



Tim Law
 Director,
 Engaged Consulting
 Email:
 tim.law@engaged-
 consulting.com
 Tel: 07960 658828

What does the consultation propose?

HMRC has issued a consultation on three measures 'designed to drive further behavioural change' by large businesses, by 'embedding best practice'. With David Gauke's foreword rooted in competitiveness, fairness and level playing fields, it is reassuring that the remaining 41 pages do in fact include some tangible proposals. However, they never quite get away from the dichotomy between domestic and international. The proposals are:

1. Published tax strategy: This would be a legislative requirement for large businesses to publish a board approved tax strategy in relation to UK taxation. This could include an overview of internal governance and statements on the approach to tax risk and tax planning. It could also include setting out the company's 'target' UK effective tax rate (ETR), and the measures which have been taken to achieve that target.

2. Voluntary 'code of practice': This would be a commitment made to HMRC, covering three broad areas: openness and relationship with HMRC; internal governance; and the approach to tax planning. The code would be voluntary for businesses, and HMRC has no plans to make public those businesses that do (or do not) adopt it. However, it will challenge any businesses that publicly claim to have signed up when they have not done so.

3. 'Special measures' regime: This would be aimed specifically at businesses which have shown a lack of transparency and cooperation with HMRC, or persistent and aggressive tax planning. It is intended to be the next step in escalation if HMRC deems the high risk corporates programme (HRCP) not to have succeeded. After a year 'on warning', businesses will be put on 'special measures' for two years, and will be named and shamed by HMRC. There are two 'strands':

- Strand A: For those seen as uncooperative, HMRC may have increased powers to obtain information with less requirement to serve notice. HMRC may also stop providing non-statutory clearances or opinions to the business.
- Strand B: This is aimed at those seen as persistent tax avoiders, and therefore considered to have submitted repeated inaccurate returns. HMRC may withdraw the ability to rely on 'reasonable care' as a defence against penalties.

Who does it apply to?

The tax strategy and code of practice will apply to all large businesses, which is likely to mean approximately 2,100 companies that have a customer relationship manager (CRM) or a senior accounting officer (SAO) obligation. Interestingly, although the proposals strictly apply to activities with an impact on UK tax, the scope may not take account of the size of a company's UK operations. 'Special measures' will only apply to large businesses already in the HRCP process.

What might this mean for businesses?

Many businesses already have a tax strategy of some sort, although perhaps not a specific UK one. Recent surveys suggest that a majority of FTSE 100 companies publish something about their approach to tax.

Many large businesses are already looking at tax transparency. However, this may force the hand of those currently disclosing only that which is required by the law or accounting standards.

HMRC has made it clear that signing up to the

code of practice, together with a published tax strategy, will influence its risk profiling. Therefore, businesses seeking to achieve or maintain a low risk rating may feel that they have to sign up.

Indeed, should the non-publication of a tax strategy carry similar penalties to those of the SAO regime, this may prove to be another increase in the potential personal liability for directors.

However, I wonder whether taking away non-statutory clearances will really act as a disincentive for those that already take an uncommunicative approach to HMRC.

What are the potential limitations?

Most businesses, even those taking a more aggressive approach to tax planning, will find a way to publish something which is a tax strategy without necessarily changing behaviour. Those businesses will also rely on the voluntary nature of the code of conduct. In reality, both of these proposals may simply make the already compliant more compliant.

Both the strategy and the code of conduct are focused solely on the activities that have an impact on UK taxation. The UK corporation tax rate is still falling, and corporation tax remains a small contributor to the overall tax take. With NGOs more focused on tax revenues in the developing world, these proposals may look out of step. Indeed, multinationals don't generally manage their business with a particular focus on the UK ETR. For a large multinational, its UK ETR is unlikely to be a key performance indicator.

Three years ago, these ideas may have looked radical and progressive. However, there are already 45 different tax frameworks, according to an ActionAid report, *Responsible tax practice by companies* (March 2015), which reviewed the range of responsible tax practices published by industry bodies, governments, NGOs, businesses and others. Make that 46 now...

As for 'special measures', do these proposals really give HMRC anything that it can't already get with the effective application of its existing powers?

What next?

No doubt the business community will want to respond to these proposals, particularly those that already support a responsible approach to tax and engagement. Those businesses which HMRC is really targeting will probably remain silent for now, as they will when asked to adopt a code of practice for UK tax.

Looking further forward, what might come next? Perhaps there will be a mandatory code of conduct? You can ask any banker about what happened to the voluntary banking code. Or perhaps there will be an extension to cover high net worth individuals? If HM Treasury can demonstrate that these sorts of measures generate tax revenues (this consultation estimates £100m per year) with little need for added HMRC resource, this could signal the shape of things to come.

And that may be the biggest problem. What businesses want is simplicity, stability and certainty. That means efficiency and collaboration on the part of HMRC too, with quicker and more meaningful decisions. This proposal seems to do nothing for that objective, and pushes more of the responsibility onto already compliant businesses. ■

The consultation document is available via www.bit.ly/1DuLamP. The consultation closes on 14 October 2015.