a “best judgement” test for self-assessment which could be successfully challenged rather than the current officer's opinion requirement. Others felt that it was difficult, time consuming and costly to dislodge best judgement assessments. Most VAT assessments are accepted – problems arise with grey areas of the law, or where the officer has failed to follow guidance or exercise best judgement.

108. Others felt that VAT Tribunals were now moving towards interpreting “best judgement” as if it were consistent with the “in the inspector's opinion” test for direct tax purposes.

109. Pre-assessment notices could be helpful (as in the USA) for non fraud cases. These would warn of a forthcoming assessment and act as a “window for discussion”, subject to the 2-year time limit.

### **VAT**

110. It would be helpful if legislation specified what should be in a VAT assessment and the assessment incorporated a schedule setting out the reason for the issue. The assessment should identify all the periods covered.

111. There were doubts as to legitimacy of protective VAT assessments since the taxpayer is not given all the information and cannot challenge it other than appeal.

112. It was seen to be unfair that repayments can be withheld by HMRC pending an appeal since this can have an adverse effect on cash flow. The assessment should become final based on the law applying at that time or the taxpayer should be afforded the option of having the enquiry kept open pending the outcome of any appeal to a higher court.

### **Fraud/negligence**

113. Negligence should not be treated in the same way as fraud. It should be limited to circumstances where a taxpayer unintentionally fails to fulfil an obligation, be differentiated from innocent error, and have a reasonable time limit. The definition of fraud should be aligned (including the CEMA definition of dishonesty).

114. The extended (20-year) time limit for these cases is inconsistent with finality. If HMRC rely on this limit to raise a discovery assessment in cases involving fraud/negligence, it should be equally possible for the taxpayer to make any claim s/he could have made within that period (but which is otherwise out of date).

### **Voluntary Disclosure**

115. Various points were discussed:

- It is not always clear who to contact concerning voluntary disclosures.
- There should be greater clarity on when the clock starts ticking. VAT law says disclosure begins “when first discovered”, but practitioners and HMRC then need time to review

records and analyse events. There is no specific time limit but a taxpayer who does not take action will fall into the realms of criminal negligence. But HMRC often do not take action on errors for up to 12 months and this disparity in time limits is inequitable.

- The system needs proportionality. The £2,000 limit is an old one and should be at least £5,000.
- An “after the event” disclosure procedure could cover all taxes on one form to be sent in with any money owing and would remove the need for “voluntary” disclosure.
- It can sometimes appear that repayments are slow while payments are fast tracked.

### **Time limits**

116. HMRC need to look at the reasons for time limits rather than just looking for alignment. Direct tax time limits are generally consistent with common law time limits (statute of limitations). The shorter limit for VAT is a consequence of developments in law and is necessary to protect the Exchequer. Short time limits can be helpful if they focus attention. If the taxpayer is spinning things out, HMRC might need more time. But the comment was made that time limits should be made asymmetrical only to address particular circumstances, and not universally.

117. There was a perception that HMRC reaction time is slower than it used to be for enquiries, notice of enquiry etc. However HMRC appeared flexible and usually agree to extend time limits where appropriate to do so.

118. There was a strong view that customers need certainty more than anything else, and better communication of the time limits across the core regimes.

119. There were arguments for both flexibility and uniformity. Uniformity provides bunching (particularly around 31 March). But different rules may mean a great deal of analysis is needed in order to establish when the time limit starts: PAYE forms such as P11Ds, P14s etc all have different time limits.

120. Dispensations/partial dispensations have no hard and fast rules, there is inconsistency in application and no time limits

121. There was a general agreement that the 20-year time limit is acceptable in cases of fraud. Conceptually the time limits for assessing tax due and claiming overpaid tax should be the same.

122. There was in the end no consensus on the desirability or practicality of aligning time limits, but it was recognised that the time limits were interwoven with the PGP test. The following points were made:

- Some were not attracted to aligning time limits across the regimes as this could create additional burdens on business at particular times.
- The 3-year rule for VAT was fair for the large part (leaving the transitional issues aside) because of the transactional nature of VAT and real time returns. But 3 years would be too short for direct tax given the other time limits (amendment and enquiry windows) and 6 years was considered fair. There was no wish to change to 12-month enquiry window for VAT, as it would mean a possible intervention every year.
- Some felt time limits should not be reduced. Others felt a shorter time limit for direct taxes would be possible if processes could be made simpler.
- Some felt that 3 years is a sensible time limit for both sides and in practice most claims are made within 3 years. But there would be a need for a provisional claims arrangement for complex company groups, and it was also suggested that a 3 year time limit should be linked to a requirement to only keep records for the same period.

- Some felt time limits should be the same for all, either at 3 or 6 years. Others said that an extension to 6 years for VAT could put businesses under (if an underpayment applied through neglect as opposed to fraud). This could be a greater financial cost to the Exchequer in the longer term than keeping 3 years. Others felt that the fact that the 3-year cap for VAT was introduced in 1996 and cases are still ongoing shows it was too hastily introduced and that it should be replaced.
- Another suggestion was to compromise on 4 years.

123. Delegates discussed whether time limits should be linked to the accounting date or the year-end. Time limits could perhaps be aligned for claims, but probably not for returns.

124. Different time limits for small or large businesses within indirect tax might be discriminatory under European Law. But there were concerns about small businesses in particular having to deal with a range of dates. The obvious pinch points were Christmas and 31 January but other short time limits (30 days for SDLT, for example) took no account of holidays. There might be scope for consulting taxpayers in order to prioritise or adjust time limits to get crucial information in early and delay less important items. Statutory Maternity Pay is more problematic than PAYE so could merit a discrete time limit.

125. There should be a wider use of reasonable excuse provisions to allow for unique circumstances where a business cannot meet the time limit. It is increasingly difficult to get HMRC advice in time to comply with PAYE dates.

126. For VAT, there were suggestions that the two-year/three-year time limit can provoke unnecessary correspondence to extend the time limit. If HMRC have the facts, some felt an extra year was too long.

127. The delegates were not attracted to a reduction of the time limit for error or mistake relief claims.

128. There should be a common time limit for all claims but there was a query about whether all claims needed a time limit (e.g. s222 private residence exemption). It might be helpful to have a common reference point so that the time limit was a number of years after the end of the accounting period (rather than a particular event e.g. Industrial Buildings Allowance).

## **Claims**

### **General**

129. Most claims work smoothly most of the time. Most matters are uncontroversial, and simple circumstances work well. Problems arise where there is an enquiry or, for example, on a change in the ownership or finance team of a company.

130. But many delegates also felt that the procedures for making direct tax claims were complex, cumbersome and confusing. They should be altered to reflect commercial reality and business practice better.

131. Many delegates raised the need for equity and fairness within the claims process (error or mistake relief was cited as an example) and it was felt that there ought to be symmetry between what is due to HMRC and the taxpayer

132. The following points were made:

- The root of the problem lies in the different time limits for particular claims.

- There will always be a need to make claims outside a return. There are differences in timing but some claims are so obscure that including them in the return would be confusing for many taxpayers.
- There is a difficult borderline between a provisional claim in a fixed amount, and a provisional claim.
- Double Taxation claims are difficult. They interact with many statutory company reliefs and where there are enquiries into some group companies but not others, a provisional claim is needed.
- A statutory list of all claims and how they should be made would be helpful.
- Error or mistake relief gives HMRC wide enquiry powers, but these should be restricted to the specific issue being addressed. The requirement that tax must have been paid before error relief is claimed should be abolished. Others felt error or mistake should apply similarly across the core schemes.
- Discovery should apply to claims as well as assessments.
- VAT repayments under the 8th and 13th VAT Directives to traders not established in UK/EU used to be quicker than other member states but are increasingly slow. In general the UK used to be quite lenient in the way it interpreted the Directive compared with other member states but now seems to take a tougher approach.
- HMRC can refuse late appeals but the General Commissioners then hear the refusal. Some wanted this approach to be applied to all claims, while others disagreed.
- Carrying out a cost benefit analysis of claiming (and the attendant difficulties) may actually put taxpayers off claiming.
- Taxpayers should be allowed to reinvest PAYE deductions in the business at times of serious difficulty.

#### **Claims in a return/ outside a return**

133. A key issue was the need for clarity on what claims must be made in a return and what are standalone claims. Examples of the complexity are:

- Section 419 repayment - an in year claim must be included in the return but if relating to earlier years, it must be submitted separately.
- Post cessation receipts and elections, with nowhere to put them in a return.
- It is unclear how to make negligible value claims.
- There is confusion about whether a claim is needed at all for rent-a-room relief.
- ITSA rules for carry back of pension contributions are complex.
- Some claims are not stand-alone but still made outside the body of the main return (e.g. certain CGT related claims).

#### **Format of claims**

134. HMRC should make it easy to claim. It would be inherently unfair if relief were denied if claimed on the wrong form or out of time:

- Some felt that a standard form for claims would be useful. There should be an online form with drop-down boxes for all the options.
- An alternate view was that there should be no constraints about how a claim is made. It would be more appropriate (especially for small businesses) to allow flexibility and not insist on official forms, or on claims being in the return.
- There should be an explanation why any claim should be made in a particular way, and how to cater for odd circumstances.
- Where there is a prescribed form there are often software problems which could be improved by a consistent format for entries and enhanced testing.

## **Group relief**

135. Group relief was seen as one of the most difficult areas:

- The 2-year time limit is sufficient unless there is an enquiry (or in year cessation or change of accounting dates);
- The legislation on consequential amendments is difficult to follow; and
- Meeting the 30-day deadline after the closure notice to make adjustments to the group claims is very difficult for large groups with complex affairs.

136. The general experience was that late claims to group relief are being accepted in recognition of these difficulties. However taxpayers should not have to rely on goodwill. The group relief time limit should therefore be extended to 6 years to reflect changing commercial and financial structures.

## **Repayment supplement**

137. Taxpayers now only get details of the amount of supplement included with a repayment, not how it is calculated. This makes it difficult for taxpayers/agents to reconcile. Repayment supplement should be given on overpaid VAT.

## **Appeals**

138. There were concerns over alignment with the indirect tax appeals process, which was perceived to be less flexible.

139. For example under present statute, VAT traders have to pay all sums due before they can appeal; this contrasts with direct tax where disputed sums can be postponed pending outcome of appeal. Taxpayers can plead hardship, but it was felt that HMRC's line on this is becoming harder.

140. The procedure for local reconsideration in VAT before the appeal reaches the tribunal works well and should be applied to direct tax. But the existing system could be improved by having scope for a dialogue to overcome any suspicion that the process is a 45-day rubber-stamping. And more clarity was needed on the need to appeal 30 days into the 45-day review period, and whether there is an appealable matter and/or an appealable decision.

141. Extra Statutory Concessions create inequity because they are applied inconsistently. There is no right of appeal against the application (or not) of an ESC, and one should be introduced.

## **Miscellaneous points**

### **Records**

142. There should be a set of consistent statutory rules for record keeping across the five schemes.

- Legislation should prescribe what records need to be kept, bearing in mind that much is still kept on paper.
- HMRC should take account of the (irrecoverable) costs of providing information.
- A 3-year record keeping requirement would be good and would halve archive costs.
- The limit should be no more than 6 years. For direct tax it is anomalous to have a 6-year record keeping requirement but a 1-year enquiry window. But it was also felt that there was a risk that HMRC's discretion over bad record keeping encourages it.
- In looking at record keeping requirements it is necessary to look beyond ITSA, CTSA and VAT and to consider more widely (i.e. PAYE/NICs) and even beyond HMRC responsibilities (i.e. employment law, pensions).

### **Information requests**

143. There can be problems with the current approach to information requests. Some delegates said that:

- There can be delays at each HMRC stage: while the taxpayer has 30 days to reply there is no time limit for HMRC. The taxpayer can apply to the General Commissioners for a closure notice, but many do not.
- HMRC issue formal notices too promptly.
- There is no disincentive to prevent HMRC from asking for unnecessary information.
- Inspectors sometimes had several bites at asking for information, or ask for information they are not entitled to (private bank accounts) and ignore materiality.

144. HMRC should also bear in mind the other priorities for taxpayers – information notices issued in December or January are a problem for small firms. If they comply, they may miss the 31 January deadline and be sued by clients. Second and third party information powers are burdensome and there are concerns about the taxpayer’s confidentiality agreements.

### **Valuation**

145. There should be a single, common basis for valuing property for all tax purposes rather than the present variety of rules. There might need to be some continuing differences because of the difference in tax bases, but some tidying-up ought to be possible. There should be a tolerance limit within which valuations will be accepted, rather than slavishly accepting the District Valuer’s valuation. There is a wariness that queries on valuations can open up a whole return to discovery.

### **Status**

146. The existing law is difficult to apply. It affects all peripatetic trades and professions and has consequences if individuals have to be treated as employed, rather than self-employed. HMRC should deal with status centrally, to build up a “centre of excellence” and to ensure consistent decisions and advice are available to taxpayers.

147. HMRC should give credit for self-employed tax already paid where workers are re-categorised as employed.

### **Enquiries**

148. Some delegates would like a closure notice regime for VAT based on the same principles as the direct tax approach.

**The views recorded above are those put to us in the workshops. We have included them all in the interests of transparency and open consultation. Their inclusion should not be taken as meaning that HMC accepts or agrees with them.**