ICAEW REPRESENTATION132/17

TAX REPRESENTATION

LARGE BUSINES COMPLIANCE – ENHANCING OUR RISK ASSESSMENT APPROACH

ICAEW welcomes the opportunity to comment on the consultation document Large Business compliance – enhancing our risk assessment approach published by ICAEW on13 September 2017.

This response of 4 December 2017 has been prepared on behalf of ICAEW by the Tax Faculty. Internationally recognised as a source of expertise, the Faculty is a leading authority on taxation. It is responsible for making submissions to tax authorities on behalf of ICAEW and does this with support from over 130 volunteers, many of whom are well-known names in the tax world. Appendix 1 sets out the ICAEW Tax Faculty's Ten Tenets for a Better Tax System, by which we benchmark proposals for changes to the tax system.

We should be happy to discuss any aspect of our comments and to take part in all further consultations on this area.

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ICAEW members operate across a wide range of areas in business, practice and the public sector. They provide financial expertise and guidance based on the highest professional, technical and ethical standards. They are trained to provide clarity and apply rigour, and so help create long-term sustainable economic value.

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GENERAL COMMENTS

1. The UK has been at the forefront of the development of enhanced cooperation and now, more recently, cooperative compliance.

2. The system works best when there is genuine cooperation between large business and HMRC and each side fulfils their appropriate obligations.

3. The determination of the risk posed by a particular large business is clearly an important consideration in determining the extent to which that particular large business is subject, or not, to more invasive investigation and audit to determine that the tax outcomes are appropriate.

4. The general approach is set out in the HMRC Manual Large Businesses – Introduction

5. Risk Review is an important element of the good working of this relationship but we would urge HMRC to look more broadly at the current working of this model which we believe is suffering some problems. Our members inform us that HMRC is often not able to give certainty to its business customers on complex tax issues and there is an inability to be forthright in reaching conclusions on particular issues. Cooperation requires both sides to fulfil their obligations. We have set out some concerns in response to question 13 below.

6. We would be very happy to discuss the concerns of our members in a face to face meeting with HMRC officials.

RESPONSES TO SPECIFIC QUESTIONS

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?

7. In the past HMRC has relied on how large business communicated with them and their resultant view on the level of openness shown by business.

8. In more recent times some of our members have been through a more thorough risk review with an increased focus on some of the smaller issues within their particular system which was time consuming but felt by our member to have been helpful. The suggestion was that this more detailed focus should only be undertaken at suitable intervals, certainly not every year and probably not more than every 2 to 3 years.

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?

9. We do not think that a wider range of risks would be helpful.

10. Some businesses may be high risk in relation to one relatively minor issue and clearly in those instances efforts need to be concentrated on that particular issue and not on the broader activities of the business.

11. It may be helpful if businesses are on the margins of the high or low risk that the particular issues which make that business marginal are subject to particular attention so that any concerns can be specifically addressed.

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

12. It is clearly logical that more frequent Risk Reviews are appropriate for higher risk businesses subject to the points we have made in answer to questions 1 and 2 above.

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

13. An inherent risk which is not mentioned is the sheer complexity of the tax code itself which is getting worse rather than better. In the present decade Finance Acts have been longer than ever and 5 out of the 7 annual Finance Act pages in excess of 600 pages have been in this decade and in the current year the two Finance Acts come to more than 800 pages. It is the legislation affecting large business which is often the most complex.

14. We accept that transfer pricing can be a major concern but it is very unlikely that large businesses will have "no transfer pricing transactions" to qualify as low risk and this should be expanded to reflect relatively standard transfer pricing situations which are not going to be the cause of major concern.

15. We also do not believe that linking "foreign owned" with "lack of clarity" is very helpful and foreign owned as such should not be a cause of greater risk.

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

16. No we think the Framework is pretty comprehensive.

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.

17. We do not think that the areas as such should give rise to different risk weightings: they will play a different role in different businesses.

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

18. Yes.

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

19. Not that we are aware of.

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

20. The risk profile for each different tax is likely to be different.

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?

21. Clearly any Risk Review is going to concentrate on the areas where the particular business is active.

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

22. We think there is merit in expanding the existing "low-risk" or "non-low risk" to reflect a more nuanced approach.

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

23. We suggest that there should be less frequent risk reviews for those businesses with a lower risk profile.

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?

24. Where there is a significant transaction then HMRC should be more open about giving absolute certainty in answering requests for clearance. If the taxpayer is being open in its request then HMRC should not be reluctant in providing the required certainty.

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)

25. An extended period between risk reviews for low risk businesses would be a suitable incentive.

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?

26. Yes.

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.

27. We believe it does and cannot identify any missing areas.

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

28. Not that we are aware of.

APPENDIX 1

ICAEW TAX FACULTY'S TEN TENETS FOR A BETTER TAX SYSTEM

The tax system should be:

1. Statutory: tax legislation should be enacted by statute and subject to proper democratic scrutiny by Parliament.

2. Certain: in virtually all circumstances the application of the tax rules should be certain. It should not normally be necessary for anyone to resort to the courts in order to resolve how the rules operate in relation to his or her tax affairs.

3. Simple: the tax rules should aim to be simple, understandable and clear in their objectives.

4. Easy to collect and to calculate: a person's tax liability should be easy to calculate and straightforward and cheap to collect.

5. Properly targeted: when anti-avoidance legislation is passed, due regard should be had to maintaining the simplicity and certainty of the tax system by targeting it to close specific loopholes.

6. Constant: Changes to the underlying rules should be kept to a minimum. There should be a justifiable economic and/or social basis for any change to the tax rules and this justification should be made public and the underlying policy made clear.

7. Subject to proper consultation: other than in exceptional circumstances, the Government should allow adequate time for both the drafting of tax legislation and full consultation on it.

8. Regularly reviewed: the tax rules should be subject to a regular public review to determine their continuing relevance and whether their original justification has been realised. If a tax rule is no longer relevant, then it should be repealed.

9. Fair and reasonable: the revenue authorities have a duty to exercise their powers reasonably. There should be a right of appeal to an independent tribunal against all their decisions.

10. Competitive: tax rules and rates should be framed so as to encourage investment, capital and trade in and with the UK.

These are explained in more detail in our discussion document published in October 1999 as TAXGUIDE 4/99 (see http://www.icaew.com/-/media/corporate/files/technical/tax/tax-news/taxguides/taxguide-0499.ashx).