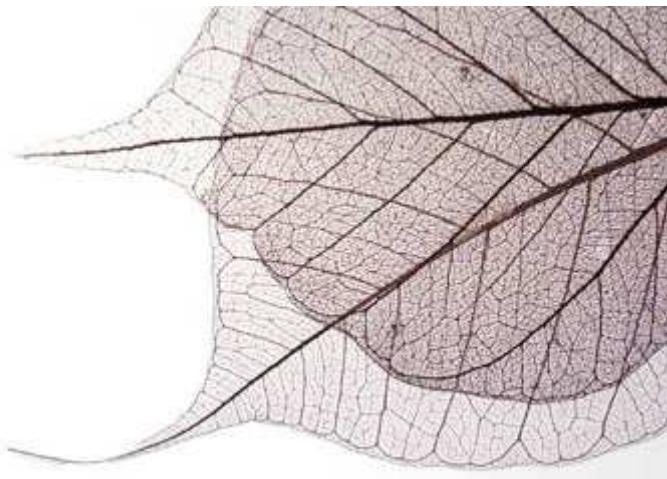


TAX TRANSPARENCY: THE TAX LANDSCAPE



The Association of Revenue and Customs (ARC) is both an independent trade union and the HMRC section of the FDA, the trade union for senior managers and professionals in public service. We represent around 2600 members in HMRC, at grade 7 and above, as well as trainees in grade 7 entry schemes. We articulate the views of senior staff working in HMRC to collect taxes from individuals and businesses operating in the UK and are recognised as a stakeholder on professional matters. We have not sought the endorsement of HMRC in respect of the comments which follow.

ARC is firmly committed to the principles of equality and diversity in both employment and in the delivery of services. We believe that ensuring the fair application of tax laws for everyone, be they the largest multinational or a sole trader below the VAT threshold, fits well with our policy aims. In order for those principles of openness and fairness to be delivered we believe that certain pre-conditions or building blocks need to be in place. We set out below, as a thought piece, our view of how those building blocks might best be applied. We consider 6 Areas:

- Policy and Legislation
- Customers
- Advisors and Representative Bodies
- Civil Society
- Customers
- Tax Authorities

Policy and Legislation

Taxation policy would be developed through a clearer route. Sufficient time would be built in to allow for early discussion and formal consultation on new or changed policy and its aims would be set out early in the process. Comment would be invited on both the desirability and practical application of proposals. The goal would be to enact law with a clear purpose in mind and that the rationale for such law is clear to taxpayers and their advisors. Legislation should be drafted with clarity and without undue complexity. There should be no room for avoidance within the drafting and where necessary anti-avoidance provisions should be built in at an early stage. We believe that the principles of a General Anti Abuse Rule are to be welcomed.

HMRC would set out the rationale for legislation, its intention and its understanding of how it would apply in practice. HMRC would also set out the circumstances when and where it would consider taking assurance or enforcement action. Taxpayers and their advisors would be in a position to rely on such statements however in giving such assurances there must also be room to allow for unforeseen or novel approach to application in practice to be effectively challenged.

To improve scrutiny Parliament would have access to a greater level of professional tax advice than currently. This could be done by making additional staff available to Parliamentary Committees such as the Treasury Select, Public Accounts, and Lords Economics Affairs. An alternative would be to create a new body with a role akin to that of the Office of Budget Responsibility (OBR). Such a body could be staffed by secondees from HMRC. Similar arrangements are already in place for staffing the Office of Tax Simplification (OTS) and the Adjudicators Office. Other alternatives could be to have staff drawn from academia or professional firms. However it is done the aim would be to increase the capacity and support available to politicians to scrutinise the impact of tax proposals. Questioning would be better informed and directed at clear weaknesses or risks in legislation or taxpayer behaviour. We would also envisage that when considering parliamentary scrutiny there would be an opportunity for Civil Society to join in the debate and ensure its views are heard.

Customers

Given the continuing public and political interest in taxation measures it might be expected that the larger a business the more information and explanation it would seek to provide on its activities and rationales in relation to taxation. This is a sensitive area, given that business is already regulated by statute, accountancy and audit requirement. But commercial drivers and public expectation may require greater disclosure over and above that which is needed under current requirements. For instance, HMRC already shares Risk Assessments with Large Business customers and those customers themselves may see a benefit in making such assessments available to customers as part of their annual report.

Business may wish to consider developments such as a Fair Tax Mark, or that of the “Responsible 100”. Indeed as public interest in the taxation field continues to rise customers may strongly welcome participation in such areas. It may be possible to develop a “transparency or compliance mark” for companies adhering to a clear set of principle around tax and financial dealings, a Tax Kite Mark if you like. This could well fit well with the concept of Corporate Social Responsibility (CSR). Most large businesses are familiar with and welcome the CSR model and it is not unusual to see statements in relation to Green Policy, the application of the National Minimum Wage or Living Wage policies on staff. The idea of Business in the community is well recognised and accepted and a clear statement on taxation policy fits in well with such developments.

Advisors and their representative bodies

Advisors would ascertain, at an early stage of engagement with clients, the client's attitude to tax risk and transparency. Advisers may want to commit to the principles of transparency in their dealings with clients. In such cases it may be appropriate to consider creating an independent body to ensure that those principles of Transparency were being adhered to. This could be built on concepts such as the Trusted Tax Adviser, or on other alternative initiatives relating to transparency.

Currently there is scope for advisors to act without a requirement to be a member of a professional association. We believe that this is undesirable from the point of view of all, including industry and customers. The professions might be encouraged to move to a more regulated status, something akin to the Legal profession, with a requirement to belong to a professional body and working to a set of guiding principles for those giving tax advice. This move would complement the work of the Institutes in setting out and enforcing their codes of conduct and required ethical behaviour.

Advisors would warn clients of the risks attached to a possible set of transactions, or planning decision. The idea would be to encourage clients to consider other commercial benefits of such a policy and not to regard tax savings as the only or main driver for commercial activity. In getting to this point agents would be able to place greater reliance on guidance from HMRC and groups like the GAAR panel.

'Civil Society'

Civil Society is a growing voice in the Community; it has been much emphasised in recent political initiatives. Civil Society would act, in a true sense, as the court of public opinion. For this to happen Civil Society itself needs to be better informed. There are alternative analyses and views on recent developments in tax policy and administration (such as on the patent box or UK Tax Competition) that are based on an informed understanding of these areas. But some of the frustration with the current position, and suggested remedies, arises out of a wider lack of knowledge and understanding. Addressing that understanding gap is one of the key aims and drivers behind the work of our "Public Understanding" group.

By definition greater transparency means greater knowledge, Civil Society would be better informed by the access to greater information and analysis at all stages. Transparency would be built into the process like the letters in a stick of rock. It would be there from the creation of policy and legislation, through improved Parliamentary scrutiny and the involvement of bodies representing NGO's. The extra information businesses would provide, with clear guidance and views from HMRC that can be relied upon and the kind of work being initiated by our public understanding group will help improve that scrutiny.

Tax Authorities

Setting aside for the moment the wider European and International bodies like OECD whose work may become increasingly important in the context of tackling international base erosion and profit shifting. We believe that HMRC should be fully resourced to ensure that the professional skills that ARC members bring to bear may be better targeted and utilized. ARC welcomed recent steps taken by HMRC to increase its capacity to tackle tax loss and reduce the Tax Gap. But we believe that more can be done to reduce the budget deficit. A tax system that is fair to all can only be achieved if HMRC has sufficient resources to tackle tax avoidance and evasion across all sectors. This work is highly cost effective, repaying the investment in skills and resources many times over. HMRC need to continue investing in its cadre of highly skilled and knowledgeable tax professionals to build and strengthen existing expertise. It is also true to say that moves to encourage greater Transparency and compliance with regulation will only be successful if HMRC is resource as a backstop to egregious behaviour. It helps no one if in applying greater openness brings with it a commercial disadvantaged to those customers committed to such openness when compared to the less compliant. A properly resourced HMRC can guard against that outcome.

Better policy and legislation make Parliaments intentions clearer, better guidance removes doubts and HMRC will provide better assurance if it is better resourced.

Conclusion

ARC believes that much can be done to improve the public's understanding of and the application of Tax Policy but for that to happen there needs to be a concerted effort from all of the players in the field to improving; policy, law, practice and openness.

We believe that openness and transparency makes for better law and understanding for the taxpayer, the advisor and for society as a whole. For transparency and openness to be a success we need to ensure that the playing field is level. HMRC's primary route to better compliance must be

predicated on a desire to help its customers to get things right at the first time of asking but it must also retain the capacity to react and deal with those who are determined to bend or break the rules.