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The Tax Administration Framework Review: Creating innovative change through new legislative pilots

Response from ICAS

The Tax Administration Framework Review: Creating innovative change through new legislative pilots

About ICAS

1. The Institute of Chartered Accountants of Scotland ('ICAS') is the world's oldest professional body of accountants. We represent over 23,000 members working across the UK and internationally. Our members work in the public and not for profit sectors, business and private practice. Approximately 11,000 of our members are based in Scotland and 10,000 in England.
2. The following submission has been prepared by the ICAS Tax Board. The Tax Board, with its five technical Committees, is responsible for putting forward the views of the ICAS tax community; it does this with the active input and support of over 60 committee members.
3. ICAS has a public interest remit, a duty to act not solely for its members but for the wider good. From a public interest perspective, our role is to share insights from ICAS members into the many complex issues and decisions involved in tax and regulatory system design, and to point out operational practicalities.

General comments and summary of key points

4. ICAS welcomes the opportunity to contribute to the consultation, [Creating innovative change through new legislative pilots](#), published on 27 April 2023. We have appreciated the opportunity to discuss the proposals with HMRC at three stakeholder meetings.
5. We agree with the suggestions in the discussion paper that HMRC could be more transparent in developing policy and take a more collaborative approach to delivering change. However, we are concerned that the proposed 'sandboxes' could potentially cause problems for taxpayers and agents, and potentially undermine trust in HMRC and the tax system. It is essential that if the proposals are taken forward, further consultation should take place on precisely how the pilots would be structured and on the safeguards that will be required.
6. We do not think the case for the proposed legislative pilots has been made. We are concerned that there has been no clear articulation of the circumstances when HMRC envisages that sandboxes would be used, why they would be beneficial and why other approaches would be inadequate.
7. There have been some good examples of collaboration on policy development and implementation in the past. Rather than experimenting with sandboxes, better results might be achieved by ensuring that the existing processes for consultation and pilots work effectively in all cases. In particular, it would be useful to develop a mechanism for ensuring that the features of successful collaborations and pilots are incorporated into future work. Lessons should also be consistently learned from examples of poor pilots or policy development, so that mistakes are not repeated.
8. If the proposals for legislative sandboxes are taken forward, the following conditions should be met:
 - a. Transparency: Ideally, opportunities to take part in pilots should be properly publicised and the pilots should be open to anyone meeting the criteria for participation. However, as a minimum, taxpayers (and agents, where relevant) should know that they are taking part in a pilot and should have agreed to participate. Consent to taking part should be based on a proper explanation of what will be involved.

- b. Participants and agents should be able to opt out of pilots if they find that they cannot deal with the alternative regime.
 - c. Participants should not be disadvantaged: they should not end up in a worse position as a result of taking part, any additional penalties or interest charges should be removed and there should be compensation where any additional costs arise from participation.
 - d. Participants should be given adequate support and guidance – not only prior to and during the pilot but potentially afterwards. It appears that HMRC envisages using sandboxes where the outcome may not be a permanent change. This is not the same as using a pilot to test a new system to identify issues before a wider roll out, so participants may need support in returning to compliance with the 'normal' rules or processes. We anticipate that there would be considerable confusion, amongst participants who take part in a temporary sandbox but then have to revert to the original regime.
 - e. Access to the normal appeal and statutory review process should be retained.
9. The use of sandboxes should supplement, not bypass, the five stage consultation process set out in the [consultation framework](#). Proper formal consultation, involving public scrutiny and the opportunity for anyone to comment on proposals (not just those taking part in a sandbox) is vital. However, if sandboxes were found to be appropriate in some areas, the results could be used to inform the formal consultation process.

Specific questions

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

10. In section 4 of the consultation document HMRC sets out what it considers to be the opportunities, challenges and risks associated with the proposals. Our comments on these are as follows:

Opportunities:

“More innovative solutions to policy challenges could be explored in a range of pilots – potentially at the same time”

11. It is unclear how HMRC envisages that multiple pilots running at the same time could work. Running one pilot effectively requires considerable resources, to provide the right support and guidance for participants and to carry out a robust analysis of the results. It seems unlikely that running (successful) multiple pilots simultaneously would be feasible, unless the numbers of participants in each were very small – but if that were to be the case, it is unlikely that the results would provide a true, representative picture.
12. Agents are generally willing to participate in pilots of new systems to try to improve them/identify issues that need fixing, but this does impose additional burdens in managing the different requirements and processes imposed by having some clients in a pilot and others outside it. Having clients in multiple pilots simultaneously is unlikely to be feasible, particularly where pilots may not result in permanent change (so clients would have to revert to the previous regime). There could potentially also be significant issues around software, which would be compounded by having multiple pilots running at the same time. There would be additional costs for agents and a greater risk of making mistakes.

“Design of more effective policy and processes, resulting in better outcomes for taxpayers, intermediaries and HMRC”

13. The consultation does not explain why HMRC believes that this would be the effect of legislative sandboxes.

14. There have been some good examples of collaboration on policy development and implementation in the past. Rather than experimenting with sandboxes, better results might be achieved by ensuring that the existing processes for consultation and pilots work effectively in all cases. In particular, it would be useful to develop a mechanism for ensuring that the features of successful collaborations and pilots are incorporated into future work. Lessons should also be consistently learned from examples of poor pilots or policy development, so that mistakes are not repeated.
15. We believe that the most successful examples of policy development are those where all of the five stages of the consultation process set out in the [consultation framework](#) take place, and adequate time is given for the consultation stages and implementation. Pilots seeking to test systems before a wider rollout, also need to be allowed adequate time, in part so that all affected taxpayers have the opportunity to take part.

“Containment of the test to a bespoke group before wider roll-out”

16. This is sensible – but would be a standard feature of most pilots, where a decision has been taken to proceed (and the pilot is simply seeking to test systems and identify issues that need to be addressed before a wider roll out). However, if HMRC proposes to use the sandboxes in cases where there is a likelihood that changes may not proceed or could be substantially amended as a result of the sandbox, this could cause difficulties for participants and their agents. It might not be easy to revert to the non-sandbox regime.

“Reduced administrative burdens for participants where the data provided within the pilot could be reused when any new scheme went live”

17. This could be helpful. However, as set out above, we can also see issues for participants if the proposals do not go ahead, and participants have to revert to the previous regime – we anticipate this causing considerable confusion and also potentially giving rise to issues with software.

Challenges and risks:

“Selection method of taxpayers for participation in pilots may not be representative”

18. We agree that this would be a major issue. Participation in pilots should not be mandatory – we discuss this further in our response to Question 2 below. It might, therefore, be difficult for HMRC to recruit sufficient taxpayers with the right characteristics to take part in a pilot.
19. Participation also needs to be on the basis of informed consent – again this might make recruitment difficult in some areas. However, the alternative – of HMRC deciding who takes part and mandating them to do so – would be unacceptable. It would breach, or potentially breach, several of the standards in the HMRC Charter, particularly ‘Treating you fairly’, ‘Making things easy’ and ‘Being aware of your personal situation’. HMRC would often be unaware of personal circumstances that could make it difficult or impossible for some taxpayers to take part in a sandbox.
20. Mandatory participation could also undermine the standard ‘Recognising that someone can represent you’ because some agents may be unable to support a client taking part in a sandbox for various reasons, including the software used by the agent.
21. If participation is mandatory, some taxpayers selected to take part may fear that they have done something wrong and that they are being investigated for some reason.

“There may be costs associated with participation in a pilot, and for HMRC running a pilot”

22. In many traditional pilots, the changes will ultimately be implemented – the pilot is being used to identify issues ahead of a wider rollout. Whilst there might be costs associated with the pilot (for example, purchasing appropriate software), the overall impact would often be to bring forward costs, rather than imposing significant additional costs. Where participants have a choice about whether to take part in a pilot, they can also take account of any likely extra costs in deciding

whether to join. Providing compensation should be considered, in recognition of additional costs, where these would be significant, particularly if there is a risk that the regime will not become permanent.

23. We do not support HMRC being able to make participation in pilots mandatory – but if this approach were to be adopted, it would not be acceptable for additional costs to be imposed on participants (or their agents, who would have difficulty passing these on to clients) without providing adequate compensation to cover them. Participants should not be disadvantaged – so extra costs would need to be covered and any additional penalties or interest would need to be removed. Any other approach would not be aligned with the Charter standard ‘Treating you fairly’.

“Taxpayers in a pilot could be subject to different rules from those not in the pilot”

24. We understand from discussions at one of the stakeholder meetings with HMRC, that it is not the intention that taxpayers in a sandbox would have a different tax liability. It is essential that this is the case. It would be a clear breach of HMRC’s Charter, if participants did end up with a different tax liability.
25. However, the second example in the consultation indicates that HMRC does envisage that a pilot could be used to test the impact of reducing penalties to a nominal amount. This raises concerns about the Charter standards (particularly ‘Treating you fairly’) because some taxpayers would be given advantageous treatment and a lower total liability (including penalties) than other taxpayers in the same circumstances. Potentially, trust in HMRC and the tax system could be undermined.
26. It is also unclear from the consultation whether HMRC intends that taxpayers taking part in pilots would retain access to the normal appeal and statutory review processes if they wanted to challenge HMRC decisions. We believe it is important that they should retain these rights.

“Intermediaries may face challenges in supporting customers who take part in a pilot and experience different processes”

27. This is a serious concern for agents. As noted in paragraph 12 above, agents are generally willing to participate in pilots of new systems, but the proposals in this discussion paper appear to envisage more pilots, possibly running simultaneously and where potentially the ‘different processes’ will not become permanent.
28. At the most basic level, the software used by an agent may not be suitable for some pilots. Even if it is, agents would still face considerable challenges in having some clients subject to different rules. It would raise issues around staff training, internal guidance and procedures and the additional costs that would inevitably arise. The timing of pilots might also be an issue if a pilot coincided with a period when an agent’s workload was heavy.
29. Some of these issues could potentially be addressed – for example, as noted above, compensation for additional costs could be provided as part of the pilot and HMRC could potentially ensure that suitable software was made available.
30. HMRC would also need to consider whether existing agent authorisations for services would carry across to pilots, where relevant. If a new authorisation is required, it could be a deterrent to taking part, if the process is difficult for some clients to follow.
31. Ultimately, agents would need to be able to decide whether and when they would be able to support clients in a pilot and whether participating in the pilot would be in clients’ interests. Agents would need to be informed if HMRC wanted any of their clients to take part, and obtaining agents’ agreement to participate should be an essential part of any pilot.

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

32. See our response to Question 1 above – many of the safeguards that would be required follow from the issues raised. In summary, key safeguards would need to include:

- a. Transparency: Ideally, opportunities to take part in pilots should be properly publicised and the pilots should be open to anyone meeting the criteria for participation. However, as a minimum, taxpayers (and agents, where relevant) should know that they are taking part in a pilot and should have agreed to participate. Consent to taking part should be based on a proper explanation of what will be involved.
- b. Participants and agents should be able to opt out of pilots if they find that they cannot deal with the alternative regime.
- c. Participants should not be disadvantaged: they should not end up in a worse position as a result of taking part, any additional penalties or interest charges should be removed and there should be compensation where any additional costs arise from participation.
- d. Participants should be given adequate support and guidance – not only prior to and during the pilot but potentially afterwards. It appears that HMRC envisages using sandboxes where the outcome may not be a permanent change. This is not the same as using a pilot to test a new system to identify issues before a wider roll out, so participants may need support in returning to compliance with the 'normal' rules or processes. We anticipate that there would be considerable confusion, amongst participants who take part in a temporary sandbox but then have to revert to the original regime.
- e. Access to the normal appeal and statutory review process should be retained.

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

- 33. Insufficient detail is provided about the proposed 'showcase space' for us to comment in detail. In principle we support the idea of a space where progress reports could be provided, including input from participants. However, the space would need to be open and transparent – it should cover things that had gone wrong and what will be learned from these, as well as positive outcomes.
- 34. The use of sandboxes should supplement, not bypass, the five stage consultation process set out in the [consultation framework](#). Proper formal consultation, involving public scrutiny and the opportunity for anyone to comment on proposals (not just those taking part in a sandbox) is vital. However, if sandboxes were found to be appropriate in some areas, the results could be used to inform the formal consultation process.

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

- 35. We do not think the case for the 'sandbox' approach has been made. We are concerned that there has been no clear articulation of the circumstances when HMRC envisages that sandboxes would be used, why they would be beneficial and why other approaches would be inadequate.
- 36. There was a discussion of an HMRC example, involving reviewing pre-populated tax returns at one of the stakeholder meetings (it was unclear whether this was intended to be a more detailed version of the first example in the consultation). Whilst this was more useful than the examples in the consultation, the discussion revealed that it would not be straightforward to address all the issues arising around the structure of a sandbox and it was unclear whether it would be likely to assist in improving processes.
- 37. As set out in paragraph 25 above, the second example in the consultation raises concerns in relation to the HMRC Charter (particularly the standard 'Treating you fairly'), because some taxpayers would be given advantageous treatment and a lower total liability (including penalties) than other taxpayers in the same circumstances.
- 38. In general, we would be concerned if participants in pilots had access to significantly better outcomes, along the lines suggested in the second example – particularly if the opportunity to take part in the pilot was not offered to anyone meeting the relevant criteria. A perception of fairness in

the tax system is crucial to supporting voluntary compliance. Potentially, trust in HMRC and the tax system could be undermined if pilots are perceived to be unfair.

39. We do not support taking the proposals forward, in the absence of better examples and more detailed analysis in support of legislative sandboxes being provided by HMRC.

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

40. See our response to Question 2. It would be essential for participants (and their agents, where relevant) to be given a detailed and clear explanation of what taking part in a pilot would involve, so that they could give informed consent to taking part. HMRC would often be unaware of personal circumstances that could make it difficult or impossible for some taxpayers to participate.
41. During the pilot participants would need adequate support. This should include detailed guidance and easy access to HMRC assistance (potentially via a designated and adequately resourced helpline).
42. As set out above, where a sandbox did not lead to a permanent change, participants might also need support in returning to compliance with the 'normal' rules or processes. We anticipate that there would be considerable confusion, amongst participants who take part in a temporary sandbox but then have to revert to the original regime.



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