

Association of Accounting Technicians response to Tax Enquiries – Closure Rules

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1. Introduction

- 1.1. The Association of Accounting Technicians (AAT) is pleased to have the opportunity to respond to the consultation paper on “Tax enquiries – closure rules” (conduc), released on 18 December 2014.
- 1.2. AAT is submitting this response on behalf of our membership and from the wider public benefit of achieving sound and effective administration of taxes.
- 1.3. AAT has commented with the objective of adding value or to highlight aspects that need to be considered further. AAT has focussed on the operational elements of the proposals and has provided opinion on the practicalities in implementing the measures outlined. Furthermore, our comments reflect the potential impact that the proposed changes would have on SMEs and micro-entities, many of which employ AAT members or would be represented by our operationally skilled members in practice.

2. Executive Summary

- 2.1. This consultation concerns a proposal to enable HMRC to refer matters to the Tribunal with a view to achieving early resolution of one or more aspects of an enquiry into a tax return. HMRC would target the power at cases or issues involving significant tax under consideration or involving issues which are novel, complex, or have a wider impact, which can include tax avoidance. The government proposes that HMRC would expect earlier payment of tax in respect of the particular aspects successfully addressed by HMRC.
- 2.2. In principle, AAT notes and supports the objectives of HMRC modernising the Tax Enquiries Closure Rules to counter aggressive tax avoidance and delaying tactics and has previously responded to a number of HMRC consultations, which are listed at the end of this document.
- 2.3. To achieve the objective of modernising the Tax Enquiries Closure Rules (2.1, above) AAT recommends:
 - Amending s.28A TMA (and the corresponding legislation for corporation tax) to enable HMRC to identify and to close one or more aspect(s) of an enquiry into a return (3.13, below).
 - That s.54(1)TMA (Settlement of Appeals by Agreement) should be amended in order to extend the existing provision for settlements by agreement to also include “Aspect” (Para 4.3 conduc uses the phrase “specific issue”) (3.16, below).
- 2.4. In addition, HMRC should use current legislation at their disposal in the form of s.55(4) TMA to bring tax into charge (3.4 & 3.5, below).
- 2.5. AAT agrees with the government proposal to introduce a sole referral facility to the Tribunal. However AAT strongly recommends that both parties should have the statutory right to sole referral (3.9, below).

3. AAT response to the consultation questions on Tax enquiries – closure rules

Q1: We would welcome views on the problem as expressed in this document.

- 3.1. AAT recognises the fact that the current enquiry rules (3.1, conduc) prevent HMRC from taking individual aspects of an enquiry into a taxpayer’s particular tax return to the Tribunal,

unless there is mutual agreement between HMRC and the taxpayer concerned to refer the matter at issue to the Tribunal.

- 3.2. The situation described in 3.1 (above) is further compounded by the fact that when a taxpayer's return for a particular year is selected for enquiry a closure notice cannot be issued until all the aspects are agreed.
- 3.3. AAT recognises that the problems outlined in the condoc in respect of rules-of-engagement set out within the Taxes Management Act 1970 (TMA) can lead to long delays in settling aspects of an enquiry, for example 3.2 (condoc) cites an instance of a large and complex case with one of the elements of the enquiry, which could be resolved in isolation, amounting to over £150 million of tax at stake.
- 3.4. While annex B (condoc) reviews the legislation in respect of the postponement of tax (s.55(3) TMA) AAT is surprised that no mention is made of s.55(4) TMA where "there is a change of circumstances in the case as a result of which either party has grounds for believing that the amount so determined has become excessive..." as AAT considers that in a multi-aspect case when one aspect is agreed then there is a change of circumstances.
- 3.5. Taking into account AAT's consideration, detailed in 3.4 above, under s.55(4) TMA HMRC is in a position to formally write to the appellant giving them notice accompanied by a computation of the tax at stake in respect of the aspect(s) no longer under dispute and which seeks their (the taxpayer's) agreement to amend the amount of tax postponed. Where there is no agreement the matter should be referred to the Tribunal for determination.
- 3.6. Paragraph 2.1 (condoc) sets out that the current enquiry legislation was enacted in 1996 for income tax and in 1999 for corporation tax. Furthermore, 2.3 (condoc) identifies the issue of "the length of time it takes to resolve a multi-dispute enquiry, primarily because under current rules {s.28A TMA} HMRC can only issue a closure notice once it has reached a conclusion in respect of all the areas of dispute within an enquiry". The result of current drafting of this section is "The current enquiry framework can therefore be inflexible and constrain HMRC's ability to settle areas of dispute, particularly in complex cases or those involving high-risk or high-value issues" (2.5, condoc).

Q2: Do you agree with the proposed changes to the tax enquiry process?

- 3.7. In principle, AAT supports the government proposal outlined in 4.1 (condoc) to enable HMRC to refer matters to the Tribunal with a view to achieving early resolution of one or more aspects of an enquiry into a tax return, especially those involving significant amounts of tax under consideration or involving issues which are novel, complex, or have a wider impact, which can include tax avoidance.
- 3.8. AAT has reservations regarding the proposal (4.1, condoc) that only HMRC, and not the taxpayer, would have the option to consider sole referral to the Tribunal.
- 3.9. In order to address the HMRC concern set out in 4.2 (condoc) AAT recommends that both parties should have the statutory right to sole referral.
- 3.10. One possible unwelcome consequence of multi-aspect referrals to the Tribunal might be the scope for appeals to the higher courts against the separate aspects at different times. Such action could lead to difficulty in managing the different aspects of an enquiry case. all of which could be at different appeal stages.
- 3.11. AAT understands and accepts the need for the proposed changes whereby "HMRC would apply to the Tribunal to close the issue, the tax treatment of which is no longer in dispute and the tax would become payable" (4.3, condoc). AAT considers that a better solution is outlined in 3.12-3.13 (below).

- 3.12. AAT considers the proposal “to extend the jeopardy amendment provisions to cover the issue in question whilst the remaining aspects of the enquiry were still in progress but to enable an appeal to be determined before the enquiry is completed” (4.4, condoc) to be inappropriate. Jeopardy amendments are intended to address situations where a taxpayer leaves the country or a company goes bankrupt, therefore it is inappropriate to seek to make use of them where taxpayers are exercising their legal rights to dispute HMRC’s assessment of the tax due.
- 3.13. AAT recommends amending s.28A TMA (and the corresponding legislation for corporation tax) to enable HMRC to identify and to close one or more aspect(s) of an enquiry into a return. Adopting AAT’s recommended course of action would enable separate complex aspects of a return under enquiry and which might be worked by separate specialists, to be concluded and to potentially simplify the overall management of the return.

Q3: Do you have any suggestions concerning the terminology of the new notice?

- 3.14. AAT considers that the titles of “Tribunal referral notice” and “Tribunal referral closure notice” in 4.2 of condoc are appropriate on the basis that they summarise the purposes of the notices.
- 3.15. AAT suggests the revised closure notice might be entitled “Determination of Aspect on Return”. It should be noted that the HMRC officer closing the Aspect or issue under enquiry would need to list the agreed Aspects.

Q4: Do you have any suggestions for how the proposed changes might be adapted to those limited cases where the tax treatment of a particular issue is no longer in dispute?

- 3.16. AAT recommends that s.54(1)TMA (Settlement of Appeals by Agreement) should be amended in order to extend the existing provision for settlements by agreement to also include “Aspect” (Para 4.3 condoc uses the phrase “specific issue”).

Q5: Do you agree with the proposed amendment to the joint referral process?

- 3.17. As stated in the response to Q2 (3.7-3.13, above), AAT supports the government’s proposed amendment to enable HMRC to refer matters to the Tribunal on a “sole referral” basis, as outlined in 4.1 (condoc). However, AAT has reservations in respect of the fact that only HMRC, and not the taxpayer, would have the option to consider sole referral to the Tribunal, although either party may appeal to higher courts.
- 3.18. It is AAT’s opinion that both parties should have the statutory right to sole referral.

Q6. Should any other taxes be included in the scope of the proposal?

- 3.19. The proposal outlined in this consultation includes income tax, capital gains tax, class 4 National Insurance Contributions and corporation taxes (4.8, condoc) and AAT’s view is that other taxes should not be included within the scope.

Q7: Do you agree with the proposed governance safeguards?

- 3.20. AAT is of the view that the current rights of appeal should be available for each separate aspect (5th bullet point, 4.2, condoc).
- 3.21. AAT also understands that the power of sole referral to the tribunal will be used sparingly but specifically in issues which are novel, complex or against tax avoidance and to be authorised by a nominated senior official outside the line management chain of the case worker (4.9, condoc).

Q8: We would welcome views on any additional safeguards to constrain the use of this proposal.

- 3.22. As set out in the response to Q2 (3.7-3.13, above) and to Q5 (3.17-3.18, above), AAT is firmly of the opinion that both parties should have the statutory right to sole referral.
- 3.23. AAT agrees that the current rights of appeal for each separate aspect should remain as previously stated in 3.20 above.

Q9: Do you agree with the assessment of impacts?

- 3.24. AAT has nothing to add to HMRC assessment of impacts at Part 5 of condoc.

4. Conclusion

- 4.1. AAT is appreciative of some of the problems outlined in this consultation as a consequence of the fact that many tax returns can be very complex including many separate aspects of income and allowances but where a return is under enquiry the tax cannot be finally brought into charge until the single closure notice for the return is issued. AAT detailed a view on the facilities of S55(4)TMA to restrict the amount of tax postponed and therefore collectible.
- 4.2. AAT favours amendments to the Enquiry Legislation and suggests amendments to s.28A TMA and to s.54(1)TMA.
- 4.3. AAT agrees with the government proposal to introduce a sole referral facility to the Tribunal. However AAT recommends that both parties should have the statutory right to sole referral (3.9, above).

5. About AAT

- 5.1. AAT is a professional accountancy body with over 49,800 full and fellow members and 83,700 student and affiliate members worldwide. Of the full and fellow members, there are over 4,100 Members in Practice who provide accountancy and taxation services to individuals, not-for-profit organisations and the full range of business types (figures correct as at 31 December 2014).
- 5.2. AAT is a registered charity whose objectives are to advance public education and promote the study of the practice, theory and techniques of accountancy and the prevention of crime and promotion of the sound administration of the law.
- 5.3. Thank you for the opportunity to respond to the consultation on Tax enquiries – closure rules.

6. Further information

If you have any questions or would like to discuss any of the points in more detail then please contact AAT at:

email: consultation@aat.org.uk and aat@palmerco.co.uk

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AAT's previous responses to consultations on tax avoidance:

- Raising the Stakes on Tax Avoidance (consultation document) – submitted October 2013
- Raising the Stakes on Tax Avoidance (summary of responses and draft legislation) – submitted February 2014
- Tackling Marketed Tax Avoidance – submitted February 2014
- Strengthening the Tax Avoidance Disclosure Regimes – submitted October 2014
- Tackling offshore tax evasion – Strengthening Civil Deterrents – submitted October 2014
- Tackling offshore tax Evasion – A new criminal offence – submitted October 2014¹.

¹ <https://www.aat.org.uk/about-aat/aat-policy-work>