# Taken to task

**Management of taxes**



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*Anton Lane* provides an overview of taskforce activity, common areas of challenge and the busy task at hand

## Key Points

## What is the issue?

HMRC’s highly sophisticated risk assessment computer system can identify risks to the Exchequer posed by new categories of taxpayer.

## What does it mean for me?

Taskforces running alongside HMRC campaigns can target any inappropriate offshore structures, using increasing global financial transparency.

## What can I take away?

Insight into the workings of HMRC task forces and advice on how new legislation and investigation cultures are changing the lie of the land.

Since their launch in 2011, more than 140 HMRC taskforces have been set up to identify and investigate individuals and businesses operating in sectors deemed to be prone to tax evasion. These taskforces have subsequently recovered over half a billion pounds in unpaid tax and penalties (see ***Table 1***). Taskforces have targeted sectors such as restaurants, the tobacco industry and even, more recently, the adult entertainment industry.

Image

# TABLE 1: UNPAID TAX AND PENALTIES RECOVERED BY HMRC TASKFORCES

| Year | Yield £m |
|---|---|
| **2011–12** | 24.3 |
| **2012–13** | 47 |
| **2013–14** | 85 |
| **2014–15** | 138.1 |
| **2015–16** | 248 |

These taskforces run alongside HMRC's various campaigns which offer opportunities for taxpayers to disclose their indiscretions and regulate their tax affairs under favourable settlement conditions. The same favourable conditions however are not available for individuals or businesses finding themselves the subject of an enquiry by one of these taskforces, who have access to a full range of civil and criminal sanctions.

Various types of business are considered by HMRC to pose a significant risk of tax evasion. The most obvious of these being cash businesses, where it is easier for takings to be diverted. As well as targeting cash businesses, HMRC also target businesses where previous experience suggests that employees (who are usually low-paid) have their wages supplemented by cash payments. Examples might

include restaurants, takeaways, care homes, children's nurseries, coach operators and cleaning businesses. The risk factor is classified as high because payment of cash wages requires both the understatement of takings and the avoidance of PAYE and NIC on the wages themselves. Furthermore, because of the element of collusion needed, these cases are likely to be considered for prosecution.

However it's not quite that straightforward and in deciding where to target their resources HMRC make use of the ever growing range of tools at their disposal. HMRC's central risk assessment computer system, Connect, has become increasingly sophisticated and can be used to identify risks to the Exchequer posed by categories of taxpayer. The result is that the amount recovered has more or less doubled each year since the taskforces were set up. Indeed, 2015/16 saw almost half of the cumulative amount recovered in that year alone.

On 14 March this year HMRC launched their Card Transaction Programme, a disclosure facility for those who have received undisclosed income from credit card transactions. Enquiries have already begun flowing, suggesting that a taskforce may be in operation. If such a taskforce is investigating undisclosed income from credit card transactions, it indicates the ability of HMRC to use their information powers and link that information to taxpayers. The digital era is here and HMRC are evolving.

The last update from HMRC on their taskforce activity related to something far more elaborate. For those that have read the international bestselling book *The Panama Papers* by Bastian Obermayer and Frederik Obermaier, your ears may have pricked up on 8 November 2016. The last sentence on page 313 of that bestseller book reads 'The start of the end of the tax haven'.

## The Panama Papers Taskforce

This particular taskforce is unique in that it is dealing with information leaked from Mossack Fonseca. That information does not only relate to the uber-rich, globally, who have sought to escape transparency and benefit from, say, political gain at the expense of the social wellbeing of a nation (allegedly) but to many others. To put it into perspective the leaked files concerning HSBC's Swiss banking arm, released by the press in February 2015, were around 3.3GB in size. The leak from Mossfon was around 3 terabytes in size – 1,000 times as much information. Journalists picked out the front page stories although a search through Panama Papers online resource at

the International Consortium of Investigative Journalists (ICIJ) provides a number of other interesting names, which when linked to UK companies can prove very interesting to someone defending clients subject to tax investigations. One such search resulted in a connection to a company, a businessman who was relatively prominent in local politics and a gain made in a British Virgin Islands company amounting to £38m. Of course, there may be nothing sinister here but why use a BVI company? This is the sort of information the Panama Papers Taskforce is looking at.

On 8 November last year HMRC announced that ‘more than 30 individuals and companies are under active investigation for criminal or serious civil offences linked to tax fraud and financial wrongdoing uncovered by the Panama Papers Taskforce partners, with hundreds more under detailed review’.

The statement also set out that the taskforce was working jointly with other regulatory bodies and National Crime Agency, identified professional enablers of economic crime, and placed 43 high net worth individuals under special review (remember there is also a high net worth taskforce). For those dealing with offshore tax disclosures, they will know this is pretty impressive in the amount of time since the leak. Offshore structures and the associated tax implications are hugely complicated and often involve an enormous amount of forensic work. HMRC appear to have acted quickly.

The speed might be explained by the Joint Financial Analysis Centre specifically established and in possession of unique software tools.

## Beyond Panama

A number of investigators we have worked with have moved into new teams, although thankfully they are still around to close cases.

There is a significant shift to offshore teams presumably in light of increasing global financial transparency: more than 100 countries, including British Overseas Territories and Crown Dependencies, are automatically sharing offshore account data. Also, there seems to be movement towards professional sports and high net worth. The one thing these categories have in common is that invariably a number of ‘taxpayers’ in these categories have, in our experience, used offshore structuring.

Lionel Messi, the footballer subject to prosecution by the Spanish tax authorities, used both image rights structures as well as holding properties in offshore companies. A few years ago, whilst in Gibraltar, we reviewed structures established by a legal firm (since the subject of a scandal and demise) where a number of well-known UK sportspersons had invested in property through offshore companies on the advice of their management team. A few years prior, a number of image right structures came our way including:

- Split employment/self-employment structures with contributions to an employee benefit trust/remuneration trust structure similar to those used more recently by contractors;
- Offshore trust/foundation and company structures to which the rights were sold; and
- Offshore pension arrangements to which the rights were sold.

Having reviewed this structures in detail, there were then a number of risks. The main one being whether the transfer of asset legislation applied. A number of reasons were put forward why anti-avoidance legislation would not apply although in today's environment is the risk of challenge greater?

Our view is simple, HMRC cannot ignore the information it is receiving from the ICIJ as well as offshore jurisdictions. Given the likelihood of higher revenues from this area, it must be an area that HMRC are going to concentrate on, regardless of the available disclosure facility and time to correct.

## The pain of getting it wrong

The Government has given HMRC the ability to make examples of those using offshore structures (wrongly). Amendments introduced by Finance Act 2016 have come into force (SI 2017/259) for income tax and capital gains tax purposes with effect from 6 April 2016 and for IHT transfers of value on or after 1 April 2017.

Included within the provisions is the naming of individuals that have been charged with a penalty for a deliberate failure to notify or a deliberate inaccuracy to a return and whose affairs are structured through offshore entities, such as companies, partnerships or trusts as well as civil penalties for enablers of offshore tax evasion.

SI 2017/261 sets 1 April 2017 as the date that HMRC’s powers under FA 2016 s 164 to publish details of deliberate defaulters in relation to offshore tax non-compliance come into effect. An extension of the naming provisions at FA 2009 s 94 enable HMRC to name individuals that control offshore structures where the individual has obtained a tax advantage as a result of the default. The naming provisions apply to defaults under: FA 2007 Sch 24 penalties for errors in returns and FA 2008 Sch 41 penalties for failure to notify a charge to tax.

With all the tools in place to identify those with offshore structures with the benefit of enhanced penalties, would you not want to use them?