Treasury Sub-Committee Inquiries into 1) Tax avoidance and tax evasion and 2) The conduct of tax enquiries and the resolution of tax disputes

Management of taxes

01 July 2018

The CIOT has responded to both recent Inquiries established by the Treasury Sub-Committee, and LITRG responded to the second Inquiry. Our written responses will be published on our websites once an order to be published has been made by the Sub-Committee. We may also be called to provide oral evidence to the Sub-Committee in due course.

Tax avoidance and tax evasion – CIOT response

This Inquiry is examining what progress has been made in reducing the amount of tax lost to avoidance and offshore evasion and whether HM Revenue and Customs (HMRC) have the resources, skills and powers needed to bring about a change in the behaviour of taxpayers who engage in offshore tax evasion and/or use tax avoidance schemes and those who promote them.

In our response we note that the UK's tax gap attributable to tax avoidance has reduced significantly in recent years. However, the element attributable to illegal behaviour has remained broadly constant. We believe that HMRC need more resources to tackle onshore illegal activity, given its persistence in the tax gap figures.

We point out that the reductions in UK tax avoidance activity in recent years have arisen through a combination of changing factors, including public opinion, anti-

avoidance/abuse legislation, HMRC's compliance activity and the approach of most tax advisers. The tax profession, in particular the seven 'PCRT bodies', has strengthened its disciplinary code to address issues around aggressive tax planning.

We are concerned about the trend towards increasingly severe treatment of offshore 'non-compliance' even in the absence of deliberate intent. We think it important to gear the enforcement approach to whether the taxpayer's behaviour is deliberate, careless, or merely confused.

Given that HMRC should now be receiving very significant amounts of data in relation to Crown Dependencies and Overseas Territories, it should be possible to target any further steps on the basis of evidence as to what is needed.

Conduct of tax enquiries and the resolution of tax disputes

CIOT response

This Inquiry is examining whether HMRC's approach to conducting tax enquiries, resolving tax disputes and determining the amount of tax to be paid meets the standards in its Code of governance for resolving tax disputes.

In our response we say that we suspect that HMRC's Code of governance for resolving tax disputes, and its contents, are unknown to many taxpayers. To help improve awareness, HMRC may wish to refer to the Code in decision letters and be required to state in their decisions that the Code has been complied with, and what level of oversight the decision has had. Also, more interaction between HMRC technical specialists/governance boards, and taxpayers, would help increase all parties' understanding and lead to better decisions.

HMRC's Litigation & Settlement Strategy (LSS) is a sensible framework for handling and resolving disputes. However, problems still arise. For example, while the LSS recommends taking early specialist advice, often HMRC's own technical and legal specialists are engaged too late in the process. Alternative dispute resolution (mediation) can work well and needs to be more widely promoted as a mechanism for resolving disputes.

Our members report increasing instances of HMRC adopting an interpretation of the law to bring in the greatest tax; rather than the right tax at the right time. This extends to running contradictory arguments in different cases, and/or ignoring their

own published guidance, custom and practice, and relevant case-law. We were recently concerned at the reference in HMRC's single departmental plan which says that it will 'maximise revenues due' rather than wording such as 'maximise collection of revenues properly due'.

Our view is that HMRC's collection and management powers are in general sufficiently flexible to enable them to achieve cost-effective and fair results. However, one of the key areas where the LSS might be reviewed concerns 'value for money'. Many cases are litigated by HMRC where the costs versus benefits simply do not stack up. In addition, in some circumstances HMRC feel compelled to collect tax where the level of tax due under the law appears unfair. In these situations, we suggest that Parliament should act promptly to correct defective legislation and HMRC must communicate legislative changes quickly to relevant staff.

HMRC's approach to enforcing compliance with tax law sometimes results in disproportionate or unjust outcomes. For example, HMRC will initially suggest an inappropriate category of behaviour (for example, categorising genuine errors as carelessness, or carelessness as dishonesty), leading to decisions which are overturned on appeal. HMRC are often unduly reluctant to suspend penalties for 'one-off' errors. Penalty conditions are often poorly thought through. HMRC sometimes threaten penalties where a taxpayer is simply (and openly) disagreeing with HMRC's interpretation of the law and challenging it through litigation. HMRC's compliance regime could be improved by simplifying tax legislation; improving the quality of guidance; emphasising the principles in HMRC's Charter; improving training of HMRC staff; improving practices, processes and record keeping by HMRC; and reviewing applicable time limits to more closely align the rights of taxpayers and HMRC to make claims and corrections.

Whilst HMRC's investigations are generally well targeted through better use of data, we do not believe there is sufficient governance over the whole of HMRC's enquiry process to ensure that taxpayers are treated fairly and professionally throughout. Governance seems only to start near the end of an enquiry. The nature of enquiries has become less collaborative and more aggressive, for example HMRC demanding information unrealistically quickly and asking for information which they are not entitled to receive.

It is unclear exactly what governance exists regarding clearances and approvals outside the formal enquiry process. In most instances, taxpayers simply need clarity.

In our view, HMRC should consider providing clearances in a wider variety of areas than they do currently.

LITRG response

LITRG's response to the Inquiry focused on aspects of dispute resolution which most commonly impact on unrepresented taxpayers – compliance and penalties. In relation to the LSS, LITRG noted that HMRC's approach is to seek, wherever possible, to handle disputes by 'working collaboratively with the customer'. However, one drawback of this approach from the point of view of an unrepresented appellant is the unequal negotiating strength between the taxpayer and HMRC. LITRG point out that unless the taxpayer is well represented, HMRC can crush his or her case by sheer weight of the resources available to a large department of State and therefore the LSS would benefit from a paragraph that focused on how officers should conduct themselves in a dispute with an unrepresented taxpayer. In particular, this should ensure the taxpayer is directed to sources of pro bono help and advice and that care is taken not to exert pressure on the taxpayer to enter into any agreement but advocate giving them time and space to make informed decisions.

LITRG most commonly encounter HMRC's enforcement activity in the form of penalties imposed on unrepresented taxpayers for non-compliance, particularly non-filling of returns. Although the appellate structures generally work well, LITRG are often surprised that a matter has to be appealed in the first place and that some disputes are allowed to get as far as the Tribunal. As a result, LITRG say there is a very strong argument for further safeguards to protect unrepresented taxpayers. Better training of decision makers by teams carrying out statutory reviews and Tribunal judges should result in fewer appeals or applications for review and much better quality decisions overall.

The final area of LITRG's response looks at those decisions where there is no statutory right of appeal – such as the application of extra-statutory concession A19. Beyond the Adjudicator, whose role constrains her from challenging HMRC's policies and procedures, the only way such decisions can be challenged is by judicial review which is beyond the means of the vast majority of unrepresented taxpayers. What seems to be needed is access to a cost-free accessible alternative to judicial review, perhaps operating at Upper Tribunal level, to review discretionary decisions on the papers. The CIOT response can be found on the CIOT website and LITRG's can be found on the LITRG website.