Large Business compliance – enhancing our risk assessment approach

Summary of responses

19 March 2018

Contents

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Subject of this response document:	The Government's response to the consultation on enhancing HMRC's risk assessment of large businesses.
Who should read this:	Large businesses, individuals, tax advisers, professional bodies and any other interested parties.
Duration:	The consultation ran from 9:30am on 13 September 2017 to 11:45pm on 6 December 2017
Lead official:	Andrew Barton, Large Business, HMRC
How to enquire about this consultation:	By email to: largebusinessconsultation.mailbox@hmrc.gsi.gov.uk Or by post to: Heather Wall, HM Revenue and Customs, Large Business Director's Private Office, 100 Parliament Street, London, SW1A 2BQ
Getting to this stage:	In recent years HMRC has enhanced its co-operative compliance model, strengthened its tax avoidance legislation, and introduced the Framework for Co-operative Compliance as the set of principles that both large businesses and HMRC should apply to their work. The framework is used as part of HMRC's existing approach to large business tax risk management. A refreshed Business Risk Review (BRR) should enable HMRC to both reflect and further enhance the shift in large business compliance behaviours.
Previous engagement:	None – this is the first consultation on this initiative.

1. Executive Summary

1.1 This document contains:

- a summary of responses to the consultation;
- the Government’s response to the issues raised in the consultation, and
- a broad timeline on when the recommendations will be implemented.

1.2 Overall, the consultation provided several suggestions on how HMRC could enhance the BRR, most notably the BRR should:

- classify customers across an increased number of risk categories,
- take more account of the tax risk management work already required by large businesses;
- prompt continuous dialogue between HMRC’s Customer Compliance Managers (CCM) and their customer on reducing tax risks; and
- clearly set out the advantages and disadvantages of being classified in a certain risk category.

1.3 The consultation also raised potential risks and concerns from implementing these changes, which will require further research and investigation.

1.4 HMRC will conduct a pilot using an enhanced BRR, which will run alongside existing BRRs for most of 2018. Subject to HMRC being satisfied that the pilot meets its key performance indicators, the enhanced BRR process will be rolled our across all sectors during 2019/20.

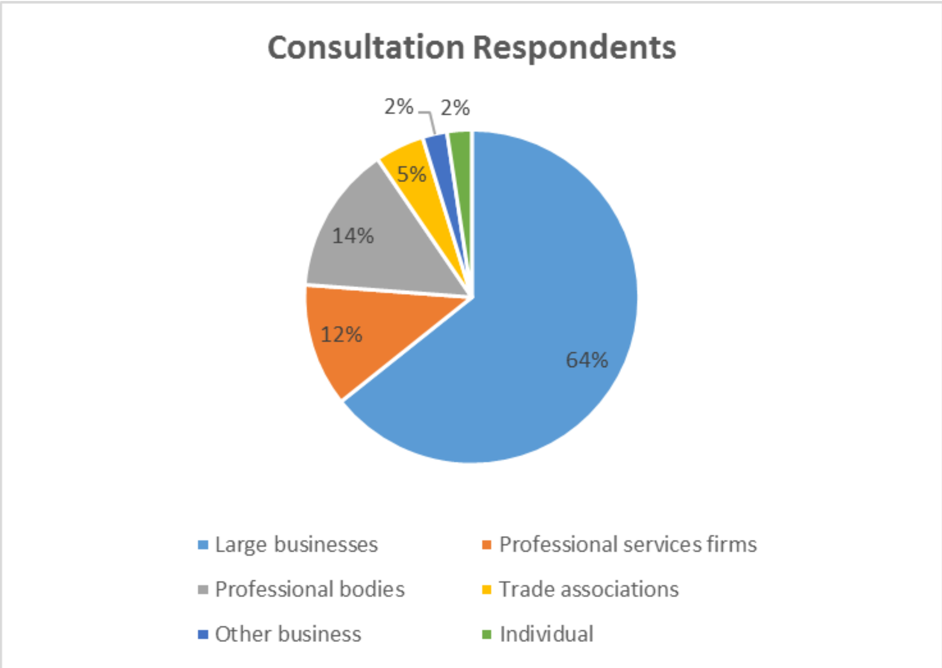
2. Introduction

2.1 This document summarises the responses to the consultation on enhancing HMRC's Business Risk Review. The original consultation document can be read online here.

2.2 The Government is grateful to all those who responded or participated in meetings linked to the consultation document.

2.3 The Government received 47 written responses to the consultation, of which 42 were within the deadline on 6 December 2017. Of those which were in time the respondents were as follows:

- 27 (64%) large businesses
- 5 (12%) professional services firms
- 6 (14%) professional bodies
- 2 (5%) trade associations
- 1 (2%) other business
- 1 (2%) individual



2.4 Five BRR roadshows were held to discuss the consultation document (held in London [twice], Edinburgh, Birmingham and Newcastle). A public webinar was also held to discuss and hear views on the consultation. Overall, over 100 people attended these events with their views included as part of the Government's response (see end of document). In addition HMRC attended external events hosted by Deloitte, EY, PWC, CBI, Winmark, and several large business forums to discuss the BRR Consultation which attracted over 700 attendees.

2.5 Overall most respondents felt the existing BRR process worked well, however, several areas of potential improvement were identified:

- the binary low risk/non-low risk classification is often too narrow to reflect the differences across the large business population;
- the BRR process should take more account of the tax risk management work already required of large businesses, such as the Senior Accounting Officer (SAO) provisions and the publication of tax strategies;
- the BRR process as a whole should be more interactive and iterative, that prompts continuous dialogue on reducing risk; and
- there should be clear advantages and disadvantages of being assessed in each risk category.

3. Summary of Responses

3.1 The responses to the consultation questions are summarised by question, with a list of respondents included in the Annex.

Question 1: Do you think the current process provides HMRC with a comprehensive view of tax risk within a business? If not, what more should HMRC be doing, and how could this be improved?

- 80% of respondents to this question felt the current BRR was satisfactory or better, but could be improved in several ways. Most respondents offered multiple suggestions on potential improvements for the BRR, the most common being:
    - making better use of tax risk management work already required of large businesses e.g. Senior Accounting Officer provisions;
    - greater involvement of the business, including alignment with the business's risk management processes;
    - greater HMRC resource, training or hand-overs; and
    - greater consistency in the application of the BRR across HMRC.

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

- More than 80% of respondents felt the BRR's risk distinctions were not optimal, and could be enhanced by moving from the binary classification to one that provided three to five risk ratings.
- For the minority that disagreed, it was generally felt that more risk categories would give more opportunity for debate and therefore increase the compliance burden without any significant benefit. Instead, it was felt that clarity should be given through discussions between the customer and the CCM.

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

- Nearly 80% of respondents thought the level of risk should influence the frequency of a BRR e.g. higher risk businesses should be subject to an annual BRR and more audits. Several respondents felt the level of change within the business and the overall tax contribution should also be key factors in determining the frequency of BRRs. Of those who did not think risk should influence the frequency of BRRs, most felt that annual reviews were a benefit for all customers regardless of risk.
  Some respondents noted increased gaps between BRRs can be counterproductive and make the review harder to carry out.

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

- Nearly 60% of respondents did not think there were any areas missing from the inherent risk factors i.e. the existing factors were widely defined and flexible enough to address the risk. The most common suggestions for additional inherent factors included:
  - type of ultimate ownership (e.g. family owned, broad shareholder base, etc.)
  - resource of internal tax and accountancy teams and systems
  - regulatory environment
  - complexity of tax law
  - culture and management
  - sector

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

- 60% of respondents who answered the question, did not think there were any areas missing from the behavioural risk factors. Possible suggestions for additional behavioural factors included:
  - Internet trading without UK taxable presence
  - SAO and Tax Strategy compliance
  - Impact of regulatory environment on behaviours
  - Prompt disclosure and error correction
  - Openness and transparency
  - Use of technology and automation
  - Provision of timely and accurate returns

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

- 70% of respondents felt some areas of the BRR should be weighted more heavily. Of these, several responses noted businesses cannot change their inherent risks, hence any risk rating should not be solely based on behavioural factors. Some respondents noted that if the risk rating is to incentivise changes in behaviours, it should be based solely on behavioural risks. One respondent was explicit in encouraging HMRC to set out a three-step process of working out the inherent risk, then factoring in behavioural mitigation to give "net risk".

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

- Nearly 90% of respondents agreed that the current approach to tax planning in the BRR is appropriate.
- Of the few who disagreed their main views were:
    - that not all tax planning is aggressive and should not be seen negatively e.g. where tax planning supports genuine commercial activity,.
    - that HMRC should take more account of published tax strategies e.g. HMRC should seek more evidence that the customer strategy is being met; and
    - the need to consider timeframes, as attitudes to tax planning and what is considered acceptable can change over time for both a business and HMRC e.g. HMRC should place more attention on the direction of travel of the customer, not its past.

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

- Most respondents (directly or indirectly) felt the BRR should take more account of the Senior Accounting Officer provisions when reviewing the risk within a business i.e. there is a strong overlap between SAO reporting, and the BRR's delivery section.
- A few respondents noted the BRR should: i) distinguish between very generic published tax strategies and those that showed genuine thought and commitment; and ii) give additional weight if a business is part of other risk control frameworks such the Banking Code of Practice.
- A few respondents thought HMRC should look at the resourcing requirements of the customer's internal tax teams as a risk factor.

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

- 95% of respondents felt HMRC should be explicit about the risks arising from particular taxes. However, the majority of respondents felt the BRR already provides sufficient detail of where the risk lies through discussions between customers and the CCM.

- A number of respondents noted that it would be easier for businesses to reduce their risk if HMRC was (even more) consistent, open and transparent about where they believe the risk lies.

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

- Nearly 80% of respondents thought there would be additional benefits if the BRR focused on specific risk regimes or areas. The main perceived benefit of a focused BRR was that it would reduce the burden and resource involved with reviews.
- In general, those who thought it would not be beneficial to run a more focused BRR, still thought it would be possible to focus and allocate resource within the scope of an overall review.

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

- Almost all of the respondents who answered the question believed there was strong advantages in introducing greater segmentation within the BRR. In relation to specific opportunities of implementing greater segmentation, the following points were made:
    - it would allow for improved resource allocation for HMRC (this was mentioned by most respondents);
    - low risk companies can benefit from a ‘lighter touch’ trusted process;
    - potential for sector benchmarks being used as a measurement tool for both HMRC and business;
    - opportunity for HMRC and customers to develop specific action plans on how to move to a lower risk segment, which would in turn provide greater clarity for all parties;
    - communications between tax departments and company Boards around risk segmentation could improve;
    - it should provide greater incentive for a high risk businesses to move to a lower risk category.
- The main risks / issues highlighted were:
    - could lead to greater debate on ‘box ticking’ e.g. debating the merits of each scoring criteria and the potential for greater disagreement around the final risk rating;
    - possibility of less resource being allocated, and less communications being apparent, with low risk customers
    - clarity on implications for each segment must be fully communicated

- respondents broadly supported a 4-5 tier system, noting that a 5 category model could lead to customers aiming for a safe-harbour/ “goldilocks” middle segment;
- the case for using a 9 box grid method was made by two respondents; another respondent recommended applying a numerical value to each element in order to provide an overall score.

<u>Q12-14. Options to encourage low risk behaviour</u>

Q12. What advantages should HMRC attach to these categories so as to reduce burden on lower risk businesses?

- Several respondents suggested quicker support should be provided, along with potential fast tracks clearance applications for those who are low risk.
- However, it was highlighted by other respondents that quicker clearances for low risk businesses could disadvantage high inherent risk businesses, and damage the UK economy if HMRC stalled on providing clarity on pressing commercial decisions.
- Three respondents suggested that, at present, there are disincentives to be low risk due to lack of support and resource allocated. To address this, multiple respondents stated clarity on HMRC resourcing commitments for low risk customers should be provided.
- Responses highlighted a mismatch in expectations, with the majority of low risk customers’ content with the level of interaction they received from HMRC, with non-low customers concerned that becoming low-risk would lead to a reduced experience with HMRC.
- Further advantages for being low risk included:
    - minimal reviews and streamlining possibilities;
    - presumption that errors are not careless and are instead mistakes despite taking reasonable care;
    - introducing a ‘lighter touch’ approach e.g. less audits, for certain regimes.

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

- This answer produced a wide spectrum of responses. Respondents highlighted:
    - public scrutiny and reputational risk for ‘customer facing businesses’ was often the best driver for encouraging businesses to adopt lower risk behaviours. As such introducing a “good taxpayer list”, in contrast to a “name and shame” list, could act in encouraging lower risk behaviour.

    - removing some tax requirements for low risk businesses e.g. removing SAO requirements for low risk businesses, as HMRC would already have assurance on tax and accounting arrangements;
    - helping businesses understand the specific actions required to move to low risk (with key milestones) would help businesses measure their progress on reducing their risk profile e.g. providing a detailed action plan on how to move to lower risk rating, that is reviewed and updated during the year by HMRC and the business);

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

- A number of respondents supported the idea of adopting a Code of Practice (CoP) for the highest-risk large business customers – noting the positive impact it had on the banking sector;
- Several respondents explicitly noted their opposition to a general CoP highlighting how HMRC already has extensive powers to deal with customers who break the rules e.g. SAO reporting and special measures. Several respondents made reference to the fact that if a group is high risk due to compliance issues, 'HMRC should challenge the Senior Accounting Officer certificate, and penalise the company that way'
- One respondent noted the Australian Tax Office publish practical tax alerts, warning of planning schemes they have seen and viewed as aggressive and stating that to use these will impact risk rating.

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

- More than 70% of respondents who gave specific answers agreed that for a business to be low risk, it should be expected to fulfil the requirements set out for a TCF.
- Many of those who agreed with the statement stated that, although they agreed that a low risk company should be expected to fulfil this, they did not support the need for the additional burden of further formal reporting requirements.
- Of those who disagreed, one respondent suggested this introduced further complexity, particularly for those at the lower end of the risk spectrum.
- Some respondents did not provide a definitive answer to this question either way, but highlighted the TCF was already broadly aligned in the SAO and Tax Strategy reporting requirements.

Question 16. Does HMRC's existing BRR process already encapsulate the content of a TCF (and more)? If you consider there are any missing areas, please explain.

- Around 60% of respondents agreed that the existing process does encapsulate the content of a TCF.
- It was raised that greater focus should be placed on the SAO, and that there was no need for any further legislation around this. A similar point was raised by another respondent who noted that the compliance burden on businesses kept increasing.

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

- Most respondents stated there were no additional areas of the BRR that needed considering as part of the review.
- A number of respondents thought there needed to be more consistency in how the BRR ratings were arrived at i.e. the enhanced BRR would only be as good as the CCM who was conducting it.

Government Response

4.1 The Government is grateful for the responses to the consultation as well as those who attended and supported the BRR roadshows.

4.2 The public consultation provided several potential options for enhancing HMRC's Business Risk Review process. It also flagged a number of areas that will require further investigation. As such, the Government has identified key recommendations it can adopt and where further research and investigation is required.

4.3 The Government accepts the view that:

- HMRC's Business Risk Review can be enhanced, so it continues to deliver excellent value for HMRC and its customers;
- the BRR's binary Low Risk/Non-Low Risk categories should be changed so it accurately reflects the differences across the large business population. HMRC is committed to exploring the optimal level of risk categories for the BRR, and accepts there should be a series of risk categories that clearly distinguish between low and high risk;
- the enhanced BRR process should take more account of the tax risk management work already required by large businesses, such as the Senior Accounting Officer (SAO) provisions and the publication of tax strategies;

- the BRR process as a whole should prompt and support continuous dialogue between the CCM and the customer on reducing tax risk. The enhanced BRR should therefore provide customers and HMRC with a clear set of actions and timelines which need to be regularly updates and discussed between the two parties.
- while there should be clear advantages and disadvantages of achieving a certain risk rating, the Government is aware that it needs to create a consistent and level playing field for all of HMRC's customers This area will therefore require further investigation. In addition, a low risk rating should only be provided to large businesses that adhere to the OECD's Tax Control Framework (TCF) or have similar controls in place.

Next steps

HMRC will develop a new version of the BRR that will reflect a number of the proposals noted above and with a view to piloting later this year across a defined group of customers. The pilot will sit alongside existing BRRs, minimising disruption. Subject to the pilot delivering the desired outcomes, the enhanced BRR will be rolled out in 2019/20.

Annex A

Responses received

	Name of organisation		*Name of organisation*
1	3i Group	24	Glory
2	AAT	25	Heathrow
3	Aegon	26	ICAEW
4	AFME	27	ICAS
5	Association of British Insurers	28	KPMG
6	AstraZeneca	29	Kronospan
7	Aviva	30	Legal & General
8	Balfour Beatty	31	Lidl
9	British Land	32	Lloyds Market
10	British Universities Finance Directors Group	33	Mazars
11	BT	34	National Grid
12	Caterpillar	35	Next
13	CBI	36	Orsted
14	Centrica	37	Pheonix Group
15	CIOT	38	PwC
16	Clydesdale Bank	39	Risk Management Options
17	Co-Op	40	Sky
18	Debenhams	41	Tax Director Network
19	Deloitte	42	Taylor Wimpey
20	ExxonMobil	43	Virgin Airways
21	EY	44	Virgin Money
22	G4S	45	Vodafone
23	Gazprom	46	Individual member of the public
		47	Zurich Insurance Group