Striking a balance
Moving from enabling to mandating?
The relationship between tax administration and taxpayer needs to be both robust and positive — a careful balance that looks to be going awry. It is not too late for the Government to move away from a path that leads to unnecessary conflict and lost competitiveness. It is about striking the right balance between enabling and mandating.
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We have seen a lot of changes in the latter and this paper considers whether iterative changes have led the UK far away from the robust but competitive system of tax administration envisaged in 2010. These changes include:

- The Senior Accounting Officer (SAO) regime
- The Code of Practice on Taxation for Banks
- The Disclosure of Tax Avoidance Schemes (DOTAS) regime
- The general anti-abuse rule (GAAR)
- The recently introduced Diverted Profits Tax
- The Extractive Industries Transparency Initiative (EITI)
- The Capital Requirements Directive (CRD IV), and
- The G20/OECD’s Action Plan on Base Erosion and Profit Shifting (BEPS).

During this period, HMRC has played a critical role in creating a stable and attractive business and tax environment.

If we look forward five years, the tax environment could be even more different – not least because of HMRC’s consultation on ‘Improving Large Business Tax Compliance’ which stands to have a significant impact not just on the way that large businesses operate but also on the role of HMRC. This raises the question of how far HMRC should go in terms of dictating how businesses should operate and whether tax administrators should use compliance rather than legislative change as a tool to achieve their objectives. At some stage, the Government and HMRC should look at the journey they have embarked on and ask whether we are going in the right direction.
With proposals including the publication of tax strategies, the naming of a responsible Board Executive, a voluntary Code of Practice on taxation and the prospect of a ‘special measures’ regime for high risk businesses, the consultation could reshape the way that businesses interact with HMRC and their stakeholders. It could also change the way that businesses operate as they are obliged to spend more time focusing on what they publish and less time working on commercial success.

Tipping that balance too far in one direction could:

- Significantly increase the administrative and financial burden on business
- Replicate existing measures with similar objectives but different obligations and limited benefit
- Force businesses to disclose commercially sensitive information
- Introduce complexity and uncertainty
- Mandate an inappropriate ‘one size fits all’ approach to tax strategies
- Impose obligations on all large business rather than targeting the few offenders

In 2013, we urged organisations to ‘seize the initiative’ and consider their approach to tax transparency. We counselled that by acting and responding promptly, organisations would have the opportunity to shape the debate and influence of travel towards a more workable and effective long-term solution. We remain firmly of the view that groups need to have strong governance in place. However, to be effective, that governance needs to reflect the characteristics of the organisation.

In an environment where more and more businesses are voluntarily publishing and explaining their tax policies, and tax transparency is now firmly entrenched on business agendas, introducing mandatory measures could well be a backward step. At the very least, it assumes that HMRC is best placed to decide the information that stakeholders need rather than the organisations that are, after all, closest to them. The apparent assumption that all businesses are the same and can fit within rigid reporting structures without considerable cost from a financial and resource perspective does not inspire confidence. We would also take issue with the suggestion that it is HMRC’s role to ‘maximise revenues’ and suggest that this is a long way from ‘collecting all taxes due’ which forms the traditional, and thus expected, role of a revenue authority.

The consequences of misjudging the impact of HMRC’s proposals could be significant and represent more than a wrinkle in the Roadmap. At a time when HMRC could be providing constructive support for businesses embarking on the path to transparency, it instead risks deterring would-be investors and creating a culture of rigid obligations of questionable merit. In particular, HMRC appears to be imposing those obligations on the compliant majority rather than targeting the few real offenders.

It is not too late for the Government to adjust its approach to the role of HMRC. It’s about striking the right balance between enabling and mandating.

### The proposals come at a time when:

- **79%** of FTSE100 companies currently publish elements of their tax strategy
- **37%** of FTSE250 companies are already following suit
- **54%** of the broader population of our survey either do not have a Board approved strategy or do not have a formal tax strategy at all
- **61%** of respondents to our survey think that the target effective tax rate is commercially sensitive information
- **64%** of respondents would not recommend signing the proposed Code of Practice in its current form

Not only would implementing the requirements of the proposals impose a significant administrative and financial burden on many businesses, they could also require businesses to disclose commercially sensitive information. More importantly, by stepping into the role of arbiters of the information that stakeholders want or need to see, the consultation arguably takes HMRC beyond its recognised remit and raises the question of whether it is appropriate to use reporting requirements as a way to direct taxpayer behaviour.

In setting out the objectives for the consultation, HMRC is clear about the need to balance its commitment to making the UK ‘open for business’ with the need to ‘maximise revenues, make sustainable cost savings and improve the customer experience’. In seeking to achieve this goal, we argue that, instead, the proposals impact the balance across a number of factors.
Introduction

With a clear objective to drive behavioural change in the large business population and embedding best practice in tax compliance in the population as a whole, HMRC’s consultation document on ‘Improving Large Business Tax Compliance’ signals a clear change of approach.

At the same time, whether intentional or incidental, the proposals in the consultation document also demonstrate the changing role of HMRC. As recently as 2009 when the current Taxpayers’ Charter was published, the role of HMRC could be summed up as collecting the taxes laid down by Parliament and helping taxpayers to meet their obligations. This seems a long way from the responsibilities outlined in the consultation document which include balancing the Government's commitment to making the UK ‘open for business’ while at the same time meeting the objectives of maximising revenues, making sustainable cost savings and improving the customer experience. Indeed, at a time when the role of HMRC appears to be changing, the move from ‘collecting taxes’ to ‘maximising revenues’ stands out as a possible cause for concern.

A further balance is sought between the increasing number of UK businesses who are already being transparent about their approach to taxation with the very small number of large businesses which persistently engage in tax avoidance or highly aggressive tax planning, or refuse to engage with HMRC in a full, open and proper way.
“Many businesses are already opening their approach to tax to investor and public scrutiny.”

A major premise of the consultation is, therefore, that ‘it would be unfair to the vast majority of businesses not to do more to tackle this problem and to level the playing field for all’. But in terms of striking this balance, is HMRC in the right position to be deciding approach? Is it ‘fair’ for HMRC to impose new obligations on the compliant majority rather than directly targeting those few offenders?

Many businesses are already opening their approach to tax to investor and public scrutiny. When this is coupled with a range of measures being applied across both the UK and international stages, is it right to add yet another set of obligations on UK businesses? Should HMRC be making these decisions and is it equipped to do so?

Things are moving quickly: our research shows that 79% of FTSE100 organisations already publish elements of their tax strategy. Our review of 2014 annual reporting in the FTSE350, Reflections on the past, directions for the future, shows that an increasing number of groups outside the FTSE100 are also now including these disclosures, with 37% of FTSE250 companies within our sample making public tax policy disclosures.

With that in mind, is this the right time for a revenue authority to be mandating an approach? Finally, has enough consideration been given to the impact of getting it wrong?

During the consultation period, we hosted over 1,100 people from 26 countries both in person and during a web seminar. Not only did this demonstrate unprecedented interest in the issues, it also gave us an exceptional insight into the way that businesses are reacting to the proposals.

In the context of the range of balances that HMRC should be striking, this report considers the potential impact of the proposals against the backdrop of HMRC’s apparently changing role. We ask how HMRC could approach things differently to achieve broadly the same outcomes with significantly less complexity and consider the steps businesses should be taking in response.

79% of FTSE100 organisations already publish elements of their tax strategy

37% of FTSE250 companies make public tax policy disclosures
A snapshot of the proposals

“...a goal of providing a fairer, more stable environment for business.”

Who

The proposals would apply to businesses:
- Handled by HMRC’s Large Business Directorate (LBD).
- With turnover >£200m and/or balance sheet total >£2bn.
- Including non-corporates and foreign-owned businesses.

What

The large business tax compliance proposals were originally announced during the Summer Budget, with two key themes: governance and transparency. In summary, the proposed package of measures includes:
- The publication of UK tax strategies by relevant business.
- A voluntary Code of Practice on Taxation for large businesses that HMRC would wish companies to adopt.
- A narrowly targeted ‘special measures’ regime.

Why

In outlining the proposals, the Government has stressed that the fundamental principles of existing HMRC Large Business Strategy are unchanged and that the current approach to identifying and managing tax risk has been effective. Instead, with a goal of providing a fairer, more stable environment for business, the proposals in HMRC’s consultation document aim to embed what it considers to be best practice including:
- A low risk approach to compliance.
- Early resolution of issues.
- Transparency on approaches to tax planning.
- Changing behaviours perceived to be aggressive.

When

The consultation period closed on 14 October 2015. Once responses have been collated, the next stage of the consultation process is likely to be announced during the Autumn Statement on 25 November 2015.

“The consultation includes proposals for tackling the small number of highest risk businesses.”
How

**Publication of UK tax strategies**

Practical implementation of the proposals would include:

- Ensuring the tax strategy is documented and approved by the Board.
- Board responsibility and the potential naming of an executive board director to be responsible for the UK tax strategy. Responsible in this context means ‘owning and signing off the strategy’.
- The annual publication of the tax strategy and associated notification of HMRC.
- The application of a penalty regime for failure to publish.

**Voluntary Code of Practice**

The proposed code of practice represents what HMRC considers to be best practice. It is seen as formalising behaviours already expected through a common set of principles. The code would be voluntary but:

- It is expected that the published strategy would include whether the organisation is a signatory.
- HMRC would correct factually inaccurate public statements.
- There would be no ruling procedure on compliance with the code.
- It would be used by HMRC as part of the existing risk management approach.

**Special measures**

The consultation includes proposals for tackling the small number of highest risk businesses. In summary, these include targeting a very small number of large businesses, perceived as persistent and aggressive planners and posing significant risk to the Exchequer.

**Key elements of the special measures regime**

- A business which represents a significant risk to the Exchequer will be given the opportunity to change its behaviours / approach during an initial notice period (INP).
- The special measures regime (SMR) will be formed of Strand A or Strand B
  - Strand A – uncooperative or lack of transparency: Increased reporting or removal of clearance mechanisms.
  - Strand B – persistent aggressive planners: Removal of statutory defence of reasonable care.
- Companies would remain within the SMR unless considered compliant in an exit review which would occur every two years.
Before looking at the changing role of HMRC, it is important to understand where it is starting from and this is perhaps best explained in its Taxpayers’ Charter, where HMRC outlines its role as:

- Making sure that the money is available to fund the UK’s public services by collecting taxes and duties as laid down by Parliament.
- Giving customers a service that is even-handed, accurate and based on mutual trust and respect.
- Making it as easy as it can for customers to get things right.

As the global business environment becomes more complex, it is only to be expected that revenue authorities need to evolve to keep pace. Indeed, disclosure to revenue authorities forms a key part of the country by country reporting elements of the G20/OECD’s Action Plan on BEPS. However, the position in the UK seems to going beyond that natural evolution, with HMRC stepping outside the traditional role of the revenue authority to take a more coercive approach to its relationship with large businesses.

While the role of HMRC has always typically been to administer the tax system, the proposals on Large Business Tax Compliance imply that it is now in the position of managing behaviour and that coercive compliance could be the future. This raises the question of how far HMRC should go in terms of dictating how businesses should operate and whether tax administrators should use compliance rather than legislative change as a tool to achieve their objectives.

We remain unconvinced that requiring businesses to publish information or risk being seen as lacking integrity is the right way to approach compliance. If behavioural change is deemed necessary, regulation or legislation provide a simpler and more certain outcome. Changes to tax administration should be reserved for making things more time or cost effective for businesses and tax administrators, where this benefits the UK as a whole. With the relationship between large businesses and HMRC underpinning the consultation document on Large Business Tax Compliance, the proposals in that document provide a clear illustration of the extent to which HMRC’s role is changing.

“As the global business environment becomes more complex, it is only to be expected that revenue authorities need to evolve to keep pace.”
Before looking at those proposals in more detail, a closer look at some of the fundamental elements laid out in the Charter provides a useful starting point.

**Taxpayers will be treated as honest:** in its notes to the Charter, HMRC explains that, unless it has a good reason not to, it will work on the assumption that taxpayers are telling the truth and will only question what it is told if it has good reason to do so.

**Information and privacy will be respected:** HMRC recognises that it has privileged access to taxpayer information. It commits to only asking for the information needed and to protecting that information.

**The cost of dealing with HMRC will be kept as low as possible:** HMRC commits to taking up as little of taxpayer time and money as possible.

**HMRC will tackle people who deliberately break the rules and challenge those who bend the rules:** HMRC sets out its obligations as focusing on identifying those who are not paying what they owe or claiming more than they should. HMRC’s remit in this regard is limited to recovering money owed and charging interest and penalties where appropriate. Importantly, HMRC commits to using its powers reasonably.

Taking each of these elements in turn, we consider the extent to which the proposals in the consultation document measure up and ask what HMRC could be doing to maintain a better balance.
The presumption of honesty

Our research shows that more than three quarters of the FTSE100 publish an element of their tax strategy already, which we believe shows that the tide is turning towards greater tax transparency, without the need for intervention.

Voluntary vs mandatory

One of the key issues arising from the proposals in the consultation document is that HMRC is attempting to mandate an approach at a time when the behaviours it is seeking to influence are already evolving naturally. This raises the question of whether HMRC trusts organisations to be honest in the way they deal with stakeholders.

Two and a half years ago, we urged organisations to ‘seize the initiative’ and consider their approach to tax transparency. We counselled that by acting and responding promptly, organisations would have the opportunity to shape the debate and to influence the direction of travel toward a more workable and effective long-term solution. Since then, we have seen a step change in the number of organisations publishing tax information voluntarily, ranging from their global tax footprint to tax principles or policies.

Our research shows that more than three quarters of the FTSE100 publish an element of their tax strategy already, which we believe shows that the tide is turning towards greater tax transparency, without the need for intervention.

This is an extremely important factor not least because the nature and content of these disclosures comes after considerable thought from business as to the needs and requirements of their own stakeholders. Information published may not articulate the tax strategy itself but, as a snapshot of current state, it is perhaps a more practical, factual statement that is meaningful for stakeholders and cost effective for businesses to produce. Our experience is that most large organisations will have a watching brief over disclosures made by competitors anyway and, over time, we would expect to see more and more businesses making similar disclosures as a matter of course.

HMRC is well placed to set its own requirements for the information it receives from business but other stakeholders would argue that their requirements are just as much of a priority. For HMRC to make mandatory requirements for public disclosure rather than allowing those to evolve to meet the needs of all stakeholders is, therefore, arguably a backward step. Indeed, it is hard to envisage a scenario where it would ever be appropriate for HMRC to expand its brief from policing tax compliance into a wider corporate transparency role since it could be seen as compromising the key commitment to taxpayer confidentiality which underpins its compliance role. Instead, such considerations should perhaps be the remit of the Department for Business, Innovation & Skills, which is arguably closer to stakeholders.

Bringing balance

A more constructive approach could be to leverage the existing trust-based model to require that a documented tax strategy be made available to HMRC on a confidential basis. This would mean that the strategy could contain more meaningful information that is useful for tax professionals and HMRC without the commercial sensitivities of a public document.

Senior Accounting Officer vs Named Executive Board Director

With a main principle of the UK Corporate Governance Code being that boards are responsible for the maintenance of sound risk management systems, there has always been a link between good governance and an organisation’s approach to tax planning. It is unsurprising, in the current environment, that HMRC is seeking to make this link explicit in the consultation document. What is surprising, however, is the inclusion in its consultation document of a requirement for a ‘named’ Executive Director to be responsible for owning and signing off the tax strategy. The consultation document is silent as to whether that name will be made public.

Despite its commitment to a presumption of honesty on the part of taxpayers, it could, therefore, be inferred from the proposal that the individual’s name could form part of the published strategy, so as to reinforce Executive Board accountability.

While there is no requirement for that Director to be the Senior Accounting Officer (SAO), as one of the most significant of the recent governance initiatives, the SAO regime resonates among many elements of the new proposals.
The SAO regime already imposes high standards of governance and emphasises the need for effective risk management and controls throughout end to end tax accounting processes. The obligations of the named SAO go beyond the mere annual signing of a certificate and have to be fulfilled throughout each accounting period. These include having mechanisms in place for identifying and managing, on an ongoing basis, the tax risks which ultimately might result in an incorrect return. The SAO, therefore, already has to be fully involved in the business's tax strategy. The name of the SAO is not, however, a matter of public record.

To introduce a similar but different requirement on businesses demonstrates either a lack of trust in the current processes or a lack of understanding of the administrative burden that such an approach would entail.

Bringing balance

Whilst HMRC has stated that the SAO regime and this proposal are to be kept apart, bringing tax strategy and risk unequivocally onto the boardroom agenda may bring together the role of SAO and the director accountable under these proposals. Indeed, this may be a desirable outcome from the perspective of both HMRC and the organisation, ensuring a holistic approach is taken to tax governance, risk and compliance and reporting.

Cooperative vs coercive compliance

Although the consultation document is titled ‘Improving Large Business Tax Compliance’, elements of it seem to focus more on giving HMRC new sanctions to enforce what it regards as low risk behaviour. This marks a step change in the relationship between Customer Relationship Managers (CRMs) and businesses and arguably moves away from the Charter assumption that taxpayers are honest.

Instead of simply encouraging the best practice of both CRM and business working collaboratively to determine how ambiguity in tax law should be resolved in the context of a particular set of facts and circumstances, the proposals treat businesses that fully meet their current statutory obligations as potentially falling on the wrong side of the new law. For example, the proposed special measures regime could be triggered by a number of situations in which the business would regard itself as fully compliant, including reaching out of court settlements with HMRC which on a ‘without prejudice’ basis accept an increase to the profits returned.

Linked with this, the proposals also move some way from the ‘relationship of trust’ which has characterised the ‘cooperative compliance’ approach to date in favour of giving HMRC more opportunity to review and potentially second-guess decisions even if the business is regarded as low risk. An example of this, under the heading of ‘governance in action’, is the suggestion that businesses compliant with the Code of Practice should be providing HMRC with evidence of internal decisions taken on significant tax transactions. It should come as no surprise then that appetite for the Code of Practice amongst the attendees at our seminars was limited. In fact, as shown by Figure 1, almost two thirds of those for whom the Code of Practice would be applicable, said they would not recommend signing in its current form.

Cooperative vs coercive compliance

Figure 1: Would you recommend the signing of the proposed Code of Practice in its current form?

A. Yes
B. Yes – reluctantly
C. No – I would want to see changes to the wording
D. No – regardless of wording, I would not recommend signing

Based on responses to our survey – respondents were asked to answer only if the code would be relevant for their business – percentage of 401 responses.

The proposals in the consultation document add an unnecessary layer of compliance obligations for the vast majority of large businesses that meet their responsibilities in respect of taxation, without a proportionate increase either in HMRC’s commitment to cooperative compliance or to its ability to allocate resources based on risk.

Bringing balance

A number of the businesses we work with place significant value on their collaborative relationship with the CRM. In finalising its proposals, the Government should consider whether the elements of the Code of Practice that shift the balance of that relationship are really needed or whether enhancing that relationship would have a better outcome.
We question whether publication of a tax strategy in a prescribed form would be something that either HMRC or stakeholders ‘need’.

Clarity vs complexity
In its Charter, HMRC commits to asking ‘only for the information needed’ and promises to respect the privacy of taxpayers. However, we question whether publication of a tax strategy in a prescribed form would be something that either HMRC or stakeholders ‘need’.

While many of the elements of the example tax strategy proposed by HMRC are relatively uncontroversial and reflect the day to day practice of many businesses, the value of this information to the whole range of stakeholders is unclear. While the CbCR proposals, for example, promote disclosure to HMRC, publication more broadly raises difficult questions as to how best to balance clarity and accuracy to meet the needs of some stakeholders, with a less complex approach to meet the needs of others.

Bringing balance
If HMRC is satisfied that the organisation is compliant and fulfilling all its tax reporting obligations, a more balanced solution would be for organisations to decide for themselves the extent to which they decide to make a more public disclosure based on the commercial realities of the business.

Tax strategy example contents
- Overview of internal governance
- Approach to risk management
- Attitude to tax planning and appetite for risk in tax planning (for example, seeking to work in accordance with the spirit as well as the letter of the law)
- Attitude to the relationship with HMRC
- Whether the UK group has a target effective tax rate (ETR), what this is, and what measures the business is taking to maintain or reach this target ETR
- Evidence to demonstrate the application of the tax strategy in practice
- Whether the organisation is a signatory to voluntary Code of Practice
Publication vs disclosure to HMRC

Also on the point of asking only for information that is ‘needed’, it has yet to be proven that publication of a tax strategy is the best way of achieving HMRC’s stated objective of promoting behavioural change. This also raises the question of whether HMRC is equipped to decide what stakeholders actually want to see. By way of comparison, the Australian Tax Office has produced guidance on tax risk management and governance as a way of spreading best practice, but has not used it as a way to add new compliance obligations for businesses.

Spain has also introduced a Code of Practice which arguably provides a better balance between taxpayer and tax authority, emphasising a reciprocal cooperative relationship. The Spanish Code of Good Tax Practices is intended to apply to both the tax authority and taxpayer, setting out best practice for both. Likewise, Italy has introduced a new cooperative compliance program for large businesses with adequate internal controls which provides qualifying taxpayers with certain benefits including accelerated rulings.

Openness vs commerciality

One of the more potentially troubling elements proposed in HMRC’s suggested tax strategy content and one which further highlights the move away from the Charter pledge to respect privacy is the requirement to state whether the UK Group has a target effective tax rate (ETR) (defined in the consultation document as ‘the rate of taxation that the group actually pays’) along with the associated planning measures in place to deliver this.

Firstly, it is far from clear that a target ETR is a common factor in tax strategies – indeed less than a third of respondents at our seminars had a target ETR and only 6% had a UK-specific target ETR. Secondly, for many organisations, the quantum of a target ETR would constitute commercially sensitive information; a point echoed by 61% of respondents at our seminars.

Questions also arise around definition and comparability, the commercial and pricing sensitivity of such information and the possibility of adverse behavioural change to meet a target once published.

Given that a target ETR without associated context is unlikely to be a useful tool for stakeholders in any event, it remains unclear what value publication would actually bring.

Bringing balance

We believe that making the details available to HMRC on a confidential basis would be more effective than a published tax strategy document, the contents of which would be subject to restrictions on the basis of confidentiality and the need to be easily understood by a lay audience. By asking to see a tax strategy document, HMRC would also be able to validate that businesses had the necessary tax governance in place.

Bringing balance

During the consultation period, HMRC indicated that it was reconsidering publication of the target ETR as a requirement.
Keeping costs of dealing with HMRC low

The issues of both transparency and corporate governance have been a focus for businesses and their stakeholders for a number of years.

Existing measures vs new rules

Despite committing to keeping the cost of dealing with HMRC as low as possible, the administrative and financial cost of the proposals could be significant. In particular, they risk adding an additional layer of compliance to an already complex regime. The issues of both transparency and corporate governance have been a focus for businesses and their stakeholders for a number of years with the significance growing since the advent of the ‘fair tax debate’ and the Public Accounts Committee investigation into tax paid by large multinational companies.

Since then, the range of measures involving transparency both to tax authorities and the public has increased significantly while a number of governance initiatives have also been introduced through company regulation measures. A key issue for UK businesses will, therefore, be balancing the new requirements in HMRC’s proposals with an already growing list of obligations.

From a transparency perspective, it is notable that, aside from the Disclosure of Tax Avoidance Schemes provisions, the other recent developments have all been incorporated into UK law as a result of international initiatives which shows the benefit of acting together, rather than creating specific rules for the UK. However, it also means that, while there may be some consistency in objectives, the output required by each is different. It is also notable that public transparency measures have been introduced as company law or accounting requirements, rather than as requirements of the tax authority. Whether intentional or not, this removes a potential conflict between the important principle of the tax authority safeguarding taxpayer confidentiality and the needs of wider stakeholders and the public for adequate taxpayer transparency.
Existing measures: Transparency to tax authorities

- BEPS Action 13
  - Masterfile and local country files
  - Country by country reporting (CbCR)
- Exchange of information requirements
- Foreign Account Tax Compliance Act (FATCA), Common Reporting Standard (CRS)
- Tax planning arrangements
- UK Disclosure of Tax Avoidance Schemes (DOTAS)

Existing measures: Transparency to the public

- Extractive Industries Transparency Initiative
- EU Accounting Directive; Capital Requirement Directive IV
- EC Tax Transparency Package – possible public CbCR
- Uncertain Tax Positions (US SEC)
- Companies Act

Recent initiatives impacting the governance of UK businesses

- Senior Accounting Officer regime
- Banking Code of Conduct
- CBI Tax Principles
- Fair Tax Mark
- Tax issues now part of FTSE4Good and Dow Jones Sustainability Indices evaluation criteria
- Overseas governance codes eg Australia, Spain
- Taxpayers’ Charter

In any event, as other countries produce their own rules, multinationals may end up having to deal with many subtly different regulations across the territories in which they operate. We welcomed coordination of disclosure requirements in respect of country-by-country reporting as part of Action 13 of the G20/OECD’s BEPS agenda, which avoided a myriad of disparate formats and obligations. To undermine this process by unilaterally introducing another set of transparency rules would be an extremely negative development.

Recent developments around governance introduce different but equally compelling challenges. Given the changes to the UK Corporate Governance Code, it is not surprising that many organisations have redesigned/refreshed their tax governance procedures already. Amongst other things, this has resulted in many having formalised a set of governing tax principles and, for some, these have been included within a board approved group tax policy document. So, once again, for many organisations, the new proposals will add a layer of complexity and could move them from a tailored approach to a less appropriate generic one with associated costs to comply.

Bringing balance

The need to implement a range of processes to ensure compliance puts additional pressure on organisations. As new initiatives emerge and other countries implement their own, this burden is likely to increase. Rather than adding another set of obligations on UK businesses, the Government should consider whether a more coordinated approach is warranted.
“Over half of respondents at our seminars have either a tax strategy that is not documented or do not have a formal tax strategy at all.”

Cost for business vs cost saving for HMRC

While standardising the tax strategy information published would be easier for HMRC to administer (and thus more cost effective), over half of respondents at our seminars have either a tax strategy that is not documented or do not have a formal tax strategy at all. For these organisations, the time invested in developing a documented tax strategy to satisfy the requirements of this new regime could far outweigh the potential value for stakeholders, including taxpayers as a whole. The processes and procedures currently associated with Board meetings and the publication of associated information are already onerous (and arguably rightly so).

Before adding to this burden, the Government should be mindful that the significant in-house resources within some FTSE100 businesses do not compare with many other companies that fall within LBD.

Given that determining which elements to include in published data is likely to be the subject of some debate around both clarity and the types of information that stakeholders require, the range of tax strategy data currently published by FTSE100 organisations illustrates that there is no ‘one size fits all’ – disclosures will need to be tailored to balance the demands of all stakeholders.

While HMRC has provided insight as to what it expects the published tax strategy to contain, the extent to which groups will be able to summarise this information in an easily navigable format remains to be seen.

Figure 4: Has your tax strategy (that includes the UK) been approved by the board?

- Yes – we have a documented strategy approved by the board (34%)
- We have documented strategy, but not approved by the board (27%)
- Our strategy is not documented (20%)
- We do not have a formal tax strategy (19%)

Based on responses to our survey – Percentage of 403 responses

Bringing balance

If the conclusion from the consultation process is that tax strategies must be published, allowing groups to tailor it to their own requirements is likely to be more meaningful and cost effective than one where they are required to make a specific set of disclosures that is dictated in advance.
Hard law vs soft law

Not only could the new regime provide new ground for disputes with HMRC (for example, on whether or not the tax strategy has been implemented in practice, or on whether particular decisions taken by internal governance procedures give the right result in tax law terms), it could also affect the whole landscape for engaging with HMRC, tilting the balance beam away from the scenario where businesses and HMRC work together to understand the application of the law to specific cases and removing incentives on HMRC officers to work collaboratively with businesses to resolve genuine differences in view.

Bringing balance

As acknowledged in the consultation document, HMRC has found the relationship management approach to be cost-effective in managing tax compliance by large businesses. Upsetting the cooperative compliance balance – described by the OECD as ‘transparency in exchange for certainty’ – risks adding unnecessary costs for both HMRC and businesses. Our 2015 Budget survey shows that uncertainty associated with the tax system is one of the key factors impacting the attractiveness of the UK as a place to do business and the extension of soft law will only exacerbate this problem. If making the UK the best place in the world to locate a business really is an objective for the Government, providing certainty around tax issues should be top of the agenda.
Tackling those who break the rules

During the consultation period, HMRC made it clear that the ‘special measures’ element of the proposals relate to the very few (perhaps two or three) organisations that enter into a significant number of tax avoidance schemes or for whom information notices are repeatedly issued before information is provided.

The many vs the few

The existence of the SMR is expected to act as an incentive for all large businesses to meet HMRC’s expectations of low risk behaviour. However, with so few organisations expected to be impacted, it begs the question of whether it is appropriate to introduce such radical change to target so few.

At first glance, this is one area of the proposals that reflect the Charter, where HMRC acknowledges that the great majority of taxpayers are honest and wants to protect them from the effects of taxpayers deliberately breaking the rules. However, it goes on to set out its obligations as focusing on identifying those who are not paying what they owe or claiming more than they should. The proposals in the consultation document go some way beyond this by applying a set complex and costly measures on the majority in order to change the behaviour of the minority.

Specifically, in the Charter, HMRC indicated that its remit in this regard is limited to recovering money owed and charging interest and penalties where appropriate. Even more importantly, HMRC commits to using its powers reasonably. We would argue that far from being reasonable, the proposals in the consultation document impose an unwarranted burden on businesses and introduce an unreasonable level of complexity and uncertainty to the UK tax regime.

Bringing balance

The time spent designing and implementing the special measures regime, would perhaps be better spent working directly with the specific organisations most likely to be impacted by it.
In fact, the burden on business will arguably outweigh the value to stakeholders – many of whom will, after all, have the success of the business at front of mind. Indeed, taking ‘UK Plc’ as the ultimate stakeholder, the proposals bring little tangible value and much that gives cause for concern.

Another concern for business will be the extent to which the proposals, once implemented, will be supplemented by later developments to further control their approach to tax.

As a device to ‘help make the UK the best place in the world to do business’, the proposals are far from ideal. In fact, in their current form, they could result in a significant decrease in the competitiveness of the UK’s tax administrative regime and could instead represent a very real deterrent for organisations considering the UK as an investment destination. At the heart of the issue is the step change in the relationship between businesses and their CRM with an apparent move from cooperative to coercive compliance.

The next step in the Large Business Tax Compliance process is for the Government to consider the responses it receives before finalising the proposals and implementing the measures. There is still time to reflect on the issues raised here and halt the seemingly inevitable move towards coercive compliance. We are in favour of getting tax administration right and support the need to the tools to tackle those who break the law. However, targeting every large business is not the right way to approach things.
There is also time for the Government to reconsider the changing role of HMRC. As illustrated here, the Large Business Tax Compliance consultation is the most recent in a long line of developments which makes it easy to consider it in isolation when, in fact, it the proposals represent the next step in an ongoing process. At some stage, the Government, HMRC and businesses should look at the whole journey and ask whether we are going in the right direction. In particular, they should consider whether it is right that the role of HMRC is changing so significantly and ask whether doing so through this route is appropriate.

Addressing the competing demands of business and the changing role of HMRC is never going to be easy but a degree of trust is required along with a recognition that businesses are all different and need to be able to focus on commercial realities rather than administrative burdens. If the role of HMRC as tax administrator becomes confused with that of a tool for meeting Government objectives without the need for legislative or regulatory change, the good work of the Corporate Tax Roadmap could be undermined. Businesses need certainty and that comes from clarity over what they can expect from revenue authorities.

However, if the Government and HMRC can get it right, the UK will be in an enviable position in terms of being an attractive place to do business. By ‘getting it right’ we mean:

- Encouraging businesses to follow best practice rather than mandating approaches
- Not setting in stone rules that may not be relevant for all businesses
- Understanding that businesses understand what their stakeholders need and will evolve their working practices to suit.
- Recognising the long-term value of a tailored approach over the short-term cost efficiencies of ‘one size fits all’

It’s about striking the right balance.

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**How businesses can respond**

Organisations who are ready for the changes will be able to respond most effectively, so businesses looking for ways to respond to these and other potential changes to the reputational risk environment should consider as soon as possible what their published tax strategy would look like, how they could demonstrate application of the strategy in practice and which Executive Board member (if not the whole Board) will take responsibility for that strategy. The issue of whether to sign the Code of Practice and the potential impact of not doing so should also be considered at the earliest opportunity.

**Other responses business should consider include:**

- **Setting out clear objectives with the CRM – making this relationship ‘work’ will be critical**
- **Engaging with stakeholders at the earlier opportunity to design an approach**
- **Proactively monitoring the changing global regulatory landscape**
- **Assessing readiness to respond to questions from all stakeholders**
- **Having a clear view of what existing external tax communications say about the organisation – making changes when appropriate in readiness for legislative requirements to publish their tax policy**
- **Drawing upon the global tax footprint information to ensure a consistent story is given to all stakeholders**
- **Identifying all stakeholders and remembering these can be internal as well as external**
- **Reviewing their tax governance, risk and control framework in response to increased stakeholder interest and as part of their SAO compliance**
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