



The 100 Group

Taxation Committee

Ms Heather Wall
HM Revenue and Customs
Large and Mid-Size Business Strategy 3C/15
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London
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By email: largebusinessconsultation.mailbox@hmrc.gsi.gov.uk

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Dear Ms Wall

Improving Large Business Tax Compliance

We welcome the opportunity to comment on HMRC's revised consultation document on 'Improving Large Business Tax Compliance'.

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 around 90% of the market capitalisation of the UK FTSE 100 Index, and in 2014 paid, or generated, taxes equivalent to 14% of total UK Government receipts. 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.

Our views

We agree with the Government's goal to make the UK the best place in the world to locate a business and having a competitive and efficient tax system is an important part of this. We recognise that attitudes to management of the tax affairs of large companies are evolving – and that the public, investors and stakeholders now expect more transparency from Large Businesses about the way they approach taxation.

We are broadly supportive of the proposals in the document and indeed many of our members are already following many of the recommendations. We have responded to the detailed questions in the consultation in the attached pages but we do have some serious concerns about certain aspects of the proposals which we highlight below;

1. We agree that large businesses need to be more transparent in many aspects of their business affairs, including taxation. Many already publish their approach to tax and this is necessarily determined by the nature and complexity of their activities. For many a reasonably brief clear description will be sufficient to inform their stakeholders of the approach to tax but for others, in more complicated and diverse businesses, it may be necessary to say more. This is already evident from the wide range of disclosures that businesses are already making. It is therefore important that any

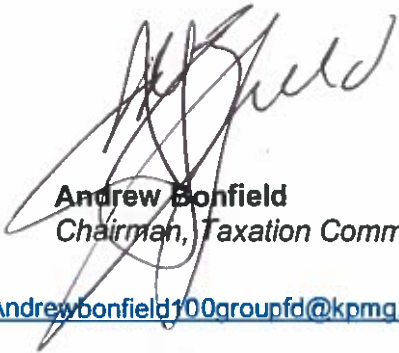
requirements for a group to publish its tax strategy remain flexible in terms of content in order to ensure that the information is relevant and meaningful to the stakeholders of the particular business.

2. We do have some concerns around HMRC prescribing tax information that should be published. This is not something that it is experienced in legislating for and it sits very uncomfortably with its obligations to ensure taxpayer confidentiality and may lead to a blurring of tax payer information that it feels it can share with the public. In our view it is preferable for financial information disclosures to be governed through the existing framework of company law and accounting standards rather than being prescribed by HMRC.
3. The comments around publication of the effective tax rate seem somewhat ill informed in terms of definition, scope and interaction with the restrictions around reporting price sensitive information. The majority of FTSE 100 companies operate globally and therefore, an effective tax rate commonly refers to the group tax charge (i.e. current and deferred tax; UK and overseas) as a percentage of the group profit before tax; it does not therefore represent a measure of cash tax at all and it is not restricted to the UK; indeed very few groups will have a strategy to target a UK effective tax rate. In terms of public disclosure of the group effective tax rate this currently tends to be limited to the current year guidance. Accordingly we do not believe it is appropriate for forecast UK effective tax rates to be published beyond the prevailing practice. There are also requirements in UK takeover law that make this problematic.
4. We do not believe it is appropriate for an individual board member to be singled out as having legal responsibility for a particular area of its business. The nature of corporate governance is that Boards have collective responsibility for management of their companies' affairs. Strategy is reserved for the board. Tax strategy is a subset of the overall company strategy, so cannot be designated to an individual board member.
5. We agree that a code of practice on taxation for Large Businesses will help to formalise the arrangements that most of our members already have with HMRC. It is important that HMRC are also prepared to sign up to the code so that they can commit to work with business to resolve issues in an open, transparent and timely manner (too often our members find HMRC moving at a slower pace than business and not always being transparent about their intentions).
6. One of our most significant reservations around the proposed code of conduct is the requirement for tax planning to be undertaken within the 'spirit of the law' and to not be contrary to the 'intentions of Parliament'. These are very subjective concepts open to many different points of view. There is a risk that such uncertainty will prevent many groups from signing up to the code which will of course undermine the rationale for having it in the first place. In our view a code based on the CBI's statement of principles (which many of our members already adhere to) would be far more appropriate. The CBI's statement of principles promotes tax planning behaviours that are aligned to the commercial and economic activities of the group and based on a reasonable interpretation of the law that does not lead to abusive results. Such a code is much more likely to have a high take up rate.
7. In relation to Special Measures our main concern is that businesses will be drawn into such measures where they have genuine disagreements with HMRC on the interpretation of the law on matters that have nothing to do with avoidance activity. Indeed the consultation document extolls the virtues of HMRC's litigation strategy but it must be borne in mind that not all litigation relates to tax avoidance and it would be extremely disturbing if HMRC were to use the threat of Special Measures, including

the withdrawal of the reasonable care defence, to prevent businesses from having genuine differences of view from HMRC.

We would be very happy to discuss our submission with you in more detail. Please do get in touch if you wish to discuss this further with me and the Committee.

Yours sincerely



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Improving Large Business Tax Compliance –Response to Questions

Q1. Do you agree that the threshold above (£200 million / £2 billion) is appropriate for these measures? What other thresholds might we use?

We believe any threshold should be modelled along the lines of the current HMRC Senior Accounting Officer (SAO) regime. We do not see any benefit in creating further thresholds.

Transparency

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 should this be?

We do not agree that there should be a named individual responsible for the group's published tax strategy. Boards take a collective responsibility for any decisions made, and tax is no exception. In other areas of law there is no named individual, for example compliance with Health and Safety legislation.

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?

The information required to be published in a tax strategy should not be too prescriptive as it will cause a significant burden for large businesses, which is not consistent with the Government's goal to make the UK the best place in the world to locate a business.

We agree with the 'Transparency and Reporting Principles' as set out in the CBI's statement of tax principles (Appendix A) and believe any formal reporting regime should be based on this model.

A lot of Large Businesses already publish a tax strategy, and we have provided examples of these in appendix B. It can be seen from these that tax strategies are varied because, amongst other things, they are dependent on the Group's own particular circumstances, its industry sector and its geographic reach. A one size fits all approach does not therefore work. For example, a multinational will most likely have a global tax strategy rather than a UK tax strategy.

The areas set out in HMRC's paper appear appropriate with the exception of;

- 1) Reference to a UK tax strategy rather than a global tax strategy
 - The information required to be published in a tax strategy should be less prescriptive and allow flexibility. Multinational groups may not maintain a UK strategy but will maintain a Group tax strategy, therefore requiring disclosure of a UK tax strategy is inappropriate.
- 2) The requirement to publish a target ETR
 - Forecasts, on which future ETR are based, are commercially sensitive. Typically businesses will only give guidance on the ETR for the current year.
 - Similar to other income statement items tax rates are not published, and typically large businesses only publish forecast post tax profit ranges.
 - Requiring UK large Businesses to publish a target ETR could potentially disadvantage them in external deal negotiations.
 - Very few, if any, multinational groups will have a target UK ETR as they will typically manage an ETR on a global basis.

- ETR is typically defined to be the tax charge over the profit before tax. It therefore includes non cash items such as deferred taxes as well as overseas taxes.

3) References to 'spirit of the law' and 'intentions of Parliament'

- The consultation document makes reference to 'spirit of the law' and also to HMRC determining the 'intentions of Parliament' through a purposive construction of the legislation when discussing attitudes to tax planning and appetite to risk in tax planning. These phrases are represented as definitive terms universally known, providing a single and correct tax treatment, which is clearly not the case given the number of matters under dispute and in litigation.
- A better definition would be to have tax arrangements that are in line with the Large Business's commercial drivers of economic activity and we therefore agree with the 'tax planning principles' as set out in the CBI's statement of tax principles (appendix B) and believe these are more appropriate to Large Businesses.

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?

We do not see any need for information to be published to support compliance with the stated strategy; additional support is not required for any other information published by companies. The mere fact that companies are required to publish their approach will be sufficient to ensure compliance as they will not wish to damage their reputations by acting contrary to their stated intentions.

It should also be borne in mind that forcing companies to publish documents risks confidential papers being brought into the public domain (e.g. Board papers, contracts, agreements, correspondence with HMRC, business forecasts, etc.). Some of these are governed by legal or contractual constraints regarding publication and potentially commercially sensitive.

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' as part of this measure?

We believe that if the 'Code of Practice on Taxation for Large Business' is voluntary then publishing whether you are or are not a signatory should also be voluntary.

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

The choice of medium for publication should be left to the business as it will be in the best position to assess the most appropriate method of communicating this information to its stakeholders.

It should also be noted that a group's tax strategy does not necessarily change every year and therefore as long as it continues to be published that should be sufficient; there should be no need to formally publish each year.

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

We believe that non-compliance with a legal requirement brings potential damage to commercial reputation and it is therefore this that will drive a change in behaviour. If there were to be fines levied these should be on the company as opposed to an individual based on the principle of collective responsibility.

Code of Practice on Taxation for Large Business

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?

We agree that the behaviours described are appropriate. Large businesses are more likely to sign up to voluntary code of practice if it is also reciprocated and binding on HMRC. Openness and adherence to relationship behaviours require communication and agreement of both parties (Large Business and HMRC) and we therefore see this as an opportunity for HMRC to raise its own standards of compliance in terms of speed, quality and transparency.

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?

We do not have any issues with being open and transparent about governance. We are unsure of what 'governance in action' evidence implies. We do not have a problem sharing documents that are relevant to computing a UK tax liability, and are not commercially sensitive. We suggest the removal of the 'evidence of governance' section altogether as this is already provided or available on request by HMRC.

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?

As noted in our response to question 3 tax planning is defined in Annex 4 of the consultation document as "operating within the letter – but not the spirit – of the law" and "gaining a tax advantage that Parliament never intended". These are very subjective matters with a high level of uncertainty and their interpretation may change over time. Without further clarity about these terms it will therefore be difficult for companies to sign up to the code.

A better definition would be to have tax arrangements that are in line with the Large Business's commercial drivers of economic activity and we therefore agree with the 'tax planning principles' as set out in the CBI's statement of tax principles (appendix B) and believe these are more appropriate to Large Businesses

Special Measures

Q11. Do you agree with the initial/preliminary framework for entry into special measures? If not what framework do you think would be appropriate?

We have no strong objections to the framework. However, it is important that large businesses are not drawn into these measures simply because they have a different view of the law from HMRC in relation to matters that do not involve tax avoidance.

We are also concerned at the inference that all litigation is a sign of bad behaviour (be it tax avoidance or non-cooperation). Clearly not all litigation relates to such behaviour and in many instances there are genuine disagreements over the interpretation of the law; such disagreements should not be a signal for Large Business to fall into 'special measures'.

Q12. At what level should thresholds (number of schemes, number of information notices issued, tax at risk, etc.) be set?

We have no strong views on the thresholds save that they should be clear and objective and be applied consistently with appropriate safeguards and rights of appeal.

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)?

We do not think it is appropriate to apply new legislation retrospectively. Large Businesses should be assessed against the criteria from when that criteria is legislated.

Q14. 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?

We do not think 1 year is long enough as this will only represent one tax cycle. The notice period should be consistent with the time taken to leave special measures which is currently proposed as two years

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?

We consider that HMRC already has sufficient powers to influence behaviour and therefore additional powers are not required.

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?

We suspect that those who are being uncooperative or opaque will not be unduly influenced by withdrawal of certainty.

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?

This appears appropriate. However, HMRC's definition of "unacceptable tax planning" is unclear.

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?

Publically naming a Large Business is likely to influence approach because of the potential damage to commercial reputation.

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?

We have no particular comments on this.

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

We have no further suggestions on other safeguards. However, it is important that the initial criteria are applied consistently and considerations are made at a consistent and appropriate level.

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?

The duration of time should be consistent with the notice period given to allow Large Businesses at risk of special measures to demonstrate a significant improvement in their behaviours and approach (Question 14).

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

We have no strong objections to the criteria. However, it is important that these are applied consistently and considerations are made at a consistent and appropriate level.

Statement of tax principles

To advance the debate on the responsible management of tax by UK business, the CBI offers this statement of tax principles for its members.

Intention of statement of principles

This statement of principles is intended to promote and affirm responsible business tax management by UK businesses. These principles are based on five key observations:

- Public trust in the tax system is a vital part of any flourishing democracy
- Transparency and co-operation between HMRC and business contributes to greater compliance and a better functioning tax system
- Most businesses comply fully with all applicable tax laws and regulations, recognising the obligation of the UK government to protect a sustainable tax base
- Tax is a business expense which needs to be managed, like any other, and therefore businesses may respond to legitimate tax incentives and statutory alternatives offered by governments
- UK businesses contribute significantly to the UK economy and pay a substantial amount of tax comprising not only corporation tax, but also National Insurance, business rates and other taxes.

The objectives

- To enhance co-operation, trust and confidence between HMRC, UK business taxpayers and the public in regard to the operation of the UK tax system
- To promote the efficient working of the tax system to fund public services and promote sustainable growth.

Tax planning principles

- UK businesses should only engage in reasonable tax planning that is aligned with commercial and economic activity and does not lead to an abusive result
- UK businesses may respond to tax incentives and exemptions
- UK businesses should interpret the relevant tax laws in a reasonable way consistent with a relationship of 'co-operative compliance' with HMRC
- In international matters, UK businesses should follow the terms of the UK's Double Taxation Treaties and relevant OECD guidelines in dealing with such issues as transfer pricing and establishing taxable presence, and should engage constructively in international dialogue on the review of global tax rules and the need for any changes.

Transparency and reporting principles

Relationships between UK businesses and HMRC should be transparent, constructive, and based on mutual trust with the result that HMRC should treat business fairly and with respect, and with an appropriate focus on areas of risk. UK businesses should, therefore:

- Be open and transparent with HMRC about their tax affairs and provide all relevant information that is necessary for HMRC to review possible tax risks
- Work collaboratively with HMRC to achieve early agreement on disputed issues and certainty on a real-time basis, wherever possible
- Seek to increase public understanding in the tax system in order to build public trust in that system, and, to that end:
 - They should consider how best to explain more fully to the public their economic contribution and taxes paid in the UK
 - This could include an explanation of their policy for tax management, and the governance process which applies to tax decisions, together with some details of the amount and type of taxes paid.

Appendix B – Example of tax strategies already published

Vodafone -

[https://www.vodafone.com/content/dam/sustainability/pdfs/vodafone tax risk management strategy.pdf](https://www.vodafone.com/content/dam/sustainability/pdfs/vodafone_tax_risk_management_strategy.pdf)

Prudential - <http://www.prudential.co.uk/site-services/governance-and-policies/tax-strategy-and-tax-risk-management>

Schroders - <http://www.schroders.com/staticfiles/Schroders/Sites/global/pdf/Tax-Strategy.pdf>

Glaxosmithkline - <https://www.gsk.com/media/659621/our-approach-to-tax.pdf>