

Andrew Barton,  
HM Revenue and Customs,  
Large Business Director's Private Office,  
100 Parliament Street,  
London, SW1A 2BQ

8 December 2017

Dear Andrew

### **Large Business compliance – enhancing our risk assessment approach**

We understand that there has not been a comprehensive review of the Business Risk Review (BRR) process since its inception over 10 years ago, as such we support HMRC's review as an example of good governance and welcome the opportunity to comment on the proposals.

The consultation seeks views on whether the efficiency and effectiveness of the BRR, and the interaction with the CRMs, might be enhanced in ways that could benefit both HMRC and large business. Currently HMRC define a low risk business as one that has an open and transparent relationship with HMRC, effectively manages its own tax compliance risk, and is trusted not to engage in aggressive tax planning. HMRC trust such a business to raise issues to discuss in real time, and to pay the right tax at the right time, although experience is mixed amongst our members whether this is consistently applied. They regard all other large businesses as not low risk. The proposals outline that HMRC now consider these two categories to be too blunt to highlight significant differences across the large business population.

In our opinion the tax climate has changed significantly over the past 10 years. Public scrutiny of the tax affairs of large businesses has increased, anti-avoidance legislation has been strengthened, and HMRC's compliance methods have been enhanced. The number of businesses who believe aggressive tax avoidance that lacks commercial substance is acceptable and actively engage in aggressive tax planning has reduced. For our members tax has risen up boardroom agendas as well as external stakeholders such as shareholders and suppliers, particularly in light of the requirement to publish tax strategies online, resulting in tax directors facing greater accountability – regardless of HMRC's risk rating – as such, from a company perspective we do not believe that sub-dividing the current risk ratings further will provide further internal focus by companies.

In our experience, the relationship between companies and CRMs has deteriorated as, in our view, the CRM no longer has authority to act without consulting within HMRC, which does not necessarily help to identify emerging tax risks and resolve tax disputes in real time. CRMs are too often over-worked and under-resourced to do so; and sometimes lack technical expertise to assist on the matter-at-hand. Whilst we support HRMC's CRM secondment process, with a number of our members actively engaging with this programme, we still find many CRMs lack real-world commercial experience, making it hard for them to distinguish between genuine business drivers and tax avoidance motives. We recommend that HMRC revisit the role and autonomy of the CRM before making any changes to the BRR process.

Additionally, a major change in the BRR process – while HMRC's transformation is taking place, some CRMs seem to be struggling already and the substantial burden of Brexit on HMRC – might not run smoothly.

## **Who we are**

The 100 Group of Finance Directors represents the views of the finance directors of FTSE 100 and several large UK private companies. Our member companies represent almost 90% of the market capitalisation of the UK FTSE 100 Index. Our aim is to contribute positively to the development of UK and international policy and practice on matters that affect our businesses, including taxation, financial reporting, corporate governance and capital market regulation. Whilst this letter expresses the views of The 100 Group of Finance Directors as a whole, those views are not necessarily those of our individual members or their respective employers

Please feel free to contact me at [chrisoshea100group@kpmg.co.uk](mailto:chrisoshea100group@kpmg.co.uk) should you wish to discuss our comments. I would be more than happy to meet to discuss these, or any other relevant items, further.

Yours sincerely,

A handwritten signature in black ink, appearing to read 'COS', with a stylized flourish extending to the right.

**Chris O'Shea**  
*Chairman*  
*Taxation Committee*

### ***Business Risk Review and Risk Classification***

**Q1. 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?**

**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?**

In our opinion, the proposals outlined in the consultation would not provide HMRC with any additional information, rather they seek to change how HMRC analyse that information, and as such we believe that the current provides HMRC the opportunity to gain a comprehensive view of tax risk within a business.

Whilst we understand why from an internal point of view it may be beneficial for HMRC to further segment the current risk rating to highlight narrow differences, we do not believe that further segmentation when liaising with companies is necessary. As noted above, whilst we further segmentation may provide greater clarity to businesses as to the tax risks, as evaluated by HMRC, we are concerned that a disproportionate amount of time may be spent debating the risk allocation, the current low risk/non-low risk system avoids this potential for debate.

Furthermore, HMRC has identified that there are currently a small number of large businesses that “continue to adopt behaviours that pose a high risk to HMRC” (consultation document 2.15). This would lend itself to the conclusion that current process is sufficient in highlighting those businesses that pose a risk to HMRC and that HMRC should be able to closely monitor them.

### ***BRR Process***

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

The level of risk should not be the defining factor in determining the frequency of BRRs. However, we believe that it should be the most significant factor, given that with greater risk there is an increased chance of tax loss, and therefore an increased requirement for BRRs to prevent this.

In contrast, large businesses with robust tax processes and systems should be able to demonstrate that they have a sustainable ongoing tax compliance process which places them in a lower risk category and therefore requires reduced HMRC intervention in the form of less frequent BRRs.

### ***BRR Criteria***

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

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

**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.**

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

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

**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**

**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?**

“Large Businesses: Tax Strategies and Sanctions” was enacted as legislation by Schedule 19 Finance Act 2016 and very briefly referred to at 1.3 in the consultation document. Schedule 19 requires all large companies to publish their tax strategy which must include: their approach to risk management and governance arrangements in relation to UK taxation, its attitude towards tax planning, its acceptable level of risk to UK taxation, their approach towards dealings with HMRC and other prescribed information.

In our opinion, we believe that there is an overlap with the statutory requirements of this new legislation (failure to comply being subject to penalties and possible special measures) and the BRR ‘governance’ factor whereby Schedule 19 will be the starting point in Risk Review informing HMRC considerations on “Governance” and “Tax Strategy”.

The type of ownership of a business (e.g. institutional investors, broad shareholder base, privately owned) and the wider internal governance procedures are two risk factors not identified in the current process.

In our experience our members (and by association subsidiary companies), are generally under increased scrutiny of institutional investors and the public in relation to our tax and governance affairs. As such, good governance and systems to support tax compliance, and internal controls can be financially beneficial overall for the company.

Furthermore, there are a number of large companies with narrow ownership that might consider more aggressive tax planning to be financially beneficial overall for the company, either due to their ownership structure and internal governance procedures or lack thereof.

It is not clear that the list of behavioural risk factors on page 15 covers Digital trading by both UK and non-UK companies. Close collaboration between BRR and the specialist HMRC unit responsible for the review of statutory residence and transactions via the internet should be behavioural risk factors that require consideration.

We do not think it necessary for HMRC to be more explicit around specific tax areas, as we believe it is clear from discussion with the CRM which, if any, processes HMRC believe to be a greater risk.

#### ***Business Risk Review Results and Impacts***

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

**Q 12. What advantages should HMRC attach to these categories so as to reduce burden on lower risk businesses?**

**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?**

**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 on for**

**the highest-risk customers, similar to the Code of Practice on Taxation for Banks (a link to the code can be found [here](#))**

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

**Q16. 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.**

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

The process has remained largely unchanged since its introduction 10 years ago, due to the changes in the business landscape we understand the need for HMRC to review the BRR process; however, in our opinion there is a danger in increasing complexity in the assessment of risk, particularly during an extensive transformation of HMRC and the CRM model; and whilst HMRC will need to reallocate resources to assist in supporting the Brexit negotiations and resulting changes to the tax environment for both HMRC and business.

We would recommend that HMRC delays any substantive changes to the BRR process until both the HMRC transformation is complete, and considered business as usual, and the Brexit transition is complete. There is considerable uncertainty right now regarding investments in the UK and any changes to an already compliance burden may further detract the competitiveness of the UK

Finally, we recommend that HMRC consider reviewing the recent changes to the CRM model to address the issue identified that "customers don't necessarily know where in the compliance risk spectrum they lie" (consultation document 5.6) and it is not clear the benefits of a low risk rating are consistently felt across customers. The experience of our members suggests that the changes have caused the relationship between CRM and business to deteriorate significantly.

In our view, it is the responsibility of HMRC to fully advise customers on where they stand in the compliance risk spectrum. More collaborative communications between CRMs and business coupled with the explanations of the Code of Practice referred to in paragraph 3.28 would provide a means of explaining to businesses the requirements for Low Risk classification. Addressing the inconsistencies in delivery of service via the CRM and ensuring appropriate allocation of CRM resource (i.e. SME in the area that is deemed to be of most significant risk), particularly for companies assessed as being non-low risk, would increase the quality of conversation between large businesses and HMRC, whilst also reducing the burden of HMRC interventions - benefitting HMRC in saving time and resources.