STEP Response - Tax Avoidance and Evasion Inquiry

About us

STEP is the worldwide professional association for those advising families across generations. We help people understand the issues families face in this area and promote best practice, professional integrity and education to our members.

Today we have over 20,000 members across 95 countries, with over 7,000 members in the UK. Our membership is drawn from a range of professions, including lawyers, accountants and other specialists. Our members help families plan for their futures: from drafting a will or advising family businesses, to helping international families and protecting vulnerable family members.

We take a leading role in explaining our members’ views and expertise to governments, tax authorities, regulators and the public. We work with governments and regulatory authorities to examine the likely impact of any proposed changes, providing technical advice and support and responding to consultations.

STEP welcomes the opportunity to take part in this inquiry.

Response

It is widely accepted that governments must raise taxes to fund their expenditure, that, in doing so, rules should be framed to tax those assets, activities and transactions which Parliament identifies as being the appropriate subject of taxation and that powers must be conferred on a Fiscal Authority, sufficient to allow it to collect that tax and to ensure taxpayers are complying with the tax system.

Doing so is a complex task because the tax system must take account of the complexities of modern economic life.

Inevitably, therefore, tax rules, both substantive and administrative, are immensely complicated and their complexity bears the risk of creating unintended consequences.

1. The need for balance

1.1. Designing and administering a tax system, therefore, involves balancing:-

   a) the demands of revenue raising against the need to avoid distorting or deterring economic enterprise; and
   b) the risk of there being significant tax avoidance against the danger that taxpayers will pay more tax than is due through fear of, or undue pressure from, the Fiscal Authority.

2. The decline in tax avoidance

2.1. As was acknowledged by Mr. David Richardson, Interim Director General, Customer Strategy and Tax Design, HMRC in his evidence to the Committee on 17 April 2018, the amount of tax avoidance activity in the UK economy has declined enormously since the
enactment of the rules relating to the disclosure of tax avoidance schemes in the Finance Act 2004.¹

2.2. Members of the leading professional bodies concerned with taxation have long since ceased to advise on the implementation of artificial tax planning schemes. As Mr. Richardson’s evidence to the Committee made clear, the organisations which are still marketing schemes they brand as ‘tax avoidance schemes’ are peddling schemes to the gullible which either do not work at all or depend for their effectiveness on evasion and not on avoidance.

2.3. There are many reasons for the almost complete decline of tax avoidance activity in the UK. Public opinion now very much disapproves of tax avoidance with the result that the majority of taxpayers, but particularly commercial organisations, are reluctant to risk jeopardising their reputations by becoming involved in schemes which might attract public opprobrium. Judges in the tax tribunals and the Courts have become noticeably more hostile to tax planning. The professional bodies, responding to these changes have introduced strict, new ethical rules preventing their members from being involved in the marketing or implementation of tax planning which might be considered abusive.

3. The extension in HMRC’s powers

3.1. One very significant cause of this decline in tax avoidance activity, however, and perhaps the most significant, is the great extension of HMRC powers to which Mr. Richardson referred in his evidence and the change in the internal culture of HMRC which prompted that extension.

3.2. The conferring on HMRC of extensive new powers has, therefore, had the very effect for which they were introduced. There are signs, however, that they, and the change in HMRC’s culture of which they have been a part, have also caused certain much less beneficial effects.

4. Taxpayers’ acquiescence in excessive assessment

4.1. The tax system is now so complicated that, in all but the most straightforward of circumstances, it is rarely possible to give a simple answer as to whether tax is exigible or not and if so, of what amount. Even where a taxpayer takes a position which is highly probable to be a correct construction of the law it is not uncommon for HMRC to take a contrary position if it will maximise the ‘tax’ raised by doing so.

4.2. In those circumstances, the taxpayer is a combatant in a very unequal battle. HMRC can vastly multiple the taxpayer’s costs by making demands under its statutory powers for information which is extremely costly to collect but which takes the tax officer concerned only minutes to specify. The resources of even the wealthiest taxpayer are dwarfed by the resources available to HMRC. The length of time which HMRC’s investigations, and any subsequent litigation, take means that a taxpayer who challenges the view of HMRC of the tax effects of his or her transactions is subject to years of uncertainty and the threat that, if

they lose, they will be subject to costs which may dwarf the tax at stake. By contrast, HMRC may balance the uncertainties in one case against others so that delay for HMRC is merely an inconvenience in setting and meeting its departmental targets.

4.3. It is our experience that, except for the very largest corporations, it is now common for taxpayers subject to investigation by HMRC to acquiesce to assessments of amounts which are not due under the law because the financial risks of resisting HMRC’s demands are disproportionate to the tax demanded.

5. Payments imposed on the honest and careful

5.1. It is appropriate that penalties should be imposed on taxpayers whose errors are careless or deliberate. Such is the complexity of the tax system, however, that many taxpayers, even using their best endeavours, will make honest mistakes. Under the penalty system, penalties are very properly not supposed to apply to those who make honest mistakes having taken due care, and are supposed to apply more lightly to those who make careless mistakes than to those who perpetrate deliberate errors.

5.2. It is now common, however, for HMRC to start from the position that any error in a tax return is deliberate and, even after considerable investigation and correspondence, to refuse to accept that an error can have been anything less than careless regardless of the actual circumstances.

5.3. In many decided cases, the First Tier Tribunal has been strongly critical of HMRC’s behaviour in the imposition of penalties.

6. HMRC is concentrated on maximising its receipts not on collecting the correct amount of tax

6.1. In its public pronouncements, HMRC does acknowledge the need to be fair in its dealings with taxpayers. Organisations, however, can develop a corporate culture which, unless the greatest care is taken, will prioritise the interests of the organisation over those of the people whom it is created to serve. Mr. Richardson said in his evidence that:—

“We have a very strict governance procedure in place to ensure that people are taxed neither too much nor too little.”

6.2. Our members’ experience, however, is that HMRC staff in the course of their investigation work do not point out to taxpayers where they have over-assessed themselves and it is not unusual for our members, who advise previously unrepresented taxpayers, to find that in its previous dealings with those taxpayers, HMRC has not informed them of obvious cases of over-assessment.

6.3. Any accurate calculation of the tax gap should include an estimate of the tax over-assessed due to taxpayers’ errors and to the acquiescence of taxpayers in over-assessments by HMRC. On 6 March 2012, the Treasury Committee, in its report ‘Closing the Tax Gap: HMRC’s record at ensuring tax compliance’ said:—

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1 Treasury Sub-Committee, Oral Evidence: Tax avoidance and evasion, Q12, 17 April 2018:
“For HMRC to collect the right amount of tax, it would also need to address the many people who pay more tax than they need to by law.”\textsuperscript{3}

6.4. The tax gap calculations still make no attempt to take account of the over-assessment of taxpayers. It is difficult to avoid the conclusion that HMRC is concentrated, not on collecting the tax which is correctly due under the law, but on maximising its receipts.

7. The need for robust independent review

7.1. The tax system, like any other part of Government activity, needs robust mechanisms to ensure that those who are responsible for administering it take proper account of the interests of those who are affected by its activities and that they are not incentivised by simple measures which distort their priorities. HMRC should not judge itself, nor be judged, purely by the amount of revenue it raises without reference to other criteria.

7.2. This situation will only occur if it is subject to a review process which is robustly independent. In recent years, developments intended to provide that independence have been firmly placed under HMRC’s control. Examples are the creation of the Office of Tax Simplification and the system, which was introduced in 2009, of statutory review of HMRC’s decisions to raise assessments under the Taxes Management Act 1970 s.49A - 49I.

8. A culture of suspicion

8.1. In his evidence to your Committee, Mr. Richardson very properly referred to the need to prevent evasion and to raise taxation without providing opportunities for tax avoidance but, in doing so, revealed the fact that HMRC is currently investigating half of all large businesses and one in ten of all small businesses.\textsuperscript{4} The resources which need to be diverted to deal with an HMRC investigation can be a very significant cost for a large business and can threaten the very existence of a small one.

8.2. Such a level of investigation would seem to suggest either that we have in this country a taxation culture which is seriously dysfunctional and ridden with dishonesty or that HMRC has a culture of suspicion which is diverting too many of its resources to investigation which might more properly be used on education and enablement.

9. A threat to Government Revenues

9.1. Our experience is that the vast majority of taxpayers, both corporations and individuals, wish to pay the amount of tax which is due under the law and struggle to do so only through the complexity of tax law and the inadequacies of HMRC’s administrative systems. An approach based upon suspicion and coercion may increase yield in the short term but in the long term it destroys the shared acknowledgement of standards of ethical behaviour on which a healthy tax system depends and so undermines the collection of Government revenues.

\textsuperscript{3} Treasury Committee, Closing the Tax Gap: HMRC’s record at ensuring tax compliance, p. 6, 6 March 2012: https://publications.parliament.uk/pa/cm201012/cmselect/cmtreasy/1371/1371.pdf.

10. A new problem requiring solution

10.1. HMRC would seem to have an approach to investigation which is often concerned with the absolute amount of money which it can raise in the short term from the investigative process without regard to whether those moneys represent tax which is due under the law and without regard to the wider economic effects of indiscriminately imposing the burden of investigation on UK businesses and individuals.

10.2. HMRC’s attack on tax avoidance over the last 15 years has been so successful that tax avoidance no longer forms a significant part of UK economic activity or a significant threat to Treasury receipts. The obverse problem of overpayment of tax has not yet received serious consideration.