Business Services Association
130 Fleet Street,
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EC4A 2BH

BSA – The Business Services Association

Improving Large Business Tax Compliance consultation response

October 2015

The BSA is pleased to have the opportunity to respond to this consultation from HM Revenue & Customs on improving large business tax compliance through measures to boost transparency, promote positive behaviours and attitudes to tax compliance, and tackle serial offenders.

The BSA – the Business Services Association – is a policy and research organisation. It brings together all those who are interested in delivering efficient, flexible and cost-effective service and infrastructure projects across the private and public sectors. The business services sector accounts for over 9.3 per cent of economy-wide gross value added to the economy with an annual turnover of around £263 billion, and employs 3.3 million people, or 10 per cent of the UK workforce.[1]

The BSA supports the Government's aims to improve transparency and promote best practice in tax strategy and governance. Many BSA members already have an appointed Senior Accounting Officer and work closely with HMRC to ensure responsible tax behaviours within their companies. The Government and HMRC should acknowledge the progress that has been made by large businesses in this sector towards accountability and transparency and be aware of the deleterious effect of unnecessarily burdensome regulation as it seeks to implement the proposed changes.

In all matters, HMRC should also take into account the intended purpose of these measures which is to drive further behavioural change in large businesses and to embed best practice in tax compliance in the population as a whole. To achieve these positive outcomes, we believe a flexible and responsive framework approach will be most effective as it gives businesses the opportunity to tailor their strategy to their current approach and build upon their existing successes.

It is also important for HMRC to provide clarity on key terms and to ensure that phrases used in the legislation or in the Code of Practice are not left highly subjective and open to misinterpretation.

Finally, as HMRC calls for large businesses to engage with them in a collaborative and constructive way, the BSA would like to emphasise the importance of a reciprocal relationship with HMRC itself promoting open dialogue and committed to providing relevant information in a fair and timely manner.

In these ways, we hope that the positive behaviours already exhibited by large companies can be successfully developed to continue to improve transparency and accountability within a responsible and responsive framework.

We have structured our response to look at the most relevant questions raised in the consultation.

[1] Oxford Economics - The UK market for business services, The national, regional and constituency picture in 2013 – January 2015

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Q1. Do you agree that the threshold above (£200 million / £2 billion) is appropriate for these measures? What other thresholds might we use?

The BSA believes that this threshold is appropriate for the measures suggested. However, government should consider individual businesses' responses to understand the additional burden of regulation they will face and should take their views on this matter into account when setting the threshold.

Transparency

Q2. Do you agree there should be a named individual at Executive Board level with accountability for a business's published tax strategy? If so, do you have any views on who should this be?

The BSA accepts that tax responsibility is shifting to the Board and that accountability for a business's published tax strategy should therefore lie at the Executive Board level. However, a business' tax strategy will necessarily be a strategic approach and therefore should be a board's collective responsibility rather than an individual's personal duty. Unlike the role of the Senior Accounting Officer, in which an individual can take reasonable steps to ensure appropriate tax accounting arrangements within a company, it is not possible for any single Board member to have complete oversight of such a broad strategic issue. We therefore recommend that accountability for a business's published tax strategy sits collectively with the Executive Board.

Q3. Do you think the areas above are the right areas for a published tax strategy to include? If not, what other aspects of tax strategy are more relevant? Equally, what aspects do you think are less relevant?

- **Overview of internal governance**
  The BSA agrees that this is relevant for inclusion in a tax strategy.

- **Approach to risk management**
- The BSA agrees that this is relevant for inclusion in a tax strategy.

- **Attitude to tax planning and appetite for risk in tax planning (e.g. whether they seek to work in accordance with the spirit – in addition to the letter of the law);**

  "Tax planning" is a term which presents difficulties as it carries negative connotations, especially in the public sphere, which lead to confusion as to its meaning. It is often conflated with the concept of "aggressive tax planning" (as defined in Annex C of the consultation), or "tax avoidance" when, as the consultation document acknowledges, there are legal and proportionate levels of tax planning which responsible large businesses can reasonably do. It would therefore be helpful for any guidance to include a definition of non-aggressive tax planning and a statement from HMRC setting out what it deems to be acceptable to ensure that companies are able to candidly discuss their approach to tax planning without unfair censure.

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Clarity is needed on what "the spirit of the law" is. As an undefined concept, it creates an unhelpful dilemma for companies who aim to comply with "the spirit of the law" but who may have concerns about including the term in a formal document when it is open to subjective and variable interpretation. A more definable and useful point for inclusion may be whether a company is signed up to the voluntary Code of Conduct as proposed in section 3 of the consultation. This should not be compulsory (see question 5) but would be of relevance at this point if a company chose to include it.

- **Attitude to their relationship with HMRC;**

  This is relevant for inclusion and is another point at which companies could reference the Code of Conduct should it be appropriate.

- **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.**

  We believe that recommending the publication of a target ETR for the UK Group would be unhelpful to the stated aims of these measures. The consultation document states that the proposals will provide "a fairer, more stable environment to do business and support UK competitiveness".

  In light of this, the recommendations should note that publishing a target UK ETR will be impossible for many companies who do not set separate national target ETRs. This many unfairly damage their reputation if it is assumed that they are choosing not to publish because they have something to hide.

  For those who do have and can publish a target UK ETR, there is a strong risk that this figure will be taken out of context and misused or misinterpreted. A single figure cannot convey a company's attitude to tax planning nor can fair judgements be made without additional information.

  In addition to this, publishing target UK ETR figures will be of limited use publicly for those wishing to know more about a businesses' tax strategy. There is a lack of public awareness around tax policy for large businesses and what is deemed acceptable by HMRC and lawmakers. In this environment, target ETR figures are likely to at best become a distraction from the wider tax strategy being published, at worst create a negative public atmosphere which makes it difficult for companies to increase transparency for fear of seeing information misinterpreted.

  The BSA therefore recommends that businesses should have the option to publish a target UK ETR should they choose but it should not be laid out in the recommendations for the tax strategy and weight should not be given to instances where a company cannot, or has chosen not to, provide a figure.

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Q4. Should the tax strategy be supported by publication of factual information on how it has been applied in practice? If so, what information would be most relevant to demonstrate the application of the strategy?

Information demonstrating the application of a tax strategy could come in many forms. Every company has a different tax governance system and accounting arrangements and it is therefore impossible to prescribe what evidence companies should provide without adding an unnecessary and unreasonable burden upon businesses.

Many companies may choose to outline in their tax strategy the measures they have in place to ensure its full application and so supporting factual information will be part of the published text. Others may wish to provide additional information separately and in the format most appropriate to them. HMRC should therefore aim to minimise burdensome regulation and promote flexibility and relevance by allowing companies to include supporting evidence where and when it makes sense for them to do so.

Q5. Do you think that businesses should be required to publish whether they are or are not a signatory to the 'Code of Practice on Taxation for Large Business' as part of this measure?

The consultation document states in Section 3.8. "Unlike the Banking Code, HMRC does not intend to name (or otherwise publish any information on) signatories to, or compliance with, the Code, or otherwise publicly identify which businesses are or are not signatories". It therefore seems inconsistent to require businesses themselves to publish whether they've signed up to the Code of Practice.

Additionally, the document states that the Code aims to "encourage all business to adopt the most positive tax compliance behaviours, and…offer large businesses a means to demonstrate their commitment to these standards and have that recognised". The Code therefore does not exist to "name and shame" those who have not signed up but to acknowledge those that have and to encourage industry-wide behaviour change. It should be up to companies to decide whether they wish to publish their status regarding the Code and should be kept as a positive attribute for a company to publicise rather than a tool of coercion against those who have not.

Q6. What is the right medium for publication of a tax strategy? Where do you think a business's tax strategy should be published?

Business's tax strategies should be publicly available but businesses should have the choice as to where it is published, whether that be on their website, in their annual report, in a press release, or elsewhere. This will allow companies to publish information in a manner appropriate to them and in the context in which it was written and agreed.

It should also be recognised that a business' tax strategy will not necessarily change significantly over the course of a year. Companies should therefore not be required to compile a new tax strategy each year, but should be required to review and update their policy annually to ensure it remains in line with changes to government policy or internal developments.

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Q7. What would you see as an effective sanction for non-publication? To whom should this apply?

Any sanctions for non-publication must be fair and not increase the burden of regulation upon businesses disproportionately. Therefore sanctions must reflect that businesses may need time initially to create and publish a tax strategy in this format, and give due consideration to the burden on businesses that new regulation will create. Sanctions should be targeted at those who repeatedly fail to publish the information or those who can be proved to have wilfully misrepresented their tax strategy, rather than companies who have made honest mistakes or struggled to publish the information due to internal challenges.

Code of Practice on Taxation for Large Business

Q8. Do you agree that the openness and relationship behaviours contained within the Code of Practice are appropriate for large businesses? Are there any other behaviours you would expect to see?

The BSA believes that the openness and relationship behaviours contained within the Code of Practice are broadly consistent with the values and conduct of our members.

We are concerned that HMRC will not offer routine opinions on the extent to which specific transactions are or are not 'Code compliant' as this creates a tension with the clause that businesses will "engage in open early dialogue with HMRC to discuss tax strategy, planning, risk and significant transactions and fully disclose any significant uncertainty in relation to tax matters". It would be beneficial to businesses which had voluntarily signed up to the Code of Practice to have a route to opinion with HMRC to ensure that this open and constructive dialogue can be maintained. It would also present HMRC opportunities to resolve issues early on and would provide greater insight into the issues which businesses find unclear in tax policy.

It is also key that the positive relationship built between HMRC and businesses is reciprocal with HMRC working to provide fair, accurate and timely information and maintain collaborative working relationships with their customers. Where disagreements arise, businesses would value proactive engagement from HMRC to resolve issues by agreement and in real-time where possible.

Q9. Do you agree that the governance behaviours contained within the Code of Practice are appropriate for large businesses? Are there any other behaviours you would expect to see?

BSA members fully support the principles of transparency and accountability which the governance behaviours within the Code of Practice promote.

Regarding clause 3.16 on "governance in action", we refer to the issue of supporting evidence for a tax strategy in our answer to question 4. We believe that if additional evidence is required, the nature of this information should be left flexible and responsive to businesses' needs especially as this clause has been left purposefully open.

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It should be noted however, that HMRC has stated that signature of and compliance with the Code would be viewed as an indicator of lower-risk behaviour. It therefore seems unnecessary to demand evidence of signatory's tax governance beyond the norm and unfairly burdensome on those who have shown they are already positively engaged with HMRC.

Q10. Do you agree that the tax planning behaviour contained within the Code of Practice is appropriate for large businesses? Are there any other behaviours you would expect to see?

The clarity from HMRC on the legitimacy of tax planning is welcome but, as stated above, additional definitions on tax planning and HMRC's stance would be helpful.

It is also important to note that clause 3.20 is currently highly subjective as it stipulates "In all cases, the business should reasonably believe that transactions are structured in a way that gives a tax result which is *not contrary to the intentions of Parliament*". As Parliament's intentions are ever-changing, to provide clarity we suggest that this could be amended to say, "*not contrary to the intentions of Parliament when the law was passed.*"

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Appendix – List of BSA Members

Full Members:

Accenture plc
AECOM
Amey plc
ARAMARK Ltd
Atos
Babcock International Group plc
Balfour Beatty plc
Bellrock Ltd
Berendsen plc
Bouygues Energies and Services Ltd
British Telecommunications plc
Capita plc
Carillion plc
Cofely UK
Compass Group plc
Costain Group plc
Elior UK Ltd
G4S plc
Interserve plc
ISS UK Ltd
Kier Group plc
Laing O'Rourke plc
Maximus UK Ltd
Mitie Group plc
MYFM Ltd
OCS Group UK Ltd
People Plus
Pinnacle PSG Ltd
Prospects Services Ltd
Seetec Group Ltd
Serco Group plc
Skanska UK plc
Sodexo Ltd
SopraSteria Ltd
TerraQuest Solutions Ltd
Veolia (UK) Ltd
Vinci UK Ltd

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Barclays Corporate
Bevan Brittan LLP
Clyde & Co
Deloitte LLP
DWF LLP
ECI Partners LLP
Grant Thornton LLP
KPMG LLP
Metzger Ltd
Nabarro LLP
Navigant Consulting Ltd
PA Consulting Ltd
Pinsent Masons LLP
PricewaterhouseCoopers UK LLP
Reynolds Porter Chamberlain LLP
Royal Bank of Scotland Group Plc
Sharpe Pritchard LLP
Trowers&Hamlins LLP
Warren Partners Ltd