
HM Revenue and Customs

**Modernising Powers, Deterrents
and Safeguards**

Compliance Checks: The Next Stage

**Consultation Document
November 2008**



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Chapter 1: Summary Table

Scope of the consultation

Topic of this consultation:	HMRC's legal powers to check that taxpayers have paid the right amount of insurance premium tax, environmental taxes, stamp duty land tax, stamp duty reserve tax, inheritance tax and petroleum revenue tax and repeals of specialist legislation.
Scope of this consultation:	Currently there are different rules for taxpayers and HMRC where different taxes are checked. A new aligned framework will shortly apply to checks on income tax, capital gains tax, corporation tax and VAT. This consultation seeks views on whether the new framework should also apply to these other taxes and whether certain specialist legislation can be repealed.
Impact Assessment:	An impact assessment is published alongside this document.

Basic Information

Who should read:	Those who are or may become involved with insurance premium tax, environmental taxes, stamp duty land tax, stamp duty reserve tax and petroleum revenue tax, and those who may administer estates for inheritance tax.
Duration:	From Pre Budget Report 2008 to 13 February 2009
Enquiries:	The Review can be contacted by telephone on 020 7147 3223 or at powers.review-of-hmrc@hmrc.gsi.gov.uk .
How to respond:	Responses should be sent to: powers.review-of-hmrc@hmrc.gsi.gov.uk ; or HMRC Review of Powers: compliance checks, Room 1/72, 100 Parliament Street, London SW1A 2BQ;
Additional ways to become involved:	HMRC will be inviting taxpayer representatives for these taxes to meet with the Review team and discuss the issues raised in the consultation document.
After the consultation:	Subject to consultation, the new compliance checking framework would be applied to these taxes through the 2009 Finance Bill, to take effect from 1 April 2010. The repeals would take effect from the date of Royal Assent. Responses to consultation will be published around Budget 2009.

Background

Getting to this stage:	The Review of Powers, Deterrents and Safeguards was set up to provide a framework of law and practice for HMRC that is appropriate to the merged Department's tasks and allows those tasks to be carried out effectively and efficiently while also providing appropriate safeguards for citizens.
Previous engagement:	<p>The Review has published the following formal consultation documents covering compliance checking. Separate documents have covered criminal powers, penalties and debt:</p> <ul style="list-style-type: none">• March 2005: "HM Revenue & Customs and the Taxpayer: Modernising Powers, Deterrents and Safeguards";• March 2006: "HM Revenue & Customs and the Taxpayer: Modernising Powers, Deterrents and Safeguards: The Developing Programme of Work" which sought initial views on HMRC's compliance checking activities;• May 2007: "HM Revenue & Customs and the Taxpayer: Modernising Powers, Deterrents and Safeguards: A new approach to compliance checks; and• January 2008: "HM Revenue & Customs and the Taxpayer: Modernising Powers, Deterrents and Safeguards: A new approach to compliance checks: responses to consultation and proposals" together with draft legislation and guidance. <p>These formal consultations have been supplemented by various methods of informal consultation through workshops, conferences and other meetings with taxpayers, advisers and their representative bodies, as well as regular meetings of the Review of Powers Consultative Committee which was established in June 2005.</p> <p>More information is available about the Review at: http://www.hmrc.gov.uk/about/powers-appeal.htm</p>

Chapter 2: Introduction

- 2.1 The Review of HM Revenue and Customs' (HMRC) Powers, Deterrents and Safeguards is designed to provide a modern framework of law and practice for the Department that will benefit taxpayers, agents and HMRC. This work forms part of HMRC's modernisation agenda and supports the Government's objective of a fair tax administration that better meets taxpayers' needs.
- 2.2 The Review further aims to provide an improved and consistent framework of powers and safeguards. In this capacity it oversees a programme of legislative, administrative and operational changes designed to support those who try to get their tax right but come down hard on those who seek an unfair advantage through failing to calculate, return or pay the right amount of tax.
- 2.3 A key part of this work involves the framework of powers and safeguards within which HMRC checks whether people are correctly calculating, declaring and claiming tax. These statutory powers are collectively referred to as compliance checking powers.
- 2.4 The compliance checking framework aims to do a number of things:
 - align powers where it makes sense to do so in order that HMRC can take a customer view rather than a tax by tax view;
 - reduce costs for compliant taxpayers by undertaking faster, risk focused checks and by dealing with issues across taxes;
 - review and improve legislation to provide consistent and clear safeguards across taxes;
 - improve HMRC's effectiveness in discovering and tackling non-compliance; and
 - provide clear statutory powers for HMRC to check whether taxpayers have declared and claimed the right amount of tax.
- 2.5 HMRC has consulted on the principles of aligning compliance checking powers through the consultation document published in May 2007 which set out high-level ideas. A further, more detailed consultation was published in January 2008 which included draft legislation for a new compliance checking framework across the main taxes: income tax (IT) (including PAYE and the Construction Industry Scheme), corporation tax (CT), capital gains tax (CGT) and VAT. This reflected responses to the earlier consultation which supported more flexible checks within a clear statutory framework, giving powers that are more responsive to different taxpayer circumstances and behaviours.
- 2.6 Throughout these consultations HMRC has held meetings and technical workshops with numerous stakeholders representing

businesses, taxpayers and their professional representatives. Wherever possible, HMRC has reflected concerns that arose in proposed legislation and guidance. HMRC is grateful to all those who participated.

- 2.7 The new compliance checks framework for the main taxes was put into law by the 2008 Finance Act (FA 2008). That framework is described in more detail in Chapter 4 of this consultation document.
- 2.8 Overall the FA 2008 compliance checking framework increases HMRC's powers in some areas, but builds greater safeguards in other areas. For example the inspection power for IT, CGT and CT is an increase in powers, but it also introduces a requirement when checking VAT, PAYE and CIS to provide advance notice of a visit unless it has been specially authorised.

This consultation

- 2.9 This consultation seeks views on whether it would be appropriate to extend the compliance checking framework and its associated safeguards legislated in FA 2008 beyond the main taxes to other areas which are administered by HMRC. These are:
- environmental taxes (aggregates levy, climate change levy and landfill tax);
 - insurance premium tax (IPT);
 - stamp duty land tax (SDLT) and stamp duty reserve tax (SDRT);
 - inheritance tax (IHT); and
 - petroleum revenue tax (PRT).

For convenience, this consultation document uses the term "other taxes" to refer to these.

- 2.10 It also seeks views on repealing a significant number of specialist information powers which appear to be superfluous as a result of the new compliance checking legislation.
- 2.11 Excise duties, bulk information powers and repeal of further specialist powers will be considered as part of the Review's next stage of work. The Review of Powers' Work Programme published today gives more details on this.
- 2.12 HMRC welcomes comments on this consultation, the related impact assessment and draft legislation which are being published separately.

How to comment

2.13 HMRC would welcome comments on any aspect of this consultation document. Chapter 6 lists the questions on which we would specifically welcome views. Comments should be received by **13 February 2009**.

- by email to: powers.review-of-hmrc@hmrc.gsi.gov.uk;
- or by post to: HMRC Review of Powers: compliance checks, Room 1/72, 100 Parliament Street, London SW1A 2BQ;
- or by fax to: 020 7147 2375.

This document can also be accessed from the HMRC internet site: www.hmrc.gov.uk/consultations/index.htm.

Hard copies are available from the above address. The Review team can be contacted by telephone on: 020 7147 3223.

Confidentiality

2.14 Information provided in response to this consultation, including personal information, may be published or disclosed in accordance with the access to information regimes (these are primarily the Freedom of Information Act 2000 (FOIA), the Data Protection Act 1998 (DPA) and the Environmental Information Regulations 2004).

2.15 If you want the information that you provide to be treated as confidential, please be aware that, under the FOIA, there is a statutory Code of Practice with which public authorities must comply and which deals, among other things, with obligations of confidence. In view of this it would be helpful if you could explain to us why you regard the information you have provided as confidential. If we receive a request for disclosure of the information we will take full account of your explanation, but we cannot give an assurance that confidentiality can be maintained in all circumstances. An automatic confidentiality disclaimer generated by your IT system will not, of itself, be regarded as binding on the Department.

2.16 The Department will process your personal data in accordance with the DPA and, in the majority of circumstances this will mean that your personal data will not be disclosed to third parties.

The Government's Consultation Code of Practice

2.17 This consultation is being conducted in accordance with Government's Code of Practice on consultation. A copy of the Code of Practice criteria and a contact for any comments on the consultation process can be found in Annex D.

Chapter 3: Principles behind Compliance Checking Powers and Safeguards

Why HMRC carries out compliance checks

- 3.1 Consultations since the formation of HMRC have consistently shown that businesses and individual taxpayers see it as a prime function of the tax authority to ensure that people do pay the right amount of tax. This creates a level playing field for all. Businesses are particularly concerned about the ability of the non-compliant to undercut their compliant competitors.
- 3.2 To respond to those concerns HMRC needs to ensure that there is a widespread understanding that those who deliberately do not comply with the law will suffer significant disadvantage compared to those who do. In this way potential non-compliers will be deterred and those who seek to comply will be reassured that the system is fair.
- 3.3 Most people in the UK do want to pay the tax they owe and claim only what is due because they think it is right and they are aware of the link between tax and public services. Where people do get things wrong it is often because of mistakes made despite trying to get it right. But international research and HMRC's own compliance checking suggest that there are some people who weigh up the benefit of non-payment against the likelihood of getting caught. There is also a small minority whose determination not to pay tax is part of a wider failure to comply with the law.
- 3.4 HMRC therefore needs a compliance checking framework which is flexible enough to address the different reasons and behaviours which underlie why a taxpayer may not pay the right amount.
- 3.5 For those who want to get things right, checks must:
 - reassure the compliant that the system is fair;
 - ensure that taxpayers are aware of and have understood their obligations to register, account for and pay tax;
 - establish whether taxpayers understand what records are needed to correctly calculate the tax due;
 - identify and correct misinterpretations of the law;
 - identify weaknesses in taxpayers' systems and processes; and
 - find and help to correct mistakes which have led to underpaid or overpaid tax.
- 3.6 For those who do not want to get things right, checks must:
 - assess the level and type of risk posed by a particular taxpayer;

- deter those with the opportunity to become non-compliant from doing so; and
- uncover and correct deliberate understatements of tax.

Principles for a compliance checking framework

3.7 Previous consultations have set out principles for HMRC’s compliance checking, which have been welcomed in consultation. These are:

HMRC must support those who seek to comply and come down hard on those who seek an unfair advantage through non-compliance

Powers and the statutory obligations which they impose must be:

- set within a clear statutory framework;
- easily understood (by taxpayers, their agents and HMRC staff);
- straightforward to comply with;
- proportionate to what HMRC staff need to do to protect the Exchequer from the risk assessed;
- consistently applied; and
- effective in providing information which is needed for HMRC officers to assess risk, discover and deal with non-compliance.

Safeguards for taxpayers and representatives must be:

- clear, publicised and accessible;
- effective;
- supportive of human rights; and
- responsive to the nature and purpose of particular powers and sanctions.

3.8 FA 2008 provided the legislative framework to apply these principles to compliance checking for IT (including PAYE and CIS), CGT, CT and VAT.

3.9 Compliance regimes in other taxes are quite different, and they vary in the extent to which they apply these principles. Further alignment of the legislative framework for compliance checks across the taxes administered by HMRC would introduce greater certainty for taxpayers and improve the balance between the principles. It would mean that the

further safeguards which were included in the FA 2008 legislation would be applied to these other taxes on a consistent basis.

Principles for simplification

- 3.10 Where it is possible to reduce the amount of legislation by applying one framework rather than having rules spread throughout the legislation the review aims to do this. That does not mean forcing a one-size-fits-all approach. Rather the approach is to look at existing legislation and ask whether the new compliance checking framework will work as well as or better than existing legislation.
- 3.11 By doing this it is hoped that the overall amount of legislation can be reduced and rules can be simplified for taxpayers. It also aims to improve taxpayer safeguards. Chapter 4 outlines the first phase of specialist powers where repeals are thought sensible as a result of the new compliance checking framework.

Principles for safeguards

- 3.12 Throughout the review safeguards have been built into the primary legislation where it is appropriate to do so. The introduction of a single framework helps to make safeguards clearer for taxpayers. New safeguards, including new appeal rights and new authorisation requirements for the most intrusive powers, are being introduced. Moreover, all of the powers must be used reasonably and exercised only in relation to a tax position.
- 3.13 The table on the next page shows the high-level safeguards in legislation for the taxes covered by this consultation document. It compares them with the safeguards included in the FA 2008 compliance checking framework.

Safeguards in existing legislation compared with the new checking framework

3.14 This table gives an illustrative view of the safeguards which accompany the main information powers for each tax. Safeguards for other more specialist powers may be different.

Tax	Env*	IPT	IHT	SDLT	SDRT	PRT	New framework
Inspection power?	Yes	Yes	Yes**	Yes	Yes	No	Yes
Appeal right against inspection?	No	No	No	No	No	No	No
Information notice power?	Yes	Yes	Yes	Yes	Yes	Yes	Yes
Appeal right against notice?	No	No	Yes	Yes	No	No	Yes
External authorisation required?	No	No	No	Yes	No	No	Yes***
Named third party information notice power?	Yes	Yes	Yes	Yes	Yes	Yes	Yes
Appeal right against notice?	No	No	No	No	No	No	Yes
External authorisation required?	No	No	Yes	Yes	No	No	Yes***

* the environmental taxes: aggregates levy, landfill tax and climate change levy, which have very similar information and inspection powers

** for valuation purposes only

*** external authorisation is only required where no appeal right applies

Chapter 4: An Aligned Framework for Compliance Checks, Safeguards, Simplification and Repeals

- 4.1 FA 2008 provides the legislative structure for an aligned framework for compliance checks. The framework consists of aligned information powers and safeguards, aligned record-keeping rules, and aligned time limits for claims and assessments. Together these allow HMRC to support those who seek to comply but come down hard on those who seek an unfair advantage through non-compliance.
- 4.2 This framework will take effect following an appointed day order, and it is anticipated that it will come into effect on 1 April 2009 (1 April 2010 for time limits). This chapter sets out an overview of that aligned framework.

Record-keeping rules

- 4.3 The general record-keeping requirement will be for taxpayers to keep the records they need in order to complete an accurate return. This overarching requirement will allow taxpayers to decide what to keep given their particular circumstances.
- 4.4 In some cases it is necessary to specify that particular records need to be kept, for example to give clarity or because of requirements in EU law. This can be done in secondary legislation or notices (tertiary legislation). Existing specific record-keeping requirements for VAT and employers' PAYE will continue to apply.
- 4.5 There will be guidance to support taxpayers in deciding what records are needed to complete an accurate return. This will set out what is likely to meet the generic requirement. There will be separate advice for businesses and individuals, and for particular cases such as capital gains.
- 4.6 Taxpayers will be able to request a reduction in the period they need to retain certain records. This will be appropriate where a taxpayer has particularly bulky records which impose an unnecessary administrative burden.
- 4.7 Schedule 37 to FA 2008 made a further change which removed the requirement for taxpayers to ask for HMRC's approval in order to keep the information contained in records rather than the original records themselves. This will reduce the administrative burden on taxpayers, who can store records in the form most suitable to their business.

Taxpayer information notices

- 4.8 The ability to require a taxpayer to provide information which is necessary to check their tax position is an essential tool in tackling

risks of non-compliance. It gives taxpayers certainty as to what they need to provide to HMRC, and acts as a strong deterrent to the non-compliant.

4.9 HMRC will be able to issue a notice to a taxpayer, asking them to produce a document or provide information. A notice will have to be in writing.

4.10 The notice must:

- reasonably require information to check the tax position;
- set out a reasonable amount of time to comply with the notice; and
- set out a reasonable time and place (not a private home) for the information to be provided.

4.11 If the notice asks for something going beyond the records a taxpayer is required to keep by law (“statutory records”), then one of two further safeguards will apply:

- taxpayers will have a right of appeal against a notice to the independent Tribunal, for example if they think a requirement is unreasonable; or
- alternatively, HMRC may ask the independent Tribunal to approve the notice.

4.12 The independent Tribunal will only approve a notice if:

- the application for approval is supported by an authorised HMRC officer;
- the Tribunal is satisfied that the officer is justified in issuing the notice;
- the taxpayer has been told, and given the opportunity to make representations (unless in exceptional cases the Tribunal agrees this is not appropriate); and
- a summary of any representations made by the taxpayer has been provided to the Tribunal.

If the notice has been approved by the Tribunal, this fact must be specified on the notice.

Third party information notices

4.13 It is sometimes necessary to check the taxpayer’s information or tax position against information from a third party. This may be because the taxpayer no longer has the information, because there are

indications that the taxpayer has deliberately destroyed or altered information, or because both ends of a transaction need to be treated consistently to prevent an over or underpayment of tax. To meet these needs, the third party information power will enable an HMRC officer to require production by a third party of information relevant to a tax position

- 4.14 HMRC will be able to issue a notice to a third party asking for documents or information. A notice must be in writing.
- 4.15 The notice will have to:
- be reasonably required for the purpose of checking the tax position of a taxpayer whose identity is known;
 - name the taxpayer;
 - set out a reasonable amount of time to comply with the notice; and
 - set out a reasonable time and place (not a private home) for the information to be provided.
- 4.16 There are additional safeguards for a third party notice, in order to protect the taxpayer's right to privacy and avoid unreasonable requests of the third party. These are set out below.
- 4.17 If the taxpayer gives consent to HMRC seeking the information, then HMRC will be able to approach the third party directly. If the third party thinks that complying with a notice will be unduly onerous, it will be able to appeal against the notice to the independent Tribunal.
- 4.18 Otherwise, HMRC will be able to ask the independent Tribunal to approve a third party notice. The Tribunal will only approve a notice if:
- the application for approval is supported by an authorised HMRC officer;
 - the Tribunal is satisfied that the officer is justified in issuing the notice;
 - the third party has been told, and given the opportunity to make representations (unless the Tribunal agrees this is not appropriate);
 - a summary of any representations given has been provided to the Tribunal; and
 - the taxpayer has been given a copy of the notice (unless the Tribunal agrees this is not appropriate).

If the notice has been approved by the Tribunal, this fact must be specified on the notice.

4.19 The notices described above can only be used where HMRC knows the identity of the taxpayer whose tax position is being checked. HMRC will retain previous provisions¹ for asking questions about an unnamed taxpayer (or class of taxpayers). Such notices can only be given with the approval of the independent Tribunal and only where non-compliance is likely to lead to serious prejudice to the assessment or collection of UK tax.

Inspection of premises

4.20 Risk-focused, planned and well prepared visits to premises can considerably reduce administrative burdens by cutting overall compliance costs. Where businesses are very large they generally prefer visits as the cost of making records available at an HMRC office is high. Where taxpayers are confused and would like reassurance about their records and systems they also tend to welcome visits.

4.21 If it is reasonably required to check the taxpayer's tax position, HMRC will be able to enter their business premises and carry out an inspection. HMRC may also enter and inspect premises used for the supply or acquisition of goods if those goods are on the premises, or if the premises are used as a fiscal warehouse.

4.22 During an inspection, HMRC will be able to inspect the premises, business assets on the premises, and business documents on the premises.

4.23 Inspections will have to be carried out at a reasonable time, and in most cases either with the agreement of the occupier or following at least 7 days' notice. No penalty will be charged for failure to comply with an inspection unless the independent Tribunal has formally approved it.

4.24 HMRC will only be able to inspect sooner if it is agreed to by an authorised HMRC officer. This will only be done where HMRC believes it is necessary, for example to avoid someone hiding documents. In such cases at the time of the inspection a formal notice will be given to the occupier setting out their rights and responsibilities.

Further safeguards

4.25 Further safeguards will cover any information or document requested by HMRC:

- documents must be in the taxpayer's power or possession;

¹ This provision was previously at sections 20(3) and 20(8A) of the Taxes Management Act 1970.

- the taxpayer may normally provide a copy of a document, unless the original is specifically requested;
- information must not relate to the conduct of a pending tax appeal;
- taxpayers cannot be required to produce journalistic material or “personal records” as defined in the Police and Criminal Evidence Act 1984;
- information must not be subject to Legal Professional Privilege;
- there will be protections for auditors’ papers and documents in the hands of tax advisers;
- an authorised HMRC officer must approve any request for documents over 6 years old;
- information cannot be requested about a taxpayer more than 4 years after their death;
- if HMRC reasonably believes it is necessary to remove a record, it must give a receipt and a copy of the record on request; and
- if a taxpayer has made a self-assessment return, HMRC can only ask for information for the purpose of checking that return if an enquiry has already been opened, or the officer has reason to suspect tax has been underpaid.

Assessment and claim time limits

- 4.26 The FA 2008 legislation will align the variety of different lengths of time limits for tax claims and assessments for IT, CGT, CT and VAT. For some taxes this will mean longer time limits, for others shorter.
- 4.27 The normal time limit for claims and assessments will be 4 years from the end of the tax period.
- 4.28 For direct taxes (IT, CGT and CT), if the taxpayer has failed to take reasonable care, the time limit will be 6 years from the end of the tax period. This will be a considerable reduction from the previous 20 years, giving taxpayers substantially earlier certainty.
- 4.29 Across all taxes, if the taxpayer has deliberately underpaid tax, or has failed to notify HMRC that they are liable to tax or has failed to disclose about a disclosable avoidance scheme, the time limit will be 20 years.
- 4.30 Some special rules remain for certain specific claim provisions, and IT, CGT and CT payers will continue to be able to make claims later than 4 years if they have a reasonable excuse for not claiming on time.

Implementation

- 4.31 Work is underway on implementation. A key element will be ensuring that safeguards for the new framework are clearly set out in the guidance and training which is being produced. Technical guidance will explain the law, and operational guidance will give more details such as how and why a compliance check will be carried out. Operational guidance will also describe how and in what circumstances visits will be conducted, including how a visiting officer should behave.
- 4.32 There will be e-learning packages and training, which will include case studies covering planning, arranging and conducting a visit, informing agents (where appropriate), performing audits, and follow-up action. Governance for authorisation levels will also be addressed both in the learning and guidance. These packages and training will be mandatory within HMRC and shared with those outside HMRC.
- 4.33 The aim is that all these products will be finalised and be available on the HMRC website by February 2009. Drafts will be subject to review by taxpayer representatives – some technical guidance has already been circulated and operational guidance will follow.

Simplifying legislation

- 4.34 There are information powers for IT, CGT, CT and VAT which are best described as specialist. They are exercised in relation to a particular set of provisions or in relation to specific types of information.
- 4.35 Most of these specialist powers are for IT, CGT or CT. They were introduced to meet specific needs, but in general they are there to enable a person's tax position to be checked. They are often expressed in fairly general terms although they contain the inherent safeguard that their use is restricted to particular narrow purposes. Schedule 36 will allow for inspections and for third party information notices to ask for information as well as documents. This will mean that there is often considerable overlap between a specialist power and the new powers.
- 4.36 Schedule 36 imposes new disciplines on inspections and the way information is obtained. It gives taxpayers new safeguards such as appeal rights against information notices, which are often not present in the specialist provisions.
- 4.37 Although many of these powers work well in practice and there are arguments for leaving specialist powers with the provisions to which they relate, the aim in general is to avoid leaving overlapping powers in place. HMRC wants to prevent a situation where an officer could use the specialist power in one case (perhaps to sidestep a safeguard in the new legislation) and the new legislation in another case (perhaps to access the more robust penalties that it contains). It is also likely that

taxpayers will be able to work with HMRC more easily if checks are made under a single set of rules.

- 4.38 Accordingly, HMRC has reviewed all these specialist powers with a view to relying upon Schedule 36 where possible and repealing powers where it is appropriate to do so. This year HMRC plans to repeal powers for which Schedule 36 can be used with little or no modification. HMRC anticipates that this will simplify matters for taxpayers. A provisional list of powers that could be repealed this year is at Annex A.
- 4.39 In addition there are a significant number of cases where the specialist power enables HMRC to require information about unidentified taxpayers as well as to check the tax position of known taxpayers. These cases cannot be accommodated within Schedule 36 as it stands because use of the unknown taxpayer power is limited to cases where loss of tax is suspected. HMRC is not proposing major surgery to Schedule 36 to meet these cases but is instead considering them alongside a review of other powers which enable HMRC to call for bulk information. It is hoped that this work will in due course lead to the proposed repeal of a further batch of specialist provisions.
- 4.40 In a large number of the provisions HMRC has reviewed, the primary legislation simply provides authority to make regulations containing, amongst other things, provision for HMRC to call for information. The powers themselves are contained in secondary legislation. It is again proposed that Schedule 36 should be used where possible and information and inspection powers in regulations will be amended or revoked in due course. That process is already underway – it is anticipated that the PAYE and CIS regulations will be amended at the same time as Schedule 36 comes into force. The regulations governing National Insurance Contributions (NIC) inspections and repayment of student loans will also be brought into line.

Question 1: HMRC would welcome views on the approach that HMRC is taking in its review of specialist legislation and the proposed repeals in Annex A.

- 4.41 This is an ongoing process, and HMRC will continue to look at areas where repeals may be possible. An example is in the relationship between current legislation for pensions schemes and the new Schedule 36.

Question 2: HMRC would welcome views on other areas where it may be appropriate to repeal provisions following the introduction of Schedule 36.

Chapter 5: Bringing Other Taxes into the 2008 Framework

Introduction

- 5.1 This chapter puts forward the case for applying the new compliance checking framework beyond the taxes legislated for in FA 2008, to a number of the other taxes which HMRC administers.
- 5.2 These other taxes are:
- environmental taxes (aggregates levy, climate change levy and landfill tax);
 - insurance premium tax;
 - stamp duty land tax and stamp duty reserve tax;
 - inheritance tax; and
 - petroleum revenue tax.
- 5.3 The other taxes all work in very different ways. Nonetheless, the way in which HMRC checks that the right tax has been paid is similar to the way in which IT, CGT, CT, VAT are checked. Having a single aligned checking framework would allow a single compliance check to cover more than one tax.
- 5.4 The alignment carried out by FA 2008 tackled many of the cases where a business was subject to more than one checking framework. There are however still further overlaps, especially between VAT and other indirect taxes. An insurance company has to pay corporation tax, VAT, PAYE and Insurance Premium Tax. To check a risk which runs across the taxes it therefore makes sense for checks to happen under one framework rather than under different but overlapping frameworks.
- 5.5 Applying the compliance framework to other taxes would be another step towards modernising HMRC's powers, deterrents and safeguards. Applying the FA 2008 legislation would mean only one set of rules and more safeguards for taxpayers applying across the other taxes. It would further improve the effectiveness of the compliance checking process and reduce compliance costs for taxpayers and HMRC. Doing this sooner rather than later will ensure that taxpayers and HMRC see the benefits of that alignment at the earliest opportunity. For this reason HMRC would plan further alignment to be carried out through the 2009 Finance Bill, taking effect from April 2010.
- 5.6 To do nothing would leave an imbalance between the taxes already aligned in FA 2008 and the remainder of those taxes and duties administered by HMRC, which would be confusing.

Question 3: HMRC would welcome views on whether applying the compliance checking framework legislated in FA 2008 and described in Chapter 4 to other taxes would be appropriate.

Safeguards

- 5.7 A review of the other taxes under consideration has highlighted the different approaches taken to safeguards. The current safeguards for other taxes depend partly on when they were introduced and which of the former departments they came from. So for information powers the relatively recent SDLT has a detailed statutory framework including appeal rights, while petroleum revenue tax information powers have gaps in their corresponding appeal rights. The environmental taxes all follow the original VAT model which means there are no appeal rights against information powers, although there is a right of appeal against any penalty for failure to provide information. There are therefore benefits to taxpayers to bringing the other taxes into the framework in order to apply the new safeguards consistently.
- 5.8 The new compliance checking framework has included more appeal rights and safeguards than previous legislation. Examples include:
- introducing an appeal right against a first and third party information power if the notice asks for information beyond statutory records and is not pre-authorised by an independent Tribunal;
 - before pre-authorising a notice, the Tribunal must be satisfied that the notice is necessary and that the right of appeal might prevent the right tax being quantified;
 - making it clear that the power to inspect premises and records and assets on those premises only applies to businesses;
 - applying a 7-day minimum period of notice of a visit to business premises; and
 - requiring visits without prior notice to be approved by an authorised HMRC officer.
- 5.9 Supporting the compliance checking framework there will be a Code of Practice to ensure the law is used in a way that is reasonable and proportionate, as required by the Human Rights Act. HMRC will be working with taxpayers and representatives in drafting the Code of Practice for IT, CGT, CT and VAT checking. This Code of Practice would be applied to other taxes, modified as appropriate.

Question 4: HMRC would welcome views on the safeguards which would apply when checking other taxes. Are there specific safeguards which should be considered for certain taxes?

Bringing other taxes into the new framework

- 5.10 Existing powers for the other taxes were developed separately to suit particular taxes at that time. Applying the FA 2008 legislation would enable a more effective and proportionate response to risks of non-compliance, with appropriate taxpayer safeguards. Because many of the compliance checking processes and needs are similar to those of IT, CGT, CT and VAT, the FA 2008 framework could be applied to other taxes, as a whole or with minor changes. This would be done in a way which does not widen powers or reduce safeguards for those taxes.

Record-keeping

- 5.11 Good records underpin correct tax returns and claims. However, it would be an unnecessary administrative burden if the law required the creation and retention of records which were not needed to establish the accuracy of tax payments and claims.
- 5.12 The intention is to align high-level rules so that there would be a common requirement to preserve information which is sufficient to accurately meet, quantify and report obligations. There are currently no plans to amend the existing specific requirements about which records to keep, which are in tax-specific regulations. However, HMRC would welcome views on where the current record-keeping requirements could be improved.
- 5.13 The aligned record-keeping provisions would allow taxpayers to apply to reduce the period of retention of records. This was welcomed as a benefit in responses to the last consultation.

Question 5: HMRC would welcome views on where the current record-keeping requirements for these taxes could be improved.

IHT record-keeping requirements

- 5.14 At present there are no record-keeping requirements for those who may be liable to account for IHT charges. This would be personal representatives, namely the executors or administrators of an estate subject to IHT, and others such as individuals who make lifetime transfers chargeable to IHT. This means that they have no certainty about what records they need in order to complete an accurate IHT return or to deal with an HMRC check into an IHT position. They also have no certainty about how long they need to retain any records. This

section of this consultation seeks views as to whether there should be such a requirement.

Record-keeping requirements – IHT return or account made

- 5.15 One option for an IHT record-keeping requirement would be that where any IHT return or account has been made to HMRC the records used to complete it should be retained for 2 years after the payment (or last payment) of tax was made and accepted. Where no tax was due, the requirement would be to retain records for 2 years from when the return or account was delivered to HMRC. The date of payment or return would act as a proxy for the date an amendment was made, since there is no other statutory process to give such a date.
- 5.16 The proposed requirement would apply to IHT accounts and returns where a person had died and to other IHT chargeable events such as IHT charges on property in a settlement.
- 5.17 HMRC does not think it would be appropriate to specify records which need to be kept in anticipation of death. It is not, therefore, proposed that records of lifetime transfers of property which are potentially exempt from IHT should be included in any record-keeping requirement.

Question 6: HMRC would welcome views on whether it is appropriate or helpful to set out details of records which it is helpful to keep after an IHT chargeable event. If so would this advice be best placed in regulations or guidance and are there records which should or should not be specified?

IHT record-keeping requirements – IHT return or account not required

- 5.18 In some cases, there are chargeable IHT events for which a return or account is not required because the values are below a reporting threshold. Although no account has to be delivered, there is a case for setting out the records which need to be kept to calculate charges that may subsequently arise. For example, charges below the threshold can arise at 10 yearly points on property held in some settlements. Despite not needing to account for the IHT, trustees do still need to keep records because they will form the basis of future tax charges such as property leaving the settlement.
- 5.19 Similarly, a lifetime transfer of property (other than a potentially exempt transfer) will give rise to an immediate reporting requirement and may affect the amount of tax payable on other lifetime transfers that become liable to IHT on the transferor's death. If the value of the transfer is below a certain level, then there is no need to submit an account at that time, but the transferor still needs to keep records should they make later lifetime transfers that become liable to IHT.

Question 7: HMRC would welcome views on whether it is appropriate or helpful to set out details of such IHT records; whether these would be best placed in regulations or guidance; and what records should or should not be specified.

Other taxes without record-keeping requirements

- 5.20 There is currently no record-keeping requirement for petroleum revenue tax or stamp duty reserve tax. In practice those who pay these taxes keep such records in any case.
- 5.21 Setting out record-keeping rules for these taxes could help give taxpayers clarity about what is needed to complete an accurate return, and what HMRC would want to see when checking. However, businesses may feel this to be an unnecessary burden.
- 5.22 If there were to continue to be no definition of “statutory records” for these taxes, it would be necessary to consider what documents HMRC should be able to inspect when checking. This is considered below.

Question 8: HMRC would welcome views on whether a record-keeping requirement should be introduced for PRT and SDRT.

Penalties for failure to keep adequate records

- 5.23 In previous consultations the option of suspending penalties for record keeping failures has been considered and supported. HMRC is continuing to look at the best way of introducing this.

Inspection and information powers

- 5.24 The ability of fiscal authorities to see business records, assets and premises is the norm throughout OECD countries. In practice, many compliant taxpayers, especially those looking for reassurance, allow officers to visit their business premises and view this as good practice. The visiting officers can then help to correct mistakes and support future compliance as well as tackle any non-compliance.
- 5.25 The following paragraphs sets out the current information powers for each tax and duties regime. They demonstrate that the safeguards legislated in FA 2008 are not currently in place for most of the other taxes. It is these powers that would be replaced by applying the new compliance checking framework instead.

Current information powers

Environmental taxes: Aggregates Levy, Climate Change Levy (CCL) and Landfill Tax

- 5.26 The information powers for environmental taxes apply to people:
- involved in commercially exploiting aggregates or connected activities;
 - involved in making or receiving supplies of CCL taxable commodities or connected activities; or
 - concerned with any landfill disposal.
- 5.27 These powers require these persons to provide such information as HMRC may require that is related to the activity. They are also required to produce documents upon demand. An HMRC officer may enter and inspect premises used for business purposes in order to exercise these powers, and may copy or remove documents.
- 5.28 There is no right of appeal against these information powers, though there is a right of appeal against any penalty for failure to comply with them.

Insurance Premium Tax

- 5.29 The information powers for IPT apply to every person who is concerned in an insurance business, anyone who makes arrangements for others to enter into a contract of insurance, anyone who is in business and has been involved in the entry into an insurance contract for the business, and, in some limited circumstances, the insured person themselves. These powers require the person to provide such information HMRC may require that is related to the insurance contract. They are also required to produce documents upon demand. An HMRC officer may enter and inspect premises used for business purposes in order to exercise these powers, and may copy or remove documents.
- 5.30 There is no right of appeal against these information powers, though there is a right of appeal against any penalty for failure to comply with them.

Inheritance Tax

- 5.31 There are two key information notice powers for inheritance tax. The first (section 219 of the Inheritance Tax Act 1984 (IHTA)) applies to any person. An information notice under this power requires a person to furnish HMRC with such information as may be required for the purpose of IHT. A notice must be pre-authorised by a Special Commissioner, or in future the Tribunal.

- 5.32 The second (section 219A of IHTA) applies only to those liable to deliver an account for inheritance tax purposes. An information notice under this power requires a person to produce documents or furnish accounts or particulars for the purpose of checking an account or making a determination. There is a right of appeal against this power.
- 5.33 There is also a power to inspect any property for the purpose of ascertaining its value (section 220 IHTA). There is no right of appeal against this power.

Stamp Duty Land Tax (SDLT) and Stamp Duty Reserve Tax (SDRT)

- 5.34 There are two sets of information powers for SDLT. One set can only be used within an open Enquiry, the others can be used at any time.
- 5.35 If an Enquiry is open into an SDLT return under paragraph 12 of Schedule 10 to FA 2003, HMRC may require the purchaser to produce documents and information that may reasonably be required for the purpose of the enquiry. There is a right of appeal against this power.
- 5.36 The other SDLT information powers apply to any person. A first party information notice may require documents containing information or information relevant to an SDLT liability. A third party information notice may require documents containing information relevant to a taxpayer's SDLT liability. A notice requires the consent of an Appeal Commissioner, or in future the Tribunal, and can only be given if the person has been given a reasonable opportunity to provide the document or information. There is a right of appeal only against a third party notice which does not name the taxpayer. Further safeguards are listed in Schedule 13 to FA 2003.
- 5.37 There is also a power to inspect any property for the purpose of ascertaining its value, or any other matter relevant to SDLT (section 94 FA 2003). There is no right of appeal against this power.
- 5.38 The SDRT information power requires any person to provide such information as HMRC may reasonably require for SDRT. The inspection power requires every accountable person or operator to make records containing information relating to any relevant transaction available for inspection by HMRC whenever and wherever required to do so. There is also a power to inspect for the purposes of valuation. There is no right of appeal against these powers, though there is a right of appeal against any penalty for failure to comply.

Petroleum Revenue Tax

- 5.39 The PRT information power allows HMRC to issue a notice requiring a person to deliver documents or furnish information relevant to that person's PRT liability. HMRC may also issue a notice to a third party requiring documents relevant to a taxpayer's PRT liability to be

delivered or made available for inspection. If the third party notice does not name the taxpayer, a Special Commissioner (in future the Tribunal) must have approved the notice, and there will be a right of appeal.

- 5.40 There are also information powers for seeking information relating to sales at arm's length and the market value of any oil.
- 5.41 Annex B shows some examples of how these powers operate in practice.

Question 9: HMRC would welcome views on replacing the powers described above with the new compliance checking framework. Are there particular reasons why certain taxes should not be brought into the new framework?

Modifications for specific taxes

- 5.42 When comparing the new compliance checking framework with what is currently in place for the other taxes, it can be seen that the new framework could be applied to other taxes with only minor changes. For example, environmental taxes are checked in a similar way to VAT. There are however some circumstances specific to individual taxes where the new framework would need to be modified to be fully effective. These modifications would be made in a way that did not affect the powers and safeguards applying to IT, CGT, CT and VAT.

Involved third parties

- 5.43 For some taxes, it is not only the taxpayer who holds the key documents which are needed to check that the right tax has been paid. Other parties who are closely involved in the transactions concerned are an integral part of the taxable activity. Often they provide key information to the taxpayer which then forms a part of the tax return. In some cases it is necessary to verify this information to make sure no mistakes have been made. In a very few cases the taxpayer and those working closely with them may be working together in order to deliberately underpay tax.
- 5.44 If the new compliance checking framework were applied to these taxes as drafted, these involved third parties could only be checked as third parties to a taxpayer's tax position. This would mean, for example, that before asking for information from an insurance broker, HMRC would either have to seek pre-authorisation from the Tribunal, or obtain written consent from each insurer connected to the insurance broker in order to issue information notices.
- 5.45 Currently HMRC has the same kind of powers to check these involved persons as it has to check taxpayers themselves. It is proposed to take

the same approach in applying the new framework. This would mean that HMRC could use powers akin to the new first party information powers to check that an involved person is complying with their obligations in order to make sure the taxpayer is paying the right amount of tax. The same safeguards would then apply as when HMRC checked a taxpayer's own tax position, so there would be a right of appeal against HMRC seeking information beyond statutory records.

- 5.46 "Involved third parties" would be tightly defined for each tax to make sure this change does not weaken safeguards for other third parties. The draft clauses and explanatory notes published separately provide details of how this would work for the specific taxes.

Question 10: HMRC would welcome views on applying powers to involved third parties and on the draft legislation.

Inspections at business premises for taxes without record-keeping requirements

- 5.47 The new checking framework allows HMRC to visit business premises and to inspect statutory records there. As set out above, certain taxes do not have rules requiring taxpayers to keep certain records. This means there is no definition of statutory records which HMRC would be able to inspect at business premises.
- 5.48 One option would be to introduce a record-keeping requirement, and this is explored above. Another option would be to state what documents HMRC may inspect if they have been kept. This could parallel what HMRC can inspect for other taxes, namely those documents which are required for the purpose of completing an accurate return. For SDRT, it could be based on what companies must keep according to the Companies Act 2006.

Question 11: HMRC would welcome views on what documents HMRC should be able to inspect at business premises for SDRT and PRT.

Valuation

- 5.49 There are circumstances when HMRC need to value land, property and assets to check a person's tax position. If a taxpayer has wrongly valued an asset, this can have a direct result on any stamp duty land tax, stamp duty reserve tax or inheritance tax due, as well as potential consequences for other taxes. In some cases an asset is deliberately undervalued in order to reduce the tax.
- 5.50 HMRC currently has powers to enter property for the purposes of valuation. It should be noted that there is currently no right of appeal against these powers, nor any requirement for external authorisation.

- 5.51 While the new checking framework allows HMRC to access business premises, it does not include powers to visit non-business premises. HMRC introduced restrictions on inspecting premises and assets that were wholly private to safeguard an individual's right to privacy in their home. Even where there is some business use of the home, guidance will set out rigorous safeguards and the visit will only be considered if essential to understanding the tax position or if invited to visit a home.
- 5.52 There are times when property and assets which need to be valued are private. Whenever possible such assets are valued without visits but often it is impossible to give an accurate valuation without seeing the item in question. Sometimes the need to see something to value it will mean that HMRC does need a right to inspect private property.
- 5.53 In practice valuation powers are very rarely used formally. There are high levels of co-operation and working together between HMRC, taxpayers and agents on valuation matters. The practice of agreeing valuations without exercise of the formal powers where possible would continue.
- 5.54 There is however a minority of people who would not allow valuation visits if HMRC had no power to visit or with whom powers do need to be exercised formally. The power is essential if such individuals are not to gain an advantage over those who work with HMRC to establish their correct tax position.
- 5.55 HMRC recognises that significant further safeguards are appropriate if officers are to enter non-business premises even if that right of entry is for the narrow purpose of valuation.
- 5.56 In the response to the January 2008 consultation many respondents suggested that inspections at private residences should only be made with external pre-authorisation. This is the approach HMRC would want to take in modernising valuation powers.
- 5.57 It is therefore proposed that the current valuation powers of entry for stamp duty land tax, stamp duty reserve tax and inheritance tax would be replaced by a new valuation power. This would only allow entry to non-business premises for the purposes of valuation. If the visit was not agreed to by the taxpayer, HMRC would have to seek external authorisation from the Tribunal before carrying out a visit. This authorisation could include the Tribunal applying conditions to the visit. This represents an increase in safeguards, as currently such visits do not require external authorisation.
- 5.58 There are also currently powers for HMRC to enter premises for valuation purposes for IT, CGT and CT. These are at sections 110 and 111 of the Taxes Management Act 1970, and were not replaced by the new checking framework. These powers could also be brought into

line in terms of safeguards by requiring either the taxpayer's consent or external authorisation for a visit to take place.

Question 12: HMRC would welcome views on introducing a requirement for the taxpayer's or Tribunal's approval before exercising a power to enter private premises for the purposes of valuation for IT, CGT, CT, IPT, SDLT and SDRT. Would other safeguards be appropriate in addition to or instead of this?

Time limits

- 5.59 The intention is to align the time limits for assessments and claims to four years, in line with the new compliance checking framework. Where a check finds an error for one tax, it will be more likely to be within time to correct the error for another tax. Taxpayers have said that they find a single set of time limits more straightforward than different time limits for different taxes.
- 5.60 The table at Annex C sets out the variety of different time limits that currently apply, alongside the time limits that will be introduced to IT, CGT, CT and VAT as part of the new framework.
- 5.61 Assessments are not raised for IHT but there is a time limit for HMRC to recover IHT. This is six years from the date when the (last) payment of tax was made. There is also a 6 year time limit for claiming overpaid IHT. The proposal is that the 6 year time limit should be aligned at 4 years but that the 6 year limit should remain for charging IHT underpaid as a result of careless or deliberate actions.
- 5.62 When looking at changes to time limits HMRC will consider how these might affect more vulnerable taxpayers. HMRC is committed to ensuring that there are adequate transitional arrangements and publicity.

Question 13: HMRC would welcome views on the options for applying the aligned time limits in FA 2008 to the other taxes.

HMRC would also welcome views on whether there are circumstances where the change in time limits could disadvantage vulnerable taxpayers, and how could this risk best be addressed?

Corrections to FA 2008 legislation

- 5.63 The draft legislation includes 5 paragraphs that correct errors or omissions in or relating to Schedule 36 to FA 2008. Of these, 4 are minor, but there is one that is more significant. It inserts a new paragraph 40A into Schedule 36 and provides a penalty for giving inaccurate information and documents when complying with an information notice issued under Part 1 of Schedule 36.

5.64 Section 98(2) TMA 1970 provides a penalty not exceeding £3,000 where a person fraudulently or negligently provides incorrect information or documents in response to notices under any of the provisions listed in the table in section 98. The list includes a number of powers that will be repealed when Schedule 36 takes effect. Rather than include Schedule 36 in the table it is proposed to follow the approach taken in Schedule 24 to FA 2007 and provide for a penalty where a person carelessly or deliberately provides information or a document that contains an inaccuracy. The maximum penalty for an inaccuracy is £3,000. As with Schedule 24 there is no need to include a “reasonable excuse” let-out because the onus will be on HMRC to show that a penalty should be applied in respect of the inaccuracy in question.

Question 14: HMRC would welcome views on retaining a penalty where a person fraudulently or negligently provides incorrect information or documents by including it in Schedule 36 to FA 2008.

Chapter 6: Questions for Consultation

Question 1: HMRC would welcome views on the approach that HMRC is taking in its review of specialist legislation and the proposed repeals in Annex A.

Question 2: HMRC would welcome views on other areas where it may be appropriate to repeal provisions following the introduction of Schedule 36.

Question 3: HMRC would welcome views on whether applying the compliance checking framework legislated in FA 2008 and described in Chapter 4 to other taxes would be appropriate.

Question 4: HMRC would welcome views on the safeguards which would apply when checking other taxes. Are there specific safeguards which should be considered for certain taxes?

Question 5: HMRC would welcome views on where the current record-keeping requirements for these taxes could be improved.

Question 6: HMRC would welcome views on whether it is appropriate or helpful to set out details of records which it is helpful to keep after an IHT chargeable event. If so would this advice be best placed in regulations or guidance and are there records which should or should not be specified?

Question 7: HMRC would welcome views on whether it is appropriate or helpful to set out details of such IHT records; whether these would be best placed in regulations or guidance; and what records should or should not be specified.

Question 8: HMRC would welcome views on whether a record-keeping requirement should be introduced for PRT and SDRT.

Question 9: HMRC would welcome views on replacing the powers described above with the new compliance checking framework. Are there particular reasons why certain taxes should not be brought into the new framework?

Question 10: HMRC would welcome views on applying powers to involved third parties and on the draft legislation.

Question 11: HMRC would welcome views on what documents HMRC should be able to inspect at business premises for SDRT and PRT.

Question 12: HMRC would welcome views on introducing a requirement for the taxpayer's or Tribunal's approval before exercising a power to enter private premises for the purposes of valuation for IT, CGT, CT, IPT, SDLT and SDRT. Would other safeguards be appropriate in addition to or instead of this?

Question 13: HMRC would welcome views on the options for applying the aligned time limits in FA 2008 to the other taxes.

HMRC would also welcome views on whether there are circumstances where the change in time limits could disadvantage vulnerable taxpayers, and how could this risk best be addressed?

Question 14: HMRC would welcome views on retaining a penalty where a person fraudulently or negligently provides incorrect information or documents by including it in Schedule 36 to FA 2008.

Proposed repeals

Draft list of primary legislation repeals

Taxes Management Act 1970

Sections 12, 22 and 28

Finance Act 1973

Section 32

Income and Corporation Taxes Act 1988

Sections 38(5)*, 217(1) to (3), 226(3), 250(7), 272(7), 588(7)*, 700(4)*, 708, 728, 754(2B) and (2C) and 774(5)

Schedule 5 paragraph 10*

Schedule 15 paragraph 14(5)

Finance Act 1989

Schedule 12 paragraph 2

Taxation of Chargeable Gains Act 1992

Sections 169G(2) to (5) and 235

Schedule 1 paragraphs 1(7) and 2(9)

Schedule 4ZA paragraphs 14 to 16

Schedule 5 paragraph 10

Finance Act 1998

Schedule 18 paragraph 13

Finance Act 2002

Schedule 18 paragraph 12

Income Tax (Earnings and Pensions) Act 2003

Section 715(3)(a)(i)

Income Tax (Trading and Other Income) Act 2005

Sections 75(5), 128 and 305 and 700

Income Tax Act 2007

Sections 271(2) and (3), 330(5), 703, 788 and 862

Schedule 2 paragraph 155(5)

*Note that by the time these provisions are repealed they will have been rewritten in the Corporation Tax Act 2009. The draft legislation will therefore refer to the rewritten provision.

Examples of how these powers operate in practice

Environmental Taxes

Aggregates Levy is a tax on the commercial exploitation in the UK of rock, sand and gravel.

Climate Change Levy (CCL) is chargeable on the industrial and commercial supply of taxable commodities for lighting, heating and power by businesses.

Landfill Tax is a tax on the disposal of waste.

For these three tax regimes HMRC undertakes a range of compliance checks covering desk audits conducted by phone or letter, and visits by prior appointment to both compliant and non-compliant taxpayers, including relief claimants. Unannounced visits may also be carried out for non-compliant taxpayers, particularly to those who haven't registered but should have. Also credibility checks are carried out on voluntary disclosures and tax credits etc.

Inheritance Tax

All IHT tax returns received from executors are subjected to a manual (as opposed to automated) risk assessment. The value of property is checked by the Valuation Office Agency. Internal and external information sources, along with the supporting information delivered with the return, are used to check the tax return, and where this check reveals a high risk to tax, the case is checked in more detail. This is conducted through correspondence and meetings with the executor or their agent. In the event of difficulties in obtaining information from the executor, an information notice might be issued – alternatively a third party information notice may be used where necessary.

In the event that matters cannot be agreed, HMRC formally determine either the value chargeable or the point of principle and the case will be heard before the Special Commissioners.

Petroleum Revenue Tax

A compliance check on PRT is similar to what other parts of HMRC carry out in respect of repayments, checking assessments, tax due etc in respect of sales at arm's length and market value of oil.

If there is major expenditure or significant increases in figures, HMRC asks for evidence. If this is split between different oil fields, HMRC checks the basis on which the expenditure is split to ensure this is on a just and reasonable basis.

HMRC also checks that the amount of oil produced from a field is returned by all the participators in the field. This is done by checking the tax return sent in

by the person responsible for the whole field with the individual tax returns sent in by each participator.

Information and inspection powers are used if information needs to be examined and is not otherwise provided to establish a person's PRT liability.

Insurance Premium Tax

Insurance is written in one of two categories: general insurance, which is subject to IPT; and long-term insurance, which is exempt.

IPT returns are subject to an automated basic arithmetic check on receipt. Any anomaly may be forwarded to the relevant office for further investigation. IPT returns or voluntary disclosures showing a repayment of tax due to the insurer will normally be forwarded to the relevant office and may be subjected to credibility checks prior to any repayment being made.

Visits are usually conducted at the insurer's principal place of business. HMRC may request that information is forwarded to them beforehand or may ask for additional information after an initial visit has been conducted. Selective checks are made of all the information used to compile the return, paying particular attention to the liability of insurance written and that tax is being brought to account at the correct time.

Insurers rely heavily on information supplied by third-parties, such as agents, to complete their IPT returns. HMRC may call for additional information from the agents to be sent to them or will visit them to verify the documentation sent to the insurers.

Insurers are required to complete regular returns for the Financial Services Authority (FSA). The reports sent to the FSA can be examined and in limited circumstances compared to the information used to compile the IPT return.

Time limits

Current Time Limits

Tax	Claims	Mistake	Careless	Deliberate
environmental taxes: (aggregates levy, climate change levy and landfill tax)	3 years	3 years	3 years	20 years
insurance premium tax	3 years	3 years	3 years	20 years
stamp duty land tax	6 years	6 years	21 years	21 years
stamp duty reserve tax	6 years	6 years	6 years from date fraud or negligence comes to HMRC's knowledge	
petroleum revenue tax	5 years 10 months	5 years 10 months	20 years 10 months	20 years 10 months
inheritance tax	*	6 years from the date when the (last) payment of tax was made, or the date when fraud, default or neglect comes to HMRC's knowledge.		

Taxes legislated in Finance Act 2008

Tax	Claims	Mistake	Careless	Deliberate
VAT	4 years	4 years	4 years	20 years
IT and CGT	4 years	4 years	6 years	20 years
CT	4 years	4 years	6 years	20 years
PAYE	4 years	4 years	6 years	20 years

* There are only certain aspects of IHT that have time limits for claims, other exemptions and reliefs are due without time limit. Specifically:

- a claim to transfer unused nil rate band is to be made within 2 years of the death;
- a claim for conditional exemption is to be made within 2 years of the death or other event;
- a claim for fall in value relief for gifts has no time limit;
- a claim for loss on sale of shares relief claim is only available to sales within 12 months of death; but there is no limit by which it must be made; and
- a claim for loss on sale of land relief is only available to sales within 36 months of death (or in some circumstances 48 months of death); but there is no limit by which it must be made.

The Government's Consultation Code of Practice

ABOUT THE CONSULTATION PROCESS

This consultation is being conducted in accordance with the Government's Consultation Code of Practice. If you wish to access the full version of the Code, you can obtain it online at:

<http://www.berr.gov.uk/files/file47158.pdf>

THE CONSULTATION CRITERIA

- 1. When to consult** – Formal consultation should take place at a stage when there is scope to influence the policy outcome.
- 2. Duration of consultation exercises** – Consultations should normally last for at least 12 weeks with consideration given to longer timescales where feasible and sensible.
- 3. Clarity of scope and impact** – Consultation documents should be clear about the consultation process, what is being proposed, the scope to influence and the expected costs and benefits of the proposals.
- 4. Accessibility of consultation exercise** – Consultation exercises should be designed to be accessible to, and clearly targeted at, those people the exercise is intended to reach.
- 5. The burden of consultation** – Keeping the burden of consultation to a minimum is essential if consultations are to be effective and if consultees' buy-in to the process is to be obtained.
- 6. Responsiveness of consultation exercises** – Consultation responses should be analysed carefully and clear feedback should be provided to participants following the consultation.
- 7. Capacity to consult** – Officials running consultations should seek guidance in how to run an effective consultation exercise and share what they have learned from the experience.

If you feel that this consultation does not satisfy these criteria, or if you have any complaints about the process, please contact:

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020 7147 0062 or richard.bowyer@hmrc.gsi.gov.uk