



## TREASURY SELECT COMMITTEE - SUB-COMMITTEE INQUIRY

# THE CONDUCT OF TAX ENQUIRIES AND THE RESOLUTION OF TAX DISPUTES

Issued 12 June 2018

ICAEW (Institute of Chartered Accountants in England & Wales) welcomes the opportunity to respond to the **Inquiry into the HMRC Conduct of Tax Enquiries and the Resolution of Tax Disputes** launched by the sub-committee of the Treasury Select Committee on 27 March 2018.

This response of 31 May 2018 has been prepared by the ICAEW Tax Faculty. Internationally recognised as a source of expertise, the Tax Faculty is a leading authority on taxation and is the voice of tax for ICAEW. It is responsible for making all submissions to the tax authorities on behalf of ICAEW, drawing upon the knowledge and experience of ICAEW's membership. The Tax Faculty's work is directly supported by over 130 active members, many of them well known names in the tax world, who work across the complete spectrum of tax, both in practice and in business.

ICAEW is a world-leading professional body established under a Royal Charter to serve the public interest. In pursuit of its vision of a world of strong economies, ICAEW works with governments, regulators and businesses and it leads, connects, supports and regulates more than 150,000 chartered accountant members in over 160 countries. ICAEW members work in all types of private and public organisations, including public practice firms, and are trained to provide clarity and rigour and apply the highest professional, technical and ethical standards.

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## GENERAL COMMENTS

### Background

1. The Public Accounts Committee published a highly critical report in December 2011 into the handling of tax disputes by HMRC [HMRC Customs 2010-11 Accounts: tax disputes](#) and its then chair, Margaret Hodge, stated:

“This report is a damning indictment of HMRC and the way its senior officials handle tax disputes with large corporations. We uncovered both specific and systemic failures which must be addressed.”

2. The National Audit Office appointed a retired judge, Andrew Park, to look into this issue and review in detail a number of cases and published its report in June 2012 [Settling large tax disputes](#). The then [head of the NAO reported the findings of the report](#) as follows:

“On the basis of Sir Andrew Park’s reports, I conclude that the settlements reached by HMRC in these five cases were all reasonable. Moreover, in settling them, the Department successfully resolved multiple, long-outstanding tax issues. “However, our concerns over the processes by which the settlements were reached have been confirmed. It was not appropriate to set up governance arrangements specific to certain cases or to fail to apply processes correctly. Poor communication with staff also undermined confidence in the settlements.”

3. HMRC has taken steps to provide a more professional approach to the settling of tax enquiries including appointing, in 2012, a Tax Assurance Commissioner who in addition to heading the new system was required to produce an annual report to Parliament with details of the work undertaken in the previous 12 months. Four stand-alone annual reports were published but in 2016-17 the report was included in the [HMRC 2016-17 Annual Report and Accounts](#) (pages 100 to 110).

### HMRC policy

4. In 2007 HMRC introduced its Litigation and Settlement Strategy (LSS), most recently refreshed in 2017, [Resolving tax disputes: commentary on the litigation and settlement strategy](#). The LSS sought to ensure that all disputes were settled in accordance with the law and not as a result of compromise.
5. HMRC has a [Code of Governance for resolving tax disputes](#) first issued in July 2014 and of which an updated version was published in October 2017. The Code of Governance is designed to ensure that the principles of LSS are applied consistently when resolving a tax dispute.
6. In general terms we believe that most differences of view between taxpayer and the tax administration are resolved collaboratively and by agreement. In the past few years HMRC has also introduced alternative dispute resolution procedures to provide additional mechanisms to try and resolve differences before they reach a more formal stage.
7. However, more recently, some members have reported that HMRC have been adopting a more aggressive approach to the pursuit of enquiries and the raising of penalties. We do not know whether these reports are evidence of particular problem areas or are a more systemic problem. However, the comments made do highlight that there may need to be greater clarity

over what are HMRC's governance and oversight arrangements over this important aspect of its work and that taxpayers are being treated in accordance with the terms of the Taxpayers' Charter **Your Charter**, including taxpayer rights to be treated as honest and for HMRC to be professional and act with integrity.

8. A member of the ICAEW Tax Faculty Technical Committee, Keith Gordon, has made his own submission to the Inquiry and on the basis of his own experience representing clients in court he has highlighted a number of areas of concern which we believe are worthy of further investigation by TSC including:
  - Out of time assessments;
  - The proper interpretation of "reasonable excuse";
  - Suspension of penalties;
  - Requests for information;
  - HMRC approach to Alternative Dispute Resolution (ADR).
9. The firm, Mercer & Hole, where another member of our Technical Committee is a partner, has raised concerns about HMRC enquiries into foreign domicile cases where individuals have been living in the UK for a significant period of time.

***Q1 How do HMRC governance and settlement processes affect its ability to resolve tax disputes in a proportionate and fair way?***

10. The HMRC Code of Governance for resolving tax disputes and the Litigation and Settlement Strategy provide a good framework for reaching agreement in the majority of cases before a difference of opinion becomes entrenched.
11. These processes are generally less in evidence in smaller cases and there is evidence that there is a power imbalance between HMRC and the smaller taxpayer and his adviser which does not necessarily lead to every taxpayer being treated even-handedly: the first taxpayer right set out in Your Charter and a major concern of this Inquiry which is to ensure that HMRC "deals with all tax disputes fairly and in an even-handed manner".

***Q2 Does HMRC's litigation and settlement strategy provide a rational and sound framework for resolving tax disputes?***

12. We believe that in principle the strategy does provide a sound basis for resolving tax disputes.
13. Our members have suggested to us that in practice there is often not a fully collaborative approach in practice from HMRC and we recommend that the Committee should take oral evidence from both sides as to whether in practice the strategy is adhered to in all cases.

***Q3 Do HMRC's collection and management powers set out in the Commissioners for Revenue and Customs Act 2005 provide HMRC with sufficient flexibility to achieve cost-effective and fair results?***

14. We believe the statutory powers do provide HMRC with sufficient flexibility to achieve cost-effective and fair results.
15. There are some concerns that the introduction of LSS in the following year has reduced that flexibility.
16. We have some concerns about overpayment relief when, if HMRC rejects the taxpayer's claim, there is no appeal against that decision except in cases when HMRC has formally enquired into the claim.

***Q4 Does HMRC's approach to enforcing compliance with tax law, including its approach to penalties and other sanctions, result in disproportionate or unjust outcomes? If so, how can the situation be remedied?***

17. There are some detailed concerns about the use of penalties spelt out in the paper by Keith Gordon referred to above.

***Q5 Is there sufficient governance over the whole of HMRC's enquiry process to ensure that HMRC's interventions are well-targeted and that taxpayers are treated fairly and professionally throughout?***

18. The governance arrangements discussed under our General Comments only generally apply towards the end of the enquiry or investigation.
19. HMRC has a risk based approach to investigations and uses its Connect data analysis to identify the risks to the system.
20. We have concerns that the initial stages of enquiries are not always handled in an appropriate manner.

***Q6 Do HMRC's governance processes provide sufficient scrutiny and assurance for clearances and approvals given to taxpayers outside the formal enquiry process.***

21. More clarity is required about the governance that exists regarding clearances and approvals outside the formal enquiry process.