



HM Revenue  
& Customs

# Improving Large Business Tax Compliance

**Summary of Responses**

09/12/2015

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# Foreword

This Government is making sure that Britain is open for business, with the most competitive tax system in the G20. It is also committed to reducing the deficit. To achieve these two goals we must continue to build a tax system that values both competitiveness and compliance. That is why, alongside the lowering of the corporation tax rate to 20 per cent in 2015 and further reductions to 18 per cent by 2020, in July 2015 the Government published a consultation on Improving Large Business Tax Compliance. The three proposals in this consultation were:

- A legislative requirement for all large businesses to publish their tax strategy, enabling shareholder, investor, and public scrutiny of their approach towards tax planning and tax compliance;
- A voluntary 'Code of Practice on Taxation for Large Businesses, which set out the behaviours which HM Revenue & Customs (HMRC) expects from its large business customers; and
- A narrowly targeted 'Special Measures' regime to tackle the small number of large businesses that persistently undertake aggressive tax planning, or refuse to engage with HMRC in an open and collaborative manner.

The Government received a large volume of written responses to this consultation, as well as feedback at multiple stakeholder events. These responses were broadly supportive of the aims and intent of the proposals, with agreement that businesses should pay the right tax, at the right time, and that deliberate failure to do so should be tackled.

All responses have been considered carefully and have helped to shape both the policy and the legislation.

Following the consultation, the Government will legislate for the required publication of a tax strategy as well as a narrowly targeted 'Special Measures' regime in the Finance Bill 2016. These two measures will cement tax planning and compliance as key issues for corporate compliance at boardroom level, and will ensure that the Government can continue to work to create a level playing field for all.

We recognised in our original consultation that the relationship between HMRC and businesses needs to be built on clear and fair guiding principles. In the light of the responses received, the proposed Code of Practice has been reshaped into a Framework for Co-operative Compliance. This sets out common principles that both HMRC and businesses can use to work professionally and co-operatively. This will enable HMRC to deliver more efficiently for the UK.

**David Gauke**

**Financial Secretary**

# 1. Introduction

## Background

- 1.1. HMRC remains committed to dealing with all customers fairly and efficiently while making sure that the correct tax is paid to the Exchequer. HMRC's Large Business Directorate works in this way with the largest 2,000 or so businesses.
- 1.2. The relationship between HMRC and large businesses is conducted through Customer Relationship Managers (CRMs). CRMs lead teams who man-mark these complex and high risk customers. This is a cost-effective way of agreeing the right tax on time.
- 1.3. The Government is continuing to effectively address large business tax compliance. In 2014-15 HMRC collected an additional £7.3 billion in compliance revenues from businesses handled by the Large Business Directorate. These businesses contributed around 38 per cent of HMRC's total receipts in 2014-15. This was to the value of £198.8 billion.
- 1.4. Despite this, there are some large businesses that persist in undertaking aggressive tax behaviour and refuse to engage with HMRC. HMRC has some means by which to tackle this behaviour, for instance, the High Risk Corporates Programme (HRCP) and Accelerated Payment Notices (APNs). However, more needs to be done.

## The Consultation

- 1.5. Following the announcement at Summer Budget 2015, the Government published the consultation document "Improving Large Business Tax Compliance". This consultation document set out three proposals:
  - a) A legislative requirement for all large businesses to publish their tax strategy, enabling investor, shareholder, and public scrutiny of a business's approach towards tax planning and tax compliance;
  - b) A voluntary 'Code of Practice on Taxation for Large Business's, which sets out the behaviours which HMRC expects from its large business customers; and
  - c) A narrowly targeted 'Special Measures' regime to tackle the small number of large businesses that persistently undertake aggressive tax planning, or refuse to engage with HMRC in an open and collaborative manner. This will affect a handful of the large business population.
- 1.6. The consultation ran from 22 July 2015 until 14 October 2015. There were a number of stakeholder engagement events throughout the consultation, as well as a series of meetings with individual stakeholders, covering over 1,500 interested parties. HMRC would also like to thank the ICAEW for discussion of the work it has been doing on corporate governance generally.

## Overview of Responses

1.7. The Government received 98 written responses to the consultation. Respondents comprised:

- Six professional services firms;
- Two law firms;
- Fifty-nine other businesses;
- Nine professional bodies;
- Eleven trade associations;
- One investor group;
- Two charities;
- One non-profit;
- One independent regulator;
- One university; and
- Five individuals.

1.8. Respondents were generally supportive of the aims of the package. Some respondents were not convinced that the measures would achieve the aims. Others had specific concerns. These are detailed in the appropriate sections of this response document.

1.9. The Government is grateful to those who engaged in the consultation, whether by attending events or submitting written responses. They have all helped to shape the policy and legislation.

## 2. Responses to question 1: Scope

2.1. The first question in the consultation document asked respondents to consider and suggest an objective threshold at which a business would be within the scope of the proposed measures. The Government suggested that a threshold similar to that set for the Senior Accounting Officer (SAO) regime - a turnover of more than £200 million and/or a relevant balance sheet total of more than £2 billion for the preceding financial year - might be applicable.

<b>Q1. Do you agree that the threshold above (£200 million / £2 billion) is appropriate for these measures? What other thresholds might we use?</b>
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2.2. Just under eighty per cent of respondents, including all but one of the professional bodies that responded to the consultation, agreed that the proposed thresholds were appropriate for the measures contained in the consultation document.

2.3. Two respondents were concerned that the turnover threshold of £200 million was too low. Suggested alternatives were:

- Raising the turnover threshold to £250 million for an individual company and £1 billion for a group; or
- Ignoring assets as a threshold while at the same time raising the turnover threshold to £500 million (this could be adjusted after three years if necessary).

2.4. One respondent was concerned that this threshold did not take into account “the level of profit a company makes”, and suggested a threshold of £20 million of declared pre-tax profits.

2.5. Two respondents suggested the use of the number of employees a business has as either a separate or additional threshold. The suggested levels for this threshold were:

- More than 250 employees; or
- More than 500 employees.

2.6. One respondent suggested that there could be a test in the thresholds for large businesses which are privately held.

2.7. A small number of respondents asked for clarity as to whether the thresholds would relate to the turnover and assets of UK companies, or to the wider Group. Respondents tended to agree with the proposed threshold on the basis that it was in line with the widely understood SAO threshold, which captures the global turnover of UK incorporated groups and individual companies.

2.8. A few respondents suggested means by which large businesses with a small UK footprint and foreign-owned businesses could be excluded. These were:

- The use of a '*de minimis*' threshold;
- The use of membership of the FTSE 100 as a threshold;
- The use of membership of the FTSE 250 as a threshold; or
- The use of membership of the FTSE 350 as a threshold.

2.9. Contrary to this view, a small minority of respondents proposed that the thresholds look beyond UK turnover and assets so as to bring businesses headquartered in the UK, but with relatively little UK activity, into scope. One respondent thought that this would be useful from a “tax risk, governance, and public perception perspective”.

2.10. The Government is grateful for the responses and suggestions received. The policy objective on scope was to include all those businesses administered by HMRC’s Large Business Directorate (i.e. those businesses, including partnerships, with a CRM). Although the SAO thresholds go slightly wider than this the Government welcomes the support for this approach. (There are approximately 200 businesses outside the Large Business Directorate which are subject to the SAO rules.) In order to ensure that the Large Business Directorate population are in scope the legislative definition will include an additional criterion, namely global turnover of more than €750 million (the threshold used for the Organisation for Economic Co-operation and Development (OECD) Country by Country Reporting framework).



### 3. Responses to questions 2-7: Transparency

- 3.1. Chapter 2 of the consultation proposed a legislative requirement for all large businesses to publish their tax strategy.
- 3.2. Respondents were, overall, supportive of this. Further, respondents were in general agreement with the Government about the areas a tax strategy should cover, with the exception of the Group's target UK effective tax rate (ETR).
- 3.3. Fewer than one third of respondents expressed a concern around the potential administrative burden of publishing a tax strategy. While the government agrees that there may be some additional administrative work in publishing a tax strategy, businesses should already be discussing the content and application of their strategy with HMRC.
- 3.4. A small minority of respondents were not convinced that mandatory publication of a tax strategy was the best way to encourage the desired behaviour. Some respondents suggested that businesses could adopt a set of principles, rather than publish a tax strategy.
- 3.5. The Government notes the contrary views, but believes that it is right to legislate for the publication of tax strategies as the means of embedding best tax practice across all large businesses.

**Q2. Do you agree there should be a named individual at Executive Board level with accountability for a business's published tax strategy? If so, do you have any views on who this should be?**

- 3.6. Over three quarters of respondents disagreed that accountability for a business's published tax strategy should sit with a named individual at Executive Board level. Instead, the majority of respondents were of the view that accountability should rest with the Executive Board as a whole as this would be consistent with UK company law, and with corporate governance generally, and reflect the fact that a tax strategy is a "company rather than individual" matter. The Government notes and accepts this view.
- 3.7. Fewer than twenty per cent of respondents agreed that a named individual at Executive Board level should have accountability for a business's published tax strategy. Most of these respondents recommended that the individual be either the Chief Executive Officer (CEO) or Chief Financial Officer (CFO). One respondent suggested that the accountable individual should come from outside of a business's finance function. Another respondent recommended that there should be two named Executive Board members with accountability, and that these should be the CEO and the SAO (even though there is no legal requirement for an SAO to be a board member).

- 3.8. One respondent sought clarification as to whether the regime would be designed to take affiliates into account for published strategies, or whether separate strategies would be required.
- 3.9. The Government recognises that multinational groups may have different governance structures in different parts of their overall organisation. The policy objective here is transparency of the tax strategy that applies to the UK. As such different structures and governance arrangements should not prove an obstacle to publication of the strategy that applies to the UK. For example, if a business has a single global tax strategy, then the obligation to publish will be fulfilled by publication of that global strategy, subject to any UK specific adjustments, if any, that it is appropriate to make. If on the other hand a business does have a UK specific tax strategy then that is what should be published.
- 3.10. In view of the consultation responses the Government will not require that a named individual at Executive Board level is accountable for a business's published tax strategy. Instead, the Executive Board as a whole will be accountable for a business's published tax strategy, as part of the general corporate governance process.

**Q3. Do you think the areas above are the right areas for a published tax strategy to include? If not, what other aspects of tax strategy are more relevant? Equally, what aspects do you think are less relevant?**

- 3.11. Over half of respondents who expressed an opinion agreed that the suggested areas were the right areas for a published tax strategy to include.
- 3.12. The exception to this agreement was the inclusion of the Group's target UK ETR. Generally, business respondents did not have a target ETR. Those that did noted two things. First, that this may be commercially sensitive information, and second, that any target ETR would rarely be UK-specific.
- 3.13. Some respondents suggested that being rigid in what was required of a tax strategy would be counter-productive, and that flexibility would allow for more informative tax strategies. One respondent wrote that high level principles would allow "companies to tailor their strategies" in a useful way.
- 3.14. A minority of respondents were uncomfortable with HMRC requiring a tax strategy with global context. There were concerns that groups may have differing and conflicting obligations in different jurisdictions, and that global information may be "needlessly published".
- 3.15. One respondent in the third sector suggested that the published tax strategy should relate to all jurisdictions in which a business operates. This requirement would be outside of HMRC's jurisdiction (although businesses would be free to publish this information if they wished).
- 3.16. The Government notes these views. The policy objective here is for businesses to be transparent about their tax strategy, whatever that strategy is. The

Government has no desire to insist on a common format, but it does require a degree of consistency in the scope of what is published, to allow different strategies to be compared. Following the consultation the Government believes that a flexible, principles-based approach will minimise the risk of businesses publishing sanitised 'generic' tax strategies. The legislative requirement will therefore be based on the four areas referred to in the consultation:

- a) The business's approach to risk management in relation to UK taxation;
- b) The business's governance arrangements for dealing with risk management in relation to UK taxation;
- c) The business's attitude towards tax planning (so far as it affects UK taxation) and the level of tax planning risk (in relation to UK taxation) that the company is prepared to accept; and
- d) The business's approach towards engagement with HMRC and its attitude towards HMRC.

3.17. It will then be up to individual businesses to bring their own strategy alive with appropriate detail.

3.18. The Government does not intend to make it a requirement that the published strategy includes whether business has a target UK ETR (although individual businesses may choose to do this).

**Q4. Should the tax strategy be supported by publication of factual information on how it has been applied in practice? If so, what information would be most relevant to demonstrate the application of the strategy?**

3.19. More than three quarters of respondents did not think that the published tax strategy should be supported by the publication of factual information showing practical application of the strategy. The view was that this requirement would lead to the publication of commercially sensitive information.

3.20. Slightly more than one fifth of respondents were supportive of the publication of factual information to evidence the practical application of a business's published tax strategy. One respondent suggested that businesses could publish high level information, such as the frequency of tax committee meetings, without publishing low level information, such as specific transactions. Another respondent suggested that a business's tax return could be accompanied by a statement from a business's Executive Board noting that the return had been prepared in line with the tax strategy.

3.21. It was recommended by one respondent from the third sector that published evidence of the practical application of a business's tax strategy should be required, and that this should take the form of "full public country-by-country reporting".

3.22. The Government notes these views. In keeping with the principles-based approach described above, and the desire to not create an industry in unhelpful 'metrics', the Government will not be requiring that businesses publish factual information to evidence the practical application of the business's published tax strategy. Instead, it envisages that many businesses will choose to publish relevant metrics to illustrate how they apply the strategy in practice. In addition, the application of the business's published tax strategy will form a part of the existing business risk review process between a large business and HMRC.

**Q5. Do you think that businesses should be required to publish whether they are or are not a signatory to the 'Code of Practice on Taxation for Large Business's as part of this measure?**

3.23. More than three quarters of respondents did not think that businesses should be required to publish whether they are a signatory to the 'Code of Practice on Taxation for Large Business's (the Code) as part of this measure. Respondents were of the view that if the Code is intended to be voluntary, then publication of whether a business is a signatory should also be voluntary. The Government notes and accepts this view.

3.24. It was of significant concern to respondents that the Code of Practice could evolve from a voluntary Code to an essentially mandatory Code, if at some stage the Government published a list of signatories. One respondent was further concerned that the Government might use publication of non-signatory status as a potential threat during disputes. The Government notes these concerns, and restates that it has no intention of publishing a list of signatories to the Code, regardless of any potential dispute.

3.25. For reasons that will become apparent below this question is no longer relevant.

**Q6. What is the right medium for publication of a tax strategy? Where do you think a business's tax strategy should be published?**

3.26. The two most frequent suggestions for where a business should publish its tax strategy were that:

- Businesses should be given flexibility as to where they publish their tax strategy; and
- Businesses should publish their tax strategy on their websites.

3.27. A number of respondents suggested that the right medium for publication would be the business's Annual Report and Accounts. This would be contrary to the general trend towards more concise Annual Reports and Accounts. Also, as other respondents noted, publication in the Annual Reports and Accounts would potentially make the business's published tax strategy subject to audit. One respondent was additionally concerned that businesses subject to U.S. Securities and Exchange Commission requirements may not be able to publish a tax strategy in their Annual Report and Accounts. The Government notes these concerns.

3.28. Some other, less frequent, suggestions were that a business's tax strategy could be published:

- In the Annual Financial Statement;
- In a Corporate Social Responsibility Report;
- At Companies House;
- In the Corporate Governance Statement; or
- In the Corporation Tax Return.

3.29. One respondent suggested that the tax strategy could be made available to interested parties on request.

3.30. The Government recognises respondents' views and will proceed on the basis that businesses publish their tax strategies on their websites or in some other accessible place on the internet, as this will be the most convenient point of access for interested parties, while also being the most sustainable option. The Government is exploring whether there might be a requirement that a link to the strategy should be published on the Companies House website.

**Q7. What would you see as an effective sanction for non-publication? To whom should this apply?**

3.31. There were a significant number of possible sanctions for non-publication recommended by respondents. The most often suggested were:

- The publication by HMRC of the names of businesses who fail to comply with the legislative requirement;
- A financial penalty levied on an individual modelled on the SAO regime;
- A financial penalty levied on the non-compliant business different to the SAO regime; and
- To take non-publication into consideration for the business risk review process.

3.32. One respondent expanded on this final suggestion, recommending that failure to publish should result in a business's risk rating being automatically downgraded.

3.33. It was thought that the publication of the names of businesses that failed to comply would be effective for reasons of reputation and public scrutiny. Respondents who tended towards this view thought that publication would be more effective than financial sanctions.

3.34. Of those respondents who were in favour of a financial penalty, there was a relatively even split between those who advocated the penalty being levied on an individual and those who advocated the penalty being levied on the business. Respondents' views on whether a penalty should be levied individually or corporately were generally in line with whether they advocated individual accountability for a business's published tax strategy.

3.35. Respondents offered various suggestions for the quantum of a financial penalty. These included:

- £5,000 in line with the SAO regime;
- 0.1% declared turnover of the consolidated group for the period to which the failure to publish relates; and
- An additional 5% UK Corporation Tax on the total declared adjusted profits of UK members of the group.

3.36. The Government is grateful for these suggestions, and will proceed on the basis of a financial penalty levied on the business for non-publication of a tax strategy. The Government is of the view that this will be the most effective and appropriate method of encouraging businesses to publish a tax strategy in relation to the UK. For consistency the penalty will be a maximum amount of £7,500, in line with the Companies House maximum penalty for late/non-filing.

## 4. Responses to questions 8-10: Code of Practice on Taxation for Large Businesses

- 4.1. Chapter 3 of the consultation document proposed a voluntary 'Code of Practice on Taxation for Large Business's. A draft of the proposed Code can be found at Annex D of the consultation document.
- 4.2. The majority of respondents were supportive of a Code or similar, and the behaviours which it outlined.
- 4.3. However, the overwhelming theme of responses was that the Code was missing an element of mutuality, that is, it did not outline what large businesses could expect of HMRC. This also came through strongly in the stakeholder meetings, in some instances even to the extent of bringing the UK's approach to 'co-operative compliance' into doubt.
- 4.4. Other general points made were that that the Code could draw more from existing codes and principles of practice, particularly the CBI and Business and Industry Advisory Committee to the OECD (BIAC) principles. There was also concern that taxpayers may lose some of their statutory rights and take on a potential administrative burden by becoming signatories to the Code.
- 4.5. The Government is grateful for the responses received. The Code of Practice was not intended to reflect any change in the UK's attitude to co-operative compliance. On the contrary, it was simply intended to codify the characteristics of a 'low-risk' co-operative relationship. Having taken this feedback into consideration, the 'Code of Practice on Taxation for Large Business's has been reshaped into a 'Framework for Cooperative Compliance' (the Framework). This will set out a common set of principles and ways in which large businesses and HMRC can work together to ensure that the right tax is paid at the right time.
- 4.6. The Framework will be accompanied by clear guidance. Further, the Framework will not look to erode the statutory rights of taxpayers.

**Q8. Do you agree that the openness and relationship behaviours contained within the Code of Practice are appropriate for large businesses? Are there any other behaviours you would expect to see?**

- 4.7. More than two thirds of respondents agreed that the openness and relationship behaviours contained within the Code of Practice were appropriate for large businesses.
- 4.8. Respondents were unsure about how much information they would be expected to disclose as signatories to the Code, with special concern that confidential information might be required. Respondents also wished to make

clear that it would, at times, be wholly appropriate for HMRC to use its formal information powers and that this would not be indicative of the absence of an open approach to the relationship.

- 4.9. One respondent was keen that the Code be extended to ask for the proposed behaviours to be adopted in all jurisdictions in which a business operates, as well as for businesses to disclose relationships and correspondence with tax advisers. Another respondent suggested that the Code could require businesses to publish incentives and reliefs received in all jurisdictions, as well as their full group structure.
- 4.10. The Government will reflect the openness and relationship behaviours outlined in the Code of Practice, as well as the responses to them, in the Framework for Co-operative Compliance.

**Q9. Do you agree that the governance behaviours contained within the Code of Practice are appropriate for large businesses? Are there any other behaviours you would expect to see?**

- 4.11. The majority of respondents agreed that the governance behaviours contained within the Code of Practice were appropriate for large businesses.
- 4.12. Respondents sought clarity as to what evidence would be needed to show 'governance in action'. Respondents did not expect to be audited by HMRC or to be required to publish evidence of 'governance in action' by referring to specific transactions or confidential information, such as board minutes.
- 4.13. A few respondents noted that senior executives, specifically "the most senior decision makers" would not be signing off all decisions. This was because some decisions would not necessarily go to the Board. One respondent suggested that the wording could reflect this by changing from "the most senior decision makers" to "the most appropriate decision makers".
- 4.14. The Government is grateful for the responses it has received and will reflect these in the Framework for Co-operative Compliance.

**Q10. Do you agree that the tax planning behaviour contained within the Code of Practice is appropriate for large businesses? Are there any other behaviours you would expect to see?**

- 4.15. Respondents were relatively evenly split as to whether they agreed that the tax planning behaviours contained within the Code of Practice were appropriate for large business.
- 4.16. Respondents had reservations about the terms 'intentions of parliament' and 'spirit of the law'. Respondents generally felt that it was not truly possible to know the 'intentions of parliament'. Similarly, respondents generally felt that legislation should be clear in and of itself.



4.17. One respondent suggested that the Code should go further by asking businesses to:

- Prove that there are non-tax benefits to operating in low-tax jurisdictions which cannot be achieved in “higher-tax jurisdictions”;
- Require tax incentives to be available to all competitors on the same terms, approved by the legislature, and publicly disclosed;
- Not hire tax officials for a certain period after the end of their service; and
- Unwind country-specific restrictions on taxation.

4.18. The consultation’s acknowledgement that tax planning was legitimate was welcomed. However, some respondents expressed the need for further clarity as to what constitutes ‘aggressive tax planning’. Some suggestions for a definition of ‘aggressive tax planning’ were:

- A definition similar to the double reasonableness test contained in the General Anti-Abuse Rule (GAAR) provisions; or
- Achieving tax results that are not consistent with the underlying transaction, “unless there exists specific legislation designed to give that result”.

4.19. Further, some suggestions for definitions of acceptable tax planning practice were the use of:

- CBI’s ‘Tax planning principles’; or
- BIAC’s ‘Tax planning principles’.

4.20. The Government is grateful for the responses it has received and will reflect these in the Framework for Co-operative Compliance. A draft of the Framework can be found at Annex B.

## 5. Responses to questions 11-22: Special Measures

- 5.1. Chapter 4 of the consultation proposed a narrowly targeted 'special measures' regime to deal with high risk behaviours by a handful of large businesses.
- 5.2. Respondents were of the view that compliant businesses were clear from any thresholds that they would not be inadvertently drawn into special measures.
- 5.3. Some respondents were of the view that HMRC has sufficient tools to tackle businesses who persistently exhibited high risk behaviours and does not need further powers.
- 5.4. Some respondents raised the need for appropriate safeguards. A variety of safeguards were suggested by respondents.
- 5.5. There were respondents who chose not to respond to the questions on special measures because they were of the view that they would never meet the criteria for entry.
- 5.6. The Government is grateful for the responses received. Special measures will be tightly drawn to target only those businesses who are the most persistent in exhibiting high risk behaviours. HMRC does have other tools to tackle businesses who persistently exhibit high risk behaviour and will continue to use them robustly. But the 'special measures' proposals were specifically designed to address a gap in the armoury. Doing this also ensures a level playing field for all.

<b>Q11. Do you agree with the initial/preliminary framework for entry into special measures? If not, what framework do you think would be appropriate?</b>
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- 5.7. More than half of respondents who expressed an opinion agreed with the initial/preliminary framework for entry into special measures.
- 5.8. A large number of respondents expressed the need for this framework to ensure that entry into special measures is narrowly targeted to prevent compliant businesses being drawn in. It was thought that this would be aided by avoiding subjectivity, and utilising "clear laid-down specifics" that support with "certainty" the reasonableness of the decision to enter special measures.
- 5.9. On this theme, respondents also expressed the need for a definition of 'tax avoidance schemes' for the purposes of special measures. Suggested definitions were:
  - Schemes to which a tribunal has confirmed that the GAAR, the abuse of law principle, or the Targeted Anti-Avoidance Rule (TAAR) applies;
  - Disclosure of tax avoidance schemes (DOTAS) notified arrangements (one respondent suggested that if DOTAS is widened then the scope for

special measures should not be, while another noted that DOTAS includes schemes which should not be considered ‘tax avoidance’ for the purposes of special measures); or

- Schemes which have been issued with an APN or a Follower Notice (FN).
- 5.10. Several respondents were of the view that schemes which are successful in avoiding tax should not be considered as ‘tax avoidance schemes’ in the context of special measures.
- 5.11. Respondents were also of the view that no business should enter special measures only because of a genuine difference of opinion on a technical point with HMRC, even if HMRC’s view is eventually accepted by tribunal.
- 5.12. One respondent was of the view that entry to special measures could be based on:
- Conduct in other jurisdictions;
  - Failure to disclose data from other jurisdictions; and
  - At the request of other jurisdictions.
- 5.13. The Government notes concern about entry to special measures. The legislation will be drafted to ensure that entry into special measures is narrowly targeted. This will ensure that businesses will not enter special measures simply as a result of a genuine and reasonable difference of opinion with HMRC on a technical point of tax law, even if HMRC’s view is eventually accepted by tribunal. And, for the avoidance of doubt, it is not within HMRC’s jurisdiction to enter businesses into special measures based on their conduct or disclosure in foreign jurisdictions, or at the request of foreign jurisdictions.

<b>Q12. At what level should thresholds (number of schemes, number of information notices issues, tax at risk, etc.) be set?</b>
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- 5.14. The majority of respondents agreed that thresholds for entry to special measures needed to be clear and objective, with appropriate safeguards in place, with a right of appeal.
- 5.15. One respondent suggested that any thresholds should be used only as guidance, and should “allow for HMRC discretion” to prevent “gaming of the system” by “persistent abusers”.
- 5.16. Tax at risk was the most frequently suggested threshold, with respondents variously suggesting the threshold be set at:
- More than £10 million;
  - More than 25% of the overall tax at stake;
  - A percentage of the business’s UK tax bill; or
  - A percentage change in the business’s UK ETR.

5.17. Several respondents recommended the issuing of either information notices, APNs, or FNs as a threshold. Suggested levels that this threshold should be set at were:

- One information notice per period (with one respondent suggesting excluding principle-based objections and those subject to successful or partially-successful appeals);
- Three information notices per period; or
- One APN or FN per period.

5.18. Two respondents were of the view that strand 'A' of special measures should not be activated in the event that a relationship between a business and their CRM breaks down.

5.19. The Government notes this concern regarding strand 'A' of special measures. In practice, there will have been significant and ongoing conversation between the business and HMRC before entrance to special measures in which any perceived breakdown could be raised and appropriately addressed.

5.20. The Government is grateful for these suggestions and will consider at what level appropriate, clear, and objective *de minimis* thresholds should be set.

5.21. Presently, the draft thresholds include:

- a) Significant and continuing risk. By significant, the Government means the absolute amount of tax at risk has to be significant, rather than the size of the group or its overall tax payments.
- b) Persistent lack of transparent and cooperative behaviour in relation to HMRC. Factors that would be taken into account could include the frequency of the formal use of information powers, the nature and significance of the issues in relation to which they have been used, and the degree of contention about their use; and
- c) Persistently aggressive tax planning. This criterion would be met if there was an established pattern of behaviour over a sustained period that included:
  - i. A group (i.e. one or more companies in the group) had repeatedly entered into arrangements in relation to which a DOTAS disclosure or similar falls to be made; or
  - ii. Returns made by companies within the group had repeatedly been found to be inaccurate as a result of the group relying on a view of the law that it is reasonable to consider a Tribunal might reasonably regard as speculative or without significant merit; or
  - iii. Behaviours similar to the above.

**Q13. Do you agree that HMRC should look back at a business's recent behaviour when applying these criteria? If yes, to what extent (e.g. three years as in the 'Promoters of Tax Avoidance Schemes' regime)?**

5.22. Over two thirds of respondents agreed that HMRC should look at a business's recent behaviour when applying the proposed criteria.

5.23. Most respondents thought that when looking back, HMRC should not consider behaviour prior to the relevant legislation. Respondents were also generally of the view that the more recent a behaviour was, the more weight it should be given. There were various suggestions as to how far back HMRC should look. Suggestions ranged from one accounting period in isolation through to seven years.

5.24. The Government notes these views and suggestions and recognises potential concerns. When legislation is introduced HMRC will review those businesses already persistently exhibiting high risk behaviours. Entry to special measures will consider the absolute behaviour at the point of consideration for entry and the trend of behaviour in recent years. Each case will be assessed on its merits and sanctions will not be applied retrospectively.

5.25. Regardless of past behaviour, there would need to be a significant and continuing risk of future problems for entry to special measures.

**14. Is 12 months an appropriate notice period to allow businesses at risk of special measures to demonstrate a significant improvement in their behaviours and approach to tax planning? If not, what period would you propose?**

5.26. Respondents were relatively evenly split regarding whether 12 months was an appropriate notice period to allow businesses at risk of special measures to demonstrate significant improvement in their behaviours.

5.27. The following notice periods were proposed by respondents:

- One year (with one respondent suggesting that this runs from the end of the business's accounting period);
- Two years;
- Six months;
- A reflection of the time a business spends in special measures; or
- A reflection of the period of time over which HMRC will look at a business's past behaviour.

5.28. Two respondents suggested that there was flexibility within the notice period to allow for variation in businesses' circumstances.

5.29. The Government is grateful for the responses and suggestions to this question. The Government intends to proceed with a notice period of 12 months as this will allow businesses to display significant improvement where necessary.

**Q15. Would introducing increased reporting and disclosure requirements for businesses who persistently refuse to engage with HMRC alter behaviour? If not, what other ways might we achieve this objective?**

5.30. The majority of respondents did not think that introducing increased reporting and disclosure requirements would alter the behaviour of those businesses that persistently refuse to engage with HMRC. Generally, these respondents did not see why businesses which refused to engage would begin to do so in the event that requirements were increased.

5.31. One fifth of respondents thought that increased reporting and disclosure requirements would alter the behaviour of businesses who refused to engage with HMRC. One respondent, a large agent, was of the view that this would work because businesses would seek to “avoid the additional compliance burden”.

5.32. Further suggestions offered by respondents for how the Government might achieve these objectives were:

- Increasing the tax rate of businesses who do not engage with HMRC by 5% or disallowing 25% of all losses if there are no taxable profits;
- Levying of significant financial penalties;
- The application of a surcharge similar to that which was consulted on in ‘Strengthening Sanctions for Tax Avoidance’;
- Public naming of businesses on HMRC’s website; and
- A change in a business’s CRM.

5.33. The Government does not intend to introduce increased reporting and disclosure requirements for businesses who persistently refuse to engage with HMRC as part of this measure. HMRC will continue to exercise its existing powers. The Government is of the view that other approaches in this measure will better achieve our objective.

**Q16. Would businesses’ behaviour be influenced by the withdrawal of certainty from those who refuse to work with HMRC in a transparent or collaborative way? If not, what other ways might we achieve this objective?**

5.34. More than half of respondents did not think that the withdrawal of certainty from businesses who refuse to work with HMRC in a transparent or collaborative way would influence the behaviour of those businesses.

5.35. These respondents were of the general view that businesses that do not work transparently or collaboratively with HMRC already operated, by choice, in an uncertain environment. As such, the removal of certainty would not have an impact on these businesses’ behaviour.

5.36. Less than a third of respondents thought that the withdrawal of certainty would influence business’s behaviour. One respondent thought that businesses’ behaviour might be influenced because the withdrawal of certainty would cause

“delays of crucial business decisions and additional (significant) cost as further professional advice might need to be sought”.

5.37. Suggestions from respondents for other ways in which the Government might achieve this objective were:

- To assign or embed HMRC personnel in these businesses for a time;
- A provision for the disqualification of relevant directors;
- To write to the Board of the relevant top UK company; or
- To offer enhanced certainty to those taxpayers who are not subject to special measures

5.38. The Government is grateful for the responses and suggestions it received. These will be reflected in the final policy design for special measures, where we will look to limit the certainty afforded to businesses who persist in unacceptable behaviours. This may involve, for example, removing non-statutory clearances.

**Q17. Would removing the defence of “reasonable care” from businesses who repeatedly engage in unacceptable tax planning be successful in changing behaviours? If not, what other ways might we achieve this objective?**

5.39. Responses to this question generally raised concerns regarding the removal of the defence of reasonable care as a statutory safeguard.

5.40. Some respondents offered an alternative to the removal of “reasonable care” as a defence. These alternatives were:

- A mandatory increase in the tax rate of those companies which refuse to engage with HMRC; or
- The robust use of existing tools, such as the GAAR.

5.41. The Government notes this concern and the suggested alternatives. However, the Government remains of the view that it is appropriate to consider removing “reasonable care” as a safeguard in cases where a business shows a pattern of persistently aggressive behaviours towards tax, and where this is significant risk of this behaviour continuing once the business is in special measures.

**Q18. Would businesses’ behaviour and approach to tax planning be influenced by public naming by HMRC as being subject to special measures? If not, what other ways might we achieve this objective?**

5.42. Respondents were relatively evenly split as to whether they thought a business’s behaviour and approach to tax planning would be influenced by HMRC publicly naming those businesses which were subject to special measures.

5.43. Respondents who believed it would influence behaviour generally thought that this would be because of a business’s fear of damage to its reputation.

Respondents who did not think public naming would influence a business's behaviour generally thought that businesses in special measures would not be influenced by potential reputational damage.

5.44. There was concern that public naming would potentially breach taxpayer confidentiality. Further, there was concern about the impact this may have on the relationship that has been built between taxpayers and HMRC.

5.45. The Government notes these concerns. Naming as a sanction is never entered into lightly. The Government remains of the view that naming may be an appropriate sanction, but only if a business's time in special measures is extended. The Government restates that special measures will affect only a small number of large businesses where there is a history of aggressive tax planning, lack of co-operation, and significant risk of this behaviour continuing despite being given the opportunity to improve.

**Q19. Given the objectives of the 'Special Measures' regime are there any other sanctions that you think should be considered, either in addition to, or instead of, those described above?**

5.46. Respondents offered a variety of suggestions for additional and alternative sanctions as part of the special measures regime. Some of these suggestions were:

- The increased use of penalties and surcharges;
- Accelerating payment of PAYE/NIC and VAT;
- Extension to the time limit for making 'discovery' assessments;
- Barring companies from taking part in tenders for public projects and applying for public subsidies; and
- Monitoring similar to the 'Managing Serious Defaulters' programme.

5.47. Several respondents were also of the view that it was important that HMRC engage fully with a business before it enters special measures. Two respondents suggested that the first phase of special measures could require an individual from the business to attend regular meetings with their CRM to engage in a dialogue on concerns and progress.

5.48. One respondent, a large agent, suggested that HMRC should adopt a "multilateral approach" which could include education and engagement with taxpayers as well as "raising awareness of what appropriate behaviour looks like".

5.49. The Government notes this suggestion and recognises that it has a role in educating the taxpayer. The behaviours and attitudes set out in the proposed Framework for Co-operative Compliance reflect what the Government considers appropriate and best behaviour to look like. The content of the Framework will be publicly available.

5.50. The Government agrees that it is important that HMRC engage fully with a business before it enters special measures. There would have been an ongoing



board-to-board conversation for a number of years between HMRC and a business, with attempts to resolve any disagreement, before special measures were considered.

5.51. The Government is grateful for the suggestions received for additional sanctions. The Government will not be adopting any of these additional sanctions in the present draft legislation, but will reflect on them for future fiscal events.

**Q20. What other safeguards do you think might be required in applying sanctions within special measures?**

5.52. Respondents were of the view that taxpayers' rights should be seriously considered when applying sanctions within special measures. Suggested safeguards to protect taxpayers' rights when applying sanctions within special measures were:

- Some form of independent (possibly judicial) process before entry to special measures;
- A tribunal safeguard;
- An arbitration process;
- A dispute resolution mechanism during the Initial Notice Period; and
- A right of appeal for businesses who are entered into special measures.

5.53. The Government notes these suggestions, and will utilise existing HMRC governance structures and challenge boards. But the Government does not believe that there is a need for additional safeguards within the special measures regime itself. This is because entry into the special measures regime will be the final phase of an intensive, ongoing Board to Board level relationship which is likely to have been in place for several years, during which there will have been ample opportunity for any appropriate legal challenge to specific issues.

**Q21. Do you agree that two years is a suitable length of time to remain in special measures? If not, what duration would you suggest?**

5.54. Slightly less than two thirds of respondents agreed that two years is a suitable length of time to remain in special measures. Other suggested lengths of time to remain in special measures were:

- One year; or
- Three years.

5.55. A common theme among responses was that there should be some flexibility in the amount of time a business remains in special measures. Some suggested forms this flexibility could take were:

- That businesses should be able to request early exit interviews;
- That there should be a mandatory annual review; or

- That there should be no set time in special measures, and that businesses would only exit when behaviours improve.

5.56. The Government is grateful for the responses and suggestions it has received. The responses reaffirm the Government's view that two years is a suitable length of time for a business to remain in special measures.

**Q22. Do you agree the criteria for determining exit from special measures are appropriate? If not, what criteria would you suggest?**

5.57. Just under two thirds of respondents agreed that the criteria for determining exit from special measures are appropriate. A minority of respondents suggested that, in addition to the criteria, there should be a right of appeal for businesses in the event that HMRC does not decide to allow the business to exit special measures.

5.58. Less than one fifth of respondents disagreed with the criteria for determining exit from special measures. These respondents were generally concerned that the subjectivity of the wording would allow for too much discretion on HMRC's part.

5.59. The Government is grateful for the commentary received on the criteria for determining a business's exit from special measures. After two years, HMRC will conduct an 'exit review' with the business. This review will take into account:

- a) Behaviours and attitude to tax risk during the special measures period;
- b) The nature of the relationship with HMRC during the special measures period; and
- c) Current and emerging risk and risk profiles.

5.60. Depending on the outcome of this review, the business will either leave special measures, or have its time in special measures extended.

## 6. Next steps

- 6.1. The Government is grateful for the responses to this consultation. There have been legitimate concerns that have been raised and useful suggestions which have been offered. These have all been taken into account.
  
- 6.2. Following the consultation, the Government is of the view that the correct way forward is to introduce both a legislative requirement for large businesses to publish a tax strategy and a narrowly targeted special measures regime. These will be legislated for in Finance Bill 2016.
  
- 6.3. The Framework for Co-operative Compliance is proposed to be introduced in April 2016. We propose to consult further on the final content of this in the next few months.

## Annex A: List of stakeholders consulted

The following submitted written responses:

3i Investments PLC  
3M United Kingdom PLC  
Affinity Water Limited  
Aiglon Consulting  
Ashurst LLP  
Aspen Insurance UK Limited  
Association of Accounting Technicians  
Association of British Insurers  
Association of Foreign Banks  
AstraZeneca UK Ltd  
Baker Tilly Tax and Accounting Ltd  
Brewin Dolphin Ltd  
British Property Federation  
British Telecommunications PLC  
British-American Tobacco (Holdings) Limited  
Caterpillar UK Holdings Limited  
Centrica PLC  
Charity Law Association  
Co-operative Group Limited  
Costain Group PLC  
Deloitte LLP  
Dick Lovett Companies Ltd  
DONG Energy (UK) Limited  
EnSCO PLC  
Ernst & Young LLP  
G4S PLC  
Galliford Try PLC  
Gazprom Marketing & Trading Ltd  
GKN PLC  
GlaxoSmithKline Services Unlimited  
Grant Thornton UK LLP  
Great Portland Estates PLC  
Grosvenor Group Limited  
Hermes Equity Ownership Services Ltd  
Home Builders Federation  
ICAS  
ICAEW  
Institute of Directors  
InterContinental Hotels Group PLC  
International Corporate Governance Network  
International Underwriting Association of London Ltd  
ITV PLC  
JD Wetherspoon PLC  
John Lewis PLC  
KPMG LLP

KRONOSPAN Ltd  
Land Securities Group PLC  
Legal & General Group PLC  
Lidl UK GmbH  
London Society of Chartered Accountants  
Munich RE  
National Australia Group Europe Limited (including its subsidiary Clydesdale Bank PLC)  
National Grid  
Nissan Motor Manufacturing (UK) Ltd  
Oxfam GB  
Oxford University Centre for Business Taxation  
Pearson PLC  
Petrofac Services Limited  
Phoenix Group Holdings  
Pinsent Masons LLP  
Porterbrook Leasing Company Limited  
PricewaterhouseCoopers LLP  
Robertson Group Limited  
Rolls-Royce PLC  
SABMiller PLC  
Safran UK Limited  
Saint-Gobain Limited  
Smith & Nephew UK Limited  
Spectris PLC  
Standard Life PLC  
Tax Computer Systems Limited  
Tax Executives Institute, Inc.  
Tennants Consolidated Ltd  
The 100 Group  
The Association for Financial Markets in Europe  
The Berkeley Group Holdings PLC  
The British Bankers' Association  
The British Land Company PLC  
The Business Services Association Limited  
The City of London Law Society  
The Confederation of British Industry  
The Fair Tax Mark Limited  
The Financial Reporting Council  
The Investment Association  
The Law Society  
The UNITE Group PLC  
United Utilities Group PLC  
Vattenfall AB  
Virgin Money PLC  
Vodafone Group Services Limited  
Volkswagen Financial Services (UK) Limited & Volkswagen Group United Kingdom Limited  
Winmark Tax Director Network  
Zurich Community Trust (UK) Limited

The Government also received five responses from individuals.

In addition to this, HMRC ran multiple internal and external stakeholder events, meetings, and seminars, covering over 1,500 interested parties. The views received at these events have been carefully considered in the writing of this document.

# Annex B: Draft 'Framework for Co-operative Compliance'

HMRC is committed to taking an even-handed approach in dealing with all of its customers and does so in the context of three key objectives: maximising revenues, making sustainable cost savings and improving the service provided to customers, regardless of size or complexity.

These objectives are tailored to the different risks and needs identified in customer groups. This is informed by customer insight, a detailed understanding of customer behaviours, and the varying complexity of their affairs. HMRC's models for dealing with small, mid-size and large businesses are based on the different needs of, and the different risks posed by, these three customer groups and their representatives. The aim is the same in all cases: to collect the tax that is owed and reduce cost for both the customer and HMRC.

The Large Business Directorate manages the tax compliance of the UK's 2000 largest and most complex businesses using a customer relationship management model to manage the aforementioned objectives. This model allows HMRC to build an in-depth knowledge of the customers' business and the commercial environment in which they operate, their appetite for risk and internal governance. It also provides the business with a Customer Relationship Manager (CRM) who has a real grasp of the key tax risks as they relate to the customer. This model ensures that HMRC can therefore effectively identify and tackle tax compliance risk and that the right amount of tax is paid.

The Framework for Co-operative Compliance highlights a set of principles that both large businesses and HMRC should engage and work within. The Framework recognises the value of mutuality between both parties; and influences HMRC's approach to risk management.

## Professional working

- Both parties to promote collaborative professional working building an open, transparent and trusted relationship.
- Both parties to engage in open and early dialogue to discuss tax planning, strategy, risks and significant transactions and businesses to fully disclose any significant uncertainty in relation to tax matters.
- Both parties to respond to queries, information and clearance requests in a timely fashion and to ensure that the other party are informed about how issues are progressing, especially those that are complex or difficult.
- Both parties to seek to resolve issues in real-time and before returns are filed where possible.

- The business to make fair, accurate and timely disclosure in tax returns, reports and documents that the business files with, or submits to, HMRC.
- Both parties, where disagreements over tax arise, proactively work together to seek to resolve all issues by agreement (where possible) and reach reasonable solutions. HMRC will work within its Litigation and Settlement Strategy.
- Both parties, where recourse to the Tribunal is required to resolve disagreements, maintain a professional working relationship throughout the process.
- The business, where other disagreements arise and a reasonable solution cannot be reached between both parties, may seek to escalate the issue through to the Deputy Director.

### **Business Governance**

- The business to be open and transparent with regards to decision making, governance and tax planning in their business, keeping HMRC informed of who has responsibility, how decisions are reached, how the business is structured and where the different parts of the business are located.

### **Business Tax Planning**

- The business to avoid structuring transactions in a way which will have tax results that are inconsistent with the underlying economic consequences unless there exists specific legislation designed to give that result. For example, the business should reasonably believe that transactions are structured in a way that gives a tax result which is not contrary to the intentions of Parliament.
- In all cases, the business should interpret the relevant tax laws in a reasonable way, and ensure transactions are structured in a way that is consistent with a relationship of co-operative compliance with tax authorities.

### **Risk Management**

- Applying an “Openness and Early dialogue” approach which sets out the specific tax risk identified and avoids opening unnecessarily wide-ranging enquiries.
- Discussing risks/transactions on a “real time” basis (i.e. pre-transaction or pre-return).
- HMRC will prioritise resource to work with customers in areas of;
  - Genuine uncertainty;
  - Commercial urgency; and / or
  - Absolute risk.



### **How will HMRC use the framework?**

The framework will be used as part of HMRC's existing risk management approach.

HMRC will view continued compliance with the Framework as an indicator of lower-risk behaviour, and non-compliance with the framework as an indicator of higher-risk behaviour.