



HM Revenue  
& Customs

# How we resolve tax disputes

The Tax Assurance Commissioner's  
Annual Report 2015-16

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# Foreword



**Edward Troup**  
Tax Assurance Commissioner

Since I took up the role as HMRC's first Tax Assurance Commissioner in 2012, I have seen the department embed its strengthened governance processes to provide assurance that all civil tax disputes are resolved in a fair, transparent and even-handed way. I have personally observed consistently high standards of casework and decision-making for our most significant and sensitive disputes. At the same time, HMRC's business areas have worked with our Internal Audit teams to assure the decisions we take in tax disputes of all sizes and complexity and to drive up quality standards.

This year's report confirms that the high standards which HMRC has set itself have been maintained, and I continue to be proud of the high levels of tax professionalism and capability across the department. I see this first-hand with the largest and most complex tax disputes which the Commissioners see and challenge. And on my visits to HMRC offices around the country I meet tax professionals in our compliance teams as well as legal, accountancy and policy professionals who work on tax disputes of all shapes and sizes, all of whom bring enthusiasm and professionalism to the work of the department. We continue to work on improving our standards across all of our casework and ensuring our focus on yield is always matched by getting the right tax outcomes as efficiently as possible. Continuing to promote the message that our settlement process is professional and even-handed and that we will never settle for less than the tax due under the law remains a priority.

The role and responsibilities of the Tax Assurance Commissioner are now well-established as part of our governance. Since my appointment as Executive Chair in April 2016 as part of recent changes in HMRC's senior leadership, I have continued to perform the responsibilities of Tax Assurance Commissioner. I expect to pass these responsibilities on later in the year once Jon Thompson, as Chief Executive, and I have considered any wider issues of HMRC's governance.

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# Audit and Risk Committee Statement



**John Whiting**

Chair, HMRC Audit and Risk Committee

The Audit and Risk Committee is chaired by John Whiting (Non-Executive Board Member). Other members are Leslie Ferrar, Paul Smith, and Mervyn Walker (all Non-Executives). HMRC's Chief Executive, Chief Finance Officer and Head of Internal Audit, as well as the team responsible for the HMRC audit at the National Audit Office, are all standing invitees and normally attend.

The Audit and Risk Committee spends a lot of time on risk issues, with a focus on ensuring that HMRC has good processes in place and that these are operating properly. HMRC's governance and assurance processes for tax disputes and their development and implementation are important risk areas so we have sought and been given regular updates on work in this important area, enabling us to provide oversight.

We have encouraged a substantive programme of work by Internal Audit in this area. As in 2014-15, the aim has been to provide additional assurance around the processes used and to identify how these could be enhanced. We receive reports on this work and have also made various enquiries of our own. This work will continue into 2016-17.

Although the procedures are operating satisfactorily, as set out in Chapter 5 of this report, there continues to be a number of cases where processes around the settlement of disputes could be improved. We do not think that this is a matter of significant concern as there will always be scope to improve procedures to give the best possible assurance to HMRC's many stakeholders. However, we do expect that the proportion of cases that fully adhere with governance and assurance procedures will improve in the coming year and we will be asking Internal Audit to continue its programme of work on dispute resolution. We will continue to take a close interest in the area.

We have seen this report in draft during its preparation. It is not our function to audit the report, but we have had the opportunity to comment on the drafts and challenge the information presented. We believe that it is a fair report on and representation of HMRC's governance and assurance of its dispute resolution procedures and in particular the procedures around its largest and most sensitive tax disputes.

# Chapter 1: Introduction

HMRC strives to help all taxpayers get things right, but we know there will always be some differences of opinion about the tax due. Where tax disputes arise in cases worked under civil procedures, HMRC's published [litigation and settlement strategy](#)<sup>1</sup> (LSS) sets out the department's policy on how they should be handled and the basis on which they should be resolved. The LSS applies to all tax regimes and business areas within the department where cases are worked under civil processes. Civil interventions are often the most cost-effective means of securing the tax due, but HMRC carries out criminal investigations at its discretion, often where a deterrent is needed or where the conduct involved is such that only a criminal sanction is appropriate. HMRC's published [criminal investigation policy](#)<sup>2</sup> gives further information. This report does not cover criminal investigations or prosecutions.

In the course of civil tax disputes HMRC's decisions are made within the governance framework explained in its published [code of governance for resolving tax disputes](#)<sup>3</sup>. This provides assurance that HMRC treats taxpayers fairly and even-handedly - no matter what the size or complexity of the taxpayer or their affairs.

Where tax disputes do arise, the department aims to work collaboratively with taxpayers and their agents as the most cost-effective way to agree the amount of tax due under the law. The vast majority of tax disputes HMRC has with customers are resolved by agreement, following discussions between ourselves and the taxpayer. However, where collaborative working indicates that there is no prospect of settling by agreement tax disputes move towards litigation.

The governance arrangements discussed in this report fall into two strands – **cases** relevant to specific taxpayers (see Chapter 2) and **issues** that affect multiple taxpayers (see Chapter 3).

In terms of the governance of HMRC's largest and most sensitive cases this year, we have again seen a steady flow of cases to the Tax Disputes Resolution Board (TDRB) and Commissioners, informed by advice from technical specialists and specialist advisory boards including the Transfer Pricing Board and the new Diverted Profits Board. This year we have seen more risks than in previous years being referred to the business-level case boards which consider the next tier of significant and sensitive cases. This is largely due to the closure of settlement opportunities in 2015-16, which encouraged taxpayers to approach HMRC with settlement proposals before the opportunities were withdrawn.

Where taxpayers disagree with an appealable decision that HMRC has made they can ask for the decision to be reviewed or make an appeal to an independent tax tribunal, or take both actions. Chapter 4 provides further information about statutory reviews and appeals.

Chapter 5 sets out the results of this year's review of settled cases – a systematic annual review of a small sample of cases from across the department settled in the previous year, which tests whether the appropriate governance and assurance processes were followed.

<sup>1</sup> HMRC's litigation and settlement strategy and guidance is available here: <https://www.gov.uk/government/publications/litigation-and-settlement-strategy-lss>

<sup>2</sup> HMRC considers a range of interventions to address customer behaviours and adopts the appropriate response in individual cases and categories of cases. The decision to carry out a criminal investigation is based on a number of factors, for example the nature and scale of the alleged fraud or our ability to obtain the evidence to prove the case. HMRC's published Criminal Investigation policy is available here: <https://www.gov.uk/government/publications/criminal-investigation/hmrc-criminal-investigation-policy>

<sup>3</sup> HMRC's code of governance for resolving tax disputes is available by visiting: <https://www.gov.uk/government/publications/resolving-tax-disputes>

## Types of dispute

There is huge variation in the nature of tax disputes. This arises from a range of factors including the type of tax at stake, the complexity of the taxpayer and their tax affairs, the type of underlying transactions and where the counterparties to those transactions are based, and the taxpayer's behaviour. Examples of the types of dispute that are resolved each year and how they are resolved can be found in Annex 1.

## Resolution through collaboration

The Commissioners' powers of collection and management allow them to resolve tax disputes by agreement (as well as having specific powers to resolve tax appeals by agreement) where it is cost-effective to do so. This approach is reflected in the LSS, which emphasises the need to use litigation appropriately. The LSS makes clear that HMRC should seek to handle civil disputes non-confrontationally and, no matter what the size or complexity of the risk or point at issue, work collaboratively with the taxpayer to resolve them effectively and efficiently for both taxpayers and HMRC. This approach to collaborative working is reflected in HMRC's 'Your Charter'<sup>4</sup>, which helps to set the boundaries for our relationship with customers. The Charter ensures that HMRC consistently applies the same standards and behaviours, and our performance in this respect is reported on in the 'Your Charter' annual report<sup>5</sup>.

Collaborative working may result in the production of new information which causes one or both parties to re-assess their tax analysis of the transaction, or it may help either or both parties to improve their understanding of each other's technical arguments, which may result in either or both parties revising their opinion about the tax treatment of the transactions under consideration.

The 2014-15 Tax Assurance Commissioner's annual report<sup>6</sup>, included an explanation of how HMRC seeks to resolve civil tax disputes collaboratively.

In the minority of cases where this collaborative approach has not led to a resolution, it may be appropriate to consider using alternative dispute resolution (ADR)<sup>7</sup> methods. In 2015-16 operational responsibility for ADR passed to compliance teams within the department. The operational teams have processes in place to consider and evaluate all the requests HMRC receives for ADR, and experienced facilitators are integral to considering the suitability of ADR. Where they are of the view that a case is not suitable for ADR it is referred to a governance panel for consideration.

This year the department piloted using ADR techniques to work with taxpayers and their agents to agree parameters for resolving a number of similar tax disputes. The basis for this pilot and the parameters were considered and agreed by the Business Tax Contentious Issues Panel (BT CIP). HMRC will continue to explore whether such innovative uses for ADR are suitable in relation to other issues.

The statistics in Annex 4 show the number of requests evaluated, taken forward, and resolved to agreement or removal from ADR in 2015-16. More information about ADR can be found in the 2014-15 Tax Assurance Commissioner's annual report.

<sup>4</sup> 'Your Charter' can be found here: <https://www.gov.uk/government/publications/your-charter>

<sup>5</sup> 'Your Charter' annual reports are available by visiting: <https://www.gov.uk/government/collections/your-charter-annual-reports>

<sup>6</sup> The 2014-15 TAC annual report is available here: <https://www.gov.uk/government/publications/how-we-resolve-tax-disputes-2014-to-2015>

<sup>7</sup> Further information about how to request ADR is available by visiting <https://www.gov.uk/tax-disputes-alternative-dispute-resolution-adr>

## New powers

As Parliament introduces new powers, HMRC develops and strengthens governance processes to ensure disputes continue to be resolved even-handedly and appropriately.

In March 2016, following extensive consultation with our stakeholders, the 'direct recovery of debts' power came into operation, allowing the department to recover established debts from customers' bank and building society accounts in an appropriately safeguarded fashion. The operation of this new power is expected to be reported in HMRC's Annual Report and Accounts from 2016-17 onwards.

The Diverted Profits Tax (DPT) was introduced from April 2015 to tax profits of multinational businesses which have been diverted from UK taxation through contrived arrangements. Recognising the nature and importance of the risks presented by the types of arrangement that DPT is aimed at, HMRC's strong operational focus on them and the clear need for the most robust governance in relation to these risks, the department set up a Diverted Profits Board with members consisting of experienced, senior officers from relevant compliance directorates in HMRC. It considers dispute resolution proposals in relation to all tax risks (not only DPT) arising from arrangements that have been identified as meeting the conditions for a potential DPT charge, and it makes recommendations to the appropriate case governance board on a case-by-case basis. We expect to report on the activities of the Diverted Profits Board in future years.

HMRC expects Parliament to legislate in 2016 for the large business special measures regime, which will be targeted at the minority of large businesses who persistently engage in aggressive tax planning and/or refuse to engage with HMRC in an open and collaborative way. To ensure this legislation is applied even-handedly and consistently, the department has been working to put in place an effective governance structure for when this legislation is enacted.

## Chapter 2: HMRC case governance 2015-16

Tax disputes are dealt with by HMRC's case workers who are trained tax professionals. We expect all case workers to apply the appropriate level of case governance to their work, whether that is management authorisation of particular actions or referring cases to the relevant case board for a decision.

For any dispute, the department's decision on how it should be resolved is taken by the final, appropriate, decision-maker - whether that is the Commissioners of HMRC, the TDRB, one of the business-level case boards or the case worker acting with appropriate management oversight and, where relevant, having sought appropriate advice from specialists within HMRC.

Three HMRC Commissioners make decisions about how to resolve tax disputes in the most significant and sensitive cases. When a case is referred to them, the three Commissioners consider the recommendations of the TDRB which is made up of senior representatives from business areas across HMRC including the Solicitor's Office<sup>8</sup>. The remit of the TDRB which sets out the categories of cases it considers is contained in the code of governance for resolving tax disputes.

Decisions about the next level of significant and sensitive risks sitting below those considered by the Commissioners are referred to case boards which are within our business areas but made up of senior leaders from across the department. These business-level case boards do not refer cases to the Commissioners as a matter of routine, but the Commissioners do consider a sample of these cases to assure themselves about the governance of cases they do not regularly see. Sample cases are selected in accordance with rules designed to ensure the Commissioners see a representative cross-section of cases from business-level case boards, which refer these cases directly to the Commissioners. Exceptionally directors may refer a sample case for which they have operational accountability to the TDRB prior to onward submission to the Commissioners.

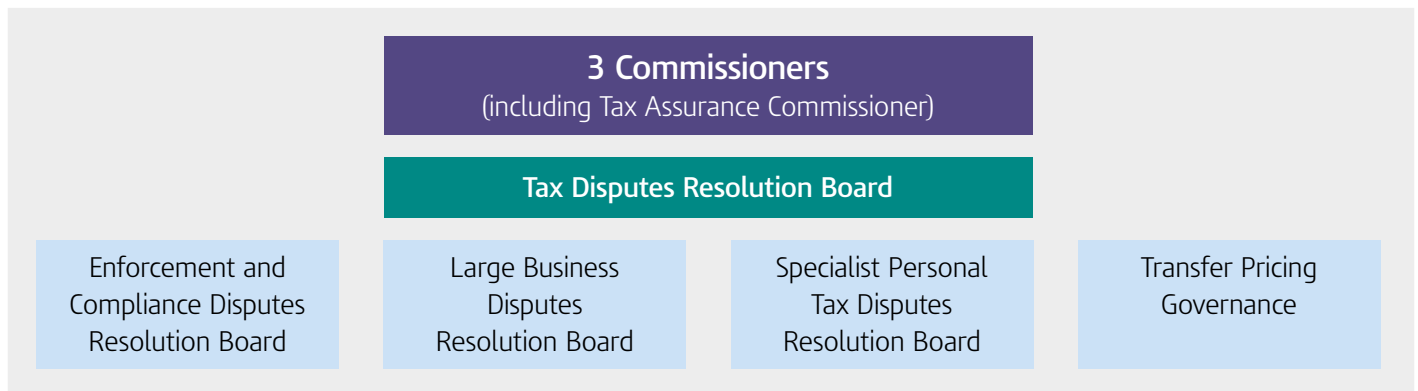
When a case goes to the Commissioners or business-level case board, the case team – supported as appropriate by technical and legal advisers – will present the case by outlining the facts and technical analysis. The Commissioners or case board may ask the case team to clarify particular points or ask questions to test certain propositions. This enables them to consider whether the taxpayer's position on the point in dispute is an acceptable basis on which to resolve it and results in a tax outcome consistent with the law. This open and transparent process provides the Commissioners and case boards with assurance about the quality of the case teams' work and provides case teams with insight into how the most sensitive and significant tax disputes are resolved.

The referral to the Commissioners or business-level case board will be made following significant work by HMRC, the taxpayer and their agent and is made when a decision is needed on whether HMRC accepts the taxpayer's position. By this point, either or both parties may have revised their initial opinion about the tax treatment of the transactions under consideration, reflecting the extensive discussions between the taxpayer and HMRC case workers, and often the case team will recommend the case board or Commissioners accept the taxpayer's position.

The Commissioners or case board will consider whether the taxpayer's position on the disputed point is in line with the LSS and whether HMRC can accept that position to resolve the dispute. If not, HMRC may undertake further work with the taxpayer to determine whether an agreed position can be reached. Where agreement cannot be found, the case will normally move towards litigation.



## HMRC case governance



### Tax Disputes Resolution Board

The TDRB held 16 meetings in 2015-16 (17 in 2014-15), considering a total of 40 referrals from case teams (65 in 2014-15). The 40 referrals comprised:

- 33 cases that were considered by the TDRB before being referred on to the Commissioners
- two additional referrals to the TDRB regarding one of the 33 cases, both of which were sent back for further work before the TDRB sent the third referral on to the Commissioners
- two cases which were referred to the TDRB by the director with operational accountability for the cases. The TDRB remit allows for such referrals where the case does not otherwise fall within the remit of the TDRB, but the director with operational accountability considers that the nature of the dispute renders it necessary or prudent to refer it. In both these instances the TDRB made a decision about the resolution of the dispute without making an onward recommendation or referral to the Commissioners
- two cases which were referred to the TDRB for guidance and advice. The TDRB remit provides that cases or risks may be referred if it is thought prudent or necessary to do so, whether or not the case otherwise falls within the remit of the TDRB. The TDRB was not asked to provide a recommendation in relation to these cases, but it did provide guidance and advice in both. These cases were not referred on to the Commissioners
- one referral to the TDRB which was sent back for further work, and was not re-submitted to the TDRB before the end of 2015-16.

We keep the TDRB remit under review to ensure it fulfils its function to advise the Commissioners about how to resolve the largest and most significant tax disputes. In 2014-15 work started on updating the TDRB remit to reflect that it will make referrals to the Commissioners where it believes a bank has not complied with the voluntary [code of practice on taxation for banks](#)<sup>9</sup>. We will publish a revised code of governance for resolving tax disputes, containing an updated TDRB remit, following the consolidation of further updates.

<sup>9</sup> Information and guidance published on the code of practice on taxation for banks can be found here: <https://www.gov.uk/government/collections/the-code-of-practice-on-taxation-for-banks>

## The Commissioners

In 2015-16 three Commissioners met 14 times (16 in 2014-15), and considered one case by email, to make decisions on 33 case referrals from the TDRB (including one sample case from a business-level case board which the director referred via the TDRB), nine sample cases sent directly to the Commissioners from the business-level case boards and a referral relating to a case heard by the TDRB in 2014-15 but sent back for further work before being referred directly to the Commissioners in 2015-16. The Commissioners saw a total of 43 referrals (60 in 2014-15).

Each meeting was attended by three Commissioners and were all chaired by the Tax Assurance Commissioner, Edward Troup, except for one meeting which was chaired by another Commissioner.

In 2015-16, four Commissioners were involved in the meetings in addition to Edward Troup: Jennie Granger (Director General, Enforcement and Compliance), Jim Harra (Director General, Business Tax), Nick Lodge (Director General, Benefits and Credits) and Ruth Owen (Director General, Personal Tax<sup>10</sup>).

The 43 referrals related to decisions with tax under consideration<sup>11</sup> of £3.2 billion (£5.2 billion in 2014-15). For each referral, the Commissioners decided whether or not to accept the taxpayer's position which may have changed over the course of the investigation (see Chapter 1).

The Commissioners accepted the position reached with the taxpayer in 20 cases, worth £2 billion (30 cases worth £3.2 billion in 2014-15). In 22 referrals, worth £1.2 billion, they rejected the taxpayer's position because they believed it was an unacceptable basis on which to resolve the dispute (26 referrals worth £1.7 billion in 2014-15). Where this happened, the case teams worked with the taxpayer to determine whether an agreed position could be reached. If that was not possible, the cases moved towards litigation. In addition, the Commissioners remitted one referral for the case team to do further work before the case is re-submitted.

The Commissioners were impressed with the high quality of the work in the cases referred to them and the standards of the case teams' presentations. However some of the cases they considered – including those referred from the TDRB and those referred as sample cases from the business-level case boards – contained missed opportunities for raising assessments to protect HMRC's position during the course of an investigation. Lines of business are reviewing why in some instances time limits have been missed and are taking positive steps to reduce the risk of missing assessing time limits in the future, for example by looking at ways to strengthen prompts to case workers to remind them to raise assessments.

Full statistics for the TDRB and Commissioners are in Annex 2.

## The Commissioners' decisions compared with the TDRB's recommendations

During 2015-16, the Commissioners accepted the TDRB's recommendation in 31 referrals (56 in 2014-15). In a further two cases the Commissioners did not agree with the recommendation from the TDRB (in one the TDRB recommended HMRC accept the taxpayer's position but the Commissioners rejected it, and in the other the TDRB recommended HMRC accept the taxpayer's position but the Commissioners remitted it for further work).

The Commissioners also accepted the TDRB's contingent recommendation in relation to a referral which had been remitted by the TDRB in 2014-15 for further work. Following that further work, the case was referred directly to the Commissioners in 2015-16.

The business-level case boards also directly referred nine sample cases to the Commissioners (with no recommendation from the TDRB), bringing the total number of referrals to the Commissioners to 43.

<sup>10</sup> Personal Tax is now known as Customer Service.

<sup>11</sup> Tax under consideration is a theoretical estimate of what the tax liabilities might be if the taxpayer fully accepted alternative tax positions across all identified tax risks. It does not take into account the strength of HMRC's or the taxpayer's arguments concerning these alternative tax positions and does not therefore represent an estimate of the actual expected tax liabilities. Rather, it is a helpful way for HMRC to quantify the maximum potential tax at stake, which is then used to set the appropriate level of case governance.

## HMRC business-level case boards

Decisions about significant and sensitive risks which do not fall within the remit of the TDRB are referred to case boards which sit within HMRC's business areas.

In 2015-16 the Specialist Personal Tax (SPT), Enforcement and Compliance (E&C) and Large Business (LB) Disputes Resolution Boards (DRBs) saw 139 referrals (62 in 2014-15). The rise in referrals reflected the closure of a number of settlement opportunities in 2015-16, which encouraged taxpayers to approach HMRC with settlement proposals before the opportunities were withdrawn, as well as the broadening in scope of these boards during 2014-15.

In 2015-16 HMRC reorganised its compliance directorates to focus activities on the risks posed by specific groups of customers. The Local Compliance directorate in Enforcement and Compliance was restructured to create two new customer compliance directorates – Individuals and Small Business Compliance (ISBC) and Wealthy and Mid-sized Business Compliance (WMBC), which also incorporated the High Net Worth Unit from SPT. HMRC also brought together its criminal and complex civil investigation teams to create a new Fraud Investigation Service (FIS) directorate – joining up the way the department responds to the most serious wrongdoing.

This reorganisation resulted in a drop in the number of referrals to the SPT DRB because it now serves a smaller proportion of the department's compliance teams. In 2015-16 the E&C DRB saw a substantial increase in the number of referrals which was primarily down to the closure of settlement opportunities.

During this period of change we put in place arrangements to ensure continuity of the governance of tax disputes but this reorganisation also provided the chance to review some aspects of our tax dispute governance, such as strengthening the memberships of the business-level case boards. We continue to review the remits of the case governance boards to ensure that they remain an effective system for taking decisions and providing assurance that sensitive and significant disputes are resolved appropriately.

We were satisfied that all of the case governance boards worked effectively and in line with their remits throughout the year. During the year three cases were identified that fell within the E&C DRB remit which had not been referred to the board at the correct point in the decision-making process. As soon as these cases came to light they were referred to the E&C DRB secretariat. The relevant directorates are working to ensure future decisions are referred at the correct point in the decision-making process.

The case which we reported on last year that should have been considered by the E&C DRB but was not referred before a decision was communicated to the customer was considered by the TDRB in 2015-16.

In 2015-16 High Risk Corporate Programme (HRCP) referrals were made to the LB DRB. The HRCP is HMRC's flagship compliance programme having contributed over £22 billion to the Exchequer since its inception in 2006. The HRCP has had a significant impact on the tax strategy of the UK's biggest corporates with Customer Relationship Managers (CRMs) across Large Business reporting a significant reduction in the use of marketed avoidance schemes. In 2015-16 HMRC refreshed its approach to the HRCP to reflect the changing behaviours of large corporates. By introducing broader case selection principles and a new selection process, the HRCP continues to tackle the highest risk corporates within the UK. Accordingly, during 2015-16 the number of cases within the programme increased from 12 to 20.

Details of the business-level case board referrals and outcomes can be found at Annex 3.

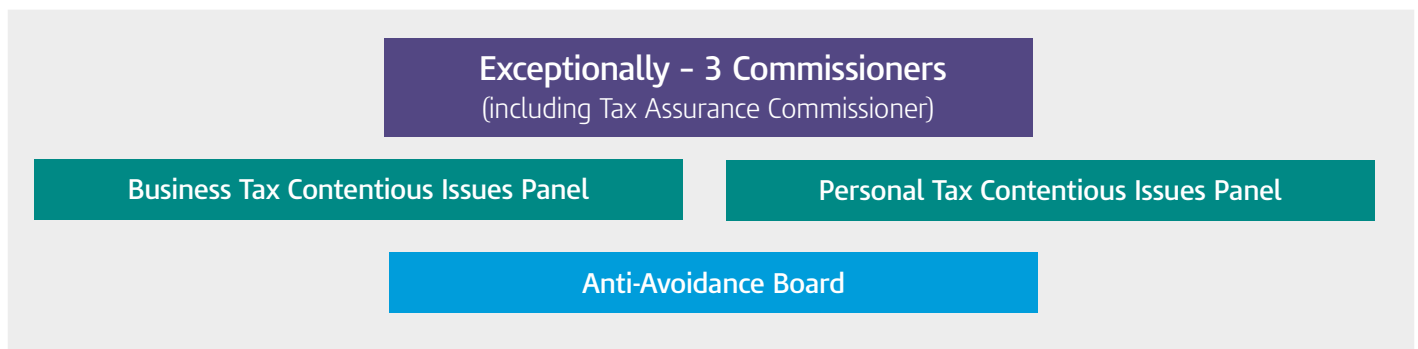
The Transfer Pricing Board makes decisions on high profile or contentious transfer pricing enquiries. It also makes recommendations to the TDRB about transfer pricing risks which fall within the TDRB's remit. In 2015-16 it considered 22 cases (28 in 2014-15).

The Transfer Pricing Board is supported by the Transfer Pricing Panel which makes decisions on transfer pricing enquiries in individual cases, including whether to open an enquiry. During 2015-16 the Transfer Pricing Panel considered 45 resolution proposals (47 in 2014-15).

## Chapter 3: HMRC issues governance 2015-16

An 'issue' is a disputed tax point that can arise in more than one case and affects multiple taxpayers. The Business Tax and Personal Tax Contentious Issues Panels (BT and PT CIPs) and the Anti-Avoidance Board (AAB) form HMRC's issues governance. These are designed to achieve consistency in and an even-handed approach to how HMRC deals with the same point across multiple taxpayers.

### HMRC issues governance



### Contentious Issues Panels

The CIPs, which bring together a wide range of internal stakeholders, decide on handling strategies for major contentious issues involving a point of law or practice which might have a significant and far-reaching impact on HMRC policy, strategy or operations, affect multiple cases and different business areas, or result in major litigation. Once a strategy has been agreed by a CIP, it must be applied consistently across all cases where the contentious issue arises. It may take many years to settle these cases and so a particular point or points of law may be uncertain for long periods.

In 2015-16 the BT CIP met eight times and considered 12 issues (eight times and 13 issues in 2014-15), including updates on one issue (following further legal advice) which had been previously considered by the panel in 2013-14.

Over the year the BT CIP heard a wide variety of issues involving income tax, Corporation Tax and VAT. Among other things, the panel considered HMRC's approach to granting retrospective approval of VAT partial exemption special methods in Fleming cases, determined a handling strategy for issues following several high-profile court decisions, decided to defend HMRC's approach to a VAT issue affecting multiple taxpayers in light of an application for judicial review, and decided that a settlement opportunity should be closed.

In 2015-16 the PT CIP met seven times (10 in 2014-15) and considered 12 referrals on 10 issues, including updates on six issues which were previously considered by the panel (14 issues in 2014-15). Two of those updates related to an issue heard for the first time in 2015-16; the others related to issues heard in earlier years.

The PT CIP agreed on handling strategies for contentious issues involving income tax, National Insurance Contributions and Inheritance Tax. Examples of issues considered included the application of the connected persons rules in particular circumstances, issues around pensions tax reliefs, the revision of guidance concerning qualifying recognised overseas pension schemes (QROPS) and the application of the Inheritance Tax rules on conditional exemption for heritage properties.

During the year no issues were referred to both CIPs jointly.

## Anti-Avoidance Board

The AAB oversees all anti-avoidance strategies in HMRC. In 2015-16 the AAB met eight times and considered 31 issues, including one issue considered via correspondence (12 times and 68 issues in 2014-15). The fall in the number of new issues considered reflects the work done by AAB in previous years to agree settlement parameters for schemes under investigation, meaning fewer referrals about those schemes were required in 2015-16, as well as a reduction in the number of new avoidance schemes notified to HMRC.

## Commissioners' decisions on issues

The Commissioners provide an additional layer of governance when CIP members cannot reach an agreed way forward, or where the CIP chair considers the issue to be so significant that the Commissioners should take the decision on HMRC's position.

During the year the Commissioners considered one referral that had been made by the CIPs jointly in 2014-15 and decided on a strategy for concluding the issue.

## Published offers

From time to time, HMRC formally publishes its position on disputed issues and invites taxpayers and their agents to resolve disputes in their specific cases on the published basis which is in accordance with the LSS. The department does this where the disputed point arises in significant numbers of cases, as a means of handling large numbers of cases as efficiently as possible and ensuring transparency about its position. It is of course open to any taxpayer to pursue appeals in their own case to a tax tribunal rather than agree to settle on the basis published by HMRC.

Employers wishing to use the Employee Benefit Trust settlement opportunity (EBTSO)<sup>12</sup> had to notify HMRC by 31 March 2015 and enter into an agreement with the department by 31 July 2015, with all amounts due under the agreement either paid by that date or with a signed time to pay agreement in place. The closure of this settlement opportunity resulted in the successful resolution of a number of tax disputes.

Taxpayers wishing to use the Contractor Loans Settlement Opportunity (CLSO)<sup>13</sup>, aimed at individuals who have used 'Contractor Loan' schemes to avoid tax on all or part of their income, were required to contact HMRC by 30 June 2015 to discuss possible settlement and to agree settlement by 30 September 2015 at the latest.

In June 2015 HMRC announced the complete closure of the Autumn Statement Settlement Opportunity (ASSO) which had been aimed at the users of a number of marketed avoidance schemes involving sideways loss relief. This followed the closure of the ASSO to users of certain tax avoidance schemes in 2014-15. Following the announcement in June, letters were issued to the users of all affected schemes and they were given around six months to register their interest in settling.

<sup>12</sup> Further information about the EBTSO is available here: <https://www.gov.uk/government/publications/employee-benefit-trusts-settlement-opportunity>

<sup>13</sup> Further information about the CLSO is available by visiting: <https://www.gov.uk/government/publications/tax-on-contractor-loans>

## Chapter 4: Reviews, appeals and litigation<sup>12</sup>

Where taxpayers disagree with an appealable decision made by HMRC they can ask for a review of the decision or make an appeal to an independent tax tribunal, or take both actions. HMRC makes a very large number of decisions each year, including more than one million concerning VAT alone, of which the most common relate to tax assessments and penalties. Only a very small proportion of these decisions attract a review or an appeal.

As the department makes better use of digital capabilities over the coming years we will explore how to make the review and appeal process as easy and intuitive as possible.

In 2015-16 HMRC worked on transferring appeals and reviews teams from lines of business to the department's Solicitor's Office to create a new legal function called Solicitor's Office and Legal Services (SOLS), which will offer an 18-month training programme for staff presenting on behalf of HMRC in front of the First-tier Tribunal.

### Reviews

The statutory review system gives taxpayers a quick and easy way to ask HMRC to review its decisions and put forward an explanation. Reviews provide an early, cost-effective opportunity to resolve disputes, and most taxpayers do not go on to submit an appeal to the tribunal. The review system is open to all and is often used by those taxpayers who do not have an accountant or an agent (87% of reviews were requested by unrepresented taxpayers, compared to 86% in 2014-15). Reviews are carried out by HMRC staff who are independent of the teams that worked the case.

Most reviews relate to late filing and late payment penalties, many of which are issued automatically when a return or payment is not received on time. HMRC may also be asked to review decisions which do not involve penalties - such as liability decisions, closure notices and refused claims. These cases often involve significant discussion between HMRC and taxpayers.

In 2015-16 more than 26,000 reviews were completed (more than 33,000 were completed in 2014-15). As in 2014-15, in 2015-16 there was a reduction in the number of reviews requested into non-VAT penalty decisions, whilst the number of reviews requested for VAT penalty cases has remained fairly constant. The drop in the number of non-VAT penalty review requests may be due to the changes to the way penalties are applied.

#### Reviews and VAT cases

Where taxpayers submit their VAT return late or pay late, the department warns them that future late returns or payments may lead to a penalty. After repeated defaults, a default surcharge penalty is issued. This penalty will be waived if the taxpayer has a reasonable excuse for the late payment or filing. The VAT penalty review process provides taxpayers with the opportunity to explain why a payment or return is late.

As VAT decisions are a significant proportion of all reviews, we have provided additional detail on these cases, including the outcome for VAT Default Surcharge reviews by quarter, in the tables in Annex 5.

<sup>14</sup> The data in this chapter relates to reviews and appeals received and settled in 2015-16 tax year. There was a pool of cases on hand at April 2015 which was added to as new requests were received. As cases were settled they were removed from the pool.

## Appeals

It is beneficial for taxpayers and HMRC to resolve disputes without having to go to a tribunal, but there will always be cases where the parties cannot agree and a tribunal or court decision is needed. For a case to go to the tribunal, the taxpayer must appeal an appealable decision that HMRC has made.

When a taxpayer appeals an appealable decision, the presumption is the dispute will proceed towards litigation. A relatively small number of appeals reach the tribunal because many disputes are settled or withdrawn before the hearing for a variety of reasons, including where HMRC accepts the taxpayer's grounds of appeal or the taxpayer subsequently adopts a view that HMRC accepts. The majority of cases that do reach the tribunal relate to disputes about the facts of a particular case. However, every year there will be a number of technical disputes between HMRC and taxpayers about how to interpret and apply legislation. Some of these disputes have wider implications and may affect other cases. These disputes are often taken through to the higher courts.

In 2015-16 the tribunal notified HMRC of 5,161 tax appeals that it received<sup>15</sup> (5,077 in 2014-15). During the year 3,917 appeals were settled either by a formal hearing, or by agreement before the hearing (3,468 in 2014-15). The majority of appeal cases that have not been closed are currently within tribunal directions, awaiting hearing or on hold awaiting a decision in a related case. Whilst we cannot pinpoint a single reason for the growing stock of cases on hand, it may be due in part to the increasing number of appeals being allocated by Her Majesty's Courts and Tribunals Service (HMCTS) to categories of appeal which require more lead time and input from both taxpayers and HMRC before they are resolved. Of those appeals which were heard by the tribunal in 2015-16 HMRC won 75% (80% in 2014-15). Further information about tribunal hearing outcomes is in Annex 5.

During the same period the tribunals and courts issued decisions in 26 avoidance cases, with 23 decided in HMRC's favour – protecting tax revenue of approximately £3.1 billion (34 cases, 28 in HMRC's favour and £1.6 billion in 2014-15). There are over 30 avoidance cases in litigation. We are gearing up to triple the flow of avoidance cases into litigation (or to be litigation ready) to deal with the stock of avoidance cases where litigation is necessary because taxpayers do not agree with us that a particular avoidance scheme does not work. How quickly cases are scheduled to be heard is a matter for HMCTS and it is working to increase resources to respond to the planned increase in flow.

Further details about the outcome in tax avoidance litigation cases can be found on [GOV.UK](https://www.gov.uk)<sup>16</sup>

More information about reviews and appeals figures for 2014-15 and 2015-16 can be found at Annex 5.

<sup>15</sup> These figures do not take account of appeals that have been sent to HMRC without also being referred to the tribunal.

<sup>16</sup> See [www.gov.uk/government/publications/tax-avoidance-litigation-decisions](https://www.gov.uk/government/publications/tax-avoidance-litigation-decisions)

## Chapter 5: Review of governance processes in settled cases

During the year HMRC's Internal Audit worked with operational areas across the department<sup>17</sup>, to review a sample of our settled cases. These checks determine whether appropriate governance and assurance procedures were followed in a sample of civil tax disputes that were settled in the previous year.

The review covers several hundred cases and provides a good indication of how procedures are being followed within operational areas across HMRC. Because the disputes tested vary in size and complexity they are subject to a range of governance and assurance procedures, from decisions taken by case workers under line management oversight to business-level case boards or the Commissioners.

Governance and assurance procedures support the responsibility of HMRC's operational areas to resolve cases on a basis consistent with the LSS. It is not the role of the settled case reviews to reopen the points that were in dispute in the case. Rather, they focus on whether processes have been properly followed and on identifying areas where we can make improvements in the way we work cases.

Processes are tested that were in place at the time the case was worked. The review identifies opportunities to drive up standards through improvements to existing processes and the introduction of new ones. It also identifies best practice, which is then shared between operational areas. Operational areas provide assurance to HMRC's Internal Audit that follow-up actions are implemented and have the intended impact, and progress made against the recommendations is monitored throughout the year.

In 2015-16 more quality functions in operational areas assumed greater responsibility for the programme of testing and reporting. The level of responsibility assumed by the various quality functions depended on their level of maturity and experience. Internal Audit provided quality functions with education and support, and ensured that the programme was delivered effectively by providing independent assurance of the testing and the results that were reported by the different operational areas. In 2016-17 all quality functions in operational areas will assume full responsibility for testing and reporting, with Internal Audit continuing to provide independent assurance.

In 2015-16 quality functions and Internal Audit tested settled cases using a common set of 'key governance questions' as well as questions about quality which may impact on governance, such as delay, to ensure continued comparability of testing and reporting between operational areas and year-on-year.

During the year the quality functions worked closely with their operational areas to embed process and governance improvements, driven by the results of previous settled case reviews and other quality assurance work. New initiatives introduced by operational areas included:

- improved quality control of submissions to case governance boards
- improved consistency of penalty processes, including authorisations
- a thorough review of bespoke systems used to record case outcomes and the governance of such systems.

The department also launched a new learning product focusing on the LSS, ADR and tax dispute governance, aimed at its approximately 18,000 tax professionals.

<sup>17</sup> Large Business in Business Tax, Specialist Personal Tax in Personal Tax and the Fraud Investigation Service, Counter-Avoidance, Individuals and Small Business Compliance and Wealthy and Mid-sized Business Compliance in Enforcement and Compliance.



We expect case workers to maintain high standards, including the application of our governance and assurance procedures. We know, however, that there will always be scope for improving tax dispute resolution processes, so the annual review helps to identify any weaknesses in arrangements and improvements needed. We continue to identify existing and new areas of compliance work that fall within the scope of this programme and in 2015-16 some types of cases which had not been tested in previous years were brought within the scope of the review, so year-on-year comparisons should be treated with caution.

## Overview of findings

In 2015-16 the programme tested and reported on 448 cases that were settled in 2014-15, from across the operational areas of the department (402 cases were tested in 2014-15).

This year's testing identified a number of strengths, including:

- good supporting evidence of initial risk assessment in cases
- excellent customer relationships across all business areas enabling successful collaborative working
- improved penalty audit trails, including authorisation
- high standards of contact with taxpayers – both initially when the case-worker issues relevant guidance, and at the end of a tax dispute when the case worker notifies the taxpayer of the outcome of the tax dispute.

The results show that 77% of cases (347 out of 448) fully adhered to assurance and governance processes (80% in 2014-15). In 21% of cases (93 cases) processes were followed but with scope for some improvement (18% in 2014-15), and in 2% (eight cases) we found one or more aspects that did not meet our expected standards (2% in 2014-15).

There continues to be an overall high level of compliance with governance and case-handling standards, but the testing also identified areas where improvement activities are being focused. These areas are similar to those identified in previous years:

1. Clarifying and reminding case workers of the stages in a case when management authorisations need to be sought, including settlements and penalties, and exploring whether it is possible to streamline case closure procedures.
2. Taking action to improve the management checks throughout the lifetime of a case, including:
  - a. capturing evidence of taxpayer behaviours in relation to penalties
  - b. making sure cases are appropriately referred to governance boards
  - c. ensuring yield is correctly recorded
  - d. effectively tackling delays by HMRC and taxpayers.
3. Clarifying standards for good audit trails, including meeting notes and decisions taken during the lifetime of a case.

By reporting through the year, Internal Audit has enabled operational areas to take action as soon as possible, including updating guidance where weaknesses have been identified. Some recommendations to come out of the testing in 2015-16 were implemented by operational areas during the year, and the remainder will be implemented in the coming year. Operational areas have used the reports to increase the visibility of governance and quality concerns at senior management levels, establishing clear lines of responsibility to drive improvements.

# Annex 1: Tax Dispute resolution case studies

These case studies are drawn from experience in actual cases, but do not describe the position of any specific taxpayer. They are chosen to illustrate the variety of risks and sizes of case that HMRC tackles, which require differing approaches depending on the risks involved. Taken together they represent the broad range of tax disputes that may arise and how they are resolved.

## High Risk Corporates Programme changing behaviour of multi-national enterprise

Over many years a large multi-national enterprise (MNE) with an aggressive tax strategy entered into numerous complex transactions with the intention of avoiding UK tax of more than £100 million. These transactions were aimed at avoiding Corporation Tax, VAT and PAYE on behalf of the taxpayer's employees.

Recognising the risk that these transactions had been structured with the aim of achieving benefits that were not in accordance with Parliament's intentions, HMRC's case team – led by the Customer Relationship Manager (CRM) – opened enquiries. The case team worked collaboratively with the taxpayer to determine the facts in relation to each transaction – meeting with the MNE on a number of occasions to determine how the transactions were structured and the steps the taxpayer had taken.

The enquiries were into extremely complex, technical tax avoidance and it took a long time to establish all the relevant facts in relation to some of the transactions that the business had undertaken. Due to the varied nature and complexity of these transactions, the strands of enquiry progressed at different speeds. As a result HMRC considered that the MNE was a suitable candidate for the High Risk Corporates Programme (HRCP) – a structured and accelerated approach involving high level board-to-board engagement to rapidly progress substantial disputes and address poor customer behaviour.

An enquiry coordinator was appointed to lead the project and coordinate a team including the CRM, tax specialists, solicitors, accountants and technical specialists from across HMRC. The project team reviewed each issue within the project and then met with the business on several occasions to rapidly complete the fact-finding for each risk and better understand each other's position. The project team set out HMRC's technical analysis of the transactions leading the taxpayer to move considerably from their initial position. Subsequently the MNE proposed that it would concede all issues other than those where HMRC believed it had limited chance of success.

The proposal was referred to the TDRB, which questioned the case team about the investigation and considered the taxpayer's position in relation to each risk before recommending to the Commissioners that the taxpayer's proposal should be accepted. The case team then met with the Commissioners to explain the background to the case, the various risks that had been investigated and the taxpayer's proposal in relation to each of those risks. The Commissioners considered each of the risks independently and agreed to the taxpayer's proposal.

The collaborative engagement between HMRC and the business meant that a number of legacy risks which had been investigated over many years were resolved within a nine-month window. The board-to-board engagement, which took place as a result of the HRCP, helped to improve the MNE's understanding of HMRC's expectations in relation to its tax affairs. As a result, the working relationship between HMRC and the business has become more open and transparent, enabling more issues to be addressed in real time and the customer adopting a lower risk tax strategy for the future. HMRC has used lessons learned from this case and others worked within the HRCP to update training material designed to improve the capability of caseworkers and enquiry coordinators.

## Change of behaviour: PAYE compliance

An international company with a poor record of compliance with its obligations under PAYE issued a large number of shares to senior executives as part of their remuneration package. The company sought assurance that HMRC agreed with its valuation of the shares for PAYE purposes.

HMRC's share valuation specialists found that the company had used a low share valuation when calculating the PAYE due on the share award, compared to the price achieved on the sale of company shares to an independent third party shortly after the share award. Using a low valuation had delivered a significant tax advantage to both the company and its senior employees. Following eight months of collaborative working the company accepted both that it had made an error in its return to HMRC and HMRC's revised share valuation.

The case team continued to gather facts so that it could consider whether the company was liable for additional employers' NICs on the share award and whether a penalty was due for the error in the company's return. Based on the facts, the case team concluded that additional NICs were due because the company had not arrived at a 'best estimate' share valuation for tax purposes and a penalty was due because it had acted carelessly.

The case fell within the remit of the E&C DRB so the case team presented the case to the board, setting out the issues at stake and HMRC's technical analysis of the facts. The E&C DRB tested the case team's analysis and agreed that the uplifted share valuation should be used for tax purposes, additional employers' NICs were due and the company was liable to a penalty for failing to take reasonable care when it submitted the tax return containing the valuation error. The case team explained HMRC's conclusions to the taxpayer, and the employees paid the additional PAYE due, the company paid the additional NICs and a substantial penalty. Since the investigation the company has complied with its PAYE obligations and improved its communication with HMRC.

As a result of this case HMRC's share valuation specialists have improved the way in which similar valuations are handled. In addition lessons learned from this case have been shared with other teams in HMRC – building the department's capability to interrogate the data we hold to find cases demonstrating similar risks.

## Improving HMRC guidance: Excise Duty

A few years ago HMRC approved a company to deal in duty-suspended excise goods on the basis that the warehouse keeper and the premises met the legislative 'fit and proper' test for holding goods with suspended Excise Duty and VAT. Following this initial approval – and as it does in all such cases – HMRC monitored the taxpayer's compliance with its obligations.

As a result, HMRC identified that the volume of consignments that the taxpayer was exporting increased significantly over a very short period of time. Due to the potential amount of tax at stake, HMRC caseworkers decided that the taxpayer presented sufficient risk to the Exchequer to warrant a visit. During the visit to the company's premises the caseworkers noted several breaches of the Excise Duty regime including goods leaving the warehouse before the end of the mandatory holding period. The caseworkers also found that the company was not carrying out due diligence in relation to its suppliers. This non-compliance created an excise duty point and the goods were liable to forfeiture.

The case team was aware that HMRC needed to 'protect' its position by issuing Excise Duty assessments within a statutory time limit, so it issued the taxpayer with assessments to protect the Exchequer. The case fell within the remit of the E&C DRB, so the case team presented the case and asked the board members to consider whether the Excise Duty assessments were appropriate and correct. Following rigorous questioning of the case team, the E&C DRB approved the Excise Duty assessments that had been issued and a statutory penalty on the basis that the trader had handled goods which were subject to unpaid Excise Duty. The meant the case could be closed within 15 months of the visit to the company's premises.

During the meeting the E&C DRB probed the case team about the guidance available for case workers in relation to issuing assessments to protect HMRC's position in such cases. The good practice identified in this case combined with lessons learned from similar cases, has helped HMRC to refresh and clarify its guidance for case workers about when and how to issue assessments in similar cases.

## VAT intervention: suspended penalty and change in behaviour

One of the ways in which HMRC focuses its compliance activity is to use a project-based approach to identify taxpayers who may present a risk to the tax system. HMRC's 'rapidly expanding business project' aims to identify those businesses which have grown quickly and – as a result – may no longer have adequate internal systems. This project identifies businesses at an early stage that present sufficient risk to the Exchequer to warrant a visit to help them improve the robustness of their internal systems and procedures.

One of the taxpayers identified by this project was in the manufacturing sector, had secured a major contract with a large customer and had grown rapidly, presenting a VAT-specific risk. HMRC opened an intervention and the case worker carried out a number of standard checks including build-up of the VAT account, export evidence, lease cars and business entertainment.

These simple tests enabled the caseworker to identify small errors created by an incorrect spreadsheet formula. The spreadsheet had been used by the business from its inception and because the business had grown rapidly it was no longer fit for purpose. The caseworker educated the business how to complete the calculation correctly and recommended using a more robust accounting package.

The case worker also identified that the business had outsourced part of its invoice accounting systems to a subsidiary based in another EU state. Due to a lack of knowledge this subsidiary had incorrectly processed the invoices and not correctly applied the HMRC requirement for 50% of the cost of leasing cars to be disallowed for the last four years.

Having explained the errors to the taxpayer, how they had come about and what the business could do to rectify the situation in the future, the caseworker issued an assessment to recoup the over-claimed input tax. The case worker's manager also authorised the case worker to issue a penalty to the taxpayer on the basis that the inaccuracies were the result of the taxpayer's careless behaviour. The penalty was suspended on the conditions that the taxpayer rectified its internal systems to prevent the errors from happening again and it filed all its returns on time during the suspension period.

From the date HMRC made initial contact with the taxpayer, this case took approximately three months to resolve. It represents one of approximately 10,500 VAT interventions that HMRC carries out each year. Where case workers and their managers identify best practice or learn lessons with wider application, they share with strategic leads who disseminate those lessons to other teams carrying out similar work.

## Mediation in a High Net Worth Unit case

A CRM in HMRC's High Net Worth Unit (HNWU), which deals with the often very complex tax affairs of the richest people in the UK, identified that certain transactions undertaken by one of their customers presented a potential tax risk. The CRM opened appropriate enquiries to establish the facts in relation to the risk.

Once the majority of facts were established the CRM and taxpayer were unable to agree the tax position, so the taxpayer requested ADR. HMRC's ADR panel considered this request and accepted it.

As a result a trained mediator in HMRC attended a two-hour preliminary meeting with the taxpayer and their advisers. At this meeting the mediator used alternative dispute resolution (ADR) techniques to clarify some of the facts which were still under dispute. The mediator then presented their findings to the HMRC case team and the dispute was put on a much clearer footing.

Subsequently the taxpayer and the CRM attended a mediation day with the HMRC mediator. This meeting clarified the remaining areas of confusion, explored how to settle the dispute, and enabled both sides to explore past difficulties and misunderstandings in a positive environment. The use of "time out" periods in private meetings allowed for reflection and understanding to develop in a less pressured way. As a result both sides agreed on the resolution of this long-standing tax dispute, avoiding costly litigation. Following referral to the HMRC trained mediator, the case was settled within a week.

This case study illustrates the benefit to taxpayers and HMRC of using ADR in appropriate cases. When a successful ADR application is made, HMRC aims to resolve the dispute within 150 days of receiving the initial application. The ADR process is designed to resolve disputes collaboratively and in accordance with the LSS, save on litigation costs for the taxpayer and HMRC, free up HMRC's case worker resource and encourage more open and transparent relationships to reduce the likelihood of lengthy and costly disputes in the future.

## Multi-national PAYE risk

HMRC identified the risk that multi-national businesses may not have robust systems and processes in place to ensure compliance with the PAYE obligations associated with Short Term Business Visitors (STBVs) – employees of an international business who are tax resident overseas but spend a few days working in the UK for the benefit of the UK employer. A PAYE obligation can arise in relation to these individuals if they come from a country with which the UK does not have a tax treaty or they normally work in an overseas branch of the UK company.

HMRC's operational and technical teams worked collaboratively on a project to identify taxpayers who might not have correctly operated PAYE for STBVs. As a result HMRC identified a large multi-national business operating in a global industry with a number of subsidiaries and branches in many countries and whose UK company appeared to operate low levels of STBV-related PAYE compared to similar businesses in the same sector.

Following initial contact from HMRC, the company engaged with its tax advisers to undertake a thorough review of its systems and processes. This review highlighted considerable system failures which had resulted in the company's failure to operate PAYE for large numbers of STBVs working in the UK who had either come from non-treaty countries or who normally worked in an overseas branch. Subsequently the company made a disclosure to HMRC of the PAYE due for the previous four years – the statutory period of time that HMRC can assess where there has been an under-assessment of tax if the error was made despite taking reasonable care.

Because assessing time limits are extended if an error is due to the taxpayer's careless or deliberate behaviour, the HMRC case team met with the company and their tax advisers to discuss the disclosure and gain a better understanding of the behaviours relating to the failure to operate PAYE. Based on the facts established at the meeting, the case team considered that the errors made by the company were as a result of a failure to take reasonable care. This meant there was a six year 'extended time limit' for issuing assessments, so the case team issued formal assessments for these additional two years. The case team explained to the company that it was taking this action to 'protect' HMRC's assessing position. This helped the company to understand why HMRC took this action and it encouraged the company to continue to work collaboratively with the case team.

To more fully test the disclosure that had been made and to gain a greater certainty over the disclosed figures, HMRC asked the company to contact a sample of their STBVs to ensure the data used was correct. As a result of this exercise, further PAYE liabilities in respect of the STBVs already included in the disclosure were identified.

The company accepted it had not taken reasonable care in relation to operating PAYE for the STBVs from non-treaty countries. However, it presented evidence demonstrating that it had taken reasonable care in relation to the STBVs from overseas branch offices. This evidence was considered by HMRC's technical specialists and the Large Business Penalties Consistency Panel, both of which agreed that the evidence supported the company's contention. The case team then vacated the assessments that it had raised in connection with the STBVs from branch offices.

The collaborative approach taken by the HMRC case team and the taxpayer meant that both were able to agree the resultant PAYE liability, penalties and interest due within two years, without resorting to litigation. In accordance with the relevant legislation, HMRC suspended the penalty for careless behaviour connected to the PAYE liability for the STBVs from non-treaty countries. This gave the company an incentive to improve its systems to change its behaviour and support future compliance. As a result the company introduced a robust system and a dedicated team to track all its STBVs as well as a separate PAYE scheme for this class of employees to improve compliance with its PAYE obligations in the future.

# Annex 2: Tax Disputes Resolution Board and Commissioner referrals in 2015-16

Chapter 2 provides narrative which should be read in conjunction with these figures.

## Tax Disputes Resolution Board

### Outcomes of referrals

	2015-16	2014-15
<b>Total referrals to the TDRB</b>	<b>40</b>	<b>65</b>
TDRB recommended acceptance of the taxpayer position and referred on to the Commissioners	17	30
TDRB recommended rejection of the taxpayer position and referred on to the Commissioners	16	23
TDRB recommended acceptance with conditions and referred on to the Commissioners	0	1
<b>Total referred to the Commissioners</b>	<b>33</b>	<b>54</b>
Seen by the TDRB under HRCP and no referral required*	0	3
TDRB remitted for further work before re-referral	3	7
Guidance given and not referred to Commissioners	2	0
Decision taken on case and not referred to the Commissioners (director referral)	2	0
<b>Total not referred to the Commissioners</b>	<b>7</b>	<b>11**</b>

\* During 2014-15 HRCP referrals started to be made to the LB DRB rather than the TDRB.

\*\* This includes one referral that was heard by the TDRB but then re-heard by the TDRB in a different form before it was referred to the Commissioners. Only the revised referral was considered by the Commissioners.

### Type of referral

	2015-16	2014-15
£100 million plus tax	31	48
£500 million plus adjustment	0	0
HRCP case	0	3
Novel and unusual	1	2
Sensitive case	3	8
Sensitive risk	0	0
Sample case*	0	4
Director referral	3	0
Advisory	2	0

\* During 2014-15 we changed the process for referring sample cases to the Commissioners. Sample cases are now referred directly to the Commissioners by the business-level case boards and are no longer initially referred to the TDRB. Exceptionally directors may refer a sample case for which they have operational accountability to the TDRB prior to onward submission to the Commissioners. In 2015-16 there was one such case which has been recorded as a 'director referral'.

## Commissioners' case decisions

### Outcomes of referrals

	2015-16	2014-15
<b>Total referrals to the Commissioners</b>	43	<b>60</b>
Taxpayer position accepted	20	30
Taxpayer position rejected	22	26
Taxpayer position accepted with conditions	0	2
Commissioners remitted	1	2

### Type of referral

	2015-16	2014-15
£100 million plus tax	29	44
£500 million plus adjustment	0	0
Sensitive case	3	7
Sensitive risk	0	0
Sample case	9	7
Novel and unusual	1	2
Director referral	1	0

### Tax under consideration in the decisions referred to the Commissioners (£million)

	2015-16	2014-15
Where the taxpayer position was accepted	2,003	3,189
Where the taxpayer position was rejected	1,181	1,657
Where the taxpayer position was accepted with conditions	0	349
<b>Total</b>	<b>3,184</b>	<b>5,195</b>

The tax under consideration in the referrals remitted for further work was £0 million in 2015-16 (£21 million in 2014-15).

The Commissioners decide whether a proposal for resolving a tax dispute is acceptable: the figures quoted here are for the value of the tax at issue in the disputes on which decisions were made. Any additional tax revenue to be accounted for as a result of the decision forms part of the amounts reported by the business area responsible for the case. These figures do not represent additional tax collected over and above business area figures.

Some referrals can include a significant number of risks for resolution, potentially over a number of years.

## Commissioners' decisions on issues - referrals from the Contentious Issues Panels

The Commissioners provide an additional layer of governance when CIP members cannot reach an agreed way forward, or where the CIP chair considers the issue to be so significant that the Commissioners should take the decision on HMRC's position.

During the year the Commissioners considered one referral that had been made by the CIPs jointly in 2014-15 and decided on a strategy for concluding the issue.

### Referrals to the Commissioners

	2015-16	2014-15
Potential settlement position accepted	1	0
Potential settlement position accepted with conditions	0	0
Potential settlement position rejected	0	1
Issue remitted for further work	0	0



# Annex 3: Cases seen by the business-level case boards in 2015-16

## Enforcement and Compliance Dispute Resolution Board

	2015-16	2014-15
<b>Total referrals to the E&amp;C DRB</b>	<b>89</b>	<b>16</b>
Taxpayer position accepted	36	6
Taxpayer position accepted with conditions	0	0
Taxpayer position rejected	38	5
Board remitted for further work before re-referral	10	3
Referral sent to the Commissioners as a sample case	3	2
Board provided advice and guidance (no decision sought)	2	0

## Large Business Dispute Resolution Board

	2015-16	2014-15
<b>Total referrals to the LB DRB</b>	<b>40</b>	<b>30</b>
Taxpayer position accepted	13	12
Taxpayer position accepted with conditions	2	0
Taxpayer position rejected	11	6
Board remitted for further work before re-referral	1	1
Referral sent to the Commissioners as a sample case	4	4
HRCP case management	9	7

## Specialist Personal Tax Dispute Resolution Board

	2015-16	2014-15
<b>Total referrals to the SPT DRB</b>	<b>10</b>	<b>16</b>
Taxpayer position accepted	6	9
Taxpayer position accepted with conditions	0	0
Taxpayer position rejected	1	1
Board remitted for further work before re-referral	1	3
Referral sent to the Commissioners as a sample case	2	3

# Annex 4: Alternative Dispute Resolution referrals in 2015-16

Figures for 2014-15 are in brackets<sup>18</sup>.

	Enforcement and Compliance <sup>19</sup>	Large Business	Totals
Cases that have applied for ADR <sup>20</sup>	570 (494)	11 (5)	581 (499)
Cases rejected by Panel and did not proceed to ADR	146 (101)	4 (0)	150 (101)
Cases awaiting ADR decision	45 (37)	4 (5)	49 (42)
Active cases <sup>21</sup>	143 (184)	5 (5)	148 (189)
Cases resolved successfully (fully or partially) <sup>22</sup>	261 (216)	1 (0)	262 (216)
Cases proceeding to litigation beyond ADR <sup>23</sup>	15 (16)	0 (0)	15 (16)
Success rate (%) <sup>24</sup>	95 (93)	100 (n/a)	95 (93)

<sup>18</sup> Following further assurance activity, some of the figures for 2014-15 have been restated. We have now established improved quality assurance processes for the figures to ensure they are accurately reported.

<sup>19</sup> In 2015-16 the SPT and Large and Complex and SME, individuals and CITEX teams merged into one E&C team. The figures for these separate teams in 2014-15 have been amalgamated for the sake of comparison.

<sup>20</sup> The restated figures for E&C cases that applied for ADR in 2014-15 include cases referred directly to the central ADR team. Cases are no longer referred directly to the central ADR team.

<sup>21</sup> The number of 'active cases' include those carried forward from the previous period.

<sup>22</sup> Dispute resolved satisfactorily (without recourse to litigation or significantly clarified prior to litigation).

<sup>23</sup> Cases that were closed without being resolved or significantly affected through ADR.

<sup>24</sup> The number of cases resolved successfully (fully or partially) as a percentage of the number of cases accepted for ADR which were closed during the year.

# Annex 5: Overview of dispute outcomes at review and appeal in 2015-16

This annex contains information about reviews of, and appeals against, HMRC's tax decisions in 2015-16 and includes comparisons with published figures for previous years, where appropriate.

## Review outcomes<sup>25</sup>

### All non-penalty cases (decisions excluding penalty decisions)

	2015-16		2014-15	
Upheld in HMRC favour: review complete	2,467	68.2%	2,875	66.7%
Deemed upheld in HMRC favour: time limit expired	10	0.3%	15	0.3%
Varied	351	9.7%	413	9.6%
Cancelled	786	21.7%	1,008	23.4%
<b>Total</b>	<b>3,614</b>		<b>4,311</b>	

### VAT penalty cases<sup>26</sup>

	2015-16		2014-15	
Upheld in HMRC favour: review complete	5,699	35.0%	5,834	34.7%
Deemed upheld in HMRC favour: time limit expired	12	0.1%	3	0.0%
Varied	2,101	12.9%	1,920	11.4%
Cancelled	8,472	52.0%	9,032	53.8%
<b>Total</b>	<b>16,284</b>		<b>16,789</b>	

### Other penalty cases

	2015-16		2014-15	
Upheld in HMRC favour: review complete	3,190	48.2%	7,572	60.5%
Deemed upheld in HMRC favour: time limit expired	5	0.1%	37	0.3%
Varied	106	1.6%	163	1.3%
Cancelled	3,313	50.1%	4,750	37.9%
<b>Total</b>	<b>6,614</b>		<b>12,522</b>	

<sup>25</sup> The 2014-15 TAC report published that 5,954 non-penalty review cases were resolved. HMRC has since identified that 1,643 penalty review cases were incorrectly included in this figure. The "other penalty" review cases (which are all penalty cases excluding VAT cases) were understated by the same amount. The figures for 2014-15 in this annex have been corrected accordingly.

<sup>26</sup> The number of VAT penalty decisions cancelled on review represents a small proportion, just over 1%, of the total number of VAT penalties issued.

## Further breakdown of VAT cases

### VAT non-penalty cases – by quarter

	2015-16				2014-15			
	Q1	Q2	Q3	Q4	Q1	Q2	Q3	Q4
Upheld in HMRC favour: review complete	246 53.8%	262 70.1%	305 68.7%	289 69.3%	317 65.2%	319 58.1%	412 65.0%	277 62.2%
Deemed upheld in HMRC favour: time limit expired	1 0.2%	1 0.3%	1 0.0%	1 0.2%	0 0.0%	1 0.2%	0 0.0%	1 0.2%
Varied	62 13.6%	39 10.4%	32 7.2%	44 10.6%	42 8.6%	63 11.5%	54 8.5%	1 13.7%
Cancelled	148 32.4%	72 19.3%	107 24.1%	83 19.9%	127 26.1%	166 30.2%	168 26.5%	106 23.8%
<b>Total closed</b>	<b>457</b>	<b>374</b>	<b>444</b>	<b>417</b>	<b>486</b>	<b>549</b>	<b>634</b>	<b>445</b>
<b>Total received</b>	<b>422</b>	<b>430</b>	<b>469</b>	<b>421</b>	<b>507</b>	<b>651</b>	<b>445</b>	<b>449</b>

### VAT penalty cases – by quarter

	2015-16				2014-15			
	Q1	Q2	Q3	Q4	Q1	Q2	Q3	Q4
Upheld in HMRC favour: review complete	1,483 36.3%	1,432 34.6%	1,515 36.3%	1,269 32.7%	1,162 32.6%	1,340 34.9%	1,640 36.6%	1,692 34.5%
Default Surcharge upheld	1,435 36.0%	1,397 34.3%	1,455 35.7%	1,234 32.4%	1,136 32.4%	1,312 34.6%	1,615 36.5%	1,659 34.2%
Deemed upheld in HMRC favour: time limit expired	0 0.0%	6 0.1%	4 0.1%	2 0.1%	0 0.0%	0 0.0%	3 0.0%	0 0.0%
Default Surcharge deemed upheld	0 0.0%	6 0.1%	4 0.1%	2 0.1%	0 0.0%	0 0.0%	3 0.1%	0 0.0%
Varied	552 13.5%	510 12.3%	542 13.0%	497 12.8%	426 11.9%	434 11.3%	523 11.7%	537 10.9%
Default Surcharge varied	523 13.1%	490 12.0%	523 12.8%	472 12.4%	402 11.5%	427 11.3%	511 11.5%	522 10.8%
Cancelled	2,049 50.2%	2,192 52.9%	2,114 50.6%	2,117 54.5%	1,980 55.5%	2,063 53.8%	2,312 51.6%	2,677 54.6%
Default Surcharge cancelled	2,026 50.9%	2,177 53.5%	2,095 51.4%	2,095 55.1%	1,969 56.1%	2,048 54.1%	2,300 51.9%	2,669 55.0%
<b>Total closed</b>	<b>4,084</b>	<b>4,140</b>	<b>4,175</b>	<b>3,885</b>	<b>3,568</b>	<b>3,837</b>	<b>4,478</b>	<b>4,906</b>
<b>Total received</b>	<b>3,879</b>	<b>4,178</b>	<b>3,625</b>	<b>3,917</b>	<b>3,559</b>	<b>4,661</b>	<b>4,216</b>	<b>5,036</b>

# Appeals

## Outcome of appeals at First-tier Tribunal

	2015-16		2014-15	
In HMRC's favour	782	75.1%	1,050	80.6%
Partially in HMRC's favour	72	6.9%	84	6.4%
In taxpayer's favour	187	18.0%	169	13.0%
<b>Total</b>	<b>1,041</b>		<b>1,303</b>	

These figures are not comparable with those published by Her Majesty's Courts and Tribunals Service (HMCTS). This is because HMRC data does not include appeals regarding decisions on matters such as payment of appealed tax and information notices, those made prior to 1 April 2009, or those where information has been requested by HMCTS.

Previously published figures were as accurate as could be at that point in time. These may change slightly due to record duplication or late keying of review or appeal cases into the database.

Numbers may not total 100% due to rounding.



# HM Revenue & Customs

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