HM Revenue
& Customs

Large Business compliance – enhancing our risk assessment approach

Consultation document

Publication date: **13 September 2017**

Closing date for comments: **6 December 2017**

Subject of this consultation:	The Business Risk Review (BRR) is a core feature of how HMRC manages the tax compliance of the largest businesses. Customer Relationship Managers (CRMs) currently conduct a periodic BRR of each large business, assessing their risk profile and placing them into a binary 'low risk'/'non-low risk' category. This assessment is a key determinant of the level of scrutiny and resource the business receives from HMRC. The process, while still effective, has undergone limited change since its introduction 10 years ago. We are seeking your views on how a refreshed BRR approach, potentially with more (e.g. 4-5) risk categories tailored to the tax risks encountered in the large business population, will support: i) HMRC maintaining a shift in large business compliance behaviours; and ii) providing greater clarity and confidence for large businesses - for example, the BRR could place businesses into a low risk, low-moderate risk, high-moderate risk, high risk and significant risk category.
Scope of this consultation:	At the 2017 Spring Budget, the Government confirmed its intention to consult on enhancing HMRC's risk assessment approach, driving further behavioural change in the large business population to improve large business tax compliance.
Who should read this:	We would like to hear from businesses, individuals, tax advisers, professional bodies and any other interested parties.
Duration:	The consultation will run for 12 weeks from 13 September 2017 to 6 December 23:59 on 2017
Lead official:	Andrew Barton, Large Business, HMRC
Questions:	Please answer as many questions as you deem applicable.
How to respond or enquire about this consultation:	Written responses should be submitted by 23:59 on 6 December 23:59 on 2017 either: by email to: largebusinessconsultation.mailbox@hmrc.gsi.gov.uk Or by post to: Andrew Barton, HM Revenue and Customs, Large Business Director's Private Office, 100 Parliament Street, London, SW1A 2BQ General telephone enquiries: 03000 578878
Additional ways to be involved:	HMRC welcomes meetings with interested parties to discuss these Proposals. Additional regional meetings will be held throughout the consultation.
After the consultation:	A response document will be published later in the year.

Getting to this stage:

In recent years HMRC has enhanced its co-operative compliance model, strengthened its tax avoidance legislation, and introduced the Framework for Co-operative Compliance as the set of principles that both large businesses and HMRC should apply to their work. The framework is used as part of HMRC's existing approach to large business tax risk management. A refreshed BRR should enable HMRC to both reflect and further enhance the shift in large business compliance behaviours. A more granular risk classification will help HMRC focus resource on the highest risk businesses, and increase the behavioural influence of the BRR process within business.

Previous engagement:

None – this is the first consultation on this measure.

Contents

On request this document can be produced in Welsh and alternate formats including large print, audio and Braille formats

1. Executive Summary

The role of large businesses

1.1 Large businesses are vital to the UK's economy. This is brought home by the fact that less than half a per cent of the companies that operate in the UK are responsible for 40% of the tax that HMRC collects (£217 billion).

What is classed as a large business?

1.2 Most businesses with a turnover of more than £200m are managed by HMRC's Large Business (LB) directorate. Additionally, the LB directorate also manages businesses whose revenue is below £200m if they are particularly complex (e.g. very large multinational enterprises with a small UK footprint) or to maintain consistency of approach across a complex sector.

Large Business Approach

1.3 HMRC's LB directorate allocates a Customer Relationship Manager (CRM) for each business it manages. CRMs are backed by teams of tax specialists, who can call on risk analysts, forensic accountants, solicitors, audit specialists and trade sector experts for any extra support they might need. This ensures an understanding of the business, and the economic and commercial environment in which it operates, ensuring they pay the right amount of tax. To help assess the risk of each business the CRM conducts regular 'business risk reviews'. This process is set out in the Tax Compliance Risk Management manual on Gov.UK – see link TCRM. The key elements of the business risk review approach are:

- to build and maintain effective relationships with all large business taxpayers promoting delivery of the right tax at the right time;
- to classify taxpayers as Low Risk or non-Low Risk so that HMRC can target resources on those taxpayers who represent the greatest risk; and
- for those taxpayers who are non-Low Risk, to understand in what respects they are not Low Risk so that HMRC and business can target resources on these areas.

1.4 CRMs have also been key in shifting large businesses towards non-aggressive tax strategies. They ensure that tax risks are raised to a large business' Board when appropriate and HMRC has a clear view of each business' risk profile. New legislation will also require large businesses to publish an annual statement explaining their tax strategy – inviting greater transparency. CRMs also identify emerging tax risks and resolve tax disputes in real time. While there is always room for improvement, large businesses tell us the CRM model helps make the UK a great place to do business.

The Issues

Business risk review

1.5 The BRR decides a large business' overall level of tax compliance risk by first considering the inherent risk they represent in terms of, for example, their size, complexity and the amount of change they are subject to; it then looks at whether or not the businesses effectively mitigate, or increase, this risk through their behaviours (for example, their attitude to tax avoidance, their systems and processes and their openness with HMRC).

1.6 Through this approach, HMRC puts great emphasis on the behaviour of large businesses; it expects them to have appropriate policies, systems and processes in place, integrated with wider corporate governance - approved by their board of directors, to ensure they pay the right amount of tax at the right time.

1.7 This process has undergone limited change since it was introduced 10 years ago. During this time, against a backdrop of increased public scrutiny of large business tax affairs, HMRC has enhanced its customer compliance model with the government strengthening its anti-avoidance legislation. As a result, the number of businesses who believe tax avoidance is acceptable and actively engage in aggressive tax planning continues to reduce.

1.8 We are therefore keen to engage your views on whether we can enhance the efficiency and effectiveness of the BRR - so it adds greater value to HMRC and large business.

1.9 This consultation looks to review:

- the current BRR process;
- the content considered within the risk review process;
- the results of the BRR, and whether this can be enhanced to provide better clarity and drive more open discussions; and
- the outcomes and potential opportunities that may exist for their use.

1.10 This consultation seeks your views on the detail of the proposals. You can send us your views by answering the questions in Chapter 6 by email or post.

2. Business Risk Review and Risk Classification

Introduction

2.1 HMRC takes a risk-based approach to its engagement with all customers including large businesses. In the case of large business the revenue at stake and the complexity of their tax affairs requires us to take a very hands-on approach. That's why HMRC assign a customer relationship manager (CRM) to each of the UK's largest companies, whose primary role is to make sure the business pays everything they owe, when it's due.

2.2 The CRM manages the relationship between the business and HM Revenue and Customs (HMRC) across all taxes and duties. This role includes being responsible for:

- preparing an integrated risk assessment for the business;
- sharing HMRC's view of risk with the business - aiming to both identify and resolve any differences of view and to involve the business in planning future interventions;
- ensuring interventions (for example, enquiries and systems audits) fully reflect the risks of the business;
- ensuring interventions are carried out effectively and proportionately, making appropriate use of the range of specialist resource available within HMRC;
- ensuring issues are resolved in line with HMRC's litigation and settlement strategy;
- managing responses to queries and clearance requests from the customer to ensure they are handled in a timely fashion so HMRC meets agreed deadlines; and
- keeping the business informed about how issues are progressing and why some may take longer to deal with due to their complexity or difficulty.

2.3 The BRR is the process by which HMRC evaluates and discusses with a large business where they think they sit on the compliance spectrum and currently whether they meet the criteria for Low Risk.

2.4 While factors such as the size and complexity of a business create their own risks and can make it more challenging for taxpayers to comply with their tax obligations, the largest and most complex businesses can be classified as Low Risk if they mitigate these risks to an acceptable level through their behaviours. Large businesses often have sophisticated governance and assurance processes in place for the benefit of management, shareholders and investors which, if they are shared, can support HMRC's understanding of how they actively manage tax compliance risk within the business environment.

2.5 The results of the BRR inform both the overall approach to a large business (currently Low Risk or not Low Risk) and help focus future risk activity e.g. a high-risk business is likely to face higher levels of scrutiny from HMRC.

2.6 Given the complexity of large businesses the process is cyclical in nature and is different for taxpayers who are identified as Low Risk and those who do not meet all the criteria for Low Risk. Both Low Risk and not Low Risk customers can be subject to national risk initiatives and Low Risk customers may identify risks as part of their Low Risk relationship.

2.7 The key to the co-operative compliance approach, which is internationally benchmarked, is it allows HMRC to build and maintain effective relationships with taxpayers and to determine the level of risk a taxpayer represents so that HMRC focusses on the areas of highest risk.

Current segmentation: Low risk/Non-low risk

2.8 Currently HMRC defines a low risk taxpayer as a taxpayer who has an open and transparent relationship with HMRC, effectively manages their own tax compliance risk and who we trust will not engage in aggressive tax planning.

2.9 The designation of Low Risk status defines HMRC's approach to this group of large businesses. Through understanding and evidencing the taxpayer's approach to tax, HMRC trusts that Low Risk taxpayers are open and transparent, bring issues to discuss in real time, and pay the right tax at the right time.

2.10 HMRC expects Low Risk taxpayers to

- give advance warning of any significant or potentially contentious voluntary disclosures; and
- share their approach to identifying and managing tax compliance risk across the business.

2.11 Trusting the customer to comply with their obligations and involve HMRC as necessary is one of the outcomes of Low Risk status. In cases where a Low Risk taxpayer breaches this trust, HMRC will take appropriate action which may include removal of Low Risk status.

2.12 Currently HMRC defines all other large business taxpayers as non-low risk. Taxpayers who are not Low Risk cover a wide spectrum of tax compliance behaviour. Some may want to work with HMRC in an entirely open and transparent way and seek to manage their tax risk effectively through their systems and processes but may take a stance on tax planning which HMRC believes is inconsistent with Low Risk; others may choose to minimise the investment they make in their tax accounting arrangements with the result that they cannot be relied upon to produce accurate tax return figures and/or may not want to work in real time with HMRC.

2.13 These different behaviours create different types of risk. In response to this spectrum of risk, HMRC ensures that the response is proportionate and appropriately focused. In all cases, HMRC will aim to develop an open and collaborative relationship with the taxpayer to manage the tax compliance risk of the large businesses.

2.14 The current approach has been effective in identifying and managing tax risk, encouraging large businesses to adopt a lower risk approach to tax compliance, and encouraging them to resolve any issues early. While this approach works, there is still opportunity to do more.

2.15 There continue to be a small number of large businesses who continue to adopt behaviours that pose a high risk to HMRC. Although there are only a small number of businesses who behave in this way, HMRC do not believe, that the current low risk and non-low risk segmentation adequately defines the differences across the spectrum of the population in a useful way for HMRC. It is too blunt to highlight significant differences across the population.

2.16 Moving to a greater level of differentiation across the population could increase the behavioural influence of the BRR process – allowing CRMs to link changes in HMRC's risk profile more closely to changes in business behaviours. Greater segmentation, particularly if based on objective and auditable criteria, would also allow HMRC to explore new, more sharply focused, behavioural incentives to support compliant lower risk businesses and target the minority with an appetite for aggressive tax planning. It would also allow businesses that are close to achieving a low risk rating, to be more accurately rated.

Q1. Do you think the current process provides HMRC with a comprehensive view of tax risk within a business? If not, what more should HMRC be doing, and how could this be improved?

Q2. Do you think the current Low Risk/Non Low risk distinction is optimal for HMRC and/ or business purposes? Would having a wider range of risk distinctions provide more clarity?

3. BRR Process

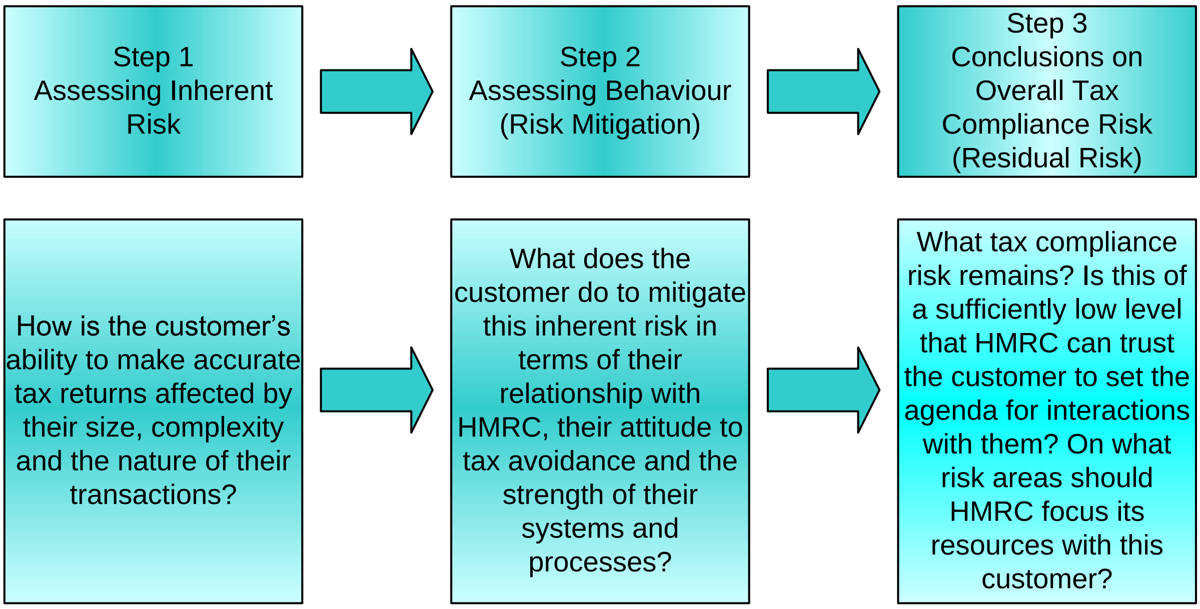
Introduction

3.1 The Business Risk Review (BRR) is the risk based assessment process by which HMRC evaluate and discuss with the taxpayer where HMRC think they sit on the compliance spectrum.

Process

3.2 The BRR process involves the following steps:

- assessing the inherent level of tax risk the large businesses represents because of the complexity or size of their business and the amount of change affecting them;
- assessing the effect of the large business behaviour on their inherent risk - does their relationship with HMRC, their systems and processes and their approach to tax planning tend to increase or decrease this inherent risk?;
- determining whether there are any unexplained trends in the amount of tax they pay which suggests that any of the conclusions reached on inherent or behavioural risk should be revisited;
- confirming the large business' overall risk status; and
- confirming any action required to reduce the level of risk.



3.3 HMRC decides a large business' overall level of tax compliance risk by first considering the inherent risk they represent (in terms of their size, complexity and the amount of change they are subject to) and then looking at whether or not they effectively mitigate this risk through their behaviour (their attitude to tax avoidance, their systems and processes and their openness with HMRC). This is done during the regular BRR, which is a collaborative process between the taxpayer and HMRC.

3.4 If the large business is classified as Low Risk, the CRM will not usually carry out another formal Business Risk Review for 2-3 years but will maintain sufficient contact with the business in order to understand any change in their compliance risk, as well as using data led insights to identify concerns. Low Risk customers are still subject to national compliance projects, and will be contacted if wider compliance work identifies particular risks. If subsequent BRRs result in the taxpayer being classified as not Low Risk they will enter the cycle for non-Low Risk customers.

3.5 If the taxpayer is classified as non-Low Risk, the CRM will carry out a BRR every year. This is the position for the majority of Large Business customers.

Q.3 To what extent should the level of risk of the large business, influence the frequency of HMRC conducting a BRR? Please explain.

4. Business Risk Review Criteria

Introduction

4.1 HMRC uses the BRR to assess the large business against seven factors:

- Complexity - the potential risk in the size, scope and depth of business or tax interests.
- Boundary - the level of complexity of international structures, financing and connected party issues.
- Change - the degree and pace of change with tax implications affecting the business.
- Governance - the taxpayer's openness and co-operation with HMRC and the management accountabilities for managing tax risk.
- Delivery - the taxpayer's ability to deliver the right tax through systems, processes and skills.
- Tax Strategy - the taxpayer's involvement in tax planning which does not support genuine commercial activity.
- Contribution - whether the amount of tax declared/claimed looks reasonable in the light of what we know about the taxpayer and/or sector.

Assuring the BRR in practice

4.2 Alongside the BRR, HMRC looks to establish tangible evidence of how a business is actively managing its tax risk. To assess tax accounting arrangements HMRC take a 'top down' approach which starts by considering the overall governance and control framework within which the taxpayer identifies and manages tax risk, only auditing or testing specific systems if HMRC find weaknesses in the practical application of these frameworks. In doing this HMRC take full account of work which the large business has already done to assure themselves that their systems and processes are producing accurate numbers for their tax returns.

4.3 The current approach involves three stages:

- Understanding the governance framework within which the business manages tax compliance risk and how this applies in practice by reference to some key business events;
- Understanding how the business ensures that their systems and processes produce the right tax figures by reference to some key risk areas; and
- In some circumstances, testing these systems and processes.

4.4 Reliance on the business is an important aspect of this approach. It recognises the investment being made by taxpayers in governance, processes and systems. HMRC's aim is to work with taxpayers to avoid duplication of effort and, in doing so, develop a truly collaborative approach to tax compliance. As such, the approach allows flexibility to incorporate the range of approaches adopted by taxpayers.

4.5 Looking at a business's governance enables HMRC to understand how tax fits into the wider business and the framework within which the tax function is operating. This helps

HMRC ensure a better understanding of potential risk areas, where further work is needed and how best to discuss these matters with taxpayers.

4.6 In each case HMRC is looking for evidence that possible tax risks were considered and that appropriate measures were put in place to mitigate these tax risks. HMRC do not normally expect taxpayers to create new documentation or processes to do this, so CRMs make every effort to rely on documentation and processes which are already in place, such as the work of the Internal Audit function or work done to meet Senior Accounting Officer (SAO) requirements.

4.7 In more complex cases or if it is the first time they have applied the approach CRMs may need to work with an Audit Specialist who has specific experience in assessing corporate/tax governance and in applying this approach to help them with this stage.

4.8 At the conclusion of these discussions, CRMs have a better understanding of how tax fits into the wider business and the framework within which the tax function is operating. This ensures a better understanding of potential risk areas, where further work is needed and how best to discuss these matters with taxpayers.

4.9 Having understood the taxpayer's approach to governance, the next stage involves assessing the large business's ability to deliver the right tax through processes and systems. For any process to work in practice the appropriate skills need to be in place so a review of that process should also include a review of skills. Therefore, in the comments below, any reference to 'process' should be taken to include 'skills'.

4.10 HMRC wants to encourage good processes and systems to support tax compliance but recognises it is not feasible or time/cost-effective to review processes and systems for all risk areas. The aim is therefore to focus on identifying significant risk areas or key events.

4.11 The existence of robust processes and systems is a further indicator that a large business's approach to tax governance is good, as it is an indicator of proper direction and control within the tax function and strong relationships between the tax and other functions. Robust tax processes and systems will help to demonstrate that a large business has a sustainable ongoing tax compliance process which requires minimal HMRC intervention.

4.12 If HMRC review a large business's approach to processes and systems, and this suggests that there are weaknesses, HMRC will discuss an audit testing approach with the taxpayer and seek to undertake such testing in a time efficient manner.

Risk Factors

4.13 The first three factors HMRC considers (Complexity, Boundary and Change) are 'inherent' factors'. They reflect the nature of the business itself - which inevitably impacts on the businesses tax profile. The next three factors (Governance, Tax Strategy and Delivery) are the behaviours through which these inherent risks might be managed. A large business may have inherent factors that potentially create major tax compliance risk, but they can still be Low Risk if they effectively manage these inherent risks through their behaviours. There can be businesses where the inherent risk might be low but the behaviours create the risk, through, for instance, a tax strategy which drives the purchase of tax avoidance schemes.

4.14 The types of evidence that CRMs will look for to identify inherent risk factors will clearly vary with the nature of the business. But in the context of assessing risk the following examples lie at the opposite ends of the spectrum:

Factor	Major risk features	Low risk Features
Complexity: What is the potential risk in the size, scope and depth of business or tax interests?	• The taxpayer operates within a highly complex structure - many VAT accounting schemes, large numbers of associates, subsidiaries etc. • High degree of complex tax issues e.g. PAYE arrangements, partial exemption, financial transactions etc. • Very significant tax throughputs in a number of different tax regimes.	• The large business operates in a well-defined and organised structure • Fewer complex tax issues arise • Large tax throughputs
Boundary: What is the level of complexity of international structures, financing and connected party issues?	• Foreign owned business and lack of clarity around the global business interests • UK business with foreign owned entities within the business • Complex and diverse business structure with major connected party interests and activity • Many and complex transfer pricing transactions • Extensive involvement with tax havens • UK-based business using offshore entities	• UK-based business customer as are all entities, associates and payrolls • Simple business structure with no connected parties • No transfer pricing transactions • No involvement with tax havens.
Change: What is the degree and pace of change with tax implications affecting the business?	• Numerous acquisitions and disposals (including international), with significant tax implications • Significant and frequent product/service charge/turnover changes, affecting liability, agreements, approvals, partial exemption etc.	• Low level of business change affecting tax obligations • Infrequent product/service changes, turnover changes, with simple liability/tax consequences.

Q4. Are there any areas which you think are missing from the *inherent* risk factors within the current BRR framework?

4.15 CRMs and tax teams assess the large businesses' compliance risk management behaviour against a spectrum of criteria including the following. In the last 10 years requirements like SAO have been introduced and formalised some of the risk factors. (Where terms such as 'significant' and 'appropriate' are used these are relative to the degree of inherent risk present. In other words, what is appropriate will differ depending on whether a customer has to mitigate 'Significant Inherent Risk' or 'Low Inherent Risk' for example.)

Factor	Increases risk definition	Low risk definition
Governance - the large business's openness and co-operation with HMRC and the management accountabilities for managing tax risk	The large business fails more than one of the Low Risk Governance criteria in more than one regime.	• The taxpayer is open with HMRC in real time about how they manage tax compliance risk across all relevant taxes and duties; and • The taxpayer raises significant compliance issues, uncertainties and/or irregularities with HMRC in real time; and • The taxpayer promptly provides full, accurate and helpful answers to HMRC queries; and • The taxpayer is aware of their obligations across all taxes and duties, seeks assistance as necessary and provides appropriate resources to deal with those obligations; and • The taxpayer has clear accountabilities up to and including the Board for the management of tax compliance risk and tax planning
Delivery - The large business's ability to deliver the right tax through systems, processes and skills.	• The taxpayer makes regular significant errors in their tax returns in more than one regime; or • The taxpayer regularly fails to make their returns on time in more than one regime; or • The taxpayer's tax accounting arrangements have significant shortcomings which will result in tax returns which are not accurate in all material respects and the customer has no current plans to resolve these shortcomings.	• The taxpayer has a history of accurate and timely returns, declarations, claims and payments across all relevant taxes and duties; and • The taxpayer has appropriate tax accounting arrangements in place.
Tax Strategy - the large business's involvement in tax planning which does not support genuine commercial activity	• The taxpayer does not tell us about significant transactions involving innovative interpretation of tax law or does not fully disclose any legal uncertainty and is regularly involved in tax planning other than that which supports genuine commercial activity or regularly structures transactions in a way which gives a	• The taxpayer is not involved in tax planning other than that which supports genuine commercial activity; and • The taxpayer does not structure transactions in a way which gives a tax result contrary to the intentions of Parliament; and

	tax result contrary to the intentions of Parliament; or • The taxpayer is directly involved in illicit trades.	• The taxpayer tells us about significant transactions involving innovative interpretation of tax law and fully discloses any legal uncertainty; and • The taxpayer is not involved with illicit trades.

Q5. Are there any areas which you think are missing from the *behavioural* risk factors within the current BRR framework?

Q6. Do you think any of the areas identified should attract a greater or lesser degree of weighting due to their significant impact on overall risk? If so, please expand.

Q7. Is the current approach to the use of tax planning in the BRR assessment appropriate?

Q8. Is there other evidence of the practical applications of tax risk governance that HMRC should take into account when assessing risk within businesses?

4.16 BRRs are collated on the basis of reviews covering all relevant regimes. For the benefit of sharing with customers this report is collated into a single, non-appealable marking.

4.17 Currently, the BRR is expected to cover the full spectrum of tax regimes even though the business may only be high risk in one or two of those regimes. By conducting the BRRs solely on the high-risk regimes, the CRM and large business could focus on areas of highest risk. Would this be an appropriate approach?

4.18 HMRC can see a benefit in being more specific around the risks in different tax regimes and that it would be more helpful to taxpayers to differentiate the risks within the business by tax regime, or perhaps international risk if this is appropriate. This might help focus the discussion between the CRM and the business, and drive more specific outcomes from the BRR.

Q9. Do you think HMRC should be more explicit around the risks in Corporation Tax (CT), Value Added Tax (VAT), Employer Duties (PAYE/National Insurance Contributions), and/or international tax risks? If yes, please specify and explain.

Q10. Do you think there would be benefits in running a BRR that focusses on specific risk regimes or areas, for example dropping areas where there is negligible activity or risk with suitable businesses?

5. Business Risk Review Results and Impacts

Introduction

5.1 As covered previously, the results of the BRR inform both the overall approach to a taxpayer (currently Low Risk or not Low Risk) and, in the case of taxpayers who are not Low Risk, the focus of any future risk assessment activity.

5.2 It is based on the principle that, while factors such as the size and complexity of a business create their own risks and can make it more challenging for taxpayers to comply with their tax obligations, even the largest and most complex businesses can be classified as Low Risk if they mitigate these risks to an acceptable level through their behaviours.

Results and Impacts

5.3 Taxpayers HMRC regards as non-Low Risk can expect regular Business Risk Reviews. For those taxpayers who represent the greatest risk it is likely that several meetings will be necessary each year, with annual Business Risk Reviews. These taxpayers can also expect more HMRC-initiated interventions. If HMRC are not confident that significant issues are being brought to them or they are not getting full information, they may need to undertake more regular analysis and checking.

5.4 While HMRC aims to work with these taxpayers as issues arise and to target resources on the most significant tax issues so that they get to their heart more quickly, if the taxpayer has not worked with HMRC collaboratively up to that point, it may be less easy to provide certainty in the timescales they might want. As such, HMRC may need to undertake more regular systems reviews and require more comprehensive analysis. It is more likely that HMRC will want to test information submitted with a formal clearance application.

5.5 Where HMRC believe that a taxpayer is either not managing tax compliance risk adequately or takes a position which, because of its innovative nature and/or its intended tax effect, represents a significant risk, they will deploy the full range of specialist resource across HMRC and work intensively with the customer to enable rapid reduction in their risk profile. HMRC will increasingly do this in real-time, using information powers, if appropriate, to drive the process.

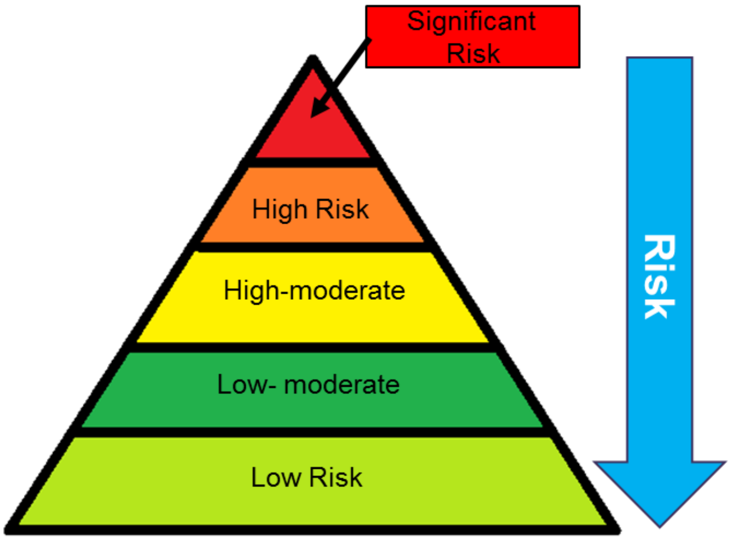
5.6 The Non-Low risk label covers a wide range of customers, and a wide range of behaviours. There are numerous ways this can be reflected. It can range from a taxpayer with an appetite for avoidance which otherwise has strong governance and capable delivery, to a taxpayer which is otherwise very compliant but fails on a particular element of their ability to deliver good compliance in a particular regime. Customers don’t necessarily know where in the compliance risk spectrum they lie, and if they do not seek Low Risk treatment they may not have any benchmark or objective which might improve their overall compliance.

5.7 It may be that further sub-dividing the categories emerging from a BRR might assist HMRC in its efforts to direct resource to the areas of greatest risk. It may also provide a more effective lever for improving the compliance of those who do not aspire to Low Risk.

Customers may see such categorisation as giving them more clarity around how HMRC regards their tax profile and level of risk.

5.8 Such segmentation of customers would raise issues about how such segments might be defined, and whether the existing risk factors and how they are assessed are appropriate for arriving at such segmentation. But in the light of views around the risk factors themselves we would like to explore whether such further segmentation would be desirable, and if so how it might be achieved. There are a number of ways this could be structured:

- a simple refinement of the current approach (e.g. a five segmented risk rating - low risk, moderate-low moderate-high risk, high risk, significant risk) to more elaborate frameworks.



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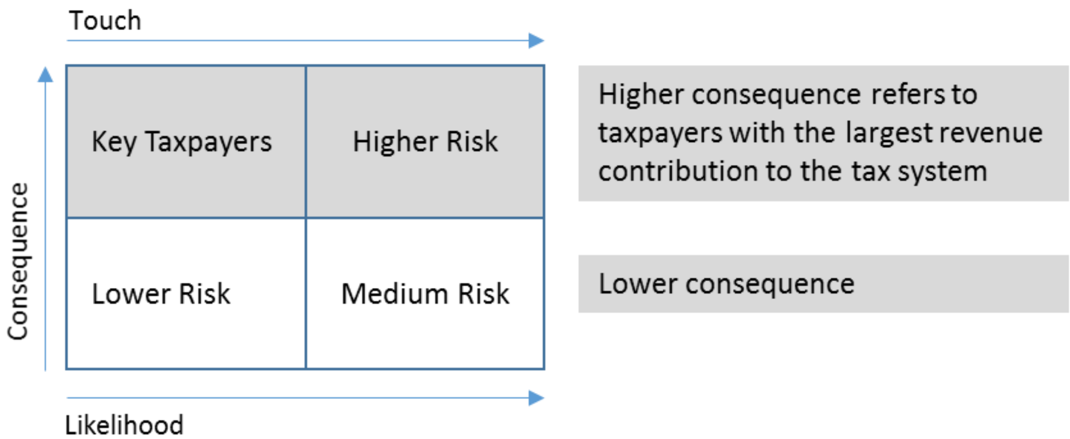
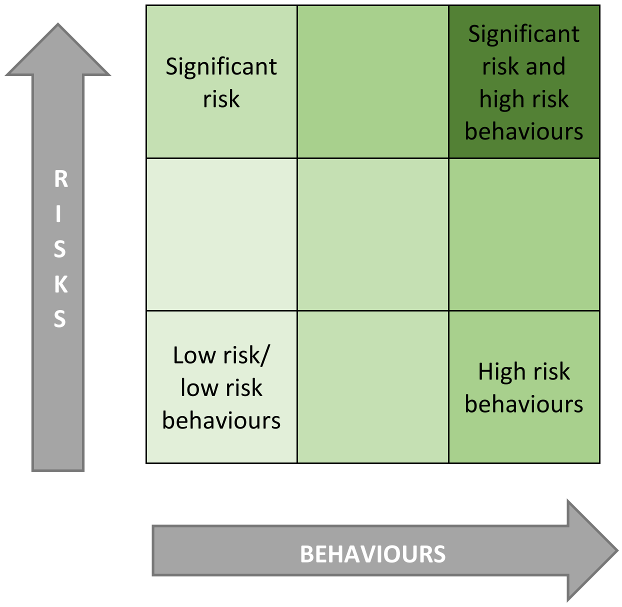
- adopting an approach similar to the Australian Tax Office, that reviews the impact (consequence) and likelihood of certain risks; and/ or



- introducing a nine box grid or distributed approach where large businesses are ranked according to their risks and behaviours.



Q11. If HMRC introduced a greater segmentation, what opportunities do you foresee for HMRC and business?

5.9 Any further detailed segmentation of customers on the basis of BRR outcome would, of course, depend on the approach taken, and the factors considered as part of any revised BRR process. These are the subject of this consultation. Nonetheless, we would be interested in views as to how any further segmentation might be achieved, and how far it might be taken. Using the current system as an example Low Risk Status is available only if Low Risk is evidenced for all three behaviours. But within the Low Risk category itself that can apply to very different levels of inherent risk. Should different levels of inherent risk be reflected in the segmentation?

5.10 Again, the current system does not label a customer differently if its behaviour is other than Low Risk. This is so, whether the behaviour tends to reduce risk, or in fact increases risk. Would a segmentation that identified all customers that had a “tends to increase risk” or “increases risk” marking for a behaviour be a useful approach to take, effectively producing a four level segmentation? This sort of approach would raise issues over how to deal with the fact that markings are spread over a number of different factors. Combining this with assessments of inherent risk is likely to add to the complexity of the system, and one concern would be that the benefits of greater segmentation might be lost, through greater complexity.

5.11 In order to further incentivise positive behaviour change through segmentation, HMRC could potentially introduce additional support to low risk businesses that reduces their administrative burden. For example, offering quicker clearance procedures or offering a view on novel arrangements more speedily.

Q 12. What advantages should HMRC attach to these categories so as to reduce burden on lower risk businesses?

5.12 The current approach to large businesses has been effective in identifying and managing tax risk, encouraging large businesses to adopt a low-risk approach to tax compliance, and encouraging them to resolve any issues early.

5.13 In 2016 Parliament legislated for large businesses to publish their tax strategies, in relation to UK taxation, to embed the best practice we see in lower risk businesses with a more transparent approach to their tax. Our aim is to encourage businesses to adopt and maintain low-risk approaches to tax compliance. We have also introduced special measures legislation focussed on businesses who persist in aggressive tax planning approaches.

Q13. HMRC is encouraging businesses to adopt lower risk behaviours. Can you identify anything else that would further encourage lower risk businesses to maintain or adopt lower risk behaviours?

Q14. For those businesses at the higher end of the risk spectrum, what are the opportunities to encourage lower risk behaviours? This could include adopting a Code of Practice on for the highest-risk customers, similar to the Code of Practice on Taxation for Banks (a link to the code can be found here)

Aligning BRR with a Tax Control Framework

5.14 OECD's Forum on Tax Administration's Large Business Programme (FTA LBP) has reported the importance of Tax Control Frameworks (TCF) within multinational enterprises, as a key part of the internal controls that assures the accuracy and completeness of the tax returns and disclosures made by an enterprise. The importance of a TCF lies in its ability to provide a verifiable assurance that the information and returns submitted by a taxpayer are both accurate and complete.

5.15 All taxpayers are expected to submit accurate returns. However, co-operative compliance places an additional emphasis on disclosure and transparency. Disclosure is the willingness of the taxpayer to make the revenue body aware of any tax positions taken in the return that may be uncertain or controversial, and being ready to go beyond their statutory obligations to disclose. Transparency refers to sharing information about the internal control system, including the design, implementation and effectiveness of the TCF that enables the taxpayer to be fully aware and "in control" of all the positions and issues that need to be disclosed.

Essential Features of a TCF

5.16 The OECD outlined the essential features of a TCF as containing 6 building blocks:

- Tax Strategy Established: this should be clearly documented and owned by the senior management of the enterprise, i.e. at Board level;
- Applied Comprehensively: All transactions entered into by an enterprise are capable of affecting its tax position in one way or another, which means that the TCF needs to be able to govern the full range of the enterprise's activities and ideally should be embedded into day to day management of business operations;
- Responsibility Assigned: The board of an enterprise is accountable for the design, implementation and effectiveness of the tax control framework of that enterprise. The role of the enterprise's tax department and its responsibility for the implementation of the TCF should be clearly recognised and properly resourced;

- Governance Documented: There needs to be a system of rules and reporting that ensures transactions and events are compared with the expected norms and potential risks of non-compliance identified and managed. This governance process should be explicitly documented and sufficient resources deployed to implement the TCF and review its effectiveness periodically.
- Testing Performed: Compliance with the policies and processes embodied in the TCF should be the subject of regular monitoring, testing and maintenance.
- Assurance Provided: The TCF should be capable of providing assurance to stakeholders, including external stakeholders such as HMRC that the tax risks are subject to proper control and that outputs such as tax returns can be relied on. This is accomplished by establishing the entity's "risk appetite" and then by ensuring that their Risk Management Framework is capable of identifying departures from that with mechanisms for mitigating/eliminating the additional risk.

5.17 The OECD have introduced a concept of "justified" trust. This is where the integrity and robustness of a well-designed and effective TCF has been tested by a revenue authority. This evidence underpins the "justified" trust in a taxpayer and in return, the revenue authority can provide certainty on the disclosed tax positions.

5.18 HMRC sees a direct alignment between the key elements of the TCF, as described above, and our decisions relating to low risk, particularly the behaviours described in the inherent risk factors set out above, linked to the practical application measures listed in section 4.2 onwards.

Q15. Do you agree that for a business to be classified by HMRC as low risk it should be expected fulfil the requirements set out for a TCF?

Q16. Does HMRC's existing BRR process already encapsulate the content of a TCF (and more)? If you consider there are any missing areas, please explain.

Q.17 Are there any others areas of the BRR that HMRC should consider as part of the review of the BRR?

6. Summary of Consultation Questions

Q1. Do you think the current process provides HMRC with a comprehensive view of tax risk within a business? If not, what more should HMRC be doing, and how could this be improved?

Q2. Do you think the current Low Risk/Non Low risk distinction is optimal for HMRC and/ or business purposes? Would having a wider range of risk distinctions provide more clarity?

Q3. Do you agree the level of risk within a business should influence the frequency of HMRC conducting a BRR? If not please explain.

Q4. Are there any areas which you think are missing from the *inherent* risk factors within the current BRR framework?

Q5. Are there any areas which you think are missing from the *behavioural* risk factors within the current BRR framework?

Q6. Do you think any of the areas identified should attract a greater or lesser degree of weighting due to their significant impact on overall risk? If so, please expand.

Q7. Is the current approach to the use of tax planning in the BRR assessment appropriate?

Q8. Is there other evidence of the practical applications of tax risk governance that HMRC should take into account when assessing risk within businesses?

Q9. Do you think HMRC should be more explicit around the risks in Corporation Tax (CT), Value Added Tax (VAT), Employer Duties (PAYE/National Insurance Contributions), and/or international tax risks? If yes, please specify and explain

Q10. Do you think there would be benefits in running a BRR that focusses on specific risk regimes or areas, [for example dropping areas where there is negligible activity or risk] with suitable businesses?

Q11. If HMRC introduced a greater segmentation, what opportunities do you foresee for HMRC and business?

Q 12. What advantages should HMRC attach to these categories so as to reduce burden on lower risk businesses?

Q13. HMRC is encouraging businesses to adopt lower risk behaviours. Can you identify anything else that would further encourage lower risk businesses to maintain or adopt lower risk behaviours?

Q14. For those businesses at the higher end of the risk spectrum, what are the opportunities to encourage lower risk behaviours? This could include adopting a Code of Practice on for the highest-risk customers, similar to the Code of Practice on Taxation for Banks (a link to the code can be found here)

Q15. Do you agree that for a business to be classified by HMRC as low risk it should be expected fulfil the requirements set out for a TCF?

Q16. Does HMRC's existing BRR process already encapsulate the content of a TCF (and more)? If you consider there are any missing areas, please explain.

Q.17 Are there any others areas of the BRR that HMRC should consider as part of the review of the BRR?

7. The Consultation Process

This consultation is being conducted in line with the Tax Consultation Framework. There are 5 stages to tax policy development:

Stage 1 Setting out objectives and identifying options.

Stage 2 Determining the best option and developing a framework for implementation including detailed policy design.

Stage 3 Drafting legislation to effect the proposed change.

Stage 4 Implementing and monitoring the change.

Stage 5 Reviewing and evaluating the change.

This consultation is taking place during stage 1 of the process. The purpose of the consultation is to seek views on the policy design and any suitable possible alternatives, before consulting later on a specific proposal for reform.

How to respond

A summary of the questions in this consultation is included at chapter 6.

Written responses should be submitted by 23:59 on 6 December 23:59 on 2017 either:

by email to: largebusinessconsultation.mailbox@hmrc.gsi.gov.uk

Or by post to:

Andrew Barton, HM Revenue and Customs, Large Business Director's Private Office, 100 Parliament Street, London, SW1A 2BQ

Telephone enquiries: 03000 578878

(From a text phone prefix this number with 18001)

Please do not send consultation responses to the Consultation Coordinator.

Paper copies of this document or copies in Welsh and alternative formats (large print, audio and Braille) may be obtained free of charge from the above address. This document can also be accessed from HMRC's GOV.UK pages. All responses will be acknowledged, but it will not be possible to give substantive replies to individual representations.

When responding please say if you are a business, individual or representative body. In the case of representative bodies please provide information on the number and nature of people you represent.

Confidentiality

Information provided in response to this consultation, including personal information, may be published or disclosed in accordance with the access to information regimes. These are primarily the Freedom of Information Act 2000 (FOIA), the Data Protection Act 1998 (DPA) and the Environmental Information Regulations 2004.

If you want the information that you provide to be treated as confidential, please be aware that, under the FOIA, there is a statutory Code of Practice with which public authorities must comply and which deals with, amongst other things, obligations of confidence. In view of this it would be helpful if you could explain to us why you regard the information you have provided as confidential. If we receive a request for disclosure of the information we will take full account of your explanation, but we cannot give an assurance that confidentially can be maintained in all circumstances. An automatic confidentiality disclaimer generated by your IT system will not, of itself, be regarded as binding on HM Revenue and Customs (HMRC).

HMRC will process your personal data in accordance with the DPA and in the majority of circumstances this will mean that your personal data will not be disclosed to third parties.

Consultation Principles

This consultation is being run in accordance with the Government's Consultation Principles.

The Consultation Principles are available on the Cabinet Office website: http://www.cabinetoffice.gov.uk/resource-library/consultation-principles-guidance

If you have any comments or complaints about the consultation process please contact:

John Pay, Consultation Coordinator, Budget Team, HM Revenue & Customs, 100 Parliament Street, London, SW1A 2BQ.

Email: hmrc-consultation.co-ordinator@hmrc.gsi.gov.uk

Please do not send responses to the consultation to this address.