



HM Revenue  
& Customs

# **Evaluation of HMRC's implementation of powers, obligations and safeguards introduced since 2012**

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## Foreword

A healthy and effective tax system relies on trust. Taxpayers must be able to trust that their tax authority is fair, effective, professional and respectful while ensuring all pay their share. Maintaining and building this basis of trust for HMRC have been at the heart of the Government's approach to tax reform.

HMRC have been building this trust by supporting businesses and the economy during the COVID-19 pandemic. But HMRC also have a vital role to collect the tax that pays for public services and that also requires them to tackle the minority of people who seek to avoid or evade tax. HMRC have powers, approved by Parliament, to secure through taxation the funds for public services and provide a level playing field for businesses and individuals that pay their taxes.

Since 2010, the Government has introduced over 100 reforms to continue to tackle tax avoidance and evasion. Of these, over 40 have strengthened HMRC's powers to administer the tax system, including by detecting those that pay less than they should, investigating efficiently and effectively and responding proportionately.

Alongside these reforms, the Government supports HMRC in maintaining and developing a culture which treats all taxpayers fairly and empathetically and takes account of their needs. This includes resolving disputes in an appropriate and proportionate way, ensuring the correct tax is paid while helping those that try to get it right and holding those that deliberately pay less than they should to account. The Tax Assurance Commissioner provides additional assurance that tax disputes are resolved fairly across taxpayer groups. Overall, HMRC's approach is designed to complement the statutory safeguards, and to ensure that taxpayers can take action where they feel HMRC have acted unreasonably or misinterpreted the legislation.

To support this process, HMRC's Charter has been updated, following public consultation, and now sets out more clearly the standards of behaviour and values taxpayers can expect of their tax authority. Other recent measures include the introduction of an Extra Support Service to ensure those who may need extra help are identified and appropriately assisted. Finally, HMRC continue to work with taxpayers, tax agents and their representatives to review and improve the tone and content of HMRC's communications – including letters, factsheets and guidance – so that they are easy to understand.

This report sets out the findings of the evaluation of HMRC's implementation of powers introduced since 2012, and commitments made by HMRC as a result. HMRC worked with taxpayer and agent representatives to carry out this evaluation, consulting them on the scope, approach and findings from the project. In many areas, this analysis has underlined the importance of the changes HMRC are already introducing to help build and maintain public trust in the tax system, including through the wider powers and safeguards programme as set out in my Written Ministerial Statement of 22 July 2019 and the Government's response to Sir Amyas Morse's Independent Loan Charge Review.

However, this evaluation has also highlighted new opportunities for HMRC to act to improve public trust in the tax system. These include: deepening engagement with voluntary and community services so as to help raise awareness of tax obligations among harder-to-reach taxpayers, steps to enhance public confidence in HMRC's governance and operations, and improving guidance so that the public can better understand how their circumstances could contribute to a reasonable excuse for failing to comply with a tax obligation.

HMRC will take forward 21 commitments to address the findings of this evaluation. These commitments will also support the Government's vision for a tax system fit for the 21st century: a system that provides a better experience for taxpayers while reducing the tax gap and building greater resilience and responsiveness to future crises, such as the COVID-19 pandemic.

I would like to express my thanks to all those who participated in this evaluation, and in the wider powers and safeguards programme, for their support. I am especially grateful for the patience and perseverance of all involved following the pause in this work that occurred at the beginning of the COVID-19 pandemic and for their

resuming their consideration of the issues promptly and at pace. This only underlines the commitment, both from external stakeholders and HMRC, to build and develop public trust in the tax system over the longer term.

**Rt Hon Jesse Norman MP**  
**Financial Secretary to the Treasury**

# 1. Executive Summary

## Background and context

- 1.1. In his Written Ministerial Statement (WMS) of 22 July 2019, the Financial Secretary to the Treasury (FST) said that citizens need to be reassured that HMRC have the necessary powers to ensure that everyone pays their fair share of taxes. He noted that, particularly where those powers are designed to tackle fraud, evasion or tax avoidance, they can be far-reaching. It is important that the powers granted to HMRC are exercised in a way that maintains and enhances public trust. This means taking care that powers are used consistently and proportionately, taking into account an individual's circumstances. Meanwhile, taxpayers need to be able to access the safeguards provided in legislation, along with other channels provided by HMRC to dispute decisions or complain about their treatment. The Government and HMRC are committed to maintaining and building public trust in the administration of the tax system.
- 1.2. A key part of the Powers and Safeguards work programme that the FST established in July 2019 has been this evaluation of how HMRC have implemented powers and obligations introduced since 2012. It used as a benchmark the principles which underpinned the 2005-12 Review of HMRC's Powers, Deterrents and Safeguards (the Powers Review).<sup>1</sup> HMRC established and worked with a new powers evaluation forum (the Forum) to engage with stakeholders, in accordance with FST's request. The Forum comprised representatives from 16 organisations, including organisations representing taxpayers and their advisers and the Office of Tax Simplification.
- 1.3. This evaluation focused on how powers, obligations and safeguards granted by Parliament to enable HMRC to administer the tax system have been implemented and operated. It has not examined the policy underpinning those powers. The evaluation considered reforms introduced since 2012, in line with the FST's commitment, while noting that many members of the Forum were keen also to consider powers and obligations introduced prior to 2012 and the policy rationale underpinning the powers and obligations.
- 1.4. The Forum discussed the scope and methodology of the evaluation, including which powers to prioritise for more detailed examination. This report draws on HMRC's engagement with the Forum, which in turn drew on their experiences and those of their members and stakeholders. Forum members provided around 70 pieces of written evidence to inform discussions and the findings in this report. In addition, the evaluation was informed by a small number of interviews (conducted by independent researchers) with tax agents who had specific experience of HMRC's use of Accelerated Payment Notices and Follower Notices, which were among the most significant new powers introduced during this period.
- 1.5. This report and its findings represent HMRC's conclusions from the evaluation. The commitments made in the report reflect HMRC's desire to achieve and consistently maintain the highest standards of professionalism, while implementing the powers granted by Parliament to ensure that taxpayers meet their obligations.

## Findings and conclusions

- 1.6. Overall, HMRC believes that the approach to implementing powers introduced since 2012 has been broadly consistent with the 2005-2012 Powers Review principles. Internal processes are designed to ensure that substantial care is taken when making decisions, so that outcomes align with the principles. Data on reviews, complaints and litigation in relation to these powers show that taxpayers have formally challenged HMRC's decisions in a small minority of cases (see Table 2 and Annex E for details).

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<sup>1</sup> Jesse Norman MP Financial Secretary to the Treasury (2019) 'HMRC Powers and Taxpayer Safeguards.' Available at: <https://questions-statements.parliament.uk/written-statements/detail/2019-07-22/hcws1785>

- 1.7. However, members of the Forum shared a number of examples of individual cases where no formal challenge or complaint had been made, but where they felt that HMRC could and should have approached cases differently. These examples highlight the need for HMRC to ensure a consistent approach and level playing field for all taxpayers, while taking account of the individual circumstances that a taxpayer may face.
- 1.8. This evaluation has not reviewed individual cases and the examples that Forum members provided, which often reflect difficult and complex cases where the taxpayer and HMRC do not have a shared view of the facts, have not been verified. The individual examples complement, and should be read alongside, the narrative of this report. However, the evaluation has identified a number of instances where HMRC agree more could have done more to demonstrate that taxpayers' circumstances had been understood and taken into account when difficult decisions that affected them were made. In order to reassure taxpayers that they are treated fairly, HMRC are committed to helping them to understand how and why decisions are made that affect them; and giving them the information and support they need to challenge HMRC, including submitting a complaint if they wish to do so.

## Our commitments

- 1.9. The commitments set out in this report align with HMRC's strategy to promote compliance, prevent non-compliance and respond proportionately and even-handedly to non-compliance. Many of them are a direct result of this evaluation and the comments provided by external members of the Forum. These commitments include:
  - updating HMRC's guidance to clarify taxpayers' rights and obligations in relation to several powers, including Follower Notices and the Requirement to Correct non-compliance relating to income or assets held offshore.
  - exploring ways to improve awareness of HMRC's internal governance processes, to promote public trust in decisions on the General Anti-Abuse Rule, Accelerated Payment Notices, Follower Notices and the Diverted Profits Tax; and
  - reviewing and updating guidance to clarify the range of factors that may contribute to reasonable excuse, including taking account of an individual's personal circumstances. HMRC will support this work by building capability, confidence and consistency of approach where HMRC's officers consider the application of reasonable excuse provisions.
- 1.10. The evaluation has also reinforced the importance of improvements that HMRC have already begun to take forward, including as part of the wider Powers and Safeguards programme and the Government's response to Sir Amyas Morse's Independent Loan Charge Review.<sup>2</sup> It underlines the importance of building confidence and trust in the administration of the tax system by making further improvements to:
  - HMRC's engagement with harder-to-reach audiences to raise awareness of new powers and obligations;
  - HMRC's guidance, including raising awareness of feedback processes so that more users can help HMRC make guidance as useful as possible;
  - Aspects of customer experience, to ensure that HMRC consistently meet the high standards that the public expect, especially where people need extra support;

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<sup>2</sup> Sir Amyas Morse (2019) '*Independent Loan Charge Review: report on the policy and its implementation.*' Available at: <https://www.gov.uk/government/publications/disguised-remuneration-independent-loan-charge-review>

- Some of HMRC’s compliance communications, especially the letters sent during an enquiry, so that these communications help taxpayers to understand their rights and obligations quickly and easily while minimising unnecessary worry; and
- Support to those experiencing financial hardship, including where taxpayers need extra help.

1.11. Our commitments are listed below, and described in detail in Chapters 5-7 of this report. Chapter 8 summarises the report’s conclusions.

1.12. HMRC will always strive to improve the way the tax that is due is collected. This includes working with taxpayers to make their experience as clear and fair as possible. HMRC make millions of decisions every year that affect taxpayers. Inevitably, HMRC do not always get everything right. However, alongside the considerable work already underway, including on other aspects of the Powers and Safeguards work programme, these commitments mark a significant further step forward in building trust in HMRC’s administration of the tax system. They will help to ensure that, where compliance activity is necessary, taxpayers are consistently treated fairly, professionally and with respect, taking into account their individual circumstances and needs. This will help taxpayers to understand how and why decisions are made, as well as their rights and obligations.

### Future engagement on powers, obligations and safeguards

1.13. HMRC plan to continue to work with the members of the Forum to ensure that the implementation of any future powers reflects the learning and conclusions from this evaluation and our commitments. This work will complement and build on HMRC’s engagement with stakeholders through the Compliance Reform Forum and the Representative Body Steering Group. HMRC will also continue to use the independent input and challenge received through the Customer Experience Committee and the new Professional Standards Committee to support work to build and maintain public trust in the tax system.

1.14. As explained in Chapter 2 of the report and Commitment 1, HMRC will consider what further work on powers and safeguards should be taken forward as part of the review of the tax administration framework that was announced in July 2020.

## List of commitments

Commitment 1: HMRC will consider what further work on powers and safeguards should be taken forward as part of the review of the tax administration framework that was announced in July 2020.

Commitment 2: HMRC will continue to use data to target communications at the right audiences at the right time to help promote compliance and prevent non-compliance, including maximising the benefits of the Making Tax Digital programme.

Commitment 3: HMRC will continue to deepen partnerships with voluntary and community organisations to help raise awareness of tax obligations amongst, and build trust with, harder to reach taxpayer groups, complementing existing partnerships with industry and agent representative organisations. This includes helping ensure the digitally excluded and those requiring digital assistance are aware of new obligations that affect them and can access the guidance they need.

Commitment 4: HMRC will continue to explore opportunities for new and innovative communication approaches to help ensure taxpayers are aware of and understand their obligations, including harder to reach groups.

Commitment 5: HMRC will continue to improve users' experience as they use guidance, including by providing decision-based guidance to help people find the answers they need and by publishing guidance in alternative formats, including online videos.

Commitment 6: In order to make guidance as useful as possible, HMRC will work with its new Guidance Forum: to inform strategic priorities for guidance, including further opportunities to use interactive guidance; to consolidate the practice of collaboration with experts on guidance; and to explore opportunities to strengthen awareness of the guidance feedback process.

Commitment 7: HMRC will continue to raise awareness of the Corporate Criminal Offence, particularly amongst hard-to-reach and higher risk groups.

Commitment 8: HMRC will review how to best clarify the scope of multinational enterprises' obligations, with respect to publishing their tax strategies.

Commitment 9: HMRC will continue to evaluate and improve compliance communications; and will strengthen assurance processes around one-to-many activity, inviting external input and feedback, to help ensure they consistently meet the high standards that the public expect.

Commitment 10: HMRC will continue to raise awareness of the Charter, using quarterly reviews and the Charter Annual Report to monitor progress and identify and act on areas for improvement.

Commitment 11: HMRC's ongoing work to continuously improve technical tax and core compliance capabilities will focus on ensuring that HMRC's officers have the resources, skills and capability to deliver the standards set out in the Charter.

Commitment 12: HMRC's Compliance Extra Support team will continue to maintain and build processes that help ensure those who need extra help are identified and provided with appropriate support during enquiries.

Commitment 13: HMRC will continue to engage with voluntary and community sector organisations to provide support for individuals who need extra help.

Commitment 14: HMRC will explore how improving awareness around internal governance processes could promote public trust in decisions to apply the General Anti-Abuse Rule, Accelerated Payment Notices, Follower Notices and the powers underpinning the Diverted Profits Tax.



Commitment 15: HMRC will seek views from taxpayers, agents and their representatives on opportunities to improve awareness and uptake of the statutory review process.

Commitment 16: HMRC will review and update guidance to clarify the range of factors that may contribute to reasonable excuse, taking account of an individual's personal circumstances. HMRC will support this work by strengthening training products, including case studies, to help build capability, confidence and consistency of approach where HMRC's officers are considering the application of reasonable excuse.

Commitment 17: HMRC will consult with agents and their representatives to update guidance on FNs, APNs and the RTC by summer 2021.

Commitment 18: HMRC will continue to explore opportunities to help raise taxpayers' awareness of their rights as well as their obligations when paying tax debt through a time to pay arrangement.

Commitment 19: HMRC will consult with agents and their representatives to consider guidance updates on coding out of debt (through the PAYE system) and Simple Assessment by summer 2021.

Commitment 20: HMRC will consider how powers introduced since 2012 to recoup debt, especially the power to code out debt, could be used more widely to support those in financial hardship.

Commitment 21: HMRC will host a roundtable meeting to discuss opportunities to improve taxpayers' experience where they correct their tax through the Worldwide Disclosure Facility in spring 2021.

## 2. Introduction

- 2.1. HMRC are the UK's tax, payments and customs authority, and have a vital purpose: to collect the money that pays for the UK's public services and help families and individuals with targeted financial support. Public trust that HMRC are fair, careful and even-handed, while ensuring that all taxpayers pay the correct tax, is essential to a healthy tax system.
- 2.2. The Government has introduced over 100 reforms to the tax system since 2010 to help HMRC to prevent and tackle evasion and tax avoidance. Many of these reforms help HMRC to identify those who pay less tax than they should and, where this is the case, intervene appropriately to put things right and reduce the tax gap of over £31 billion.<sup>3</sup> In some areas, where HMRC are faced with fraud, evasion and complex avoidance, these powers are necessarily far-reaching to help HMRC to deal with these behaviours and provide a level playing field for those taxpayers who do pay the right tax.
- 2.3. Taxpayers need to be confident that HMRC's powers are used reasonably, in order to maintain and build public trust in the tax system. All of HMRC's powers are balanced by safeguards. Some of these are statutory and specific – such as requirements that trained, experienced Designated Officers take certain decisions, or the arrangements regarding the General Anti-Abuse Rule (GAAR) panel - while others are given effect by internal operational rules and codes of practice (see Annex A for details of HMRC's governance and oversight, including dispute resolution).
- 2.4. Taxpayers have statutory rights to challenge HMRC where they disagree with decisions. For most decisions, taxpayers have the right to ask HMRC to undertake a statutory review of the decision and the right to appeal to an independent tax tribunal. In some cases, the taxpayer can also request an impartial, specially trained HMRC officer to help mediate their dispute via Alternative Dispute Resolution. In addition, if there are no appeal rights, taxpayers may have the right to seek a judicial review of HMRC's decision where they feel HMRC's decision is unreasonable.
- 2.5. The updated HMRC Charter was published on 5 November 2020, following a public consultation. This sets out clear expectations of how HMRC should behave when interacting with taxpayers, including using its powers correctly and fairly.<sup>4</sup>
- 2.6. Where taxpayers are dissatisfied with the way HMRC are handling their tax affairs, for example because they feel HMRC fell short of the standards set out in the Charter, they can complain to HMRC. If the issue cannot be resolved by HMRC, they can appeal to the independent external Adjudicator. The Customer Experience Committee, which is attended by external experts including the Adjudicator, will monitor how HMRC meets the standards set out in the Charter and recommend areas for improvement. In addition, the newly established Professional Standards Committee, supported by independent advisors, will help oversee how HMRC administers the tax system.
- 2.7. HMRC's operational controls and governance complement the statutory safeguards, helping reassure taxpayers that powers are exercised proportionately and consistently. HMRC's extensive training programmes and operational guidance and quality assurance processes underpin all this work, and are regularly updated to reflect opportunities for improvement, helping ensure the standards the public expect are met as consistently as possible.
- 2.8. The Tax Assurance Commissioner provides additional assurance, ensuring that disputes are resolved in accordance with HMRC's Litigation and Settlement Strategy and Code of Governance, and that outcomes

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<sup>3</sup> HMRC (2020) '*Measure tax gaps 2020 edition: Tax gap estimates for 2018 – 2019.*' Available at: <https://www.gov.uk/government/statistics/measuring-tax-gaps> [published 9 July 2020].

<sup>4</sup> See <https://www.gov.uk/government/publications/hmrc-charter> for more detail.

are even-handed across taxpayer groups. The Tax Assurance Commissioner publishes an annual report detailing how HMRC's tax dispute resolution governance has operated over the year.

- 2.9. The Government is committed to maintaining and building public trust in the tax system. In response to the House of Lords Economic Affairs Committee report, *The Powers of HMRC: Treating Taxpayers Fairly*, the Financial Secretary announced, through his WMS of 22 July 2019, a package of actions HMRC would take to deliver this ambition.<sup>5</sup>
- 2.10. The Financial Secretary noted that the House of Lords Economic Affairs Committee had proposed a review of all powers granted to HMRC since the conclusion of the Powers Review in 2012. Having considered this, the Financial Secretary concluded that a full review of HMRC's powers is not necessary at this time. He said that the powers granted to HMRC since 2012 were properly scrutinised before being granted by Parliament and the Government's view is that they remain necessary and proportionate.
- 2.11. The evaluation therefore focuses on the implementation of the powers HMRC have been granted since 2012 by reference to the principles that underpinned the 2005-12 Review of HMRC's Powers, Deterrents and Safeguards (the principles, see Annex B for detail).<sup>6</sup> HMRC established a new Forum, attended by 16 external organisations, including organisations representing taxpayers and their advisers and the Office of Tax Simplification, to provide external input and evidence to support this evaluation. HMRC consulted the Forum throughout the project, including on the scope, approach and key findings of the evaluation.
- 2.12. This approach supplemented findings from a small number of interviews conducted by independent researchers with tax agents who had experience of HMRC's use of Accelerated Payment Notices and Follower Notices, which were among the most significant new powers introduced during this period. HMRC also carried out a study of published commentary concerning HMRC's use of powers introduced since 2012.
- 2.13. This report sets out the areas for improvement that were highlighted as a result of this evaluation and HMRC's commitments in response. This report is structured as follows:
  - **Chapter 3: Approach and methodology** outlines how HMRC engaged with taxpayers, agents and their representatives to deliver this evaluation, including consulting on the powers in scope and the approach to assembling and evaluating evidence.
  - **Chapter 4: summary of evidence and analysis** summarises the relevant evidence and analysis gathered to support the evaluation and sets out the overarching issues highlighted.
  - **Chapters 5 – 7** consider the key themes and findings from this evaluation and set out HMRC commitments to help address them:
    - **Chapter 5: Raising awareness of rights and obligations** considers how HMRC raises awareness of taxpayers' rights and obligations prior to powers being used;

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<sup>5</sup> House of Lords Economic Affairs Committee (2018) *'The Powers of HMRC: Treating Taxpayers Fairly.'* 4th Report of Session 2017–19. Available at: <https://publications.Parliament.uk/pa/ld201719/ldselect/ldconaf/242/242.pdf>

<sup>6</sup> The Review of HMRC's Powers, Deterrents and Safeguards ran from 2005 to 2012. It was a programme of consultation and legislative change to provide a modern framework of law and practice for tax administration. Its aim was to secure the benefits of the merger of HM Customs and Excise and the Inland Revenue by aligning powers, deterrents and safeguards across the taxes and duties administered by HMRC, where it made sense to do so. The Principles underpinned the design of powers and safeguards considered by the review, including considering whether they were proportionate, whether they could be easily understood and whether they were conformant with human rights and other relevant non-tax legislation. An overview of the Review, with links to complementary consultations, is available here: <https://webarchive.nationalarchives.gov.uk/+http://www.hmrc.gov.uk/about/powers-appeal.htm>

- **Chapter 6: Use of powers in compliance enquiries** discusses the professional standards of service that the public expect, including how, in practice, HMRC ensures that taxpayers meet their obligations, taxpayers are afforded their rights and safeguards are applied; and
- **Chapter 7: Putting things right and penalties** focuses on the actions HMRC takes where a taxpayer has paid less tax than they should, including how HMRC facilitates the disclosure of unpaid tax, considers and applies penalties and collects debt.
- **Chapter 8:** summarises the **conclusions and commitments** from this evaluation.

2.14. This evaluation, and the commitments that HMRC will take forward in response, complement the other actions that the Financial Secretary to the Treasury announced in his WMS in July 2019 to help maintain and build public trust in HMRC’s administration of the tax system. So far, HMRC have:

- **published responses to the 2019 and 2020 Adjudicator’s Annual Report.**<sup>7</sup> As part of this, HMRC established a new online portal enabling the public to submit complaints directly to the Adjudicator’s office.<sup>8</sup> During the first half of 2020, over half the complaints received by the Adjudicator’s Office were submitted through the new online portal. HMRC will continue to streamline complaints processes to improve taxpayers’ experience, and ensure the right outcome is delivered as quickly as possible.
- **published more information regularly to improve the transparency of HMRC’s compliance work,** including new data on debt and taxpayer registration performance as well as criminal prosecutions and Tribunal decisions. HMRC will continue to engage with taxpayer and agent representatives to identify new opportunities to improve transparency.
- **established the Professional Standards Committee,** which will be supported by independent advisors, to consider how HMRC administers the tax system and applies policies in accordance with its values. Its main aim is supporting HMRC to build trust in its work. The Committee will critically challenge how HMRC exercises powers and safeguards, supporting fair practice for all taxpayers, and will provide counsel on the implementation of policy reforms.<sup>9</sup>
- **worked with organisations representing taxpayers and agents to discuss taxpayers’ experience of HMRC compliance activity and identify areas for improvement.** This includes reviewing and improving the content and tone of HMRC’s standardised letters and forms relating to compliance checks. Over 100 key compliance products have already been updated, including standardised information requests and penalty letters. HMRC will continue to explore opportunities to help improve the taxpayer experience, including testing different letter templates, updating operational guidance and developing online content, matching available resource against areas of greatest priority.
- **continued to enhance HMRC’s approach to ensuring taxpayers who need extra help receive it while engaging with HMRC.** This includes creating a specialist new team, the Compliance Extra Support team, to provide direct and indirect support for these individuals, as well as deepening collaboration with voluntary and community services organisations. This builds on HMRC’s work to support those who used avoidance schemes. Mandatory training has been provided to all HMRC’s Counter-Avoidance staff

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<sup>7</sup> HMRC (2020) ‘Government response: Departmental response to the Adjudicator’s Office 2019 annual report.’ Available at: <https://www.gov.uk/government/news/departmental-response-to-the-adjudicators-office-2019-annual-report>

<sup>8</sup> Details of how to complain, including using the online portal, are available here: <https://www.gov.uk/guidance/contact-the-adjudicators-office>

<sup>9</sup> More information on the role of the Professional Standards Committee is available at: <https://www.gov.uk/government/organisations/hm-revenue-customs/about/our-governance>

(over 1000 officers in total), and they have provided extra help to over 1000 customers who needed extra support to settle their affairs.

- 2.15. This Powers and Safeguards programme also complements wider work being taken forward to maintain and build public trust in the tax system. In particular, the updated HMRC Charter was published on 5 November following public consultation; and HMRC's report on the implementation of the Government's response to the independent review of the Loan Charge was published on 3 December 2020.<sup>10</sup>
- 2.16. Looking forward, the Government is committed to creating a tax system fit for the challenges and opportunities of the 21<sup>st</sup> century. Critical to this is a modern, trusted tax administration, which will provide a better experience for individuals and businesses, enable opportunities to further reduce the tax gap, and help build greater resilience and responsiveness to future crises. The Government set out its future ambition when it published its strategy paper "Building a modern, trusted tax administration system" in July 2020.<sup>11</sup>
- 2.17. As part of this strategy, the Government is exploring options to reform the tax administration framework. This is the core legislation, process and guidance that set out and underpin the obligations for HMRC and taxpayers and help establish what tax is due and how it is paid. This review of the tax administration framework will provide further opportunities to consider the powers that enable HMRC to administer the tax system, taxpayer obligations and the safeguards and protections afforded to taxpayers. It will also look at how new powers can be considered within the context of modernisation of the tax system. The Government has committed to publishing a call for evidence to help identify and prioritise potential reforms.

**Commitment 1: HMRC will consider what further work on powers and safeguards should be taken forward as part of the review of the tax administration framework that was announced in July 2020.**

## Related issues outside the scope of this evaluation

- 2.18. The Government is also taking action to ensure that taxpayers are able to receive independent tax advice they can trust. Most tax agents are technically competent, adhere to high professional standards and provide useful advice. They have also provided considerable support to their customers in responding to the COVID-19 pandemic, helping them to understand how to engage with the financial support provided by the Government. These agents play an important role in helping HMRC and their clients to ensure the right tax is paid at the right time. However, a minority of tax agents do not provide good services. As part of this evaluation, some external stakeholders encouraged HMRC to do more to ensure high standards of tax advice, and to remove barriers which prevent agents from acting effectively on behalf of their clients. HMRC have considered these issues following a call for evidence on raising standards in tax advice.<sup>12</sup> HMRC will take action to improve tax advice standards, including raising awareness of HMRC's Standard

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<sup>10</sup> HMRC (2020) 'HMRC Charter.' Available at: <https://www.gov.uk/government/publications/hmrc-charter> & HM Treasury (2019) 'Independent Loan Charge Review: Government response to the review.' Available at: [https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/854490/20191219\\_Government\\_response.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/854490/20191219_Government_response.pdf) & HMRC (2020) 'Independent Loan Charge Review: HMRC report on Implementation.' Available at: <https://www.gov.uk/government/publications/independent-loan-charge-review-hmrc-report-on-implementation>

<sup>11</sup> HMRC (2020) 'Building a trusted, modern tax administration system.' Available at: <https://www.gov.uk/government/publications/tax-administration-strategy/building-a-trusted-modern-tax-administration-system>

<sup>12</sup> HMRC (2020) 'Call for evidence: raising standards in the tax advice market.' Available at: <https://www.gov.uk/government/consultations/call-for-evidence-raising-standards-in-the-tax-advice-market>

for Agents and publishing the results of an internal review of the powers currently available to HMRC to help enforce that Standard.<sup>13</sup>

- 2.19. Other external stakeholders also suggested HMRC should do more to tackle those who promote tax avoidance, including those who continue to promote disguised remuneration schemes following the Loan Charge. HMRC have published a strategy to tackle promoters, which sets out how HMRC will continue to respond vigorously to those who are still marketing tax avoidance schemes, the vast majority of which do not work.<sup>14</sup> HMRC have consulted on a package of measures, announced in Budget 2020, that will enable action to be taken more quickly against promoters of tax avoidance schemes. On 12 November, the Government announced a further package of measures to strengthen the actions that can be taken against promoters, which will be consulted on in spring 2021.<sup>15</sup> The Government has also published a call for evidence on tackling disguised remuneration tax avoidance<sup>16</sup> and will announce responses and actions in due course.
- 2.20. More broadly, the Government will continue to look at how HMRC's powers can be adjusted to respond to the wider environment, ensuring compliance while supporting taxpayers. HMRC have taken action in response to the COVID-19 pandemic to provide taxpayers with greater flexibility in relation to certain obligations, including considering how powers are applied while maintaining safeguards in line with statute.

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<sup>13</sup> HMRC (2018) '*HMRC: the standard for agents.*' Available at:

<https://www.gov.uk/government/publications/hmrc-the-standard-for-agents/hmrc-the-standard-for-agents>

<sup>14</sup> HMRC (2020) '*Tackling promoters of mass-marketed tax avoidance schemes.*' Available at:

<https://www.gov.uk/government/publications/tackling-promoters-of-mass-marketed-tax-avoidance-schemes/tackling-promoters-of-mass-marketed-tax-avoidance-schemes>

<sup>15</sup> Jesse Normal MP Financial Secretary to the Treasury (2020) '*Tax policy update.*' Available at: <https://questions-statements.parliament.uk/written-statements/detail/2020-11-12/hcws572>

<sup>16</sup> HMRC (2020) '*Tackling promoters of tax avoidance – Consultation.*' Available at:

<https://www.gov.uk/government/consultations/tackling-promoters-of-tax-avoidance> & HMRC (2020) '*Tackling disguised remuneration tax avoidance – Call for evidence.*' Available at: <https://www.gov.uk/government/consultations/call-for-evidence-tackling-disguised-remuneration-tax-avoidance>

### 3. Approach and methodology

- 3.1. HMRC have consulted with taxpayers, agents and their representatives in determining the scope, priorities and approach to this evaluation. As a result, over 40 legal reforms were identified as being in scope of the evaluation, and following an initial assessment 10 powers and 2 themes were prioritised for further study.
- 3.2. The external members of the Forum provided approximately 70 pieces of written evidence to support the evaluation. HMRC are grateful for this evidence, which has been considered as part of this evaluation and has also fed into wider work HMRC are undertaking to help build trust in the tax system. The evidence submitted via, and discussed by, the Forum was supplemented by a small number of interviews with agents which HMRC commissioned from an independent research company (Ipsos MORI) and a study, carried out by HMRC, of published commentary around HMRC's use of powers introduced since 2012.
- 3.3. The thematic findings from all these discussions, as well as the written evidence, the Ipsos MORI interviews and HMRC's study of public commentary, and corresponding commitments were discussed in detail by the Forum. This collaborative, evidence-based approach has ensured the evaluation has identified clear and practical opportunities for improvement.

#### Engaging with external stakeholders

- 3.4. HMRC's partnership with taxpayers, agents and their representatives to take forward this evaluation has been underpinned by the Powers Evaluation Forum, which consists of 16 organisations and HMRC (see Table 1 for the list of members, and Annex C for the Terms of Reference). HMRC are grateful to external members for their support and collaboration in delivering this evaluation.

**Table 1: Membership of the Powers Evaluation Forum**

- |  |   |   |
|--|---|---|
| • Association of Accounting Technicians          | • HM Revenue and Customs  | • Law Society of England and Wales      |
| • Association of Chartered Certified Accountants | • Institute of Chartered Accountants in England and Wales Tax Faculty | • Law Society of Scotland               |
| • Association of Taxation Technicians            | • Chartered Accountants Ireland                                       | • Low Incomes Tax Reform Group          |
| • Chartered Institute of Payroll Professionals   | • Institute of Chartered Accountants of Scotland                      | • Office of Tax Simplification          |
| • Chartered Institute of Taxation                | • Institute of Financial Accountants                                  | • TaxAid                                |
| • Federation of Small Business                   |   | • Tax Investigation Practitioners Group |

- 3.5. The Forum complements other arrangements through which HMRC engages the public and their representatives, including the Compliance Reform Forum and the Representative Body Steering Group.<sup>17</sup>
- 3.6. Following the first meeting on 30 October 2019, the Forum met on seven occasions to discuss the approach to the evaluation as well as the key findings and the commitments that HMRC will take forward.

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<sup>17</sup> The Compliance Reform Forum (CRF) is a joint forum in which HMRC consults and communicates with representative organisations about changes to HMRC compliance checking activities, with a focus on the views of tax agents and their clients. Further details are available here: <https://www.gov.uk/government/groups/compliance-reform-forum>  
The Representative Body Steering Group (RBSG) is an important forum that engages with professional bodies, intermediaries, software developers and senior HMRC managers. It helps advise on strategic decisions about HMRC's performance, including customer service, its digital strategy, and the impact of these on agents. Further details are available here: <https://www.gov.uk/government/groups/representative-body-steering-group>

3.7. At the outset, the Forum met to discuss the approach to the evaluation. This included discussing:

- the definition of a ‘power’ for the purposes of this evaluation. As a result, this evaluation focused on over 40 legal reforms that have been introduced since 2012 and have strengthened HMRC’s ability to administer the tax system by, for example, collecting information, resolving disputes or imposing penalties (see Annex D for the full list of powers considered through this evaluation);<sup>18</sup>
- a list of questions that HMRC’s officials and officers used to carry out an initial evaluation of the implementation of each power against the principles;
- a list of questions used by external members of the Forum to request written evidence from taxpayers, enabling the evaluation to draw on real-life case studies; and
- how HMRC should approach a study of public commentary around HMRC’s implementation of powers and obligations introduced since 2012, including the range of publications in scope and how the commentary should be analysed, to complement the wider analysis underpinning the evaluation and help ensure the Forum focused on the right issues.<sup>19</sup>

3.8. The external members of the Forum highlighted their preference that this evaluation also consider powers and obligations introduced prior to 2012, as well as the policy underpinning HMRC’s powers. However, this evaluation focused on how HMRC had implemented powers and obligations introduced since 2012, in line with the FST’s July 2019 announcement. HMRC will consider what further work on powers and safeguards should be taken forward as part of the review of the tax administration framework that was announced in July 2020.

3.9. Following a review of the written evidence, in consultation with the Forum, specific powers and themes were prioritised for further discussion by considering:

- the breadth and depth of impact of powers and obligations, as some focused on specific groups – for example large businesses, while others affected diverse groups across the economy, for example any taxpayers participating in tax avoidance schemes or individuals with offshore affairs;
- the extent to which powers and obligations had been used in practice – as enquiries using some of HMRC’s newer powers had not yet concluded and it is inappropriate to evaluate live cases, while others have only just taken effect and have not yet been used; and
- whether taxpayers had the right to challenge HMRC in the Tax Tribunal if they felt HMRC acted unreasonably or incorrectly applied the legislation to their circumstances.<sup>20</sup>

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<sup>18</sup> Powers and obligations outside the scope of this evaluation included those:

- introduced prior to 2012, in line with the Financial Secretary to the Treasury’s commitment;
- outside the tax system – e.g. reforms to the anti-money laundering regime or tax credit system;
- subject to separate review or equivalent public scrutiny – e.g. the loan charge and the direct recovery of debt; and
- that the Government had announced but not yet taken effect – e.g. the extended time limits for offshore non-compliance.

Reforms that did not directly affect HMRC’s powers to intervene in the tax system – e.g. changes to tax rates or the tax base – were also beyond the scope of this evaluation.

<sup>19</sup> The range of material considered as part of this study included papers and reports published by independent organisations, journal articles, specialist tax media commentary and primary evidence such as case-law

<sup>20</sup> As Annex D illustrates, taxpayers have the specific right to appeal to the Tax Tribunal against decisions taken by HMRC using many of the powers introduced since 2012, including the right to appeal against penalties imposed by HMRC for non-compliance. While some exercises of discretion by HMRC do not have specific appeal rights, for example where a taxpayer seeks a specific time to pay arrangement, HMRC are still subject to judicial oversight as these decisions may be challenged in the High Court by judicial review.



3.10. As a result, ten specific legal reforms (see Table 2) and two cross-cutting themes were prioritised and focused upon in further ‘deep dive’ discussions.

3.11. The specific legal reforms discussed were:

- Accelerated Payment Notices (APNs);
- Follower Notices (FNs);
- the General Anti-Abuse Rule (the GAAR);
- the Requirement to Correct offshore non-compliance (including the corresponding Failure to Correct penalties) (RTC);
- the obligation on multinational enterprises to Publish their Tax Strategies;
- the Corporate Criminal Offence;
- the framework underpinning the Diverted Profits Tax (DPT), including the Charging Notice;
- powers to collect information for Automatic International Exchange (including under the Common Reporting Standard);
- Simple Assessment; and
- powers to recoup (or Code Out) debt through the Pay-As-You-Earn system (PAYE).

3.12. The cross-cutting themes discussed were:

- raising awareness of new obligations, especially amongst hard-to-reach audiences (including those that are digitally excluded or unrepresented); and
- interpreting reasonable excuse provisions in relation to powers and obligations introduced since 2012.

3.13. In these discussions, HMRC specialists met with external experts to discuss and evaluate how HMRC exercised these powers, or approached those issues, taking account of the principles. Some 50 external experts attended these discussions to share their experiences and examples provided by their peers. Some 55 HMRC officers and officials also attended relevant discussions to share HMRC’s perspective and discuss external experts’ experiences.

3.14. The Forum met regularly to discuss progress and ensure a common understanding of themes arising from the evidence. Once the deep dive discussions were complete, the Forum met to discuss the conclusions from the evaluation overall and HMRC’s next steps.

## Independent research

3.15. HMRC commissioned Ipsos MORI, an independent research agency, to carry out a small number of interviews with tax agents whose clients had been subject to either FNs or APNs. The interviews focused on the agents’ experiences and their perceptions of their clients’ experience during the process, including: how HMRC communicated and the quality of information and support HMRC provided; whether their clients understood their rights and what they needed to do; and how agents felt their clients were treated. Ipsos MORI conducted 11 interviews with agents. The findings from this work are published alongside this report.<sup>21</sup>

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<sup>21</sup> <https://www.gov.uk/government/publications/hmrc-powers-and-taxpayer-safeguards-research>

## 4. Summary of evidence and analysis

4.1. This evaluation focused most closely on those powers and obligations introduced since 2012 which Forum members felt merited most attention:

- Accelerated Payment Notices and Follower Notices, which were introduced to help HMRC tackle marketed tax avoidance schemes. In 2012, the National Audit Office estimated there were 65,000 open enquiries involving users of marketed avoidance schemes and reported that HMRC's approach of investigating and, if necessary, litigating each case at substantial time and cost was inadequate.
  - Accelerated Payment Notices were designed to change the economics of avoidance by requiring the taxpayer to pay disputed amounts to the Exchequer in cases involving tax avoidance while the dispute played out, to be set against the tax due if the dispute was resolved in HMRC's favour or returned with appropriate interest if the taxpayer was ultimately successful in the dispute. Accelerated Payments are not a final payment or resolution of a dispute, but rather they change where the sum sits while under dispute.
  - Follower Notices were introduced alongside APNs and are designed to deter taxpayers from continuing to pursue an argument when the scheme they used has already been defeated in the courts in litigation involving a different taxpayer. Following a relevant judicial ruling that an avoidance scheme does not work, HMRC can issue FNs to all other users of the scheme who have an open enquiry or open appeal. There is no right of appeal against a FN as the purpose of the regime is to accelerate settlement of cases where HMRC believes the dispute is settled by another party's litigation. However, anyone receiving a FN may make representations to HMRC and the operation of the regime is suspended while those representations are considered. The recipient of a notice may choose to continue their dispute but may face a penalty (of up to 50% the tax due) if their dispute is ultimately not settled in their favour.
- The Requirement to Correct, which was introduced in 2017 to require those with undeclared offshore tax liabilities to disclose them to HMRC on or before 30 September 2018. The Government's aim was to encourage and drive the correction of past tax non-compliance across the whole spectrum of taxpayer behaviour – it applied whether the taxpayer had made a mistake, failed to take reasonable care, or deliberately failed to declare tax that was due. It was timed to dovetail with the introduction of the Common Reporting Standard which represented a major step forward in international financial transparency and which made more information available to tax authorities around the world than ever before. The RTC required taxpayers to correct their past offshore non-compliance or face new, significantly tougher, penalties for failing to do that. Those that failed to correct their past non-compliance before 1 October 2018 are liable to failure to correct penalties unless they have a reasonable excuse.
- The Diverted Profits Tax, which was introduced to address contrived arrangements by multinational entities (MNEs) to divert profits arising from economic activity in the UK from the UK tax net. The legislation's aim is to change behaviour, so that MNEs move away from avoiding a UK taxable presence, or mispricing transactions using contrived structures – the goal being that MNEs pay the right amount of corporation tax. Before issuing a DPT Charging Notice, companies receive a Preliminary Notice, clearly setting out the basis of the potential Charging Notice, how it is calculated and who must pay it. The MNE may appeal against the Charging Notice.
- The Corporate Criminal Offence, which was designed to drive a change in corporate behaviour, by allowing relevant bodies to be held responsible for the activities of their representatives where appropriate. This is achieved by creating a criminal offence for relevant bodies who fail to prevent the criminal facilitation of tax evasion by a representative of theirs. It is a defence for the relevant body to

prove that they had put in place 'reasonable procedures' to prevent the facilitation of tax evasion to demonstrate that it was not reasonable to have such prevention procedures in place.

- The General Anti-Abuse Rule, which was introduced following the recommendation of the independent GAAR Study (the Aaronson report, which considered whether a general anti-avoidance rule should be introduced into the UK tax system).<sup>22</sup> Its role is to deter and counteract the use of contrived and artificial schemes that go against the will of Parliament in order to achieve a tax advantage. The GAAR is designed to counteract tax advantages arising from abusive tax arrangements that might succeed on the strict letter of the law but where there is no reasonable analysis in which the intended outcome is consistent with the principles and policy objectives of the legislation. HMRC must obtain the opinion of the GAAR Advisory Panel (an independent body with no HMRC members made up of experts with legal, accountancy and commercial backgrounds) on whether entering into and carrying out a tax arrangement constitutes a reasonable course of action. The Panel provides HMRC and taxpayers with an independent opinion on whether arrangements are reasonable. Where HMRC uses the GAAR to counteract an arrangement, the counteraction must be on a just and reasonable basis. The taxpayer cannot appeal against the GAAR notice but can appeal against adjustments made by HMRC under the GAAR, as well as against any penalty charged.
- 4.2. These are the most far-reaching powers introduced since 2012 and have been legislated to help HMRC tackle significant tax avoidance and evasion more effectively and efficiently. These powers and obligations, which carry tough sanctions for non-compliance, potentially impact on a large number and wide range of taxpayers where tax could be at risk. For example:
- Over 20,000 taxpayers have disclosed offshore non-compliance through the Worldwide Disclosure Facility since the RTC was announced in 2016;
  - HMRC have issued tens of thousands of APNs and FNs to help tackle the use of tax avoidance schemes; and
  - As a result of the Corporate Criminal Offence, companies and partnerships across the economy have considered and introduced reasonable procedures to guard against the risk they could facilitate tax evasion.
- 4.3. While these powers are controversial, and some external members of the Forum have questioned whether they are the right solutions to the problems they seek to address, they have enabled HMRC to collect and protect significant amounts of tax revenue.
- 4.4. HMRC are rightly expected to help ensure that taxpayers get their tax affairs right first time, and to intervene appropriately to put things right where they do not comply with their obligations. HMRC will not always meet the high standards the public, and HMRC, expect. HMRC are committed to delivering on these expectations, and taxpayers and their agents can hold HMRC to account where they do not think this is the case.
- 4.5. Taxpayers have the right to complain to HMRC if they feel they have not been treated properly, and if not satisfied with HMRC's response, to the independent, external Adjudicator. If they feel that HMRC have approached their enquiry inappropriately or incorrectly applied the legislation to their personal circumstances, they have access to appropriate opportunities to challenge HMRC including, in many cases,

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<sup>22</sup> Aaronson, G. (2011) 'GAAR study: a study to consider whether a general anti-avoidance rule should be introduced into the UK tax system.' Available at: [https://webarchive.nationalarchives.gov.uk/20130402163458/http://www.hm-treasury.gov.uk/d/gaar\\_final\\_report\\_111111.pdf](https://webarchive.nationalarchives.gov.uk/20130402163458/http://www.hm-treasury.gov.uk/d/gaar_final_report_111111.pdf)

an impartial statutory review or alternative dispute resolution. They may also use statutory safeguards, such as pursuing issues through the courts.<sup>23</sup>

- 4.6. Overall, this evaluation has highlighted the value of the checks and balances governing HMRC's use of these most far-reaching powers. Table 2 shows a small minority of HMRC's interventions have been subject to complaints to the independent external Adjudicator or challenged in the courts.
- 4.7. However, the evidence provided by members of the Forum includes a number of examples of individual cases where they felt HMRC should have approached a case differently to strike the right balance between consistently ensuring the right tax is collected and taking account of individual circumstances.
- 4.8. The examples the Forum provided complement, and should be read alongside, the narrative of this report. Almost inevitably, these examples focus on the most difficult cases. They reflect the challenging decisions HMRC have to make to take account of taxpayers' individual circumstances while ensuring a consistent approach across the board.
- 4.9. The discussions and evidence provided by external members of the Forum considered a relatively narrow sample of examples and experiences. This is to be expected, as the Forum members could only bring forward examples of which they had been made aware. The examples and evidence provided have helped HMRC understand some of the issues that cause concern or opportunities for improvement, and have been used to inform the thematic issues set out in subsequent chapters.
- 4.10. The examples involve HMRC's implementation of many of the most contentious powers. These powers have been introduced to address the behaviour of a significant minority of taxpayers. Although it is important that these examples are fully considered, consideration must be in the context of the powers being used thousands of times to successfully collect money due to the Exchequer. HMRC seeks to ensure that the highest standards of fairness and professionalism are met in every case, whether when engaging with individuals with a query, those who have made mistakes or those who have deliberately sought to pay less tax than is due. The examples presented show that is not always taxpayers' experience of dealing with HMRC.
- 4.11. Sometimes, the examples demonstrate situations where external members of the Forum felt HMRC should have done more to help ensure taxpayers were aware of their obligations. These include hard to reach, low-income customers who may not have realised they had failed to comply with tax rules in the past, so were within scope of the Requirement to Correct, as Example 1 illustrates.

*Example 1: Mr A first received his overseas pensions in 2007, while resident in the Netherlands, and paid tax on it to the Dutch tax authority. He moved to the UK in 2010 and took up full-time employment. As a result, his total taxable income exceeded the UK personal allowance from 2010/11 to 2012/13 and under UK law he should have notified HMRC about the pension and paid UK tax on it.*

*HMRC wrote to Mr A in April 2019, after receiving information from the Dutch tax authority about his overseas pension income. Mr A told HMRC he did not realise his overseas pension might be taxable in the UK, and contacted Tax Help for Older People (THOP) for help. THOP argued Mr A had a reasonable excuse for failing to comply with the RTC because he thought that the pensions being sourced overseas and having overseas tax deducted meant they were taxable overseas and not in the UK. He was also unaware if he had any obligation under RTC, because he thought he was compliant. HMRC did not agree that Mr A's circumstances constituted a reasonable excuse. As a result, THOP said Mr A paid £3,334 in tax, interest and penalties, including penalties of £1,809 for failing to comply with the RTC. THOP then requested HMRC remit the debt. HMRC can only remit debt in very limited circumstances*

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<sup>23</sup> As Annex D illustrates, taxpayers have the specific right to appeal to the Tax Tribunal against decisions taken by HMRC using many of the powers introduced since 2012, including the right to appeal against penalties imposed by HMRC for non-compliance. While some exercises of discretion by HMRC do not have specific appeal rights, for example where a taxpayer seeks a specific time to pay arrangement, HMRC are still subject to judicial oversight as these decisions may be challenged in the High Court by judicial review.

*and instead agreed a time to pay arrangement over three years. THOP said this is causing the taxpayer financial hardship.*

*Source: Low Incomes Tax Reform Group*

- 4.12. Other examples underlined the importance of helping taxpayers understand their rights as well as their obligations during enquiries using these powers. Some felt that HMRC's approach could appear unnecessarily heavy-handed in some cases, highlighting that using powers to force progress in enquiries can undermine the goodwill fostered by a collaborative approach, and increase costs.

*Quote 1: one external contributor said 'the main problem with FNs was calculating the tax where the person used more than one arrangement in a single tax year or where other technical matters such as taper relief are still to be resolved.... To calculate the tax accurately to comply with the Follower Notice is not always possible [within the 90 day time limit set out in legislation] and the powers make no concession for this scenario, i.e. immediate exposure to 50% FN penalty, despite the taxpayer and their agent making best endeavours to calculate the correct figure.'*

*Source: Chartered Institute of Taxation*

- 4.13. Some members of the Evaluation Forum felt that, in some individual examples involving HMRC's exercise of its powers to tackle tax avoidance, HMRC could have provided better customer experience. Example 2 illustrates this concern: an agent felt that HMRC should not have issued a FN shortly before the statutory deadline and that HMRC should have provided more information linking the lead judicial ruling to each of their clients' circumstances<sup>24</sup>. Furthermore, the agent said that HMRC did not respond to representations before finalising the settlements.

*Example 2: An agent reported that four of their clients received FNs 30 days before the point a judicial ruling could no longer form the basis for FNs. The wording of each HMRC letter was the same, but the agent felt the facts of each client's arrangements were very different and there could be an argument the lead judicial ruling would not apply to each case. The agent submitted representation letters to HMRC on each case but did not receive a response before the settlements were finalised. The agent felt HMRC should have issued the FNs with ample time before the ruling to provide finality, and clearly demonstrated how the client's arrangements mirrored the lead judicial ruling in the FN.*

*Source: Institute of Chartered Accountants of England and Wales*

- 4.14. The deadline set out in law for issuing FNs is short. As there is a considerable amount of information to be considered and procedural safeguards to be followed, it is often the case that FNs are issued close to the point the relevant judicial ruling can no longer be used for the purpose. This does not disadvantage a recipient of a notice in any way. A taxpayer who has made representations against a notice and not yet received a response can decide whether or not to settle their case. HMRC will explore providing further clarity on this through communications complementing FNs.
- 4.15. In other examples, particularly in some cases of failure to comply with the Requirement to Correct, contributors felt that HMRC's application of penalties was disproportionate. Some contributors felt that HMRC should have reduced penalties further to reflect a taxpayer's cooperation with an enquiry; or that the penalties for taxpayers coming forward to correct their tax affairs following a prompt by HMRC should be more closely aligned with the lower penalties for those who came forward without being prompted. Discussions also focused on HMRC's application of reasonable excuse provisions, especially when considering whether a taxpayer had a reasonable excuse for failing to comply with the RTC. It was

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<sup>24</sup> Some external contributors noted that HMRC's decisions to apply Follower Notices on the basis of lead judicial rulings has been subject to judicial review – HMRC have appealed one decision to the Supreme Court (Haworth v. HMRC [2019]).

suggested that HMRC's consideration of whether the taxpayer had a reasonable excuse was inconsistent and sometimes unsympathetic.

4.16. The examples show that, where there is a perception that HMRC's decisions are not aligned with the Powers Review principles, this is exacerbated if HMRC do not fully explain how the individual taxpayer's behaviour and circumstances have been considered. This is especially the case where HMRC applies the most far-reaching powers. Several of these examples include taxpayers who said they wanted to get their tax right but made a mistake because they did not realise their income was taxable or had entered into arrangements without realising HMRC would regard them as tax avoidance. Other examples suggested that, where a taxpayer is experiencing difficult personal circumstances, HMRC did not always appear to have considered this fully.

4.17. A review of individual cases is beyond the scope of this evaluation, and the examples that Forum members have provided have not been verified or challenged. There are formal routes for complaints that enable the full and proper assessment of the evidence in specific cases. However, the examples and case studies have:

- underlined the importance of HMRC consistently demonstrating to taxpayers that HMRC have respectfully listened to and considered their evidence and circumstances; and
- highlighted situations where HMRC could have done more to help taxpayers to understand and comply with their obligations, or taken more account of their circumstances when deciding whether and how to exercise powers.

4.18. Chapters 5 to 7 provide further details on the thematic areas for improvement that this evaluation has identified, drawing on the full range of evidence that underpinning this evaluation. These chapters also set out the further commitments that HMRC are making as a result to help build and maintain public trust in the tax system.

**Table 2: background information around powers and obligations prioritised for deep dive discussions**

Power or Obligation	Broad target audience – those:	No. of times the power has been used	No. of complaints to the adjudicator	No. of statutory challenges, including Judicial Reviews***	Commentary on reviews, appeals, complaints and litigation**** <i>Notes</i>
APNs	Who have used a tax avoidance scheme	HMRC have issued over 81,000 APNs since the power was introduced in 2014*	11 specifically in relation to APNs and FNs (1 partially upheld)	13 Judicial Reviews specifically in relation to APNs and FNs	While taxpayers cannot appeal an APN or a FN, they can appeal penalties issued for failure to pay an APN and penalties issued for failure to take corrective action on receipt of a FN. <i>Taxpayers submitted some 53,000 representations against these notices. Following consideration of those representations, HMRC withdrew around 10% and amended around 20% of the notices.</i>
FNs		HMRC have issued over 22,000 FNs since the power was introduced in 2014*			
GAAR	Who have used abusive arrangements to avoid tax	HMRC have issued over 3,400 GAAR opinion notices since the power was introduced in 2013	0	0	While taxpayers cannot appeal GAAR notices, they can appeal when the adjustments are actually made, for example by way of closure notice or assessment. There is also an appeal against penalty introduced in 2016. <i>The GAAR Advisory Panel (of external experts) have provided 17 Opinions to help inform HMRC's decision. These are available on GOV.UK.<sup>25</sup></i>
RTC	Who have non-compliant offshore tax affairs	Over 20,000 taxpayers have disclosed offshore non-compliance through the Worldwide Disclosure Facility since the RTC was announced in 2016	Not applicable (see notes)	Not applicable (see notes)	Taxpayers may appeal against HMRC's decision to issue a Failure to Correct penalty. <i>Note: taxpayers may choose to disclose non-compliance through the WDF for a range of reasons, including to comply with the RTC before the Failure to Correct penalties were introduced. Those disclosing non-compliance through this facility voluntarily self-assess any tax, interest and penalty due – there is no HMRC decision to trigger a complaint/court action. Some taxpayers may have chosen to correct non-compliance through other routes – e.g. Code of Practice 9.</i>
Requirement to publish a tax strategy	Multinational companies with a UK HQ	HMRC have issued a penalty in respect of a failure to publish a tax strategy on fewer than 5 occasions since the	0	0	There is a right of appeal against penalties for non-compliance. <i>Note: where HMRC detects non-compliance with this obligation, the law requires HMRC allow 30 calendar days for businesses to publish their tax strategy. The majority do so, therefore do not become liable for penalties.</i>

<sup>25</sup> <https://www.gov.uk/government/collections/tax-avoidance-general-anti-abuse-rule-gaar#gaar-advisory-panel-opinions>

		obligation took effect in September 2016			
Corporate Criminal Offence	Companies and partnerships that could enable tax evasion	(See notes)	0	0	This criminal offence is subject to the jurisdiction of the criminal courts rather than the tax chamber. <i>As of 13 October 2020, HMRC had considered over 60 cases across different sectors and business sizes, from small firms to the UK's largest multinational companies. Of these, 13 live investigations are being taken forward and 18 are still under consideration.</i>
DPT Charging Notice	Multinationals that use contrived arrangements to avoid tax	As of March 2019, HMRC have issued some 408 Charging Notices since the power was introduced in 2015*	0	1	Taxpayers may appeal against a charging notice or supplementary charging notice.
Powers to collect data for automatic exchange	UK financial institutions, including UK branches of foreign financial institutions	Around 5,000 financial institutions provided information in 2019	0	0	Financial institutions may appeal against a penalty imposed for failure to comply with certain requirements.
Simple Assessment	PAYE customers who cannot pay their debt through their tax code or who have with simple affairs that owe tax debt	HMRC have issued over 2.1 million Simple Assessments since September 2017	3 (1 upheld)	0	Taxpayers may appeal against a Simple Assessment.
Power to code out debt through the PAYE system	Those that owe HMRC debt and are employed or receiving a pension	HMRC have issued some 2.3 million notices to collect debt through the PAYE system since 2012**	0	0	Tax Credit debts can only be coded out through the PAYE system with taxpayer consent. Otherwise, there is no specific appeal against HMRC's decision to collect debt through PAYE though a taxpayer may agree a time to pay arrangement as an alternative.

\* These figures refer to the total numbers of DPT charging notices, FN and APNs HMRC have issued. Some taxpayers may have received more than one notice and may also receive one notice covering multiple years.



\*\* This specific figure refers to the total number of occasions where HMRC have used the power to collect self-assessment and national insurance contribution debt through the PAYE system, including as a result of reforms introduced since 2012. This power may have been used on several occasions to collect different debts from the same taxpayer over the past eight years.

\*\*\* See Annex E for a summary of challenges to HMRC's implementation of powers in the courts and whether these challenges were upheld.

\*\*\*\* *Where this table describes the right to appeal, the taxpayer has the right to appeal to the First-tier Tax Tribunal unless otherwise stated*

## 5. Raising awareness of rights and obligations

- 5.1. Most taxpayers want to get their tax right first time. In line with HMRC's strategy, HMRC want to help them do so by promoting compliance and preventing non-compliance. HMRC are designing compliance into systems and processes and using data to spot mistakes and personalise online services, while deepening HMRC's partnerships with voluntary and community organisations to help engage harder to reach audiences. HMRC's information campaigns and guidance also help ensure compliance first time by developing a common understanding of how the tax system works, building trust and ensuring everyone knows what they need to do.

### Understanding and engaging relevant audiences as powers are introduced and evolve

- 5.2. HMRC run public information campaigns to help ensure that taxpayers are aware of key tax reforms that may affect them. This can include new obligations that they may need to comply with and new powers that may be used. This helps taxpayers to fulfil their responsibility to take care over their tax affairs, including doing everything they can reasonably be expected to do to understand and comply with their obligations. At the deep dive discussion on Raising Awareness, external contributors heard how HMRC's approach to these campaigns draws on industry and Government best practice, including the OASIS Planning Framework.<sup>26</sup> HMRC use a range of customer insights, including cutting edge qualitative and quantitative research, to understand who may be affected by tax reforms, including the introduction of a new power or obligation.
- 5.3. External contributors welcomed HMRC's work with partners, including taxpayer and agent representatives as well as voluntary and community services organisations, to share and test messages to help understand what works best for different audiences. This helps ensure the right taxpayers receive the right message at the right time to support compliance.

*Quote 2: one respondent said 'we have seen numerous examples of clear communication and guidance by HMRC being given when seeking confirmation that a new entrant will adopt the Code [of Conduct for Banks]. Where the response from the bank is slow, a timely reminder is provided with clear wording describing what the next steps will be for not adopting the Code.'*

*Source: Chartered Institute of Taxation*

- 5.4. However, external contributors also highlighted that not everyone is aware of new obligations that affect them. It is particularly challenging to raise awareness amongst harder-to-reach audiences. These can include taxpayers that are digitally excluded, have little or no experience of paying tax through self-assessment, or do not use a tax agent to help them understand their rights and obligations. Some groups may not be specifically targeted as part of a campaign, for example if HMRC does not identify or believe that a group will be impacted by the power or if the extension of a campaign may not provide value for money. Other taxpayers may have entered into arrangements without realising HMRC would regard them as tax avoidance or abusive tax arrangements, and subsequently been subject to HMRC's counter-avoidance powers.
- 5.5. Many external attendees of the deep dive suggested that some taxpayers who had not complied with offshore tax laws in the past were not aware of the Requirement To Correct ahead of the deadline of 30 September 2018, and may inadvertently have become liable for higher penalties as a result.<sup>27</sup> While some

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<sup>26</sup> Government Communications Service (2020) 'A guide to campaign planning.' Available at:

<https://gcs.civilservice.gov.uk/wp-content/uploads/2020/03/Guide-to-Campaign-Planning-OASIS-Framework.pdf>

<sup>27</sup> Several contributors to the evaluation underlined, in some circumstances, it may be reasonable for a taxpayer to be unaware of their tax obligations, and this may contribute to a reasonable excuse for non-compliance. This is considered further in Chapter 7.

welcomed HMRC's decision to write letters to some taxpayers (encouraging them to check that they had paid the correct tax ahead of the deadline, where HMRC had information suggesting they had offshore affairs and may therefore be in scope of the RTC), others highlighted some taxpayers did not receive a letter because HMRC did not have information at the time indicating they may be in scope.

*Quote 3: One respondent said 'we found that taxpayers and agents were unaware of the Requirement to Correct in the last couple of months before the deadline to comply... some people we met in 2019 [i.e. after the deadline] were completely unaware of the Requirement to Correct deadline.'*

*Source: Chartered Institute of Taxation*

- 5.6. Several felt that HMRC should have written letters to a broader range of taxpayers to help ensure they reached as many as possible of those in scope to make them aware of their obligations. However, others highlighted concerns about HMRC sending letters where tax may not be due. One noted some taxpayers have complex affairs, and the costs of checking the correct tax has been paid can exceed any tax ultimately due.
- 5.7. Comments about HMRC's approach to communications on new powers also suggested that there was scope to improve awareness of the Corporate Criminal Offence. One highlighted that independent research, commissioned by HMRC a year after the Corporate Criminal Offence had taken effect, estimated that only 34% of businesses were aware that they could be criminally liable for failing to prevent tax evasion, and only 24% had assessed the risk.<sup>28</sup> As Quote 4 illustrates, others welcomed HMRC's broad approach to engaging on the Corporate Criminal Offence through agent and trade representative bodies, as well as in direct discussions with taxpayers as part of the Business Risk Review process. This has helped build and maintain public awareness of the Corporate Criminal Offence since the independent research was published.

*Quote 4: One respondent said 'we have seen an increasing level of engagement from businesses [regarding the Corporate Criminal Offence] over the past 18 months. We believe this is partly because it takes businesses... time to feel they... need to take action to keep up with their peers and partly because of clear HMRC engagement, including... the inclusion of this [i.e. the offence] as a low risk indicator in the ... Business Risk Review process, including many CCMs asking questions at meetings in relation to what has been done... focused letters from HMRC to customers in 'higher risk' industries... HMRC conferences focused on the corporate criminal offence... and HMRC's publication of statistics online.'*

*Source: Chartered Institute of Taxation*

- 5.8. Contributors suggested that a range of innovative ideas should be explored to help strengthen HMRC's approach to raising awareness of new obligations going forward, including opportunities to provide tax education or publish a summary of key tax changes on GOV.UK every year. However, there was also broad appreciation that it will continue to be difficult to engage those who may not perceive HMRC's messages to be relevant to them, including those that assume they are compliant but have made a mistake.

## Conclusions and next steps

- 5.9. HMRC knows that taxpayers need to understand their obligations in order to get their tax right first time. The vast majority of taxpayers want to do that and HMRC want to help them to do so. This evaluation has

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<sup>28</sup> Under the corporate criminal offence, any company or partnership can potentially be subject to criminal prosecution for failing to prevent any associated person from facilitating tax fraud under the corporate criminal offence. Ipsos MORI (2018) 'Evaluation of corporate behaviour change in response to the corporate criminal offences.' Research Report 529. Available at: <https://www.gov.uk/government/publications/evaluation-of-corporate-behaviour-change-in-response-to-the-corporate-criminal-offences>

highlighted that, while this approach often works well for the vast majority of taxpayers, HMRC can continue to improve so that more people receive the most helpful message at the right time.

### **Reaching and engaging with the right audiences through public information campaigns**

- 5.10. This includes, for example, building prompts into HMRC's online self-assessment system, which help prevent errors by flagging when a taxpayer's entry is out of line with what HMRC might expect to see; and pre-populating online forms with information already held by HMRC, as is already the case for bank data on interest earned.
- 5.11. As part of the Government's response to Sir Amyas Morse's Independent Loan Charge Review, HMRC are enhancing use of PAYE Real Time Information to identify taxpayers who may be engaging in tax avoidance and write to them at an early stage. These letters include HMRC's view, explain the risks associated with tax avoidance and how taxpayers can take corrective action. This complements HMRC's wider work to improve communications with taxpayers to help them understand their obligations, to alert them to tax avoidance schemes and the risks of using them. For example, in summer 2020 HMRC warned NHS workers who returned to the frontline to battle COVID-19 that they were being targeted by promoters of tax avoidance. In November 2020, HMRC also launched a campaign aimed at helping contractors to spot when they are being offered an avoidance scheme, challenge what they are being told and protect themselves and others by reporting avoidance schemes. HMRC and the Advertising Standards Authority have recently issued a joint Enforcement Notice to address misleading advertising of avoidance schemes.
- 5.12. In the future, the Government wants taxpayers, and their agents, to benefit from modern services through the Making Tax Digital programme. A single digital account for each taxpayer that is easily accessible, secure and brings together data across different taxes and data sources will help HMRC to provide personalised services for everyone, with parallel services for their representatives, including agents.
- 5.13. HMRC use a range of methods to complement this data-driven approach to raising awareness, to try to ensure that all those who may be affected by new obligations are made aware, including the digitally excluded. This includes continuing to broaden and deepen partnerships with voluntary and community organisations in an effort to foster trust with harder-to-reach audiences. HMRC's ongoing engagement with these organisations, representing a range of local and national needs, provides opportunities to test and improve the effectiveness of HMRC's approach. HMRC will continue to improve awareness of these networks, and the insights they provide as well as exploring opportunities for new and innovative communication approaches to raise awareness and understanding of obligations among taxpayers, including harder to reach groups.

### **Ensuring guidance is helpful and up to date**

- 5.14. HMRC's published guidance is a key source of information about taxpayers' rights and obligations. Good guidance helps taxpayers to understand their obligations, as well as their rights and options in cases where they feel that HMRC have got things wrong or acted unreasonably.<sup>29</sup> This reduces costs for both taxpayers and HMRC and builds trust.
- 5.15. In response to a recommendation from the Office for Tax Simplification (OTS), HMRC are carrying out a consultation on the circumstances in which a taxpayer can rely on published guidance and the extent to which a taxpayer will be subject to interest, penalties and the tax in dispute where guidance is found to be unclear or incorrect.<sup>30</sup> The OTS recognised that whether a taxpayer can rely upon the guidance or not can

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<sup>29</sup> This HMRC guidance is available at: <https://www.gov.uk/complain-about-hmrc>

<sup>30</sup> Office for Tax Simplification (2018) 'Guidance for taxpayers.' Available at: <https://www.gov.uk/government/publications/guidance-for-taxpayers>

be a difficult legal question, but users ought to be able to know when and to what extent they can rely upon it.

*Example 3: The tax advisers and accountants involved with client's subject to an APN found the legislation and relevant HMRC guidance to be useful.*

*Source: Chartered Accountants Ireland*

- 5.16. The Office for Tax Simplification also called for HMRC to make it easier for people to find the guidance they need.<sup>31</sup> In addition, stakeholders felt that guidance sometimes does not change quickly enough in response to feedback or keep pace as new compliance risks or economic trends emerge or to reflect court rulings. HMRC have around 88,000 pages of taxpayer guidance and updates them when changes are needed or issues are raised with us. There have been instances where HMRC know that guidance has not been updated quickly, but now frequent engagement with representative groups and taxpayer feedback are used to ensure guidance remains as up-to-date as possible.
- 5.17. HMRC always welcome feedback to help ensure published guidance is as useful and up to date as possible and to help prioritise updates. Some external contributors thought that HMRC should have produced more sector specific guidance on the Corporate Criminal Offence that was suitable for certain small, discrete sectors. HMRC produced principle-based guidance to help corporates consider how to put in place reasonable procedures to prevent the facilitation of tax evasion. HMRC believe that this approach was appropriate for the Corporate Criminal Offence where the question of what constitute reasonable procedures is dependent on the facts of each case. In other areas, this evaluation has noted several opportunities to update HMRC's guidance following feedback (including commitments 17 and 19).
- 5.18. HMRC have recently embarked on a programme of introducing interactive, decision-based guidance on GOV.UK to help the public to navigate the tax system.<sup>32</sup> The first products, for self-employed taxpayers and for traders with specific customs authorisation/declaration requirements, were launched in September and October 2020 respectively.<sup>33</sup> Focusing on the most problematic areas identified by data and engagement with stakeholders will help continue to improve HMRC's guidance, including providing more interactive, decision-based guidance, as well as guidance in alternative formats, such as online videos and webchat. As part of this, HMRC are considering the use of interactive guidance in compliance areas, for example to improve taxpayers' and agents' understanding of penalties.
- 5.19. HMRC will continue to raise customer awareness of how they can provide feedback on HMRC's guidance. Each guidance page has a feedback button, where users can tell HMRC whether they feel guidance is helpful, as well as reporting specific issues like broken links. For more complex or technical issues regarding HMRC's published manuals, users can submit comments directly to HMRC via GOV.UK. Since HMRC took direct control of this feedback in March 2019, approximately 60% of feedback has resulted in changes to the manuals.
- 5.20. HMRC have established a new Guidance Forum with representative bodies, to help ensure that the guidance improvement programme addresses the most pressing user needs. This will consider a range of

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<sup>31</sup> Office for Tax Simplification (2018) 'Guidance for taxpayers.' Available at:

<https://www.gov.uk/government/publications/guidance-for-taxpayers>

<sup>32</sup> Interactive guidance is a proven and effective approach that enables users to easily get the answer they need. Instead of simply providing information that enables customers to reach their own conclusions, interactive guidance takes its lead from decision trees to help customers navigate complex information, based on their specific circumstances, making it easier for them to find, understand and take the correct action.

<sup>33</sup> <https://www.gov.uk/check-additional-income-tax> & <https://www.gov.uk/guidance/check-if-you-can-delay-customs-duty-and-import-vat>

strategic issues, including: how HMRC could further help taxpayers to see how specific pieces of guidance have changed over time; and how to work most effectively with stakeholders when drafting guidance.

5.21. In respect of specific powers and taxpayer obligations, this evaluation has highlighted opportunities to:

- clarify the scope of multinational enterprises' obligation to publish their tax strategy. During engagement with stakeholders, HMRC received positive feedback with respect to the implementation of the measure and support given to taxpayers on the publication of their tax strategies. However, stakeholders suggested that guidance could be further clarified to help identify customers within scope, and their compliance obligations. HMRC will consult with businesses and consider how best to provide clarity and ensure that the obligation aligns with the policy intent.
- maintain and build awareness of the Corporate Criminal Offence including through agent updates, employer bulletins, webinars and undertaking more intensive engagement, particularly with hard-to-reach and higher-risk groups.<sup>34</sup>

### **Getting the content and tone of HMRC's communications, including letters, right**

5.22. HMRC's letters provide an important opportunity to raise awareness of new obligations or explain a taxpayer's rights and obligations during an enquiry. These communications can complement guidance by reinforcing the key messages.

5.23. HMRC have already taken steps to help improve taxpayers' experiences when information is provided in a letter. As part of the wider powers and safeguards programme, HMRC are collaborating with taxpayers, agents and representative bodies to review communications:

- where HMRC opens or closes an enquiry;
- regarding an individual's offshore affairs; and
- where HMRC requests information or issues a penalty for non-compliance.

5.24. As a result, HMRC have updated over 100 key compliance products (including standardised letters and factsheets) to make them clearer and easier to understand. In addition, these letters are more tailored to the needs of individual taxpayers, including those that may need extra help.

5.25. HMRC are also strengthening internal assurance processes to help ensure that all HMRC's one-to-many compliance campaigns meet the high standards the public expect. HMRC will share and refine plans with external groups like the Compliance Reform Forum, making them more transparent and responsive to external input and feedback. Lessons from applying these processes will inform the development of the wider range of communications HMRC uses to help taxpayers understand their rights and obligations.

**Commitment 2: HMRC will continue to use data to target communications at the right audiences at the right time to help promote compliance and prevent non-compliance, including maximising the benefits of the Making Tax Digital programme.**

**Commitment 3: HMRC will continue to deepen partnerships with voluntary and community organisations to help raise awareness of tax obligations amongst, and build trust with, harder to reach taxpayer groups, complementing existing partnerships with industry and agent representative organisations. This includes**

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<sup>34</sup> Employer bulletins are published online 6 times a year and provide employers and agents with up-to-date information on payroll topics. Agent Updates are published online 6 times a year and give guidance and news to tax agents and advisers.

helping ensure the digitally excluded and that those requiring digital assistance are aware of new obligations that affect them and can access the guidance they need.

Commitment 4: HMRC will continue to explore opportunities for new and innovative communications approaches to help ensure that taxpayers, including harder to reach groups, understand their obligations.

Commitment 5: HMRC will continue to improve users' experience of guidance, including by providing decision-based guidance to help people find the answers they need; and by publishing guidance in alternative formats, including online videos.

Commitment 6: In order to make guidance as useful as possible, HMRC will work with its new Guidance Forum: to inform strategic priorities for guidance, including further opportunities to use interactive guidance; to consolidate collaboration with experts on guidance; and to explore opportunities to strengthen awareness of the guidance feedback process.

Commitment 7: HMRC will continue to raise awareness of the Corporate Criminal Offence, particularly amongst hard-to-reach and higher risk groups.

Commitment 8: HMRC will review how best to clarify the scope of multinational enterprises' obligations, with respect to publishing their tax strategies.

Commitment 9: HMRC will continue to evaluate and improve compliance communications; and will strengthen assurance processes around one-to-many activity, inviting external input and feedback, to help ensure they consistently meet the high standards that the public expect.

## 6. Use of powers in compliance enquiries

- 6.1. Tax enquiries are an important element of HMRC's compliance work. HMRC's compliance work, including using powers to make compliance checks, can be difficult and stressful for taxpayers. HMRC are committed to treating taxpayers fairly, professionally and with respect, and to working with them as quickly and effectively as possible to bring enquiries to an agreed conclusion. HMRC will continue to embed these commitments through the updated HMRC Charter in order to build further public trust in the tax system.

### Meeting the professional standards of customer service that the public expect

- 6.2. In Forum discussions, stakeholders recognised that HMRC officers generally act in a way that is reasonable, proportionate and consistent. However, they provided examples which they felt highlighted opportunities for some improvement in the way HMRC officers operate.
- 6.3. These included some instances where external contributors perceived HMRC's approach to be unnecessarily heavy-handed, when the wider facts of a case are considered.<sup>35</sup> Several felt that HMRC sometimes used formal powers to progress or conclude an enquiry without exhausting opportunities for informal co-operation, and this undermines trust in HMRC's approach. It was suggested that HMRC could do more to explain how information requests and deadlines were reasonable.

*Quote 5: One external contributor said 'sometimes HMRC have issued a preliminary DPT notice close to the time limit for issuing a notice. This limits opportunities to engage with HMRC to help ensure the taxpayer understands the detailed issues and can address the correct arguments.'*

*Source: Chartered Institute of Taxation*

- 6.4. HMRC are committed to engaging with customers before using legal powers, including DPT notices. Where possible HMRC will let a company know that a DPT Notice is likely before it is issued. However, the time HMRC have to legally collect tax is limited by the legislation and, if the deadline to collect the tax nears, a Notice may need to be issued to protect the right to collect the tax. As a result, sometimes HMRC may need to issue a Notice at short notice.
- 6.5. In other examples, contributors noted that HMRC could ask for information to be provided within weeks and then take months to respond. This could prolong an enquiry (and uncertainty for the taxpayer) unnecessarily. Forum members provided evidence of disputes that lasted several years, including where HMRC had issued Follower Notices and Accelerated Payment Notices, for example where settlement may have been dependent on long running litigation. Ipsos MORI's interviews with agents who had experience of APNs and FNs echoed these experiences, as some interviewees reported feeling frustrated where HMRC were not progressing investigation work as quickly as they expected.<sup>36</sup>
- 6.6. External contributors felt HMRC acted inappropriately in some individual cases. Some felt HMRC could have done more to take into account the wider circumstances during an enquiry. As Example 4 illustrates, one noted an example where HMRC had considered relying on a small sample of data from the taxpayer and third-party data to propose that a tax return may be incorrect, before considering if the sample was representative of the annual income.

*Example 4: While undertaking a compliance check for a restaurant, HMRC acquired information from the merchant acquirer for the business (using HMRC's powers to collect bulk data). The agent said that HMRC proposed to rely on a combination of the merchant acquirer data and a one week sample of takings for the business to assert that the restaurant owner was making larger cash extractions than*

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<sup>35</sup> HMRC's approach to penalties is considered further in Chapter 7.

<sup>36</sup> <https://www.gov.uk/government/publications/hmrc-powers-and-taxpayer-safeguards-research>



*had been disclosed previously, without considering whether this was an appropriate sample given possible business trends and seasonal fluctuations.*

*Source: The Law Society*

- 6.7. Several external contributors shared individual examples where they suggested HMRC could have approached an enquiry more efficiently. Some noted that they felt the officer leading their enquiry used HMRC's guidance as a substitute for, rather than a complement to, the legislation and relevant case law when applying a power. In other cases, stakeholders felt that better explanations by HMRC of their decisions to apply specific legal provisions or technical arguments would help resolve issues more rapidly. One suggested HMRC could have done more to help their clients calculate the tax they owed where they had received several Follower Notices for different tax avoidance schemes they had used. Some examples set out where it was felt that HMRC had approached similar cases inconsistently, or teams within HMRC fostered confusion by carrying out separate enquiries on the same taxpayer without ensuring a joint approach.
- 6.8. A number of contributors suggested that it was particularly difficult to resolve complex issues where compliance officers seek advice from HMRC's technical experts. Some encouraged HMRC to do more to help ensure that compliance officers fully understand and can defend the decisions taken by technical experts. Several of the Ipsos MORI interviewees also reported a perception that decisions about APNs, FNs and the associated calculations were handled by senior staff that the agents were not able to speak with and that the staff who did respond to them were not able to understand the details or complexities of the case.<sup>37</sup> However, others felt decisions were delegated to officers that were too junior, rather than too senior, as Example 5 illustrates.

*Example 5: one external contributor felt that the governance processes around APNs/FNs appear to be delegated to more junior officers. They felt that taxpayers' circumstances are not fully considered through the process – e.g. where taxpayers have no funds to appeal/make representations and are likely to be made bankrupt.*

*Source: Chartered Institute of Taxation*

- 6.9. This shows HMRC need to do more to explain how decisions are taken by staff.

## **Conclusions and next steps**

- 6.10. HMRC's Charter sets out the standards of behaviour that the public can expect when dealing with us. While, overall, this evaluation concludes that HMRC generally meet these expectations, it has also underlined that more can be done to reassure taxpayers their personal circumstances have been taken into account when they do not feel they should be subject HMRC's powers.
- 6.11. HMRC does not meet these high standards in every case – taxpayers should, and do, have the right to complain where they feel they have not been treated appropriately, or challenge HMRC where they do not feel HMRC have appropriately applied the legislation to facts of their case. HMRC have published an updated Charter on the standards and continues to develop the capability of compliance officers in line with the Charter.
- 6.12. Action is being taken across the organisation to help ensure that every single taxpayer, of the millions of taxpayers, are treated with professionalism and respect every time. HMRC's updated Charter sets out more clearly the experience that taxpayers should have. The updated Charter is designed to be accessible, helping all taxpayers, especially those that are unrepresented, to understand what they can expect from

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<sup>37</sup> <https://www.gov.uk/government/publications/hmrc-powers-and-taxpayer-safeguards-research>

their relationship with HMRC and enabling them to hold HMRC to those standards. The updated Charter was published on 5 November 2020.

- 6.13. Alongside the online version of the updated Charter, customers are encouraged to provide feedback about their experiences and if they do not feel their experience meets the expectations of the Charter, to submit a complaint. HMRC plan to continue with the Charter Stakeholder Group, formed during the Charter consultation and attended by tax community representatives, to help HMRC monitor performance against the Charter and provide regular feedback. In addition, HMRC's Customer Experience Committee, attended by external customer experience experts as well as the Adjudicator, will review HMRC's performance against the Charter every quarter and publish their findings every year in the Charter Annual Report. From 2020/21, HMRC have committed to publish a Customer Experience Plan setting out how HMRC will act on the findings of the Charter Annual Report.
- 6.14. Alongside updating the Charter, HMRC continue to improve HMRC's technical and core compliance capabilities. In 2019/20 HMRC created a Director-led **Customer Experience & Professionalism Programme (CEPP)** in HMRC's Customer Compliance Group, to help ensure that HMRC's compliance officers have the skills and capabilities to deliver the standards set out in the Charter. The CEPP has already set clear standards for expected from the quality of HMRC's casework, which will be used to drive improvements in professional capability. It is also delivering specific products designed to improve the experience of customers, such as changing letters and forms to make them more accessible and developing new guidance to help explain the compliance process. In addition, HMRC are also introducing more robust and impactful quality assurance processes and case-working controls. HMRC have established a director-led Tax Professionalism Programme which will ensure that HMRC's new trainees understand and apply the Compliance Professional Standards as part of their wider technical tax training.
- 6.15. Taking these elements together, backed by ongoing work to strengthen HMRC's training programmes, the CEPP is expected to drive qualitative improvements in the way HMRC work with every taxpayer, which will be measured through assurance activity and customer surveys. This will also support HMRC's strategic aims to maximise revenues due and bear down on avoidance and evasion, transform tax and payments and design and deliver a professional, efficient and engaged organisation.<sup>38</sup>
- 6.16. These programmes complement HMRC's wider work to put the taxpayer's circumstances at the heart of the approach to every enquiry, including those using powers introduced since 2012. For example, HMRC are considering the impact that the COVID-19 pandemic may have on a taxpayers' circumstances, including how it may impact on their short-term profitability as a business or health as an individual and adapting the approach as appropriate. At the start of the pandemic, HMRC responded to taxpayers' individual circumstances, giving people more time to respond where appropriate. HMRC allowed people more time to provide information where compliance checks were ongoing, but if customers wanted compliance activity to continue – for instance, if they wanted certainty on their tax position – HMRC did so. HMRC have also extended the period to make an appeal to 3 months.
- 6.17. Sir Amyas Morse, in his Independent Loan Charge Review, recommended that HMRC should update taxpayers at least annually about the status of open tax enquiries. In its response, the Government agreed, noting that HMRC were already moving to this approach in tax avoidance cases. HMRC's Compliance Professional Standards emphasise keeping in touch as a core part of the compliance journey. HMRC's Compliance Handbook was also updated in June 2020 to provide guidance to HMRC's compliance staff on keeping taxpayers informed. This includes situations where an enquiry may be on hold due to other ongoing action (for example if there is a legal challenge from another taxpayer which impacts their case).

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<sup>38</sup> HMRC (2020) '2019 to 2020: Annual report and accounts.' Available at: <https://www.gov.uk/government/publications/hmrc-annual-report-and-accounts-2019-to-2020>

**Commitment 10: HMRC will continue to raise awareness of the Charter, using quarterly reviews and the Charter Annual Report to monitor progress and identify and act on areas for improvement.**

**Commitment 11: HMRC's ongoing work to continuously improve technical tax and core compliance capabilities will focus on ensuring that HMRC's officers have the resources, skills and capability to deliver the standards set out in the Charter.**

## Supporting those who need extra help

- 6.18. This evaluation has underlined how some people need extra help while involved in a compliance enquiry because of their personal circumstances. Some may be experiencing difficult circumstances, including serious illness, mental health issues, digital exclusion, age-related difficulties, financial hardship or major life events such as bereavement.
- 6.19. Others find the compliance enquiry itself stressful. While most of the 11 agents interviewed by Ipsos MORI about APNs and FNs said they had become used to the processes underpinning those powers, they emphasised how fearful some of their clients had been when they received the advance warning or notice, noting the limited number of representations they could make. This was exacerbated if they were unable to pay the amount or there was a lack of clarity in the information they received. Ipsos MORI noted that, across their interviews with agents, it was reported that these powers had serious consequences for some clients' mental health.<sup>39</sup>

## Conclusions and next steps

- 6.20. HMRC understand enquiries can be difficult and stressful for taxpayers, especially where they are experiencing difficult personal circumstances. HMRC are continuing to develop support for those experiencing difficult circumstances or anxiety. This is especially important where taxpayers believe that their affairs were correct but have made a mistake, or where they have relied on incorrect tax advice.
- 6.21. HMRC are committed to providing extra support for those who need it, in line with HMRC's updated Charter and HMRC's legal responsibilities. Taxpayers should feel reassured that HMRC are approachable and will always provide appropriate support during enquiries, taking account of their circumstances. This will help maintain and build trust amongst the millions of taxpayers HMRC serves, including those in difficult circumstances. In 2019/20, HMRC's Customer Services Group Extra Support service helped over 90,000 customers, over the phone, via letters, and through face-to-face meetings.
- 6.22. Key to HMRC's approach is making it easy for those who wish to comply with their obligations or correct genuine errors, while intervening appropriately where taxpayers have sought to gain an advantage by bending or breaking the rules.
- 6.23. HMRC understand that some taxpayers may be reluctant to share details of their circumstances, especially vulnerabilities, with HMRC and that in particular compliance checks may be stressful. HMRC's Extra Support service has been expanded during the past year to provide support across HMRC and a dedicated Compliance Extra Support Team was established in January 2020 to provide specific support and advice in compliance cases. The Compliance Extra Support team has developed guidance and referral processes which help to ensure that those who need extra help are identified and supported appropriately.
- 6.24. The Compliance Extra Support team will continue to develop new guidance and referral processes to help ensure that HMRC's officers consistently look to understand taxpayers' personal circumstances and adapt

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<sup>39</sup> <https://www.gov.uk/government/publications/hmrc-powers-and-taxpayer-safeguards-research>

their approach accordingly. HMRC's response to those experiencing financial hardship is set out in Chapter 7.

- 6.25. HMRC's work to put in place an Extra Support service for compliance work complements work with voluntary and community sector organisations. These organisations provide a range of specialist support as well as tax and benefit-related support to a range of individuals who need extra help. HMRC also provides voluntary and community sector organisations with funding to help them to support those who find it most difficult to engage directly with HMRC. This funding is currently £1.7 million per year, across 14 organisations, and HMRC have advertised a three-year grant funding exercise for 2021-24.
- 6.26. As part of HMRC's work with taxpayer and agent representatives in the Compliance Reform Forum to improve HMRC's key letters, factsheets and guidance, the references to extra support have been strengthened to help people understand how HMRC can help them.<sup>40</sup>
- 6.27. HMRC have begun to use advanced analytics to identify, and adapt the approach to, those that may be in financial difficulty ahead of any contact. These adaptations include referring individuals who need extra help to a specialist team within HMRC for help with their tax debts and signposting them to free debt advice services provided by independent organisations such as the Money Advice Trust. These independent organisations can also provide independent advice on managing debts to other creditors.
- 6.28. HMRC will continue to explore how this support can be further improved. In 2019, HMRC commissioned research to identify opportunities to develop the digital services HMRC provides, enhance the alternative support that offered to the digitally excluded, and improve the help provided through the voluntary and community sector.<sup>41</sup> HMRC are developing assisted digital support to meet customers' needs and are working as part of a cross Government group to share best practice.

**Commitment 12: HMRC's Compliance Extra Support team will continue to provide and develop processes that help ensure those who need extra help are identified and provided with appropriate support during enquiries.**

**Commitment 13: HMRC will continue to engage with voluntary and community sector organisations to provide support for individuals who need extra help.**

## Ensuring that the public trust HMRC to apply powers proportionately and consistently

- 6.29. In discussions in the Forum, stakeholders welcomed the opportunity to understand better how HMRC's internal governance procedures ensure that decisions are consistent, proportionate and compliant with human rights and other non-tax legislation.
- 6.30. Many elements of this governance apply across HMRC's day-to-day work. HMRC's status as a non-ministerial department is intended to ensure that the administration of the tax system is fair and impartial. HMRC complies with directions of a general nature given by Treasury ministers, for example on strategies, operational policies and targets, with no political decision making in the affairs of individual taxpayers. HMRC is accountable to the Chancellor of the Exchequer for how business is conducted, and the

<sup>40</sup> HMRC (2020) 'Get help from HMRC if you need extra support.' Available at: <https://www.gov.uk/get-help-hmrc-extra-support>

<sup>41</sup> HMRC (2020) 'Assisted digital and digitally excluded support needs.' Available at: <https://www.gov.uk/government/publications/assisted-digital-and-digitally-excluded-support-needs>

Chancellor has delegated the responsibility for oversight of the department to the Financial Secretary to the Treasury.

- 6.31. In turn, Treasury Ministers are accountable to Parliament. The National Audit Office scrutinises and reports to Parliament on the value for money that HMRC provides. HMRC's internal oversight helps to ensure that key decisions are discussed and tested before being made. Where taxpayers feel they have been mistreated, they have the right to complain to HMRC and, if not satisfied with HMRC's response, to the independent, external Adjudicator.
- 6.32. If taxpayers feel HMRC may have approached their enquiry inappropriately, acted unreasonably or incorrectly applied the legislation to their personal circumstances, they have access to opportunities to challenge HMRC. These generally include an impartial statutory review, alternative dispute resolution and/or appeals to the Tax Tribunal and the courts.
- 6.33. The Tax Assurance Commissioner provides assurance to Parliament and the public that HMRC handles civil tax disputes in accordance with the law and HMRC's Litigation and Settlement Strategy - avoiding unnecessary disputes, conducting them in a non-confrontational, collaborative and transparent way, and resolving them to collect the tax that is due under the law without unnecessary delay.<sup>42</sup> The Tax Assurance Commissioner publishes an annual report detailing how HMRC's tax dispute resolution governance has operated over the year.<sup>43</sup>
- 6.34. In addition to investing in HMRC's day-to-day professional capability, substantial time and resources are invested in preparing for the introduction of all HMRC's powers and obligations. This includes providing training across the department to ensure that relevant teams are aware of new powers and how they should be applied, and creating networks of experts to provide advice, support and independent challenge where HMRC are considering how to apply a power in a specific case.
- 6.35. Experience has shown that there is a determined minority who seek to avoid tax, and who exploit safeguards that are intended to protect the compliant majority in order to prolong disputes and defer paying the right tax. Some of HMRC's powers introduced since 2012, including the GAAR, FNs, APNs and the DPT Charging Notices, are designed to help HMRC tackle this behaviour by changing the economics of these disputes or encouraging settlement. These powers are necessarily designed to be far-reaching and incentivise these taxpayers to pay the tax due.
- 6.36. These powers are complemented by rigorous statutory and operational governance to help ensure that they are used consistently, proportionately and reasonably. HMRC's use of these powers is governed by steering groups, chaired by senior officials and attended by experts from across HMRC including policy and/or technical specialists, solicitors and caseworkers. In addition, these powers are applied by specially trained and experienced HMRC officers, supported by specialist teams (though, as above, some taxpayers would sometimes prefer to speak to an officer with a greater level of seniority or experience than perceived). Key decisions about the use of these powers are taken by experienced groups of officers, or by appropriately senior, experienced officers who are independent from the original enquiry, considering the facts of the case, as well as the policy intent and legislation underpinning the power.
- 6.37. HMRC's decisions to apply the GAAR must always be informed by an Opinion provided by the GAAR Advisory Panel (an independent body with no HMRC members made up of experts with legal, accountancy and commercial backgrounds). Anonymised versions of these Opinions are published on GOV.UK.<sup>44</sup> Where

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<sup>42</sup> HMRC's Litigation and Settlement Strategy is available here: <https://www.gov.uk/government/publications/litigation-and-settlement-strategy-lss>

<sup>43</sup> The Tax Assurance Commissioner's Report is part of HMRC's Annual Report and Accounts. The 2019/20 report is available here: <https://www.gov.uk/government/publications/hmrc-annual-report-and-accounts-2019-to-2020>

<sup>44</sup> <https://www.gov.uk/government/collections/tax-avoidance-general-anti-abuse-rule-gaar#gaar-advisory-panel-opinions>

appropriate, information on how HMRC have used these far-reaching powers is published through the Tax Assurance Commissioner's Annual Report.

6.38. While these powers often remove incentives to avoid tax, some taxpayers continue to seek to avoid tax by persistently challenging HMRC. One external contributor to this evaluation noted that some taxpayers subject to an APN had set aside funds in anticipation that their schemes would eventually be defeated by HMRC and paid the APN in line with the deadline, but others chose to dispute or ignore the APN. Ipsos MORI's interviewees echoed these views, noting that some taxpayers actively seek to draw out the APN process for as long as possible, in the hope that HMRC will lose interest over time, or that they will be able to negotiate down the amount due or that a taxpayer will win the underlying case in court so no tax is due. Others choose to defer paying the Accelerated Payment Notice and accumulate penalties in the hope that HMRC may lose the underlying case.<sup>45</sup>

*Quote 6: One external contributor said 'we have had experience of several cases where APNs have been issued where clients have been found to have entered into disguised remuneration schemes. We think that APNs are being used proportionately, consistently and within the clear statutory framework... in our experience, [the power] is being used appropriately and effectively.'*

*Source: The Law Society*

### The perception that HMRC uses powers inappropriately

6.39. External contributors generally recognised that these far-reaching powers were designed to transform the economics of avoidance and contrived tax planning, with carefully crafted safeguards to help ensure that taxpayers had appropriate opportunities to influence and challenge HMRC's decision. However, it was suggested that there is still more to do to explain how HMRC's powers work. For example, as Quote 7 illustrates, some assume that the fact that few cases where APNs have been issued go to court signals a heavy-handed approach by HMRC. However, APNs are unrelated to case settlement and merely change where avoidance amounts in dispute sit while the dispute plays out. Some APNs are issued on the basis of FNs, where it is reasonable to suppose the matter has already been resolved in another party's litigation and large numbers of appeals would not be expected.

6.40. Taxpayers can, and do, submit representations against HMRC's decision to issue a Follower Notice and, if they feel HMRC have acted inappropriately, can challenge HMRC in court. Table 2 illustrates how HMRC does amend its position to reflect new information, as taxpayers submitted some 53,000 representations against APNs and FNs and following consideration of those representations, HMRC withdrew around 10% and amended around 20% of the notices. Some taxpayers have exercised their right to apply for HMRC's decisions to be judicially reviewed.

*Quote 7: One external contributor said 'the strong impression I have is that APNs are used not merely to change where money is held during the litigation process but as part of a deliberate tactic to stop the matter ever going to court. There seem to be very few cases that have come to tribunal following the issue of APNs, suggesting that the requirement to pay APNs has effectively caused the taxpayer to give up.'*

*Source: Institute of Chartered Accountants for England and Wales*

*Example 6: One external contributor noted that the DPT was introduced to target use of "contrived arrangements" by MNEs but felt most DPT cases are being settled on transfer pricing grounds and DPT was being used as a lever to achieve transfer pricing settlements. This external contributor felt that*

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<sup>45</sup> <https://www.gov.uk/government/publications/hmrc-powers-and-taxpayer-safeguards-research>

*HMRC's published statistics confirmed this perception and questioned whether HMRC's internal governance ensured that the DPT was used appropriately.*

*Source: Chartered Institute of Taxation*

- 6.41. Example 6 reflects how HMRC approaches compliance. Where HMRC's risk assessment suggests that DPT may apply, officers are asked to gather evidence to consider DPT and transfer pricing risk as well as any other related tax risks. Sometimes the evidence gathered shows that DPT does not apply and should not be pursued further. Sometimes taxpayers can choose to make a transfer pricing adjustment to displace the DPT charge. This outcome is in line with the policy intent underpinning the DPT, as it encourages taxpayers to unwind their profit diversion arrangements and pay corporation tax on profits arising from economic activity in the UK.
- 6.42. To help build awareness of how HMRC's powers work, and to counter the perception that these powers may be used inappropriately, external contributors encouraged HMRC to do more to raise public awareness of how HMRC's responsibility to protect the Exchequer – including by using powers to change the economics of a dispute and incentivise early payment – is balanced with the need to take individual taxpayers' circumstances into account.
- 6.43. It was suggested that, while applying powers, HMRC could build public awareness of taxpayers' rights as well as their obligations. This would be especially helpful where HMRC are applying powers to tackle avoidance, as the process can be complex and there are multiple opportunities to provide representations to help inform HMRC's final decision. This information is already included in the documents HMRC provides alongside an APN or FN, but some felt HMRC could go further and be more transparent about how HMRC's internal governance structures influence decisions in practice. This could reassure taxpayers that HMRC takes care to use far reaching powers consistently and appropriately in line with the policy intent.

#### **Concern over whether HMRC listens and takes the facts of each case into account**

- 6.44. For some of these powers, the statutory safeguards provide opportunities for taxpayers to submit evidence and other information they wish HMRC to consider when reviewing a decision to exercise a power. Some external contributors to the evaluation suggested they were unsure that HMRC fully took this information into account. During the DPT Deep Dive, several external stakeholders said they were unsure whether their representations were fully taken into account by the Designated Officer when making decisions to issue a Charging Notice, despite the legislative requirement to do so.
- 6.45. Similarly, Ipsos MORI noted that one tax lawyer felt it 'wasn't clear... what is the point of making a representation, what good it would do.'<sup>46</sup> However, Table 2 illustrates how HMRC does amend its position to reflect new information, as taxpayers submitted some 53,000 representations against APNs and FNs and following consideration of those representations, HMRC withdrew around 10% and amended around 20% of the notices.
- 6.46. Some external contributors noted that HMRC's decisions to apply Follower Notices on the basis of lead judicial rulings have been subject to judicial review - HMRC have appealed one decision to the Supreme Court (Haworth v. HMRC [2019]). This reflects the fact that these are complex cases and HMRC do not necessarily share the same view as taxpayers. Example 7 illustrates an instance where an agent said a taxpayer had submitted representations and HMRC initially disagreed with their arguments, but changed their view on further consideration and advice:

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<sup>46</sup> <https://www.gov.uk/government/publications/hmrc-powers-and-taxpayer-safeguards-research>

*Example 7: one taxpayer challenged HMRC at the First tier Tribunal on two grounds. Another case was heard which clearly decided (in HMRC's favour) one of the grounds and HMRC issued FNs. The agent said the taxpayer submitted representations but HMRC argued that the taxpayer must drop both grounds of appeal to comply with the FN and a 50% penalty would automatically apply. The taxpayer instigated a judicial review. HMRC amended the position a week before the court date, agreeing with the taxpayer that only one ground needed to be dropped.*

*Source: Institute for Chartered Accountants of England and Wales*

- 6.47. This reflects that tax law can be complex and evolving, and it may take time for parties in litigation to carefully consider how decisions of the courts or emerging information might affect their view.
- 6.48. Some Forum members suggested that HMRC's internal processes for contentious compliance issues should be more open so that taxpayers or their agents could personally present their arguments or hear how HMRC reached decisions. However, HMRC's existing processes are designed to ensure that taxpayers have ample opportunity to share evidence to inform HMRC's understanding of the facts. This includes responding to requests for information and submitting representations, as well as wider opportunities to discuss the substance of a dispute with HMRC's officers through correspondence or in face to face meetings. This evidence helps inform robust discussion within HMRC.
- 6.49. HMRC's existing governance processes allow for dispassionate assessment of the strengths and weaknesses of each side's arguments. These assessments take into account advice covered by Legal Professional Privilege, as well as a wider understanding of HMRC's strategy and compliance work, some of which it would not be appropriate to disclose. The participation of taxpayers in that process would inevitably introduce an element of advocacy and administration that would, to an extent, duplicate taxpayers' opportunities to access full and open arbitration, including the right to challenge HMRC in the courts. HMRC believe it would significantly increase the time and cost of resolving many disputes.
- 6.50. Forum members also suggested that HMRC should provide new opportunities for taxpayers and their agents to raise general issues around compliance activity that may relate to multiple cases. HMRC will explore how best to provide this opportunity, including discussing whether the Compliance Reform Forum and Representative Body Steering Group may provide appropriate channels for discussion.

### **Concern that HMRC could do more to help taxpayers understand their rights and obligations**

- 6.51. APNs, FNs and the GAAR are designed to enable HMRC to take decisive action to tackle tax avoidance where the legislation is highly detailed, and HMRC's associated communications must be legally robust.<sup>47</sup> Several contributors felt that these communications were clear, easy to understand and cross-reference to the legislation, as Quote 8 illustrates. However, some others felt that HMRC's communications on these powers were too complex and should be easier to understand. This was especially the case where a taxpayer had to calculate the correct tax due but had received several FNs for different avoidance schemes, or the final tax due hinged on separate technical disputes. Quote 9 illustrates how one agent felt HMRC should do more to help taxpayers understand how their arrangements mirrored the lead judicial ruling for the purposes of a FN.
- 6.52. Ipsos MORI's interviewees reflected this range of views. Some felt that APNs and FNs detailed exactly what they needed to do in a factual way and gave clear instructions on next steps. Others felt that they used technical language, making it difficult for both the agent and their client to understand exactly why they

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<sup>47</sup> For example, the content of HMRC's Follower Notices formed part of a judicial review (*Broomfield and others v. the Commissioners for HMRC* [2018]). See Annex E for a summary of this case, and further references.



had received the notice. Some of the agents interviewed said they felt that most of their clients would be unable to deal with a notice without the help of a specialist.

*Quote 8: One respondent said ‘HMRC set out the requirements of the APN – this was useful to cross check against the relevant legislation to ensure the power was being applied correctly. HMRC were flexible in agreeing Time to Pay arrangements where funds could not be released by taxpayers.’*

*Source: Chartered Accountants Ireland*

*Quote 9: One respondent said ‘a client received FNs which included several statements from the lead judicial ruling but these were not sufficiently linked to the taxpayer’s fact pattern. This made it difficult to understand why HMRC felt the lead judicial ruling applied to the client’s particular circumstances and to explain this to the client.’*

*Source: Chartered Institute of Taxation*

### **Considering the best time to inform taxpayers that they may be subject to a power**

6.53. Several stakeholders encouraged HMRC to inform taxpayers as soon as possible if their transactions or arrangements may be counteracted by the GAAR, to help taxpayers to plan how to manage any dispute. However, others felt that HMRC saying a power could be used in a particular case fosters substantial uncertainty and increases costs unnecessarily. HMRC’s approach to applying the GAAR was welcomed by some contributors, as it improved trust that the GAAR was only being used in cases that HMRC had carefully considered and felt were abusive.

6.54. Quote 10, which concerns the DPT, illustrates the importance of clear communications. In particular, HMRC should be clear where engagement with taxpayers is intended to collect evidence to determine whether the DPT should be applied. In doing so, HMRC should be conscious that this can itself foster uncertainty and therefore be as clear as possible why HMRC believe that the DPT could be in point.

*Quote 10: One external contributor said ‘given the significance of the implications of a DPT assessment, we believe it is incumbent on HMRC to ensure that it properly articulates to taxpayers at an early stage why it considers that DPT may be in point. This must include an explanation of why HMRC considers that transactions have been designed to secure a tax reduction, and this explanation must be supported by evidence.’*

*Source: Chartered Institute of Taxation*

### **Conclusions and next steps**

6.55. Many of the commitments made elsewhere in this report will help to ensure that the public trust HMRC to apply powers proportionately and consistently. This includes commitments to:

- Update HMRC’s guidance;
- Continuously improve HMRC’s officers’ technical tax and core compliance capabilities to meet the standards set out the Charter;
- Provide appropriate support during an enquiry; and
- Evaluate and improve HMRC’s compliance communications.

6.56. HMRC recognise that, in the course of compliance enquiries, it is important that taxpayers are aware of their rights, as well as their obligations, so that they can make informed decisions. This helps to build public trust in the tax system, while also minimising unnecessary costs. Where appropriate, HMRC work with taxpayers to help them calculate the tax due, or suggest that they seek independent advice. In addition, where appropriate, HMRC use discretion to provide more time for taxpayers to comply with their obligations.

6.57. In connection with the specific, additional issues raised in paragraphs 6.29-6.54 above, HMRC make the following points:

- The Government is consulting on amending the penalty for failure to comply with a FN to focus the hardest-hitting effects of the regime more firmly on the least compliant, while ensuring that HMRC can continue to discourage inappropriate litigation intended to defer settlement of disputes.<sup>48</sup>
- HMRC's compliance processes offer appropriate opportunities for taxpayers to present their arguments. It is important that it is easy for taxpayers to challenge HMRC where they feel that the legislation has been incorrectly applied to their circumstances, or to make complaints where they feel they have not been treated fairly. HMRC will continue to work to ensure that taxpayers are aware of their rights as well as their obligations when engaging with HMRC.
- In addition, HMRC will work with the new Professional Standards Committee to explore how improving awareness of HMRC's internal governance processes (especially in relation to the GAAR, APNs, FNs and the DPT) could promote public trust in HMRC's decision-making.
- As an immediate response to one of the issues raised in this evaluation, HMRC have amended the DPT guidance on the Designated Officer's role in reviewing taxpayers' representations.
- On the question of when taxpayers should be informed that the DPT and the GAAR may be in point, HMRC note the concerns raised by some external contributors. The points made by others, who felt that HMRC's careful approach to the GAAR had helped build public trust and that in general, taxpayers understood why HMRC were exploring whether the DPT may be in point and could plan accordingly, are also noted. The discussions during this evaluation have highlighted the importance of striking a careful balance between being open and collaborative, while minimising unnecessary concerns and costs for taxpayers.
- HMRC will continue to aim to resolve issues in collaboration with taxpayers, avoiding litigation where possible. Where a dispute has reached an impasse, it may still be possible to use mediation through Alternative Dispute Resolution. The Chamber President's 15 June 2020 statement on Alternative Dispute Resolution has been integrated into HMRC's guidance. This clarifies where mediation may be used to help resolve a dispute and the consequences for litigation.<sup>49</sup>
- HMRC have noted calls from the Office for Tax Simplification and the House of Lords for HMRC to promote the benefits of statutory reviews to taxpayers.<sup>50</sup> HMRC will continue to consult with a number

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<sup>48</sup> HMRC (2020) 'Follower notices and penalties.' Available at: <https://www.gov.uk/government/consultations/follower-notices-and-penalties> - this consultation closed at 11:45pm on 27 January 2021.

<sup>49</sup> Judge Greg Sinfield, Chamber President (2020) 'Practice Statement, First-tier Tax Tribunal (Tax Chamber): Alternative Dispute Resolution.' Available here: <https://www.judiciary.uk/wp-content/uploads/2020/06/200615-FTT-Tax-Chamber-Practice-Statement-on-ADR-1.pdf> & HMRC (2020) 'Use alternative dispute resolution to settle a tax dispute.' Available at: <https://www.gov.uk/guidance/tax-disputes-alternative-dispute-resolution-adr>

<sup>50</sup> Office for Tax Simplification (2017) 'Value added tax: routes to simplification.' Available at: <https://www.gov.uk/government/publications/ots-report-on-routes-to-simplification-for-vat-is-published> & House of Lords (2018) 'The powers of HMRC: treating taxpayers fairly.' Available at: <https://publications.Parliament.uk/pa/ld201719/ldselect/ldconaf/242/242.pdf>

of organisations, including the OTS, to improve HMRC's understanding of the barriers that taxpayers experience when considering requesting a statutory review. This learning, alongside insight from external research, will be used to help improve awareness and uptake of this service.

**Commitment 14: HMRC will explore how improving awareness around internal governance processes could promote public trust in decisions to apply the GAAR, APNs, FNs and the powers underpinning the DPT.**

**Commitment 15: HMRC will seek views from taxpayers, agents and their representatives on opportunities to improve awareness and uptake of the statutory review process.**

## 7. Putting things right and the use of penalties

- 7.1. HMRC want to help taxpayers get their tax right, in line with the law and HMRC's strategy. Where a taxpayer does not get it right, HMRC may charge penalties. HMRC will investigate the circumstances in which the error arose and consider a taxpayer's specific actions and behaviour as part of any decision about applying penalties. This includes considering the taxpayer's openness and engagement with HMRC. For example, HMRC will take tough measures against those that deliberately seek to pay less tax than they should and seek to obstruct HMRC's investigations.
- 7.2. In the context of HMRC's implementation of powers introduced since 2012 these careful judgements include:
  - decisions around whether to apply a penalty where a compliance enquiry has established that the right tax was not paid, and how large the penalty should be, considering the taxpayers' circumstances and behaviour; and
  - decisions about recovering unpaid tax, including where taxpayers are in financial hardship.
- 7.3. Applying penalties and time to pay arrangements in a way that is clear and fair requires careful and considered judgements so that HMRC's application of the law is reasonable, and that HMRC promote good compliance through supporting the vast majority of taxpayers who want to get things right.
- 7.4. In addition, this evaluation highlighted HMRC could provide more support where taxpayers come forward to disclose a UK tax liability that relates wholly or in part to an offshore issue through the Worldwide Disclosure Facility.

### Issuing penalties appropriately and reasonable excuse

- 7.5. Where a taxpayer has not met an obligation, HMRC always consider their behaviour to help ensure that corresponding actions are appropriate and proportionate. Those who come forward to declare non-compliance and co-operate with HMRC's enquiries should always receive lower penalties than those who wait to be detected by HMRC or choose not to co-operate.
- 7.6. Several external contributors felt that HMRC's approach to penalties could be heavy-handed in some cases. When considering a penalty, their experience was that HMRC could be unnecessarily reluctant to consider whether a taxpayer had taken reasonable care but made a mistake or had sought to co-operate with an enquiry. HMRC are sometimes seen to use penalties too aggressively to provide an incentive for taxpayers to settle early, or to discourage taxpayers from challenging HMRC's view.
- 7.7. One external contributor suggested that HMRC had considered if a taxpayer had a reasonable excuse for failing to comply with an FN, when the correct legal test is whether it was reasonable in all the circumstances for a taxpayer to fail to comply. While these grounds of appeal are different, there are degrees of similarity between them.

*Example 18: one agent felt HMRC tends not to consider how the penalties should be reduced despite the statutory provisions existing to reduce them for co-operation etc. He said 'HMRC's general approach on avoidance cases appears to be to use all powers & seek maximum penalties, despite the taxpayer trying to comply.'*

*Source: Chartered Institute of Taxation*

- 7.8. The Requirement to Correct (RTC) deep dive considered HMRC's approach to Failure to Correct penalties, where many stakeholders felt that HMRC's approach was disproportionate. They encouraged HMRC to

review the guidance on non-voluntary offshore disclosures, which says that the penalty will not be reduced below 150% of the tax owed. They would like the penalties to be closer to the minimum for voluntary disclosures (set at the statutory minimum penalty – 100% of the tax involved). However, others also recognised the Failure to Correct penalties were intended to encourage taxpayers to comply with the Requirement to Correct by checking their offshore tax was compliant, and HMRC should take care to maintain the credibility of this policy. Some recognised that reducing the penalty for non-voluntary disclosures would reduce the distinction between those who come forward voluntarily and those who do not, eroding the incentive for voluntary disclosures. Some stakeholders made the point that higher penalties do not incentivise disclosure where taxpayers were not aware of their non-compliance,.

- 7.9. This evaluation also considered how HMRC applied reasonable excuse in the context of non-compliance with some obligations introduced since 2012, especially the RTC. These discussions focused on the small minority of cases where it may not be reasonable to expect an individual to have complied with their obligations and so a penalty would not be due.
- 7.10. Through these discussions, some stakeholders raised concerns that HMRC may be considering reasonable excuse inconsistently where taxpayers had similar reasons for failing to correct offshore non-compliance before the deadline. In addition, external contributors shared several examples where they felt a taxpayer should have a reasonable excuse for failing to comply with the RTC but HMRC had disagreed, as illustrated by Example 19.

*Example 19: Mr B received overseas rental income and declared and paid tax on this income in the source jurisdiction. HMRC obtained data on this overseas income from the source jurisdiction and wrote a letter to Mr B. Mr B then sought advice and established tax should have also been declared and paid in the UK on this income and disclosed this to HMRC. The advisor said Mr B 'didn't realise that there was a need to report income in both the source country and the UK' and 'didn't necessarily get clear warnings they needed to seek advice.' HMRC determined Mr B circumstances did not constitute a reasonable excuse for non-compliance, and while the penalty would be reduced to reflect his cooperation, a penalty of at least 150% of the tax would be due because the disclosure was prompted by HMRC.*

*Source: Tax Inspectors Practitioners Group*

- 7.11. External contributors to the evaluation also highlighted concerns that some taxpayers may be subject to penalties for failing to comply with the RTC but not realise they have a reasonable excuse or may have a reasonable excuse but find it difficult to make their case. This was felt to be a particular risk where individuals need extra help, potentially including elderly retirees or those who speak English as a second language, or where taxpayers do not have an agent to represent them.

## Conclusions and next steps

- 7.12. HMRC understand that penalties for failures to comply with obligations can be stressful. Wherever a penalty may be due, HMRC will take steps to understand what has happened and whether there are any mitigations while making clear what the taxpayer's rights are.
- 7.13. Many of the commitments across this evaluation will help HMRC demonstrate that the facts of a taxpayers individual case are taken into account when making decisions. For example, HMRC are reviewing the content and tone of HMRC's communications to be clearer that FN penalties can be reduced to reflect a taxpayer's co-operation. This includes taking into account the taxpayer's actions prior to the notice being issued when this is a relevant factor.
- 7.14. HMRC have considered a request by external stakeholders that HMRC should revise guidance on the minimum Failure to Correct penalty where taxpayers do not come forward voluntarily, to align more

closely with those disclosures that are voluntary. HMRC believe it is important that the tax system consistently encourages taxpayers to do the right thing. This includes ensuring those who come forward to correct their non-compliance are demonstrably better off than similar taxpayers who do not come forward before HMRC detects that they are paying less than they should. HMRC will continue to monitor internal policies to help ensure HMRC's officers have the discretion to strike this delicate balance.

- 7.15. The reasonable excuse provisions provide a key safeguard for taxpayers, ensuring that they are not penalised where they could not reasonably be expected to comply with their obligations.
- 7.16. HMRC's guidance provides a range of relatively common circumstances that may contribute to an individual's reasonable excuse, including bereavement, serious illness and events outside one's reasonable control (such as disruptions or delays to the delivery of documents). The guidance emphasises that these relatively common circumstances are not an exhaustive list.
- 7.17. HMRC consider all relevant facts and evidence when considering whether a taxpayer has a reasonable excuse in a specific case. Depending on their individual circumstances, it may also be reasonable that someone is unaware of some less well-known or less straightforward aspect of their obligations. At the same time, it is important that HMRC guards against the risk that a dishonest minority of taxpayers seek to abuse the reasonable excuse provisions to avoid being penalised for their non-compliance.
- 7.18. HMRC will review guidance to ensure that it is sufficiently clear that reasonable excuse covers an appropriate range of issues, including some difficult personal circumstances, such as mental health issues. HMRC will support this work by strengthening training products, including case studies, to help build capability, confidence and consistency of approach where HMRC's officers are considering the application of reasonable excuse. This will help to reassure taxpayers that HMRC are interpreting and considering reasonable excuse consistently, including where taxpayers need extra help.
- 7.19. While these discussions focused on HMRC's approach to reasonable excuse in the context of powers and safeguards introduced since 2012, and did not consider HMRC's approach to reasonable excuse across the tax system; HMRC will consider whether the findings and the corresponding commitments should be applied more widely as these commitments are taken forward.
- 7.20. In addition, HMRC will work with taxpayers, agents and their representatives to update HMRC's guidance, by Summer 2021, on:
- FNs and APNs, including to provide more clarity on HMRC's view on the appeal ground that it was 'reasonable in all the circumstances' for a person not to take corrective action in response to a Follower Notice; and
  - the RTC and the Failure to Correct penalty, including to help signpost HMRC's core guidance on reasonable excuse.

**Commitment 16: By Summer 2021, HMRC will review and update guidance to clarify the range of factors that may contribute to reasonable excuse, taking account of an individual's personal circumstances. HMRC will support this work by strengthening training products, including case studies, to help build capability, confidence and consistency of approach where HMRC's officers are considering the application of reasonable excuse.**

**Commitment 17: By Summer 2021, HMRC will update guidance on FNs, APNs and the RTC, in consultation with agents and their representatives.**

## Helping those in financial hardship

- 7.21. People can owe money to HMRC for a wide variety of reasons, and HMRC know this can be stressful especially when they are worried whether they can pay or not. Ipsos MORI noted some recipients of APNs recognised they would need to pay but, they and their agents would use the representation process to delay payment while they assembled the money.<sup>51</sup>
- 7.22. Stakeholders broadly welcomed the direction of travel as HMRC looks to help taxpayers pay their debts. Some felt that HMRC could improve the guidance around Simple Assessment and the power to code out debt through the PAYE system to help taxpayers understand their rights as well as their obligations, as well as use these powers more flexibly to help taxpayers pay the debts they owe.
- 7.23. Others suggested HMRC could provide more reassurance that taxpayers are treated consistently when providing a time to pay arrangement (where a taxpayer cannot pay the tax owed immediately, for example where it is the result of an unexpected APN but can pay the debt over time). This would build confidence that taxpayers receiving an APN can discuss a time to pay arrangement with HMRC, and in appropriate cases obtaining agreement to spread their payments over a longer period.

*Example 20: a group of individuals received APNs requiring they pay tax in dispute as a result of a scheme they participated in 10 years earlier. The circumstances for many of these individuals had changed dramatically – some had retired or their business had closed. The agent felt 90 days was not enough time for these individuals collect the funds to pay the tax – more time would have reduced the risk APNs are not complied with.*

*Source: Chartered Accountants Ireland*

## Conclusions and next steps

- 7.24. When customers find themselves unable to pay on time, HMRC want to help them to find a way to pay. HMRC always encourage those that owe tax to get in touch as soon as possible to discuss their situation and agree how to pay off their debt in an affordable way for them.
- 7.25. Over the past year HMRC have taken significant steps to help taxpayers to understand how HMRC supports those who owe a tax debt. Guidance has been published describing the options available and the standards of service that they should expect, including information for taxpayers who need to settle a compliance enquiry and need to pay in instalments. The guidance also confirms that HMRC can offer Time to Pay to any taxpayer who cannot pay in full, and that where a taxpayer needs to spread their payments, there is no upper limit on the time HMRC can give them to pay. As part of the Government's response to Sir Amyas Morse's independent Loan Charge Review, HMRC have also published the template questionnaire used when considering a time to pay arrangement to help people understand the factors that HMRC considers.<sup>52</sup> In addition, HMRC have strengthened training to help officers to identify taxpayers who might need extra help managing their tax affairs and to pay debt (see Chapter 6 for details).
- 7.26. HMRC can only support those who want to cooperate. If HMRC do not receive a response to letters, phone calls or SMS text messages, HMRC try to visit taxpayers at their home or business address, in an effort to work with them to settle their outstanding tax. Reaching out in this way helps HMRC to understand their

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<sup>51</sup> <https://www.gov.uk/government/publications/hmrc-powers-and-taxpayer-safeguards-research>

<sup>52</sup> HMRC (2020) 'Policy paper: How HMRC supports customers who have a tax debt.' Available at: <https://www.gov.uk/government/publications/how-hmrc-deals-with-and-supports-customers-who-have-a-tax-debt/how-hmrc-supports-customers-who-have-a-tax-debt> and [https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/860926/income\\_and\\_expenditure\\_details.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/860926/income_and_expenditure_details.pdf)

individual circumstances – for instance, if they need extra support and HMRC were not already aware of this, they would be referred to a specialist team (see Chapter 6 for details).

7.27. Where taxpayers do not respond to HMRC’s communications, or refuse to pay, HMRC have debt enforcement powers to help collect outstanding tax. These powers come with the responsibility to use them carefully and fairly. HMRC take that responsibility very seriously and only use enforcement powers as a last resort. Before reaching this point with any customer, HMRC will make them aware of what can happen if they continue to not respond. Enforcement action should never be a surprise to a customer and HMRC will always warn them of the options before proceeding down that path. Insolvency action will only be considered after other enforcement mechanisms have been exhausted or where the taxpayer has been uncooperative or failed to engage.

7.28. HMRC will continue to take opportunities to help the public to understand their rights, options and obligations when they are unable to pay all the tax they owe. HMRC will work with taxpayers, agents and their representatives to consider updating guidance on:

- coding out of debt (through the PAYE system), including to clarify the types and amounts of debts that can be coded out using this power, by spring 2021; and
- Simple Assessment, including to clarify the process, taxpayer obligations, and the powers under which HMRC issues a Simple Assessment notice, by spring 2021.

7.29. This will help to encourage people to come forward and be open about their circumstances, building trust in the tax system. In addition, HMRC will explore further opportunities to use powers – in particular the power to collect debt through the PAYE system, to help taxpayers to pay debts in a structured, affordable way that provides certainty for them and HMRC.

**Commitment 18: HMRC will continue to explore opportunities to help raise taxpayers’ awareness of their rights as well as their obligations when paying tax debt through a time to pay arrangement.**

**Commitment 19: HMRC will consult with agents and their representatives to consider guidance updates on coding out of debt (through the PAYE system) and Simple Assessment by summer 2021.**

**Commitment 20: HMRC will consider how powers introduced since 2012 to recoup debt, especially the power to code out debt, could be used more widely to support those in financial hardship.**

## Ensuring the Worldwide Disclosure Facility supports those putting things right

7.30. Where anyone realises that they have paid less tax than they should have done (whether due to error, failure to take reasonable care, or where they have sought to avoid or evade tax) HMRC aims to help them put things right as quickly and simply as possible. HMRC’s Digital Disclosure Service provides a straightforward way for people to do that.<sup>53</sup>

7.31. Taxpayers can use the Worldwide Disclosure Facility (WDF), a part of the Digital Disclosure Service, to disclose a UK tax liability that relates wholly or in part to an offshore issue.<sup>54</sup> While one external contributor felt the WDF worked well, others encouraged HMRC to improve it. Some felt that the guidance could better reflect an individual’s rights, options and obligations including, whether they should self-

<sup>53</sup> <https://www.gov.uk/government/publications/hm-revenue-and-customs-disclosure-service>

<sup>54</sup> An offshore issue includes unpaid or omitted tax relating to income arising from a source in a territory outside the UK, assets situated or held in a territory outside the UK and activities carried on wholly or mainly in a territory outside the UK, as well as anything having effect as if it were income, assets or activities of a kind described above.



assess specific penalties. Others suggested that the WDF should enable taxpayers to fully describe their circumstances or explain their calculation online as part of the disclosure.

### **Conclusions and next steps**

7.32. HMRC will continue to explore opportunities to improve taxpayers' experiences where they use the WDF to correct their affairs. As part of this, HMRC will host a roundtable meeting in spring 2021 with taxpayer and agent representatives to discuss the issues and deepen HMRC's understanding.

**Commitment 21: HMRC will host a roundtable meeting to discuss opportunities to improve taxpayers' experience where they correct their tax through the Worldwide Disclosure Facility in spring 2021.**

## 8. Conclusions and commitments

- 8.1. This evaluation has considered HMRC's implementation of powers and safeguards introduced since 2012. It has been undertaken by HMRC in consultation with stakeholders representing taxpayers and their advisers, through the Forum. HMRC are very grateful to the members of the Forum for their time and expertise, their frank, constructive and collaborative approach to this work, and for all the invaluable evidence and opinion that they have gathered and provided.
- 8.2. As set out in the introduction to this report, HMRC, in consultation with the Forum, did not consider the underlying policy rationale for new powers or the implementation of powers introduced prior to 2012, in line with the Financial Secretary's commitment. This evaluation also does not consider specific issues related to the Loan Charge, which were explored separately through the Independent Loan Charge Review.
- 8.3. When commissioning this evaluation, the Financial Secretary said that citizens need to be reassured that HMRC have the necessary powers to ensure that everyone pays their fair share of taxes. He acknowledged, as HMRC does, that particularly where those powers are designed to tackle fraud, evasion and complex tax avoidance, they can be far-reaching.
- 8.4. The evaluation has considered the implementation of those powers, obligations and cross-cutting themes that stakeholders felt offered most scope for improvement to help maintain and build public trust in the tax system. HMRC have not sought to test or challenge the individual examples Forum members shared. Table 2 illustrates only a small minority of HMRC's interventions have been subject to complaints to the independent external Adjudicator or challenged in the courts. HMRC believe the system of checks and balances, underpinned by statutory safeguards and HMRC's operational processes, has helped ensure HMRC's decisions have been broadly aligned with the principles.
- 8.5. However, the examples provided by Forum members show where they felt HMRC should have approached some cases differently. These examples have involved some difficult cases, reflecting the challenging decisions HMRC must make to take account of taxpayers' individual circumstances while ensuring a consistent approach across the board.
- 8.6. The examples set out how any perception that HMRC's decisions were not aligned with the principles is exacerbated when HMRC appear to have not fully reflected a taxpayer's behaviour or circumstances. Several of these examples include taxpayers who said that they wanted to get their tax right but made a mistake because they didn't realise their income was taxable or entered into arrangements without realising that HMRC would regard them as tax avoidance. On other occasions, where HMRC may be applying these powers to someone who is experiencing difficult personal circumstances, the examples suggest that this was not always considered fully.
- 8.7. This evaluation is part of a wider Powers and Safeguards programme, and HMRC are also making changes following Sir Amyas Morse's Independent Loan Charge Review. HMRC have already recognised opportunities to make changes. Many of the commitments here reaffirm HMRC's aim to ensure that taxpayers understand their rights and obligations, and to ensure that HMRC approaches every enquiry with professionalism and respect. These include commitments to improve:
  - engagement with harder-to-reach audiences to raise awareness of new powers and obligations;
  - HMRC's guidance, including raising awareness of feedback processes so that more users can help HMRC make guidance as useful as possible;
  - customer experience, ensuring HMRC consistently meets the high standards the public expect, especially where people need extra support;

- compliance communications in some cases, especially the letters HMRC send during an enquiry, which are designed to help taxpayers understand their rights and obligations quickly and easily while minimising unnecessary worry; and
  - support to those experiencing financial hardship, including where taxpayers need extra help.
- 8.8. This evaluation has also shown where HMRC wants to make new commitments to help maintain and build trust in the tax system. These include commitments to:
- explore how improving clarity around HMRC’s internal governance processes could promote public trust in decisions to apply the General Anti-Abuse Rule, Accelerated Payment Notices, Follower Notices and the powers underpinning the Diverted Profits Tax;
  - review and update guidance to clarify the range of factors that may contribute to reasonable excuse, taking account of an individual’s personal circumstances, and support this work to help build capability, confidence and consistency of approach where HMRC’s officers are considering the application of reasonable excuse;
  - host a roundtable to discuss opportunities to improve taxpayers’ experience where they correct their tax through the Worldwide Disclosure Facility.
- 8.9. These commitments complement the considerable work already underway, including on other aspects of the Powers and Safeguards work programme and as part of the Government’s response to Sir Amyas Morse’s Independent Loan Charge Review. HMRC will continue to engage with external stakeholders through the Compliance Reform Forum, as well as utilising the independent input and challenge received through the Customer Experience Committee and the Professional Standards Committee to support work to build and maintain public trust in the tax system.
- 8.10. In addition, HMRC will explore opportunities to work with the members of the Forum to ensure that implementation of any future powers reflects the conclusions and commitments set out here.
- 8.11. Overall, the work being taken forward to deliver these commitments will help ensure that, where compliance activity is necessary, taxpayers are consistently treated fairly, professionally and with respect, taking into account their individual circumstances and needs. HMRC will help taxpayers understand how and why decisions are made, as well as their rights and obligations.

## Annex A: HMRC's governance and oversight, including dispute resolution

HMRC have a range of strategies, internal governance arrangements and independent oversight to ensure it achieves its vital purpose and administers the tax system in a fair and efficient way, respecting taxpayers' rights and expectations about how they are treated. This Annex details how some of these mechanisms help ensure HMRC's decisions are appropriate and/or provide opportunities for taxpayers to challenge HMRC's decisions where they feel those decisions are unreasonable or that HMRC have inappropriately applied the legislation to their circumstances.

### National Audit Office and Parliament

- The **National Audit Office** scrutinises public spending for Parliament and is independent of Government. HMRC reports to Parliament on revenues collected in its Trust Statement, published in its Annual Report and Account. Parliament gives HMRC the necessary powers to tackle avoidance effectively, which is what the public expect. The aim is to balance the powers with the appropriate protections for customers.

### Policies and strategies

- **The HMRC Charter** is a legal requirement and must include standards of behaviour and values which HMRC will aspire to when dealing with taxpayers.<sup>55</sup> It must be regularly reviewed, and revisions published. The last review of the Charter was recently completed following a public consultation process, and the updated Charter, along with HMRC's key principles of support for customers who need extra help was published on 10 November.
- **HMRC's Litigation and Settlement Strategy (LSS)** is the framework within which HMRC manages and resolves tax disputes under civil law processes. The strategy applies irrespective of whether a dispute is resolved by agreement with the taxpayer or through litigation in the courts.<sup>56</sup> The Tax Assurance Commissioner publishes an annual report on HMRC's handling of tax disputes under the LSS.

### Code of Governance for dealing with tax disputes

- A published Code of Governance sets out HMRC's internal governance arrangements for decisions on how tax disputes should be resolved. HMRC's governance processes are in place to ensure that HMRC deals with all cases fairly and in an even-handed manner.<sup>57</sup> If there is disagreement between HMRC and the taxpayers, they are able to ask HMRC to review the decision or appeal through the Tribunal and Court processes
- Under this governance process, three Revenue & Customs Commissioners now make decisions in the largest and most sensitive cases, including all of those with more than £100 million tax under consideration – a reduction from the previous £250 million threshold. They also make decisions in a sample of smaller cases where the tax involved is less than £100 million.

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<sup>55</sup> HMRC (2020) 'HMRC Charter.' Available at: <https://www.gov.uk/government/publications/hmrc-charter>

<sup>56</sup> HMRC (2017) 'Litigation and Settlement Strategy.' Available at: <https://www.gov.uk/government/publications/litigation-and-settlement-strategy-lss>

<sup>57</sup> HMRC (2017) 'Code of governance for resolving tax disputes.' Available at: <https://www.gov.uk/government/publications/resolving-tax-disputes>

- The Tax Assurance Commissioner’s (TAC) role, which was announced in February 2012 as part of a package of changes to strengthen HMRC’s governance of how tax disputes are handled, is to:
  - Provide assurance to Parliament and the public that HMRC handles civil tax disputes in accordance with the law and HMRC’s Litigation and Settlement Strategy (LSS).
  - Seek assurance that HMRC handles tax disputes in a fair and even-handed manner.
  - Decide whether to accept or reject resolution proposals from taxpayers in HMRC’s largest and most sensitive tax disputes alongside two other commissioners;
  - Review a sample of smaller cases to scrutinise HMRC’s wider dispute resolution processes.

## Internal Governance

- **HMRC’s Board** provide challenge and advice to the Executive Committee on developing and implementing their strategy, business plan and performance against that plan. The board has Non-Executive members and is chaired by the Lead Non-Executive.
- The **Tax Assurance Commissioner’s** role was announced in February 2012, as part of a package of changes to strengthen HMRC’s governance of how tax disputes are handled. Under a published Code of Governance, three Revenue & Customs Commissioners now make decisions in the largest and most sensitive cases, including all of those with more than £100 million tax under consideration – a reduction from the previous £250 million threshold. They also make decisions in a sample of smaller cases where the tax involved is less than £100 million.
- HMRC’s **Internal Governance** (IG) is responsible for ensuring that protections against fraud and corruption are robust and effective, and for carrying out investigations where, exceptionally, serious disciplinary and criminal investigations are made against staff. This scrutiny protects the reputation of HMRC and provides public confidence in their work.

## Complaints Handling

- HMRC have a two-tier **internal complaint handling process**. Tier 1 is the first opportunity to put the matter right and HMRC aims to resolve as many complaints as possible at this stage. When HMRC sends their response to taxpayers, it explains that if the taxpayer is dissatisfied with the response, the taxpayer can ask HMRC to look at the complaint again and that this is undertaken by a different complaints’ advisor at the next stage – Tier 2. At Tier 2, HMRC reviews the facts again, taking any further actions necessary to make HMRC’s final decision on the complaint. When HMRC sends its response to the taxpayer, it explains that if the taxpayer remains unhappy with HMRC’s decision the taxpayer can approach the Adjudicator’s Office for an independent review, and HMRC provides the appropriate contact details.

## Adjudicator and Ombudsman Services

- The **Adjudicator** provides taxpayers with an independent review of complaints about HMRC. The role and remit of the Adjudicator and her office is to:
  - ensure complaint handling is fair, responsive to taxpayer needs and there has been consistent application of HMRC’s standards, guidance and codes of practice;

- resolve complaints by providing an accessible and flexible service and make fair and impartial decisions;
  - support and encourage effective resolution throughout the complaints handling process; and
  - use insight and expertise to support HMRC to learn from complaints and improve services to taxpayers.
- The **Parliamentary & Health Service Ombudsman** (PHSO) provides an independent complaint handling service for complaints that have not been resolved by UK Government departments; including those about HMRC. PHSO make final decisions on complaints where someone believes there has been injustice or hardship because an organisation has not acted properly or has given a poor service and not put things right. If they decide that the organisation has got things wrong, PHSO may make recommendations to put them right, which can include explanations, apologies and recommendations for the service to learn and improve. They share findings from their casework to help Parliament scrutinise public service providers. They also share their findings more widely to help drive improvements in public services and complaints handling.
  - The remit of the adjudicator and PHSO is only to look at the service HMRC provides and does not extend to decisions about HMRC's adherence to tax law.
  - The **Independent Office for Police Conduct** (IOPC) oversees the way HMRC deals with the most serious incidents and complaints about HMRC staff in England and Wales. In Scotland oversight is provided by the Police Investigation and Review Commissioner (PIRC) and in Northern Ireland it is the Police Ombudsman for Northern Ireland (PONI). They are responsible for reviewing how complaints about HMRC have been handled. They apply to all HMRC officers and Commissioners in relation to instances where there is an indication that a Commissioner or officer may have committed a criminal offence or behaved in a manner which would justify bringing disciplinary proceedings.

## Customer Experience Committee

- The **Customer Experience Committee**, created in late 2018 to replace the Charter Committee, supports and challenges HMRC's Executive Committee (ExCom) on taxpayer experience-related issues, helping the Department to deliver on its strategic objectives. The Committee is made up of HMRC senior staff, HMRC non-executive directors and independent advisers external to HMRC. It is chaired by a Non-Executive Director. It continues oversight of the Charter and reports annually on HMRC's performance against it.

## Professional Standards Committee

- The Professional Standards Committee, established in 2020, provides oversight of how HMRC administers the tax system and applies policies in accordance with its values. Its main aim is to support HMRC to build trust in its work by considering how HMRC's actions could affect trust in the tax system and the public perception of fairness. The Committee is chaired by HMRC's Director General for Customer Strategy and Tax Design – Ruth Stanier and membership consists of three of HMRC's Non-executive Directors (Patricia Gallan, Paul Morton, Alice Maynard) alongside the other members of HMRC's Executive Committee. It is further supported by four independent advisors.

## Alternative Dispute Resolution

- Where a person disagrees with a decision or approach that an officer of HMRC may be taking they are asked to first discuss the issue with the officer. Many areas of disagreement are resolved at this stage. However, if the taxpayer feels that this approach is not working and they want to take the matter further, they can apply for Alternative Dispute Resolution (ADR). Anyone can apply for HMRC's ADR to help resolve a dispute with HMRC, or to get more information about issues that need to be taken for a legal ruling. Decisions on applications are taken by the ADR Panel.
- Once a matter is accepted into ADR, a HMRC mediator who has been trained in mediation skills and techniques will work with the taxpayer and the HMRC officer dealing with the case.
- The mediator will help both parties to explore ways to resolve the dispute, including helping the parties:
  - focus on the areas that need to be resolved;
  - re-establish communications, if needed. The mediator will not take over responsibility for the dispute.
- ADR can be used before and after HMRC have issued a decision that can be appealed, and at any stage of a compliance check. ADR does not affect the taxpayers' rights to appeal, or the right to ask for a statutory review.
- Each application is considered on a case by case basis. ADR is not a statutory process and HMRC reserves the right to reject applications that they do not consider appropriate for ADR.
- HMRC will seek, wherever possible, to handle disputes non-confrontationally and by working collaboratively with the customer. In the majority of cases, this is likely to be the most effective and efficient approach. HMRC will foster a non-confrontational approach with the customer but will not be deterred from efficient and effective dispute resolution by other means if collaboration is not forthcoming.
- HMRC seeks to secure the best practicable return for the Exchequer. To do this it must apply the law fairly and consistently. Entering into, taking forward and resolving disputes contribute to securing the best practicable return for the Exchequer.

## Reviews and Appeals

- HMRC must make decisions in accordance with the law and the facts of a specific case. Where a taxpayer disagrees with HMRC's decision they often have a right to require HMRC to review its decision and/or appeal to an independent tribunal. Reviews and appeals provide a safeguard to ensure that HMRC's decisions are lawful and accurate and that, where that is not the case, they are corrected.
- Reviews - The review process gives taxpayers a quick and easy way to have a decision reviewed by designated review officers who have not been involved in making the decision, with the conclusions signed off by a manager or technician.
- Reviewers can uphold, vary, or cancel the original decision. Where more information is received, the reviewer can return the case to the decision-maker before making a final decision. Additionally, they help provide a further explanation to the taxpayer of the decision HMRC have taken.
- In 2018-19 reviewers upheld the original decision in 49% of cases. This is split as follows:

- automated penalty cases – 42% upheld and
- other cases - 74% upheld
- These percentages reflect that often requesting a review is the first time that the taxpayer has the opportunity to provide a reasonable excuse for a default that has resulted in HMRC's systems automatically charging a penalty.
- As the review process provides a quick, cost-effective opportunity to resolve disputes, it is often used by those taxpayers who do not have an agent. In 2018-19, 77% of reviews were requested by unrepresented taxpayers.
- Appeals - HMRC will settle a dispute where it can reach agreement with the customer on the right tax due under the law. Where agreement cannot be reached, the customer can request the appeal to be heard by an independent tribunal or court. The tribunal can also give directions to control HMRC's actions during enquiries, for example if a customer considers that HMRC are taking too long to carry out a Self-Assessment enquiry they can apply to the tribunal to close the enquiry. Informally, the independent tribunals who consider UK tax appeals are known as the Tax Tribunal.

### The Tribunals and Courts, including how HMRC supports taxpayers in court

- The Tax Tribunal is a two-tier tribunal system comprised of the tax chamber of First-tier Tribunal and the Upper Tribunal Tax and Chancery Chamber. These deal with UK tax appeals.
- Where taxpayers appealing to the tribunal are unrepresented or known to need extra help, HMRC will:
  - Offer to meet with the taxpayer to discuss how best they can settle or present their case
  - Arrange extra time to deal with tribunal requests, if needed
  - Fully explain the litigation process and tribunal procedure ahead of any hearing
  - Highlight any evidence that supports the customer's case
  - Present points in favour of the customer's position to the tribunal judge
  - Offer to prepare the customer's document bundle needed for a hearing
  - Help the customer present their case in accordance with the tribunal rules.
- HMRC and customers generally must meet their own costs at the First Tier Tribunal unless the tribunal considers one side, or their representatives have acted unreasonably. If the tribunal decides a case should be classed as complex, they will normally order the losing side to pay the other's costs.
- Following judgment by the First Tier Tribunal, HMRC and customers may be able to appeal the decision to the Upper Tribunal. In the Upper Tribunal the general rule, as in non-tax disputes before the courts, is that the losing party risks having to pay the other side's costs.
- HMRC will normally apply for costs in cases where the tribunal or court has ruled in the Department's favour. However, HMRC will sometimes agree in advance not to seek the costs of an appeal, particularly if it is appealing against an adverse decision at the Upper Tribunal or the appeal courts. Very exceptionally, if it



considers there is a wider public interest in an appeal going forward, HMRC may agree other arrangements such as funding legal representation for the customer.

- Sometimes a decision HMRC takes may not be appealable. Most often this is where a customer disagrees with how HMRC have decided rather than the decision itself, or where the decision is taken under HMRC's general discretion rather than a specific power. In those cases, it may be possible for a customer to apply for permission for judicial review of that decision. Such applications are made to the High Court and there are costs attached.

## Annex B: The 2005-12 powers and safeguard principles

Powers and the statutory obligations they impose need to be:

- set within a clear statutory framework,
- easily understood—by taxpayers, their agents and HMRC staff,
- straightforward to comply with,
- proportionate to what HMRC needs to discharge its responsibilities or to protect the Exchequer from the risk assessed,
- used consistently,
- effective in providing the information HMRC needs to assess risk, and
- effective in discovering and dealing with non-compliance and in helping people to return to compliance.

Safeguards for citizens and businesses must be:

- clear,
- publicised,
- accessible,
- effective,
- responsive to the nature and purpose of particular powers and sanctions, and
- conformant with human rights and other relevant non-tax legislation.

Sanctions for non-compliance must be:

- set in statute,
- clear and publicised,
- proportionate to the offence,
- used consistently, and
- effective in deterring non-compliance and returning the non-compliant to compliance.

# Annex C: Terms of Reference – HMRC Powers and Customer Safeguards Implementation Evaluation Forum

## Role

1. The HMRC Powers and Customer Safeguards Implementation Evaluation Forum (“the Forum”) has been set up to provide expert input to the **evaluation of the implementation of HMRC powers and safeguards** introduced since 2012. The Financial Secretary to the Treasury (FST) announced this evaluation in a Written Ministerial Statement (WMS) that was laid in Parliament and published on 22 July 2019.
2. The evaluation will be carried out against the Powers and Safeguards principles that have been established from the 2005-2012 Powers Review. These cover whether:
  - Taxpayers have sufficient and accessible safeguards, and these rights are being clearly explained to them;
  - Taxpayers and agents are provided with sufficient support and guidance to be able to understand the changes to the powers and safeguards and to make any consequent behavioural changes that are required;
  - HMRC are using the powers provided to it reasonably and in a proportionate and fair manner;
  - Deterrents are having the intended positive effect on taxpayer behaviour; and
  - HMRC officers are provided with sufficient training, guidance and support to be able to administer changes to powers and safeguards.
3. HMRC will take into account in its evaluation of the evidence provided by the Forum and its members and discussions in the Forum.

## Membership

4. The Forum will be chaired by Paul Riley (Director - Tax Administration, HMRC).
5. Representatives from the following are invited to form the Forum membership:
  - Association of Accounting Technicians (AAT)
  - Association of Chartered Certified Accountants (ACCA)
  - Association of Taxation Technicians (ATT)
  - Chartered Institute of Payroll Professionals (CIPP)
  - Chartered Institute of Taxation (CIOT)
  - Federation of Small Business (FSB)
  - Institute of Chartered Accountants in England & Wales (ICAEW) Tax Faculty
  - Institute of Chartered Accountants in Ireland (ICAI)
  - Institute of Chartered Accountants of Scotland (ICAS)
  - Institute of Financial Accountants (IFA)
  - Law Society of England & Wales
  - Law Society of Scotland
  - Low Incomes Tax Reform Group (LITRG)
  - Office of Tax Simplification (OTS)
  - Tax Aid (TA)
  - Tax Investigation Practitioners Group (TIPG)
6. HMRC representatives will include members from the following directorates:
  - Counter Avoidance

- Business, Assets and International
- Tax Administration
- Large Business

## Meetings and Attendance

7. The Forum will meet at least once a month or more frequently as needed until HMRC reports back on the Evaluation to the Lords Economic Affairs Committee.
8. Standing invitations to attend Forum meetings may also be given to non-members at the Chair's discretion, including other HMRC directorates representatives.
9. Members will be asked to provide deputies to represent their organisation if they cannot make a particular meeting.
10. The Forum may appoint sub-groups, as it sees fit, to consider specific issues. Any such groups will be subject to these terms of reference.
11. The Forum will be supported by a secretariat from HMRC.
12. Occasionally when necessary, members may be asked to respond to issues by correspondence.

## Annex D: List of powers and obligations within scope of powers, obligations and safeguards evaluation

Power Legal Reference	Summary of power/obligation	Right to appeal to the tribunal?*
<p><b>Country by country reporting</b> Section 136, Finance Act 2002(1), and section 122, Finance Act 2015(2), &amp; the Taxes (Base Erosion and Profit Shifting) (Country-by-Country Reporting) Regulations 2016 (SI 2016/237).</p>	<p>Legislation passed by Parliament requires UK Multinational Enterprise (MNE) Groups and some non-UK headed MNE Groups to file an annual Country-by-Country (CbC) Report with HMRC. The CbC Report includes high level information on their global allocation of profits and taxes paid, as well as indicators of economic activity in a country, and are exchanged with treaty partners as appropriate. An initial penalty of £300 applies to MNE Groups who fail to comply. This obligation fulfils the UK's international obligation, under Action 13 of the G20-OECD Base Erosion and Profit Shifting project.</p>	<p>Yes - there is an appeal against a penalty imposed for failure to comply with the requirement. There is no appeal against the requirement to file a report.</p>
<p><b>Automatic international information exchange</b> Section 136, Finance Act 2002, and Section 222, Finance Act 2013, and The International Tax Compliance Regulations 2015 (SI 2015/878).</p>	<p>Parliament required UK financial institutions to collect data on financial accounts held by non-resident taxpayers and pass it to HMRC for exchange with other jurisdictions to help tackle tax evasion and avoidance, fulfilling the UK's obligations under the Common Reporting Standard and other similar international agreements.</p>	<p>Yes - there is an appeal against a penalty imposed for failure to comply with certain requirements. There is no appeal against the requirement to exchange information.</p>
<p><b>Power to collect (code out) debt through the Pay as You Earn system</b> Section 110, Schedule 58, paragraphs 1-7 Finance Act 2009, amending The Income Tax (Earnings and Pensions) Act 2003 (Section 684(3A)), Order 2014 &amp; The Income Tax (Pay as you Earn) (Amendment No. 4) Regulations 2014 (SI2014/2689).</p>	<p>Parliament amended HMRC's powers to collect debt by altering a taxpayers' pay-as-you-earn code. This power has been revised since 2012.</p>	<p>No - there is no specific appeal against HMRC's decision to collect debt this way, although payment arrangements may be available as an alternative. Tax Credit debts can only be coded in PAYE with taxpayer consent.</p>
<p><b>Sanctions for dishonest tax agents</b> Schedule 38, Finance Act 2012.</p>	<p>Parliament introduced a civil alternative to prosecution where an individual, acting as a tax agent, does something dishonest with a view to bringing about a loss of tax revenue. HMRC may issue a conduct notice against such an agent. There are complementary powers which enable HMRC to obtain information, with a tribunal's approval, once dishonesty has been established, and to publish the dishonest individual's details in some circumstances.</p>	<p>Yes - there are appeals against HMRC's determination to issue a conduct notice as well as against penalties for failures to meet obligations.</p>

Power Legal Reference	Summary of power/obligation	Right to appeal to the tribunal?*
<b>Obligation to notify HMRC of vehicle arrivals.</b> Section 202, Finance Act 2012.	Parliament obliged those bringing road vehicles into the UK to notify HMRC of the arrival of the vehicle within 14 days of bringing the vehicle into the UK.	N/A – those that do not comply cannot register their vehicle with the DVLA. If the DVLA reject a registration because of non-compliance the taxpayer must notify HMRC and then reapply to register the vehicle.
<b>Power to require bulk data</b> Section 228, Part 6 Finance Act 2013, Section 176, Part 11, Finance Act 2016, and Section 69, Part 4, Finance Act 2017.	Parliament extended HMRC’s data gathering powers to identify those seeking to hide their tax liabilities: <ul style="list-style-type: none"> <li>• in 2013, to merchant acquirers (businesses that process credit and debit card transactions);</li> <li>• in 2016, to online intermediaries (businesses that help to facilitate trade, typically by introducing buyers to sellers, and facilitating orders or bookings on behalf of the seller); and electronic payment providers who operate digital wallets; and</li> <li>• in 2017, to Money Service Businesses (MSBs) which transmit money, cash cheques payable to their customers, or exchange currency by way of business.</li> </ul>	Yes - there is an appeal against a penalty imposed for failure to provide data HMRC requires, including for reason that the recipient does not meet the definition, or that the data is out of scope.
<b>General Anti Abuse Rule</b> Part 5 and Schedules 43 to 43C, Finance Act 2013, Part 10, Finance Act 2016, and General Anti-Abuse Rule Procedure (Amendment) Regulations 2017 (SI2017/1090).	Parliament introduced the General Anti Abuse Rule to tackle abusive tax avoidance schemes. A penalty was added in Finance Act 2016. The penalty is chargeable only if HMRC counteracts abusive tax arrangements under section 209 of Finance Act 2013 (i.e. under the GAAR rather than by other means). The General Anti-Abuse Rule Procedure (Amendment) Regulations 2017 make small clarifications and simplifications of the existing rules to make sure the procedures achieve their policy aim.	While taxpayers cannot appeal GAAR notices, they can appeal when the adjustments are actually made, for example by way of closure notice or assessment. There is also an appeal against penalty introduced in 2016.
<b>Proceeds of Crime Act</b> Schedule 48, Finance Act 2013, amending sections in Part 5 and Part 8 of the Proceeds of Crime Act 2002.	Parliament amended legislation to regularise HMRC’s powers under the Proceeds of Crime Act 2002, so they were applicable across all taxes.	N/A - all existing rights and defences in the Proceeds of Crime Act continue to apply.
<b>Disclosure of Tax Avoidance Schemes</b> Section 284, Finance Act 2014, and Schedule 17, Finance Act 2015, amending Part 7 of Finance	Parliament amended the Disclosure of Tax Avoidance Schemes (DOTAS) regime to 1/ improve information collected under DOTAS, 2/ strengthen the hallmarks underpinning DOTAS (adding new hallmarks and removing ‘grandfathering’	Yes - there are appeals against penalties issued under DOTAS and in most cases penalties are

Power Legal Reference	Summary of power/obligation	Right to appeal to the tribunal?*
Act 2004, Tax Avoidance (Prescribed Descriptions of Arrangements) (Amendment). Regulations (SI2016/99) amending The Tax Avoidance Schemes (Prescribed Descriptions of Arrangements) Regulations 2006 (SI2006/1543); and Schedule 17 Finance Act (No. 2) 2017	provisions for future use of schemes that were excluded by those provisions) 3/ enable publication of scheme and promoter details and 4/ introduce a new regime requiring indirect tax avoidance schemes be disclosed.	imposed by the Tribunal, not by HMRC. There is no appeal against a decision to publish names but affected parties have a statutory right to make representations to HMRC prior to publication.
<b>Banking Code of Conduct</b> Section 285, Finance Act 2014.	Parliament gave HMRC the statutory power to publish the name of a participating group or entity which has breached the Code of Practice on Taxation for Banks. Participating groups or entities have unconditionally committed to complying with the Code.	No
<b>Accelerated payments notices (APN) and Follower Notices (FN)</b> Part 4, Finance Act 2014.	Parliament introduced Accelerated Payments Notices (APN) to change the economics of tax avoidance requiring users to pay disputed tax up front making it harder to sell schemes; and Follower Notices (FN) to encourage faster resolution of avoidance schemes and discourage unnecessary litigation when schemes have already been shown not work in another person's litigation.	While taxpayers cannot appeal an APN or a FN, they can appeal penalties issued for failure to pay an APN and penalties issued for failure to take corrective action on receipt of a FN.
<b>Penalties for Promoters of Tax Avoidance Schemes</b> Part 5, and Schedules 34 to 36, Finance Act 2014.	Parliament introduced the Promoters of Tax Avoidance Schemes (POTAS) regime. This regime empowered HMRC to tackle non-cooperative promoters of tax avoidance schemes, including: the power to issue conduct notices, breaches of which will trigger monitoring notices which provide increased scrutiny including enhanced information powers with large financial penalties for non-compliance.  Parliament amended the regime in Finance Acts 2015, 2016 and 2017 to ensure it continued to deliver the policy aim. Finance Act 2016 amended the POTAS regime to bring promoters of schemes that are regularly defeated by HMRC into scope.	Yes - there are appeals against penalties issued for failure to comply with obligations under the POTAS regime and in most cases a first penalty is imposed by the Tribunal, not by HMRC.
<b>Alcohol Wholesalers Registration Scheme</b> Finance Act 2015, & the Wholesaling of Controlled Liquor Regulations 2015.	Parliament obliged alcohol wholesalers to register with HMRC to reduce illicit trade in alcohol products from 2016 with penalties for non-compliance. This builds on the requirement introduced in early 2014 that alcohol traders take reasonable steps to ensure that their suppliers and customers are legitimate.	Yes - there are appeals against penalties for non-compliance and against the decision to register or continue to be registered on the scheme.

Power Legal Reference	Summary of power/obligation	Right to appeal to the tribunal?*
		New criminal offences were created that are within the jurisdiction of the criminal courts rather than tax tribunal.
<b>Tobacco anti-forestalling restrictions</b> Section 56, Finance Act 2015.	Parliament extended HMRC's powers to impose Anti-Forestalling restrictions to help prevent the removal of excessive quantities of cigarettes for home use after duty payment in anticipation of an increase on duty rates. The new powers enabled HMRC to vary the level of restrictions year on year by public notice and introduced a new financial penalty for non-compliance based on twice the lost duty	Yes - there is an appeal against a penalty issued from non-compliance.
<b>Diverted Profits Tax – Charging Notice</b> Part 3, Finance Act 2015.	The Diverted Profits Tax was designed to deter MNEs from using contrived arrangements to divert profits from the UK. Parliament introduced a requirement that businesses notify HMRC if their arrangements are in scope of the tax and for HMRC to raise a charging notice (or an amending notice) to bring the tax into charge. Tax is paid upfront, and the liability cannot be postponed, but HMRC will send a business a preliminary notice setting out the basis on which it is believed that DPT is due and the business can make representations to the Designated Officer.	Yes - there is an appeal against a charging notice or supplementary charging notice.
<b>Offshore Asset Moves Penalty</b> Schedule 21, Finance Act 2015.	<p>Parliament introduced the asset moves penalty. This penalty is 50% of the underlying penalty and applies to any relevant asset moves that take place after 26 March 2015. It can be charged in cases of serious non-compliance involving an offshore matter or offshore transfer.</p> <p>Assets moved to specified territories – those committed to exchanging information under the Common Reporting Standard – are excluded from this penalty. The list of specified territories was last updated with effect from 3 November 2017.</p>	Yes - there is an appeal against this penalty.
<b>Serial Tax Avoidance Regime</b> Section 159 and Schedule 18, Finance Act 2016	Parliament introduced the Serial Tax Avoidance Regime for those who persistently enter tax avoidance schemes that are defeated by HMRC. This regime includes a special reporting requirement, escalating sanctions, including penalties, for those who persist in using tax avoidance schemes while under warning, which HMRC defeat.	Yes - there are appeals against a relief restriction notice, restricted period extension notices, and penalties for relevant defeats for



Power Legal Reference	Summary of power/obligation	Right to appeal to the tribunal?*
		arrangements used in a warning period.
<b>Penalties for Enabling Offshore Tax Evasion &amp; Non-Compliance</b> Section 162, & Schedule 20, Finance Act 2016.	Parliament introduced new penalties for those who deliberately enable offshore tax evasion or non-compliance. The enabler's details can be published in certain circumstances.	Yes - there are appeals against these penalties.
<b>Penalties for offshore tax evasion</b> Section 163, & Schedule 21, Finance Act 2016.	Parliament increased civil penalties for deliberate offshore tax evasion by 10% and introduced a requirement for non-compliant taxpayers to provide "additional information" in addition to normal disclosure ("telling", "giving" and "allowing") in order to receive maximum penalty reductions.	Yes - there are appeals against these penalties.
<b>Publishing details of deliberate tax defaulters</b> Section 164, Finance Act 2016.	Parliament amended the definition of 'deliberate defaulters' in legislation so offshore tax evaders could be publicly named. In some circumstances individuals who control a corporate or partnership that has evaded tax offshore, and trustees of a trust that has evaded tax offshore, can also be named.	Yes - the taxpayer can appeal against the underlying penalty that makes them liable to have their details published (in line with Section 94 Finance Act 2009). There is no appeal against a decision to publish names but affected parties have a statutory right to make representations to HMRC prior to publication.
<b>Asset-based penalty for offshore tax evasion</b> Section 165, & Schedule 22, Finance Act 2016.	Parliament introduced additional asset-based penalties for taxpayers that provide inaccurate documents or/fail to notify chargeability or/fail to submit their tax return to HMRC within the time allowed. For this penalty to apply the tax involved must be offshore tax, the taxpayers' behaviour must be deliberate, and over £25,000 of tax per tax year must be involved. The asset-based penalty is the lower of 10% of the value of the asset or the offshore potential lost revenue multiplied by 10.	Yes - there is an appeal against this penalty.
<b>Simple criminal offences for offshore tax evasion</b> Section 166, Finance Act 2016, and the Sections 106B, 106C, and 106D of the Taxes Management Act 1970 (Specified Threshold Amount) Regulations 2017 (SI 2017/988).	Parliament introduced 3 simple criminal offences for additional tax exceeding a threshold amount of £25,000 and chargeable in respect of offshore income, assets and activities for: <ul style="list-style-type: none"> <li>• failing to notify chargeability;</li> <li>• failing to deliver a return; and</li> </ul>	N/A - these criminal offences are subject to the jurisdiction of the criminal courts rather than the tax chamber.

Power Legal Reference	Summary of power/obligation	Right to appeal to the tribunal?*
	<ul style="list-style-type: none"> <li>delivering an incorrect return.</li> </ul> <p>HMRC does not have to prove intent. There is an exclusion for income tax or capital gains tax chargeable on or by reference to offshore income, assets or activities, if at the relevant time it is reportable to HMRC under the Common Reporting Standard (CRS) or similar automatic exchange of information under EU directives or bilateral treaty agreements. Statutory defences of reasonable excuse and reasonable care also apply.</p>	
<b>Simple Assessment</b> Section 167(2), and Schedule 23, Finance Act 2016.	<p>Parliament enabled HMRC to make an assessment (the Simple Assessment) for an individual, or trustees income tax or capital gains tax liability, without them being required to complete a Self-Assessment return. Where the Simple Assessment stipulates the individual or trustees owe income tax (for the reason(s) specified on that assessment), the legislation also provides HMRC with a collection mechanism to recover those tax liabilities.</p>	Yes - there is an appeal against a simple assessment.
<b>Raw tobacco approval scheme</b> Section 179, Finance Act 2016, amending Section 8 of the Tobacco Products Duties Act 1979.	<p>Parliament amended the law to:</p> <ul style="list-style-type: none"> <li>define a statutory definition of raw tobacco;</li> <li>require approval to carry out activity involving raw tobacco;</li> <li>enable HMRC to assess tax due and seize raw tobacco to prevent non-compliance; and</li> <li>introduce penalties for non-compliance.</li> </ul>	Yes – there are appeals against a refusal to provide approval and against penalties for non-compliance.
<b>Obligation for multinational enterprises to publish tax strategies</b> Schedule 19, Finance Act 2016.	<p>Parliament required entities within the scope of the legislation publish their tax strategies online, so they can be easily accessed by the public, free of charge, for a specified period. These strategies should detail the entity’s approach to risk management and their governance arrangements in relation to UK taxation, their attitude toward tax planning (so far as it affects UK taxation), the level of risk in relation to UK taxation that the group is prepared to accept, and their approach towards their dealings with HMRC such as their engagement and attitude toward HMRC. Penalties for non-compliance are included.</p>	Yes - there are appeals against penalties for non-compliance.
<b>Special measures regime for persistently uncooperative, non-compliance large businesses</b> Schedule 19, Finance Act 2016.	<p>Parliament introduced special measures powers to tackle a minority of large businesses that persistently demonstrate uncooperative behaviours and engage in aggressive tax planning.</p>	No - there are no statutory appeals against the sanctions for persistently uncooperative large businesses.

Power Legal Reference	Summary of power/obligation	Right to appeal to the tribunal?*
<b>Corporate Criminal Offence</b> Section 45, Criminal Finances Act 2017.	Parliament introduced a new criminal offence for corporates failing to prevent facilitation of UK tax evasion, unless they have introduced any proportionate reasonable procedures to mitigate this risk.	N/A - this criminal offence is subject to the jurisdiction of the criminal courts rather than the tax chamber.
<b>Penalties for enablers of tax avoidance</b> Section 65, and Schedule 16, Finance (No.2) Act 2017.	Parliament introduced a new penalty for any person who has enabled another person or business to use an abusive tax avoidance arrangement that is later defeated by HMRC.	Yes - there is an appeal against the penalty.
<b>Requirement to Correct</b> Section 67, and Schedule 18, Finance (No. 2) Act 2017.	Parliament introduced the Requirement to Correct. This required those with existing offshore tax non-compliance (relating to income tax, capital gains tax or inheritance tax for the relevant periods) to disclose relevant information to HMRC on or before 30 September 2018 (or another agreed deadline). Those who failed to correct in time faced penalties of up to 200% of the tax due.	Yes - there is an appeal against the penalty.
<b>VAT fraud</b> Section 68, Finance (No 2) Act 2017, amending Section 69C, VAT Act 1994.	Parliament obliged entities to take reasonable steps to ensure their transactions do not facilitate VAT fraud. There is a penalty where a transaction is connected with VAT fraud, and HMRC can demonstrate the business knew, or should have known, that the transactions would facilitate VAT fraud.	Yes - there is an appeal against a penalty imposed for connection to VAT fraud.
<b>Reform to the statutory definition of reasonable care</b> Part 4, Finance Act (No 2) 2017, amending Schedule 24, Finance Act 2007.	Parliament amended penalties charged for inaccurate returns, placing the burden of proof on the taxpayer to demonstrate reasonable care in avoidance cases; and removed from any consideration of reasonable care non-specific and generic advice and advice from persons connected to the avoidance scheme or without the proper qualifications to give it.	N/A - existing appeal rights remain.
<b>Corporate Interest Restriction Regime</b> Schedule 5, Finance (No 2) Act 2017.	Parliament introduced Corporate Interest Restriction as Part 10 TIOPA including a power for HMRC to appoint a reporting company, to help HMRC administer the corporate interest restriction regime. Paras 4&5 Sch7A ITOPA 2010. There are penalties for failure to meet obligations.	Yes - there are appeals against the penalties.
<b>Sanctions for non-compliance with the reformed Landfill Tax</b> Section 42, and Schedule 12, Finance Act 2018.	Parliament extended Landfill Tax to include disposals of material at unauthorised sites in England and Northern Ireland. As part of this, those that did not comply with their obligations became liable for civil and criminal sanctions.	Yes - there are appeals against the assessment to tax and any penalties.
<b>Obligation on partners to provide information their tax return in some circumstances</b> Schedule 6, Part 2, Finance Act 2018.	Parliament, as part of a suite of measures requiring the provision of additional information in some circumstances whilst relaxing other information provisions, required the provision to HMRC of additional information in a partnership return and statement where a) the reporting partnership is a partner	Yes - existing appeals against penalties for failure to provide information apply.

Power Legal Reference	Summary of power/obligation	Right to appeal to the tribunal?*
	in another partnership, or b) where the reporting partnership includes a partner which is itself a partnership. Where a) applies, it requires the separate reporting of income from each of those other partnerships in which it is a partner, and where b) applies, it requires either full details of all the ultimate partners in those partnerships or calculations of the partnership's profits on each of the four possible bases of calculation so that the correct tax can be ascertained for the ultimate partners.	
<b>Power to revoke an investment fund's entitlement to an easement</b> Paragraph 21 of Schedule 1 to the Finance Act 2019 inserts Schedule 5AAA to the Taxation of Chargeable Gains Act (TCGA) 1992.	Parliament empowered a designated HMRC officer to revoke an investment fund's entitlement to an easement (i.e. their right to transfer a CGT liability to their investors) where the fund fails to report required information to HMRC, or in exceptional circumstances where it is necessary to safeguard the public revenue.	Yes - there is an appeal against a revocation of an election.
<b>Power to require a security deposit for corporation tax and Construction Industry Scheme deductions</b> Section 82, Finance Act 2019, amending Chapter 3, Part 3, Finance Act 2004 (for the construction industry scheme) & Schedule 18, Finance Act 1998 (for corporation tax).	Parliament amended the existing security deposit legislation (which covered VAT, Pay-as-you-earn taxes, National Insurance Contributions, Environmental and Gambling taxes) to include corporation tax and Construction Industry Scheme deductions, so that failure to provide a security when required to do so to protect the Exchequer from risk may result in prosecution.	Yes - there is are rights of appeal against decisions to require security to be given and decisions as to the amount, terms or duration of any security to be given

\* Where this table describes the right to appeal, the taxpayer has the right to appeal to the First-tier Tax Tribunal unless otherwise stated.

## Annex E: Analysis of some court challenges to HMRC’s use of powers introduced since 2012

This table provides high-level summaries of the key grounds and outcomes of some court disputes where HMRC’s powers within scope of this evaluation have been challenged. Only cases which are not subject to further appeal are included in the list and the list is in no way intended to be exhaustive. These summaries are not intended to be comprehensive or substitutes for the judgments themselves. Nor are the summaries intended to represent HMRC’s views.

Court reference Power subject to challenge	Summary of grounds	Judge’s view/outcome
<p>R (on the application of Marcus Carlton, Roger Hartley &amp; Ors) v The Commissioners for HM Revenue &amp; Customs [2018] EWHC 130 (Admin)</p> <p>APNs and Partner Payment Notices (‘PPNs’)</p>	<p>The claimants argued:</p> <ul style="list-style-type: none"> <li>i. the technical conditions for issuing an APN were not met; and</li> <li>ii. the arrangements were commercial in nature and did not constitute tax avoidance. In consequence, the application of the APN legislation to these arrangements was unreasonable and an abuse of power.</li> </ul>	<p>The High Court (Whipple J) dismissed the claims, concluding:</p> <ul style="list-style-type: none"> <li>i. the technical conditions were satisfied;</li> <li>ii. the main benefit of the arrangements was a tax advantage. It was not unreasonable for HMRC to issue the notices to the claimants and HMRC had not abused their powers.</li> </ul>
<p>R (on the application of John Dickinson, Paul Mushrow, Edward Whitaker &amp; Ors) v The Commissioners for HM Revenue &amp; Customs [2017] EWHC 1705 (Admin); John Dickinson &amp; Ors v The Commissioners for HM Revenue &amp; Customs [2018] EWCA Civ 2798</p> <p>APNs</p>	<p>The claimants argued HMRC had acted unlawfully by issuing APNs because:</p> <ul style="list-style-type: none"> <li>i. it breached the express promises made to the claimants to postpone the payment of their disputed tax;</li> <li>ii. in all the circumstances of the case that was conspicuously unfair as a matter of procedure and substance.</li> </ul>	<p>The High Court (Charles J) dismissed the claims, concluding:</p> <ul style="list-style-type: none"> <li>i. HMRC had acted with conspicuous unfairness, as a matter of substance and procedure. The approach that it took was unlawful.</li> <li>ii. However, the enactment of the APN legislation meant that the clear promises made to the taxpayers were no longer determinative. Their assertions of conspicuous unfairness were effectively based on the enactment of that legislation and did not establish an abuse of power.</li> </ul> <p>Upheld on appeal.</p>
<p>R (on the application of Rowe and Others) v HM Revenue and Customs, R (on the application of Vital Nut Co Ltd and Others) [2017] EWCA Civ 2105</p>	<p>The appellants argued that issuing the notices was:</p> <ul style="list-style-type: none"> <li>i. unreasonable, retrospective and not in accordance with the principles of natural justice;</li> </ul>	<p>The Court of Appeal dismissed the appeals, concluding:</p> <ul style="list-style-type: none"> <li>i. HMRC had acted within the purpose of the statutory regime and had taken steps to satisfy itself as to the ineffectiveness of a scheme before it issued notices;</li> </ul>

Court reference Power subject to challenge	Summary of grounds	Judge's view/outcome
PPNs and APNs	<ul style="list-style-type: none"> <li>ii. in breach of their human rights under Article 1 of the First Protocol to, and Article 6 of, the European Convention on Human Rights).</li> <li>iii. the result of designated officers considering the wrong test.</li> </ul>	<ul style="list-style-type: none"> <li>ii. the effect of any retrospectivity was justified by a legitimate policy and was fair and reasonable in all the circumstances;</li> <li>iii. the appellants were able to make proper representations to HMRC and were in no doubt about the basis on which HMRC did not accept that their scheme was effective;</li> <li>iv. any interference with the appellants' rights under A1P1 was provided for by law and proportionate, and if Article 6 was engaged, its requirements were met by the procedure for making representations and the ability to challenge HMRC's decision by way of judicial review;</li> <li>v. although the designated officers might not have considered the right test, it was highly likely that the same decision would have been reached if the correct test had been applied.</li> </ul>
<p>R (on the application of Marie Broomfield and others) v HM Revenue and Customs [2018] EWHC 1966 (Admin)</p> <p>APNs and FNs</p>	<p>The claimants argued that:</p> <ul style="list-style-type: none"> <li>i. their underlying tax appeal was based on two grounds, and the statutory provisions are not met where HMRC issues a FN on the basis that a judicial ruling applies to only one of two grounds;</li> <li>ii. the FNs and APNs were invalid as they did not explain the recipient's legal rights, including the right to submit written representations;</li> <li>iii. HMRC's description of the corrective action was inaccurate.</li> </ul>	<p>The High Court (Lewis J) court dismissed the claims, concluding:</p> <ul style="list-style-type: none"> <li>i. The statutory provisions were satisfied as, HMRC were entitled to serve a FN requiring the claimants to abandon the ground of appeal to which the judicial ruling applied;</li> <li>ii. the FNs and APNs were not invalid because of any inaccuracies in the description of the period of time available to make representations or to take corrective action and there is no evidence that any claimant suffered any injustice;</li> <li>iii. the FNs described the corrective action that had to be taken.</li> </ul>
<p>R (on the application of Alasdair James Dougall Locke) v Commissioners for HM Revenue and Customs [2018] EWHC 1967 (Admin)</p> <p>R (on the application</p>	<p>The claimant argued the FN and associated APN were unlawful because the judicial ruling relied on by HMRC did not address the ground which was raised by his tax return.</p>	<p>The Court of Appeal concluded that HMRC were wrong to say that the judicial ruling relied on, if applied to the claimant's arrangements, would deny the advantage asserted via the claimant's tax return.</p>

Court reference Power subject to challenge	Summary of grounds	Judge's view/outcome
of Alasdair Locke) v the Commissioners for HM Revenue and Customs [2019] EWCA Civ 1909  FNs and APNs		
Glencore Energy Ltd & Anor v Revenue & Customs (Procedure – Diverted Profits Tax and Corporation Tax Appeals) [2019] TC 07252  DPT Charging Notice	Glencore applied to the FTT to stay domestic litigation behind the Mutual Agreement Procedure between the Competent Authorities of UK and Switzerland	FTT agreed Glencore's request to stay litigation and enter the Mutual Agreement Procedure under the UK-Swiss Double Taxation Agreement
R (on the application of Glencore Energy UK Ltd) v Revenue and Customs Commissioners [2017] BTC 32  DPT Charging Notice	Glencore applied to the High Court and Court of Appeal for judicial review against HMRC in respect of a DPT charging notice which they asserted was defective on a number of technical and procedural grounds	The High Court refused permission to apply for judicial review, this was appealed to the Court of Appeal, who granted permission and unusually ordered that it would hear the judicial review in the first instance. The Court refused the claim on the basis that the charging notice was valid and the statutory review and appeal notice in the DPT legislation was a 'suitable alternative remedy'