



Law Society
of Scotland

Consultation Response

The Conduct of Tax Enquiries and the Resolution of Tax Disputes Inquiry

May 2018



Introduction

The Law Society of Scotland is the professional body for over 11,000 Scottish solicitors. With our overarching objective of leading legal excellence, we strive to excel and to be a world-class professional body, understanding and serving the needs of our members and the public. We set and uphold standards to ensure the provision of excellent legal services and ensure the public can have confidence in Scotland's solicitor profession.

We have a statutory duty to work in the public interest, a duty which we are strongly committed to achieving through our work to promote a strong, varied and effective solicitor profession working in the interests of the public and protecting and promoting the rule of law. We seek to influence the creation of a fairer and more just society through our active engagement with the Scottish and United Kingdom Governments, Parliaments, wider stakeholders and our membership.

Our Tax Law sub-committee welcomes the opportunity to consider and respond to the Treasury Committee's inquiry on The Conduct of Tax Enquiries and the Resolution of Tax Disputes¹. The sub-committee has the following comments to put forward for consideration.

Consultation questions

How do HMRC governance and settlement processes affect its ability to resolve tax disputes in a proportionate and fair way?

No comment.

Does HMRC's litigation and settlement strategy provide a rational and sound framework for resolving tax disputes?

The Litigation and Settlement Strategy does not appear to be routinely referred to by HMRC inspectors. In the experience of our members, taxpayers frequently resort to referring to it as a means to explore settlement options or to bring an inspector to focus on achieving a settlement. Long and complex matters often require a meeting of the minds and a negotiated settlement. While it is wholly understandable that HMRC cannot be seen to 'split the difference' in resolving any dispute, working towards a negotiated settlement is generally in the interests of all parties to ensure expedited resolution of disputes and we consider that the Litigation and Settlement Strategy can assist with this.

¹ <https://www.parliament.uk/business/committees/committees-a-z/commons-select/treasury-committee/treasury-sub-committee/inquiries/parliament-2017/conduct-tax-enquiries-resolution-tax-disputes-17-19/>

Prolonged all-aspect enquiries frequently result in the involvement of various teams and a large number of changes in personnel both on the part of HMRC and taxpayer. Enquiries which become all-aspect enquiries often become what may be seen as 'fishing expeditions' as large volumes of information can be requested in a relatively short period of time. These do not appear to be well targeted interventions. Requesting large volumes of information in a short time frame can place significant demands on businesses which may not be proportionate or fair, particularly in the context of small and medium sized businesses that do not carry an excess of staff to dedicate time to preparing and providing the information requested. It is not uncommon for HMRC to issue statutory notices to obtain information. This does not appear to take account of the reality of day-to-day demands of businesses and whether the information is strictly necessary for enquiries.

Our members are aware of instances where this has had a paralysing effect on businesses, particularly where information received has been misconstrued (for example by accounts being misread or a failure to understand how director loan accounts operate) or where officers have rescinded from a previously agreed position, and large volumes of information have been required.

The effectiveness of the independent review system under the Litigation and Settlement Strategy is not clear and we question how cost effective the system is for taxpayers.

Do HMRC's collection and management powers set out in the Commissioners for Revenue and Customs Act 2005 provide HMRC with sufficient flexibility to achieve cost-effective and fair results?

No comment.

Does HMRC's approach to enforcing compliance with tax law, including its approach to penalties and other sanctions, result in disproportionate or unjust outcomes? If so, how can the situation be remedied?

There does not appear to be a consistent approach taken in relation to enforcing compliance. In the experience of some of our members, the application of penalties by HMRC does not always take account of the context of the business operations but rather rests on a subjective view of a taxpayer's actions in isolation. On occasion, this results in disproportionate outcomes and greater consistency would be welcome to ensure just outcomes for all.

Is there sufficient governance over the whole of HMRC's enquiry process to ensure that HMRC's interventions are well-targeted and that taxpayers are treated fairly and professionally throughout?

We consider that there are a number of governance matters which could be improved to ensure well-targeted, fair and professional enquiries. We suggest that, in order to expedite enquiries, experienced inspectors should be deployed to carry out enquiry work. Using untrained inspectors to carry out initial enquiry work can result in delays and increased costs if further enquiries are submitted following a review by a more experienced inspector.

Clearances and approvals tend to be heavily caveated. This can affect commercial parties in dispute about circumstances and tax outcomes who may find that the opinion produced is insufficiently robust or unequivocal to be relied upon to resolve dispute between the parties.

There are often considerable delays for taxpayers who wish to reach settlement on tax that is due. We do not consider that it is fair for taxpayers to wait for a number of weeks to settle an agreed sum while interest accrues at a statutory rate until HMRC meets internal governance procedures. It should be noted that statutory interest accrues for the full time during which tax remains unpaid. If there is a dispute, interest often accrues for same period as the time during which the parties are in dispute. There does not appear to be an ability to mitigate interest, such as in circumstances where resolution of the dispute has been delayed by HMRC's actions. We do not consider this to be fair or proportionate to taxpayers.

As a result of these difficulties, cost effective and fair results are not always achieved and we consider that improvements could be made to meet this aim.

Do HMRC's governance processes provide sufficient scrutiny and assurance for clearances and approvals given to taxpayers outside the formal enquiry process?

No comment.

For further information, please contact:

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