

# MINUTES

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## MID-TIER AGENTS FORUM

Friday 25<sup>th</sup> September 2015 (13:30 - 15:30)  
Room G/57, 100 Parliament Street, London SW1A 2BQ

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<b>Chair:</b>	<b>Jeremy Tyler</b>	<b>HMRC (Business Customer &amp; Strategy)</b>
<b>Secretariat:</b>	<b>Michele York</b>	<b>HMRC (Business Customer &amp; Strategy)</b>
<b>Attendees:</b>	<b>David Barton Mark McGarry Kevin Thorne Stephen Nixon</b>	<b>Baker Tilly Saffery Champness Grant Thornton Crowe Clark Whitehill</b>
<b>HMRC Attendees:</b>	<b>Gemma Cross</b>	<b>HMRC (Local Compliance Mid-Size Business)</b>
<b>Speakers:</b>	<b>James Konya Pete Woodham Anna Thomas Hugh McCann Jen Knowlson Timothy Holmes Heather Wall Mary Purcell ( the speakers only attended the meeting for their respective slot)</b>	<b>HMRC (CTIS) HMRC (Counter Avoidance) HMRC (Business Customer &amp; Strategy) HMRC (Digital) HMRC (Offshore Evasion Strategy) HMRC (Offshore Evasion Strategy) HMRC (Business Customer &amp; Strategy) HMRC (Business Customer &amp; Strategy)</b>
<b>Apologies:</b>	<b>Lisa Macpherson Chris Simpson Tim Davies Theresa Middleton Jacquelyn Kimber Ian Stewart Hugh Hedges Andy Leggett Tim Lyford Jonathan C Riley Angela Miles Angela Nagarajah Marian Kitson</b>	<b>BDO HMRC (Counter Avoidance) Mazars HMRC (Business Customer &amp; Strategy) Moore Stephens HMRC (Indirect Tax) HMRC (Central Policy) HMRC (LocalComp) Smith &amp; Williamson Grant Thornton HMRC (Counter Avoidance Policy) HMRC (Digital) HMRC (Local Compliance Mid-Size Business)</b>

### 1. Welcome and introductions

Jeremy Tyler (JT) welcomed attendees to the meeting and introductions were made.

### 2. Minutes of last meeting, matters arising / action points

No amendments were made to the minutes of the last meeting however it transpired that a number of the action points had not been actioned and would be picked up after the meeting.

### 3. FATCA, CRS and the CDOT arrangement

Following a request by the forum members in the June meeting James Konya provided an update on FATCA which had its first reporting deadline on 31 May 2015. JK advised that all those financial institutions (FIs) that had tried to file by the deadline and requested assistance had received it; also some who tried to file late. HMRC has sent the file to the IRS within the set deadline of 30 September 2015. JK confirmed that the IRS would be applying a light touch for 2015 for FIs and tax authorities with legal or IT issues.

One problem that had been identified by HMRC was that everyone had filed the FATCA returns at the same time causing problems with accessing the system therefore HMRC was considering extended the timeframe from 1 week to 6 weeks.

2016 is the only year that the CDOT arrangement will be active, as this will be superseded by the CRS in 2017.

JK advised that the newly published CRS guidance will ultimately include the pre-existing FATCA and CDOT guidance. They are currently separate, with the CRS guidance in draft for comment before 30 November 2015.

AP JK will forward a link to the guidance when finalised.

<https://www.gov.uk/government/publications/informal-consultation-guidance-notes-for-the-automatic-exchange-of-financial-account-information>

It was highlighted that an area of irritation was the treatment of trusts – particularly around those that were of a personal nature rather than business. Concern was raised around the lack of clarity on who would report.

### 4. Client notifications

JK updated the forum on the client notification informal consultation which will finish on 8 October. JK explained that the purpose of the policy was to oblige agents and FIs to notify clients about CRS, the new disclosure regime, and the new offshore penalties. A discussion was held, with agents highlighting the problem that it was highly likely that advisors would not actually know if in the past their clients had offshore accounts, or for contacting clients who were, although on an agents books, infrequently in touch; these may be using alternative agents as well. The consensus was that a blanket notification to all clients would be preferable to a targeted approach with due diligence to find clients who had received offshore advice.

JK will provide his email address for input to the consultation.

[james.konya@hmrc.gsi.gov.uk](mailto:james.konya@hmrc.gsi.gov.uk)

### 5. Agents Strategy update

#### Segmentation and risking

Anna Thomas (AT) introduced the topic of agent segmentation and risking. AT advised that the ambition was to understand agents and using this information to resource more astutely. AT using the hand out explained that the first cut had used real CT data, linking agents with the corporation taxpayers that they represent. To inform the risk 10 indicators had been identified

including whether a penalty had been issued to their client or if there was a missing return. A further indicator was whether HMRC's frontline staff had made a referral following a concern about the agent themselves. Using these indicators HMRC, for the first time, have sought to systematically identify potentially good and poor agents based primarily on their clients' compliance. AT stressed that HMRC are aware that not all of the indicators are within an agents gift and it was recognised that agents generally add value to their clients e.g. submitting returns on time. AT explained that HMRC want to pursue further work to reverse engineer the process to see where actual agents we think are better or worse have been categorized on the basis of the indicators, and to design some initial small scale operational activity to test the approach further e.g. examining agents at the poorer end of the spectrum to see if there are actual problems with the agents' work.

The forum agreed that CT was the best tax to use initially and so far the project findings looked reasonable however there was a concern about the limited number of indicators.

AT confirmed that more indicators were being worked up including iBRL tagging patterns and indicators around the agent's own tax compliance. MTAF members reinforced that an agent's role in poor compliance may be due to e.g. lacking education or possibly if a sole practitioner, illness etc.

It was agreed that talking to the agents' professional bodies i.e. ICAEW about the risking would be a reasonable way forward to ensure that HMRC are on the same page. It was also suggested that there may be a read across on the education issue to HMRC's guidance and whether this may require revision.

#### Avoidance and standards

AT updated the forum on the issue of tax avoidance and standards. The March budget had challenged the professional bodies to do more to combat tax avoidance. It was confirmed that Jim Harra had met with the Chief Executives of the largest professional bodies (responsible for the PCRT standard).

The forum, when asked, confirmed that they had heard of discussions taking place but the general feeling was that it should be the representative bodies leading on accountancy standards and not the individual companies although it was recognised that the professional bodies would want to consult members.

The project is working to a Budget 2016 timetable, which is also likely to fit with work on the digital roadmap.

The forum agreed that the deadline was quite tight but AT explained that was due to the ministers' appetite for anti-avoidance measures.

## **6. Agents Online Self Service**

Hugh McCann (HM), provided an update on Agent Online Self Serve (AOSS), on behalf of Angela Nagarajah, highlighting the progress that was being made. HM advised that the PAYE liabilities and payments private beta service commenced in June. Over 800 agents had participated in the beta, of whom 80% provided positive feedback in an exit survey.

Agent feedback is continuing and HM advised that the PAYE service will move into public beta in the coming months.

The public beta is aimed at agents with up to 200 employer clients. The team is currently working on the agent landing page for the public beta. HM advised that research indicated that the larger firms with more than 200 clients tended to use third party software providers.

It was queried whether only PAYE would be put into public beta. HM explained that agent feedback indicated that the PAYE view should be launched first, followed by other taxes. The intention is to launch the private beta for Self-Assessment in December. The future road map and timeframe is influenced by the Agile approach to development used by AOSS. Kevin Thorne (Grant Thornton) volunteered to provide assistance in development of AOSS.

## 7. Offshore Evasion

Jennifer Haslett and Tim Holmes joined the meeting to provide an update the progress on the 4 consultations that their team is currently running on offshore evaders. JH explained that the objective of the measures was to ensure that there were no safe havens for tax evaders.

The 4 consultations, which are due to close 8 October, are;

1. Strengthening civil deterrents for offshore evaders
2. A new criminal offence for offshore evaders
3. Civil sanctions for enablers of offshore evaders
4. A new corporate criminal offence of failure to prevent the facilitation of evasion.

1. and 4. Strengthening civil deterrents and new corporate criminal offence of failure to prevent the facilitation of evasion.

JH advised the meeting that the measures were being focused on the enablers, either individuals or corporates, who due to a lack of information were largely untouched by the current deterrent measures. However with the introduction of automatic tax information exchange between 95 countries HMRC would have access to unprecedented levels of taxpayer information. This means that HMRC can increase its focus on those who enable tax evasion. Whilst the existing criminal law covers those who deliberately enable tax evasion, we do not believe we have adequate civil sanctions for the same behaviour. For the corporate criminal offence HMRC are consulting on an offence to apply to corporations whose agent(s) criminally aid and abet tax evasion. The measure is designed to encourage good corporate governance and ensure corporations are putting in place reasonable procedures to prevent their agents from committing criminal acts during the course of business. Corporations would be to put forward a defence of having put in place reasonable procedures.

2. and 3. A new criminal offence for offshore evaders and civil sanctions for enablers of offshore evaders

TH advised the meeting that the Strict Liability Criminal Offence was previously consulted on last summer. Feedback from stakeholders had raised concerns over the proposed offence. Because HMRC feel that this measure would still be a valuable tool in tackling offshore evasion, changes had been made, including safeguards in the form of a de-minimis limit. HMRC is consulting on the issue again.

HMRC recognises the difficulties in developing effective safeguards, and would welcome views on these, as well as views on apportionment of gains and treatment of anti-avoidance provisions.

TH discussed the strengthening civil deterrents for offshore evasion consultation. This looks at increasing minimum penalties for deliberate behaviour, introduction of asset-based penalties for serious cases of offshore evasion, and strengthening naming provisions.

Like the other consultations, this closes on 8 October and responses were welcomed the team would also be happy to meet with the agents to discuss further.

It was suggested that the corporate and agent were defined to ensure clarity. It was queried whether the new measures were required and whether the money laundering legislation covered evasion. JH advised that whilst tax evasion is recognised as an offence the money laundering did not cover tax evasion specifically.

A brief discussion followed and it was agreed by all that evasion was not acceptable but it was felt that the measures to increase HMRC's powers would result in a disproportionate burden on the more compliant agents whilst the ones that the measures were aimed at would ignore them. JH

commented that this would not be the case especially when the offenders are found to be guilty. The agents suggested that maybe the representative bodies and not HMRC should write the framework, a suggestion that JH promised to consider.

## **8. Serial Avoiders Consultation update**

Peter Woodham joined the meeting to provide the background and update on the serial avoiders consultation which is due to close on 14 October.

PW advised that there had been a high-level consultation in January 2015 on new measures for serial users of tax avoidance schemes, a penalty for cases where the General Anti-Abuse Rule (GAAR) applies and a new threshold condition for Promoters of Tax Avoidance (POTAS). Following the Government's announcement at the Summer Budget that legislation to introduce these measures would be included in a future Finance Bill, a further consultation was published in July to take into account responses to the earlier consultation and to consult on detail of how the provisions should be brought into effect.

So far the responses have been favourable.

Some discussion was held on a number of points in the consultation including the length of the warning period and whether it would start from date of defeat or the notice.

PW explained that if an action is counteracted by the GAAR currently a reference to the GAAR panel has to be made for each user of the arrangements, even if they are identical for every user.

One proposal in the consultation is that in these circumstances a single reference to the panel should be made to cover all users. PW agreed that some clients have different circumstance so that would need to be considered.

The forum were interested to understand the thinking behind the withdrawal of the reliefs. PW explained that reliefs were intended for a wide range of purposes, often social or economic and if exploited would be forfeited because such actions undermine the purpose of the reliefs and to ensure fairness to compliant tax payers who abide by the rules. PW advised that these restriction's would not be used on VAT reliefs as they would not be possible under European law.

## **9. Large Business Consultation update**

Mary Purcell (MP) and Heather Wall (HW) joined the meeting to provide an update on the public consultation on Improving Large Business Tax Compliance. MP explained that the consultation team had been involved in a number of events, including open days, face to face meetings and webinars and the feedback received had been very useful.

MP advised the forum that further work was being undertaken on the scope of the businesses that will be affected by the measures. Whilst the suggested scope has thresholds similar to the SAO regime, the SAO threshold does not take into account companies incorporated outside the UK which these measures are designed to include.

MP outlined the progress on the 3 measures; transparency, code of practice and special measures and advised the agents that so far there had been a fair amount of comment. This included the effective rate of tax (ETR) and whether the publication of the ETR was practical and useful. Equally, whether the strategy should be the responsibility of a named board member or the collective board which appears to be the preferred option at this time. It is worth noting that as yet, no final decisions have been reached for each measure. MP also advised that there were concerns around the multi-national companies, which were being considered.

### Transparency

MP confirmed that there was no intention to police the strategy.

There was some discussion on where the strategy could be placed i.e. in the annual accounts however it was advised that if the strategy was placed in the accounts they would need to be audited. HW confirmed providing the strategy was accessible to all the location of the strategy would be up to the business.

MP confirmed that although HMRC was legislating the publication of the strategy HMRC would not be prescriptive and was suggesting principles rather than rules. It was confirmed that HMRC would use the strategy in the risk assessment.

MP confirmed that research had shown a correlation between a lack of transparency and increased risk. The agents voiced the concern that it was very much a blanket approach thus placing increased burdens on the more compliant agents and clients. They felt that HMRC actually had an idea of which companies they wished to publicise their strategy but MP explained that this was not the case. Also following the initial publication of the strategy very little would need to be done to ensure that it remained current unless a major change occurred within the business.

#### Code of practice

The forum was advised that the wording within the strategy and code regards the intention of Parliament was causing some debate, along with the issue of mutuality which was not unexpected.

#### Special measures

MP advised the forum that the special measures was intended for a very small number of large businesses and much of the debate concerned the safeguards from the Law Society.

The findings will be published in the response document after final policy design is made and the measures will be legislated in the next Finance Bill.

#### **10. Any Other Business**

Dates for the next two meetings have been provisionally booked – 11 December 2015 and 16 March 2016. However it was highlighted that the next meeting in December was scheduled for a Friday afternoon which all agreed was not the best time for a meeting. MY agreed to rearrange the date.

8.12.15 Minutes agreed by Forum.