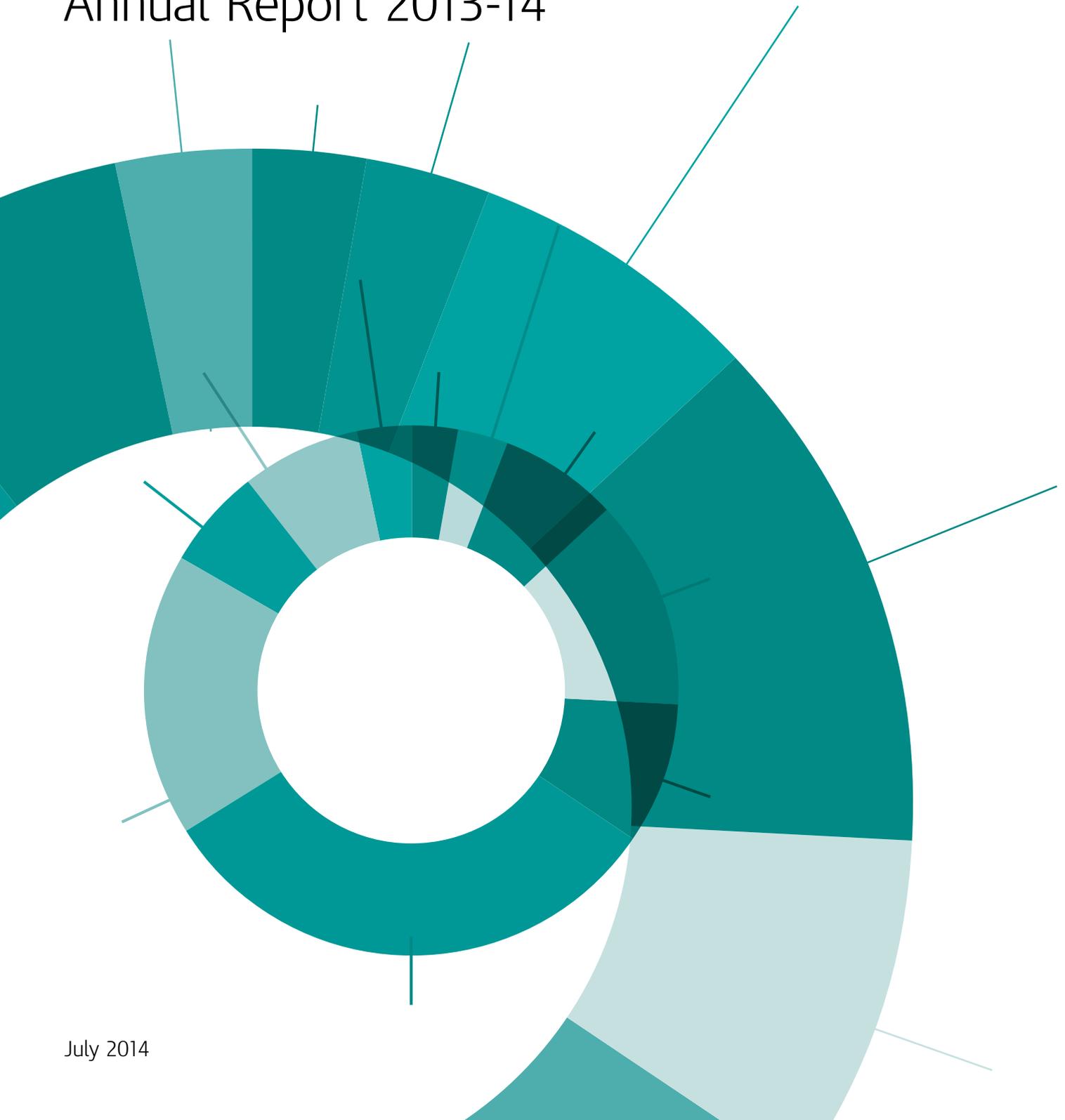




HM Revenue
& Customs

How we resolve Tax Disputes

The Tax Assurance Commissioner's Annual Report 2013-14



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Foreword



Edward Troup

Second Permanent
Secretary and Tax
Assurance Commissioner

This is my second annual report on how we resolve tax disputes within HMRC. It covers the first full year of the strengthened governance processes we put in place to provide assurance that all disputes, large or small, are resolved in a consistent and even-handed way. Across business areas, teams have responded to the challenge of improving processes and I am heartened to see a stronger focus on governance and assurance.

HMRC inevitably continues to handle a very large number of tax disputes. The majority of these are settled by agreement under the governance arrangements for which I hold responsibility. In a small proportion of cases, disputes cannot be resolved without litigation. Where litigation is necessary, HMRC wins more than three quarters of the cases we take. A theme of this year's report is to bring out how we use collaborative working in cases large and small to resolve disputes without litigation, because it is the most efficient and effective approach.

There has been a good flow of cases through the Tax Disputes Resolution Board and Commissioners this year, and an increasing number of cases have been seen by our business-level governance boards. I am pleased with the progress we have made in embedding these boards and ensuring that our tax professionals understand and work well with our strengthened governance arrangements.

I accept, though, that we still have more to do. Our review of a sample of cases settled in 2012-13 (carried out by our Internal Audit team) has identified some areas where we need to do better to ensure that procedures are applied consistently. We are working hard to improve in these areas and are increasing our efforts to strengthen quality assurance across our work at different stages. Chapter 5 provides further details on the steps that we have taken so far.

Our focus next year will be on following up these points and seeking assurance that the changes we have put in place are beginning to address the areas where we need to improve.

Once again I have been hugely impressed by the professionalism and skill of HMRC staff across the department, who have worked to resolve disputes and bring the right tax into the Exchequer. In the cases I have seen, the quality of the fact-finding and the articulation of the technical arguments have continued to reassure me that HMRC does excellent work, which achieves good outcomes for the Exchequer and consistent and even-handed resolution of disputes for taxpayers.

Across the piece, this has been a very successful year for HMRC, with record levels of tax receipts and compliance yield, our best-ever performance in handling calls to our contact centres and tax credit error and fraud reduced to its lowest level ever. I am very pleased that our work on tax assurance has been able to support these high levels of performance and to help maintain the integrity and reputation of the department.

Audit and Risk Committee Statement



John Whiting

Chair, HMRC Audit
and Risk Committee

The Audit and Risk Committee is chaired by John Whiting (Non-Executive Board Member).

Other members are Paul Smith (Non-Executive) and Leslie Ferrar (Non-Executive). Lin Homer (Chief Executive), Simon Bowles (Chief Finance Officer), and representatives from the National Audit Office and the Head of Internal Audit are standing invitees.

The Audit and Risk Committee continues to take a close interest in HMRC's governance and assurance processes for tax disputes and their development and implementation. We have received regular updates, enabling us to provide oversight to the work that HMRC continues to carry out in this important area. It is still relatively early in getting these strengthened governance arrangements established and therefore work still focuses on making sure they are understood and operated appropriately. We are satisfied that HMRC is approaching this properly and constructively.

The committee has also agreed the programme and approach for the work carried out by HMRC's Internal Audit team to review the processes used in settled cases and has received reports on the findings (see Chapter 5). We have discussed the programme of Internal Audit work for 2014-15 and will be paying close attention to its findings. We expect to see continuing improvement in HMRC's procedures, but in the meantime confirm we are satisfied with HMRC's actions in the light of the results of Internal Audit's 2013-14 findings.

We have seen this report in draft during its preparation. It is not our function to audit the report, but we have had the opportunity to comment on the drafts and challenge the information presented. We believe that the report is a fair report on and representation of HMRC's governance and assurance of its largest and most sensitive tax disputes.

Chapter 1. Introduction and context of tax disputes

The vast majority of tax disputes are resolved by agreement, following discussions between HMRC and the taxpayer

A key part of HMRC's strategy is to reduce the scope for disputes about tax to arise in the first place. We are striving to make it easier for all taxpayers to get things right the first time, but we recognise some differences of view will always arise in our interactions with taxpayers.

Where tax disputes do arise, our Litigation and Settlement Strategy (LSS¹) sets out our policy on how they should be handled and the basis on which they should be resolved. The LSS applies to all tax regimes and areas of the department where cases are worked under civil processes.

The vast majority of tax disputes are resolved by agreement, following discussions between HMRC and the taxpayer. Relatively few disputes actually reach the tribunal or courts for a decision (see Chapter 4 and Annex 4 for review and appeal statistics).

The governance arrangements discussed in this report fall into two strands - those relevant to specific cases (covered in Chapter 2) and those used by HMRC to decide how to handle issues that affect multiple taxpayers, to ensure consistency (Chapter 3).

Types of disputes

There is huge variation in the nature, complexity and amounts at issue in tax disputes. A dispute might come from an employer compliance enquiry into a small business, to establish whether the correct car and fuel benefits have been reported and the correct amounts of tax and National Insurance paid, or a VAT enquiry into increased volumes of non-standard-rated sales over a particular period, or may emerge from more general enquiries into accounts and returns for income tax or Corporation Tax.

There are of course more complex disputes that arise from inherently complex transactions. For example, when businesses restructure their operations across international boundaries HMRC will look closely at the changes to ensure that, in line with the relevant tax law, the correct amount is returned in respect of any UK assets disposed of and that correct UK tax is paid on activities carried out under the new structure. These enquiries can involve the valuation of shares and assets and detailed analysis of the functions carried on by the various group companies and can therefore be very complex.

Similarly, companies can set up complicated arrangements to reward employees, for example using overseas trusts, and detailed investigation and consideration is needed to ensure that the proper employment taxes, National Insurance and other taxes are charged.

1. For more information visit www.hmrc.gov.uk/practitioners/lss-intro.htm

Resolution through collaboration

The LSS makes clear that HMRC should, wherever possible, handle disputes non-confrontationally and by working collaboratively with the taxpayer, no matter what the size or complexity of the point at issue.

This does not mean that we work with all taxpayers in the same way. For our largest and most complex customers, we invest resource in sustained, on-going engagement as the best way to manage tax risk. For other customers we need far less day-to-day contact. But at the point where we identify a risk that requires us to make enquiries or when a dispute arises, the collaborative principles that we work to are the same - a non-confrontational approach, where we are transparent with the taxpayer and they are transparent with us, enabling the parties to resolve the dispute as quickly and efficiently as possible.

Through openness and early dialogue, we seek to be transparent with our taxpayers, including from the very beginning of a compliance check when we tell them what we are checking and why we need the information we do. We are open about emerging risks and keep taxpayers updated on our progress, as well as informed of what our expectations of them are.

For example, this could be by telling the taxpayer that we are checking a period where there is a Construction Industry Scheme risk related to entries on payment and deduction statements, because we have information that suggests a discrepancy. We would therefore ask to see monthly payment and deduction statements provided by the contractors and any sales invoices.

For all taxpayers we want to develop a relationship where there is a positive joint commitment from HMRC and the taxpayer to work together constructively to resolve current and historic risks as quickly as possible. This applies to risks of any size or complexity.

Where there are a number of outstanding risks in a case, we may use a structured, accelerated approach to rapidly progress substantial disputes, which relies on significant commitment from both HMRC and the taxpayer to make progress.

These collaborative methods rely on cooperation and commitment from the taxpayer and their agent, if they have one. Where taxpayers will not cooperate with our enquiries we will use more formal methods, such as information powers, to move the case forward and ascertain the correct tax position. And we will progress to litigation if we cannot reach a satisfactory agreement to resolve the dispute in line with the LSS.

In the small minority of cases where our collaborative approach has not led to a resolution, we may consider whether it would be beneficial to use alternative dispute resolution (ADR) methods



Alternative dispute resolution

In the small minority of cases where our collaborative approach has not led to a resolution, we may consider whether it would be beneficial to use alternative dispute resolution (ADR) methods. This would involve either mediation² or facilitated discussion between the parties.

ADR can be particularly useful in long-running disputes, where positions on both sides may have become entrenched, or progress has stalled. ADR can help narrow down the areas of disagreement, clarifying technical issues or helping to manage the process of getting additional information so that both parties can agree on key facts. The involvement of a trained facilitator can change the focus, moving on from past sticking points to help identify outcomes that would move the case forward towards resolution.

Even if a resolution cannot be agreed through the ADR process, a better understanding of why litigation is the appropriate way to resolve the dispute may emerge and help both parties better prepare for litigation, leading to quicker and more efficient tribunal hearings.

2. "Mediation is a flexible process conducted confidentially in which a neutral person actively assists parties in working towards a negotiated agreement of a dispute or difference, with the parties in ultimate control of the decision to settle and the terms of resolution." Centre for Effective Dispute Resolution (CEDR) definition.

Chapter 2. HMRC case governance 2013-14

63

referrals to Tax
Disputes Resolution
Board

We expect all our case workers to apply the appropriate level of case governance to their work, whether that is management authorisation of particular actions or attending relevant governance board meetings for a decision. For this report, references to case governance are to the governance arrangements in place for our largest and most sensitive cases.

48

referrals to
Commissioners

For any dispute, the HMRC decision on how it should be resolved will be the decision taken by the final, appropriate, decision-maker - whether that is the Commissioners, one of the business-level case boards or the HMRC case worker acting with appropriate management oversight and, where relevant, having sought appropriate advice from specialists within HMRC.

33

referrals to business-
level case boards

When a case goes to a relevant case board, that board will consider whether the taxpayer's position on the point in dispute is an acceptable basis on which to resolve it. The referral to the board will be made at the point when a decision is needed on whether HMRC accepts that position. The taxpayer position referred for decision is often the result of extensive collaborative working between the taxpayer and HMRC caseworkers, with the aim of reaching agreement on the right tax due under the law.

Referrals to
Commissioners
involved decisions
worth

£3,869m

The case board will consider whether the taxpayer's position on the disputed point is in line with the LSS and whether HMRC can accept that position to resolve the dispute. If not, then there may be further work undertaken by HMRC and the taxpayer with a view to reaching an agreed position. Where there is no further scope for working collaboratively on the points in dispute, the case will normally move on into litigation.

Structure of the case governance boards



The Tax Disputes Resolution Board (TDRB) makes recommendations to three HMRC Commissioners as decision-makers. Below the TDRB there are case governance boards within business areas, who make decisions on resolving smaller cases and are responsible for referring a sample of cases to the TDRB and Commissioners.

Tax Disputes Resolution Board

The TDRB held 14 meetings this year, considering a total of 63 referrals from case teams. They referred 46 on to the Commissioners, remitted 13 for further work and made decisions in four cases that did not require referral to the Commissioners.

The Commissioners

In 2013-14 there were 17 Commissioners meetings to make decisions on case referrals from TDRB. They considered 44 referrals from TDRB (the remaining two reached the Commissioners in April 2014). Four of the referrals were remitted by the Commissioners for further work before re-submission to them for a final decision (one other was remitted for further work but was not seen by the Commissioners again in 2013-14). The Commissioners therefore saw a total of 48 referrals.

Each meeting was attended by three Commissioners and all were chaired by the Tax Assurance Commissioner, Edward Troup.

In 2013-14, five Commissioners were involved in the meetings in addition to Edward Troup: Jim Harra (Director General, Business Tax), Jennie Granger (Director General, Enforcement and Compliance), Simon Bowles (Chief Finance Officer), Nick Lodge (Director General, Benefits and Credits) and Ruth Owen (Director General, Personal Tax).

The 48 referrals seen by the Commissioners related to decisions worth £3,869 million. The Commissioners accepted the taxpayer's

position in 28, worth £1,167 million. In 12 referrals, worth £472 million, they rejected the taxpayer's position as not being an acceptable basis on which to resolve the dispute. Three referrals were accepted with additional conditions, with the remaining referrals remitted for further work before a decision was taken.

Within these numbers are five sample cases sent to the Commissioners from the Enforcement and Compliance Disputes Resolution Board.

Full statistics for the TDRB and Commissioners are at Annex 2.

HMRC business-level boards

In 2013-14 the Disputes Resolution Boards in Specialist Personal Tax, Enforcement and Compliance and Large Business saw 33 referrals. The boards have broadly worked well, getting the new processes embedded and working with case teams to identify cases due to come forward.

The Enforcement and Compliance Board identified one case where potentially there should have been a referral to the board before the resolution proposal was agreed. The case related to an indirect tax issue and the oversight resulted from there being insufficient clarity about when referrals should be made in cases of this kind. To address this, there is now clearer guidance on when a decision point is reached and a board referral is required.

Experience with the Large Business Board has shown that many risks that in isolation would fall within its remit were actually part of cases with over £100 million under consideration and were therefore referred to the TDRB and Commissioners for a decision.

Throughout the year, we have kept the remits of these boards under review and have now made changes to their referral points, to ensure that they continue to reflect our changing structure and risk profiles. It is important that we routinely review, and where necessary update, their remits so that we can be sure the boards continue to be an effective method of taking decisions and providing assurance that disputes are resolved appropriately.

An overview of the change to the remits will be included in the Code of Governance.

Full statistics from the governance boards can be found at Annex 3.

In 2013-14 the Transfer Pricing Board saw 36 cases. There were 80 referrals of resolution proposals to the two Transfer Pricing Panels, which sit below the Board.

Chapter 3. HMRC issues governance 2013-14

15

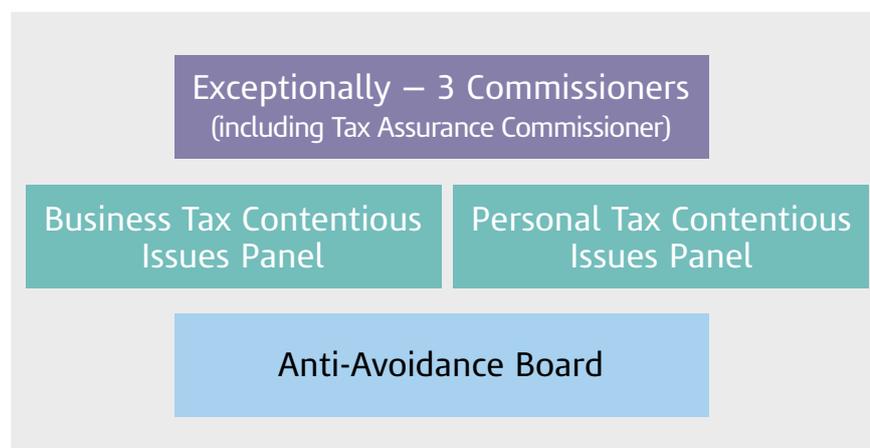
separate issues looked at by the Business Tax Contentious Issues Panel

An “issue” is a disputed tax point that can arise in more than one case and affect multiple taxpayers. Consistency across taxpayers in how we deal with the same point is an essential part of our even-handedness.

Our issues governance, in the form of the Business and Personal Tax Contentious Issues Panels (BT and PT CIPs) and the Anti-Avoidance Board (AAB), ensures that HMRC takes a consistent approach to handling issues.

13

separate issues looked at by the Personal Tax Contentious Issues Panel



263

referrals to the Anti-Avoidance Board

2 issues

referred by the PT and BT CIPs for decision by the Commissioners

Contentious Issues Panels (CIPs)

The CIPs, which bring together a wide range of internal stakeholders, decide on handling strategies for issues as well as deciding whether we should publish the basis on which HMRC is prepared to resolve a particular issue.

In 2013-14 the BT CIP saw 18 referrals, covering 15 separate issues. The panel looked at a variety of issues, such as the handling of a deemed lease premium dispute with a number of Private Finance Initiatives and how to handle capital allowances on long-life assets in the aircraft industry, after industry agreements have come to an end.

The PT CIP saw 15 referrals this year, covering 13 separate issues. There was one issue referred to both CIPs jointly.

Among the issues considered by the PT CIP during the year was the appropriate tax treatment in cases involving misapplication of funds by charitable trusts. Another issue was whether to publish the terms on which HMRC would be prepared to resolve disputes in connection with a large-scale avoidance scheme. The CIP discussed the detail of HMRC’s proposed approach and how long taxpayers should have to come forward to resolve the dispute on those terms before HMRC moved to litigation. It also considered what HMRC’s response should be in litigation cases where arguments based on equity rather than tax law were raised by taxpayers.

The Anti-Avoidance Board oversees all anti-avoidance strategies within the department



Anti-Avoidance Board

The Anti-Avoidance Board (AAB) oversees all anti-avoidance strategies within the department, monitoring the emergence of new schemes and making decisions on how HMRC should respond. This year the AAB met 20 times and saw 263 referrals. This high number is due to the number of legacy issues that the department has been tackling. We therefore expect that number to drop next year.

The AAB is now chaired by the Director of the Counter-Avoidance Directorate.

The creation of the Counter-Avoidance Directorate brings together all aspects of HMRC's work to tackle marketed tax avoidance, including policy design and operational delivery, enabling us more effectively to use our resource to reduce the number of unresolved avoidance cases.

Commissioners' decisions on issues

The Commissioners provide an additional layer of governance in relation to issues where CIP members cannot reach an agreed way forward or where the chair of the CIP considers the issue to be so significant that the Commissioners should take the decision on HMRC's position.

Two issues were referred to the Commissioners this year, one from PT CIP and the other from PT and BT CIPs jointly.

On the first issue, the Commissioners considered whether the department could accept an approach to resolve a number of cases in which the same avoidance scheme had been used. Although it might have brought some individual cases to an earlier conclusion, the Commissioners concluded that the approach was not acceptable.

In response to the second issue, regarding the interaction of two settlement opportunities, the Commissioners asked for further work to be completed.

Published offers

There are no new published offers to report from 2013-14.

Chapter 4. Litigation

Where a taxpayer disagrees with a decision made by HMRC, they can ask for a review, make an appeal to an independent tribunal, or do both. Taxpayers ask for reviews and make appeals in relation to only a very small proportion of the decisions we make.

Reviews

The statutory review system gives taxpayers a quick and easy way to ask us to review our decisions. It is open to all and is often used by those taxpayers who do not have an accountant or an agent (85 per cent of reviews are requested by unrepresented taxpayers). Reviews are carried out by HMRC staff independent of the teams that worked the case.

In 2013-14 we completed more than 38,500 reviews⁴. We saw a slight reduction in the number of reviews requested, which is largely due to fewer reviews in relation to the VAT default surcharge.

Appeals

While it is for the benefit of both HMRC and the taxpayer for disputes to be resolved without needing to go to court, there will always be cases where the parties cannot agree and a tribunal or court decision is needed.

This year just over 7,000 appeals were sent to the tribunal, and more than 6,500 were closed; 38 per cent of those appeals were closed by a formal hearing, with the remaining 62 per cent being settled by agreement before the hearing.

HMRC won in 76 per cent of cases heard by tribunal in 2013-14, which is broadly consistent with the previous year.

More information on figures for reviews and appeals from 2012-13 and 2013-14 can be found at Annex 4.

The majority of cases that are appealed relate to individual circumstances where the facts are disputed. However, every year there will be a number of cases that HMRC will pursue because of the wider implications that the judgment could have. These are often taken through to the higher courts.

The tribunals and courts also issued decisions in 39 avoidance cases this year, with 30 decided in HMRC's favour, protecting £2.7 billion of tax.

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4. A full report on the 2013-14 figures is available on GOV.UK

Chapter 5. Review of governance processes in settled cases

We have been working this year to strengthen our quality assurance and quality checking processes

In 2012 we committed to carry out an annual review of settled cases to assess adherence to governance processes when we work tax disputes, identifying any areas where we can improve.

Like last year, this year's review has been carried out by HMRC's Internal Audit team. In future years, we will be looking to integrate the review of settled cases work with the quality testing carried out by business areas, with Internal Audit assuring business area processes and providing appropriate additional oversight.

We have been working this year to strengthen our quality assurance and quality checking processes across all business areas to routinely monitor quality. The remits of the quality teams include a focus on ensuring that follow-up actions are having the intended impact and that improvements are being delivered.

2013-14 reviews

In 2013-14 Internal Audit mapped the various assurance mechanisms in place across the department for our decisions on tax, identifying areas where there was scope to improve. We are using this to help us focus on how and where we can most effectively use our Internal Audit resource in future years.

Internal Audit's 2013-14 review of settled cases used the approach developed in 2012-13. It looked at a range of disputes both in terms of size and complexity. This means that the governance procedures we would expect to be followed will vary between cases, from management authorisations to consideration by governance boards or panels depending on the nature of the case.

Governance procedures support the responsibility of HMRC's business areas to resolve cases on a basis consistent with the LSS. It is not the role of the settled case reviews to reopen the points that were in dispute in the case. Rather, they focus on whether processes have been properly followed and on identifying areas where we can make improvements in the way we work cases.

414

cases were looked at in the programme across the department

Overview of findings

In 2013-14 the programme looked at 414 cases that were settled in 2012-13, from across the operational areas of the department⁵.

The results show that 78 per cent of the cases had evidence of satisfactory adherence to governance processes (322 out of 414). In 21 per cent of cases (92 cases), there was scope for some improvement in compliance with governance procedures appropriate to the case and in one per cent (three cases) we found one or two aspects that did not meet our expected governance standards.

The results, which Internal Audit reported back to businesses throughout the year, have identified areas where we are focusing our improvement activities.

1. We are taking action to clarify and remind people of the stages in a case when management authorisations need to be sought. This will vary depending on the risk being worked, but we want to make sure that all our caseworkers and managers are clear on when these points arise in the cases they are working.
2. We are working to implement more robust management checks throughout the lifetime of cases. These include additional focus on:
 - a. ensuring that there is clear evidence of the consideration of taxpayer behaviours in relation to penalties,
 - b. reviewing the figures relating to recording the outcome of cases, and
 - c. tackling delays, whether caused by HMRC or the taxpayer.
3. We are working to clarify standards for good audit trails, and what these should look like across the lifetime of a case. This includes what we expect to be recorded in respect of any delays, penalties and our interactions with taxpayers.

By reporting through the year, Internal Audit has enabled business areas to take action as soon as possible. Business areas have used the reports to increase the visibility of quality concerns at senior management levels, establishing clear lines of responsibility to achieve improvements.

Following early action to specifically tackle penalty processes and delays, management checks have indicated that there has been some improvement. It will take a longer period of action and monitoring to be sure that improvements are fully embedded.

We are also looking to support business improvement activities across these areas by enhancing how our training and continuous professional development products address them.

In addition to the opportunities for improvement that the review of

5. Large Business Service in Business Tax, Specialist Personal Tax in Personal Tax and Local Compliance, Specialist Investigations, Large and Complex and Criminal Investigation in Enforcement and Compliance.

settled cases provides, the Commissioners and governance boards also identify scope for improvements in individual cases. These points are fed back to case teams and managers for further action. An example of this feedback loop relates to our administrative procedures designed to ensure full collection of tax through accurate and timely assessments, where we are improving both the procedures and their quality assurance.

Future activity

In 2014-15 Internal Audit will carry out a programme of reviews looking at cases resolved in 2013-14. As these cases will reflect processes followed over the full course of resolution of the cases, which can stretch over a number of years, we know that they will not show the full impact of the improvement activities outlined above. Testing by our quality assurance teams will indicate whether improvements are being delivered.

Internal Audit will work closely with the different quality review teams across the department to assess, and where necessary help improve, their capacity and capability, in readiness for integrating the settled case reviews into business areas.

Greater integration of the Internal Audit and quality assurance work will start from 2015-16, with our most established teams taking the lead initially, rolling out gradually across the department. Key to successful integration will be ensuring that there is a common set of governance points to assess in each case. This will maintain comparability across the different business areas and year on year.

Internal Audit will assure the effectiveness of quality reviews once responsibility for carrying out the reviews has passed to the business areas, as well as continuing to do some checking, giving us a more sophisticated picture of how governance processes are being followed. Through this layered approach we will continue to identify further areas for action.

Annex 1. Dispute resolution case studies

We work in an open and constructive manner with all kinds of taxpayers



This annex provides case studies showing how we use collaborative working in different ways across a range of taxpayers. They illustrate our focus on working in an open and constructive manner with all kinds of taxpayers, highlighting how this works out in practise depending on the level of risk involved.

Medics campaign enquiry conducted through an agent

When reviewing a medical practitioner's return an HMRC caseworker identified that travel costs claimed appeared high, as the business and home address were the same.

In response to a request for the business records the agent sought an extension to the time allowed to provide them, which was agreed, as the taxpayer was out of the country. The agent voluntarily disclosed an error he had identified in the electronic records used to calculate fees.

When the requested records were received, the caseworker identified that another adjustment was due in relation to work done for which payment had not yet been received. In discussion with the agent, it was agreed that a further adjustment should be made in relation to fees earned, but unpaid, at the end of the year.

On the issue of travel costs, the agent explained that the taxpayer obtained work through a specialist employment agency. He therefore contended that motor costs were allowable at approved mileage rates for journeys from the home address to the place of work, as the work obtained from the employment agency was carried out at different locations.

Working collaboratively to agree the facts, the agent and caseworker established that fees were earned in relation to two consecutive contracts, each involving travel to the same hospital for the duration of the contracts. HMRC used case law to argue that the taxpayer had a fixed base of operations during the contract, with the consequence that the costs of travel to that base were not incurred wholly and exclusively for the purposes of the taxpayer's private practice. As a result the agent, on behalf of the taxpayer, agreed to disallow most of travel costs for the year of the check and for two other years.

The case was concluded by way of a formal offer from the taxpayer, including the application of a penalty for 'careless inaccuracies'.

Alternative Dispute Resolution

A market stallholder was in dispute with HMRC about their level of business sales. The taxpayer had not kept records so the accountant had built up an estimate of the business takings from expenditure. The HMRC officer discussed with the taxpayer how the takings had been determined and estimated a higher sales turnover based on the purchase records. This higher figure was not agreed.

With the case heading for a tribunal hearing the taxpayer applied for the use of an ADR process. After researching the case and speaking to both sides the independent facilitator arranged a facilitation meeting. The facilitator supported discussions between the parties on the outstanding issues. The taxpayer's sales patterns, mark-up, wastage and other matters were discussed in detail.

On the basis of the detailed information obtained, the HMRC officer accepted many of the claims made by the trader and as a result reduced the estimated assessment. The trader still did not feel that the revised lower assessment was correct but accepted that he did not have the business records to prove this. Agreement having been reached, ADR had successfully brought the dispute to an end and saved considerable costs for both sides if the dispute had gone to tribunal to establish the facts.

Large and complex film company resolution

A film production company submitted a claim for Film Tax Relief. HMRC identified certain major risks in the claim, casting doubt on the nature of the film and the percentage of UK expenditure. If those concerns were substantiated, then no repayment would be due.

HMRC's first approach was an informal one, through a telephone call to the agent explaining that HMRC would be looking at certain risks. This was followed by a letter explaining the risks and requesting information.

The enquiry continued in a collaborative manner by letter and telephone call, with the agent providing all the information requested without the need for formal information notices. In the course of the discussions the agent was able to satisfy some of the concerns and accepted that there were errors, allowing HMRC to adjust the amount of repayment.

Where an adjustment of this kind is made, HMRC will consider whether penalties are appropriate. In this instance, as a result of the explanation provided by the agent it was evident that the company had taken reasonable care over its claim and therefore no penalty was charged.

HMRC's first approach was an informal one, through a telephone call to the agent



Response to a large and complex tax haven evasion risk

A group of companies ran a chain of businesses across England and Wales. The group holding company was registered in a tax haven and was itself owned by a discretionary trust based in Jersey.

The HMRC case worker met with the beneficial owner of the business and the finance director a number of times to improve understanding of the business and its ownership structure. Through this, the case worker established that the beneficial owner was UK resident but non-domiciled, had a poor compliance history, had taken out several million pounds as tax-free 'loans' from the business and had failed to make a return of benefits-in-kind.

By explaining the purpose of the enquiry and why certain documentation was needed by HMRC, the case worker was able to gain voluntary access to the business records of the business and the private financial documentation of its beneficial owner and his trust.

The case team then worked with the taxpayer to draw up an action plan to resolve the disputes in the case, taking account of HMRC's and the taxpayer's objectives, and considering the conflicting objectives of the beneficial owner and his finance director. This collaborative approach influenced the beneficial owner to seek to resolve the dispute.

HMRC set out its proposals for resolving the disputes on a satisfactory basis and explained the benefits of being regarded by HMRC as low risk. It was made clear that low risk status would be conditional on an onshore ownership structure being put in place and the beneficial owner ceasing to draw 'loans' from the companies.

The owner's tax adviser initially contested our proposals, stating that the failings identified were not deliberate. Reviewing the evidence, HMRC provided a robust rebuttal of that position with a clear explanation of why the behaviours shown were regarded as deliberate. The adviser accepted this, resulting in additional years being assessed and penalties for deliberate behaviour being charged. It was also agreed that the tax affairs of both the business and its beneficial owner would be monitored for a period under HMRC's Managing Serious Defaulters regime.

This robust but collaborative approach influenced the owner's future behaviour: he agreed to dismantle the offshore structure and take out funds as salary with tax and National Insurance deducted. Furthermore, the use of a collaborative approach meant that a potentially difficult enquiry was completed in less than two years, with full tax and penalties recovered and without the need to resort to formal information powers.

This collaborative approach influenced the beneficial owner to seek to resolve the dispute

Collaborative working on large business R&D issue

R&D tax relief is an incentive where a company's qualifying expenditure on R&D can reduce their tax bill. The company must be carrying out a project that seeks an advance in science or technology. They must be able to state what the intended advance is and show how the project seeks to achieve this.

In this case, HMRC's enquiry concerned multiple legal entities, a number of accounting periods and more than 20 major R&D projects. HMRC and the company agreed to work together on a project-managed basis, so that they could agree a methodology and approach to preparing detailed claims. As part of HMRC's assurance process, and in order to reduce the scope for future errors, the company agreed to work collaboratively with HMRC's systems audit specialists.

R&D claims are highly complex and some fundamental differences in legal analysis existed between the two parties. HMRC worked with the business through the High Risk Corporates Programme, aiming to arrive at a mutual understanding of the application of tax legislation and the guidelines defining R&D. This initially focused on understanding the records that formed the basis of the R&D claims and then on the process by which the records informed the detailed claims so that HMRC could be assured that they were sufficiently robust.

Through early visits, HMRC was able to appreciate the amount of work needed to compile and review the claims and understand the systems in place. This enabled HMRC to have meaningful discussions about the information available to support the claims. This was helpful to the business as well as to HMRC; as a direct result of the visits the company's in-house tax team was given direct access to data, reducing the time needed to compile their claims.

An HMRC Corporation Tax specialist and audit service specialist carried out a site visit to see what systems and data were available and to understand why the process of drawing up the claims was apparently so difficult. From this visit, HMRC gained a better overview of the systems and processes, which gave them assurance that the systems governance was robust.

The company's original position had been based on a reasonable legal interpretation. However, following the detailed work with HMRC, the company proposed to revise their claims in accordance with HMRC's view of the correct figures of R&D relief due. This resulted in claims that were substantially reduced and the parties agreeing a basic methodology and reporting structure for future claims.

An HMRC Corporation Tax specialist and audit service specialist carried out a site visit to see what systems and data were available



Annex 2. Tax Disputes Resolution Board and Commissioner referrals in 2013-14

Tax Disputes Resolution Board

63 referrals to Tax Disputes Resolution Board from April 2013 to March 2014	Referrals
TDRB recommended acceptance of the taxpayer position and referred on to the Commissioners	29
TDRB recommended rejection of the taxpayer position and referred on to the Commissioners	14
TDRB recommended acceptance with conditions and referred on to the Commissioners	3
Total referred to Commissioners	46*
Seen by the TDRB under HRCP and no referral required	4
TDRB remitted for further work before re-referral	13
Total not referred to Commissioners	17

*44 of these referrals made it to the Commissioners in 2013-14

Type of referral	Referrals
£100 million plus tax	38
£500 million plus adjustment	5
HRCP case	4
Novel and unusual	0
Sensitive case	9
Sensitive risk	2
Sample case	5

Commissioners' case decisions

48 referrals to the Commissioners from April 2013 to March 2014	Referrals
Taxpayer position accepted	28
Taxpayer position rejected	12
Taxpayer position accepted with conditions	3
Commissioners remitted for further work before re-referral	5

Type of referral	Referrals
£100 million plus tax in case	32
£500 million plus adjustment	4
Sensitive case	4
Sensitive risk	3
Sample case	5
Novel and unusual	0

Tax under consideration in the decisions referred to the Commissioners

In proposals accepted	£1,167 million
In proposals accepted with conditions	£2,230 million
In proposals rejected	£472 million
Total	£3,869 million

The tax under consideration in the referrals remitted for further work was £2,415 million.

The Commissioners decide whether a proposal for resolving a tax dispute is acceptable: the figures quoted here are for the value of the tax at issue in the disputes on which decisions were made. Any additional tax revenue to be accounted for as a result of the decision forms part of the amounts reported by the business area responsible for the case. These figures do not represent additional tax collected over and above business area figures.

Some referrals can include a significant number of risks for resolution, potentially over a number of years.

Commissioner decisions on issues - referrals from the Contentious Issues Panels

The Commissioners provide an additional layer of governance in relation to issues where the Contentious Issues Panels cannot agree a way forward or where the issue is of particular significance.

2 referrals to the Commissioners from April 2013 to March 2014	Referrals
Potential settlement position accepted	0
Potential settlement position accepted with conditions	0
Potential settlement position rejected	1
Issue remitted for further work	1

Annex 3. Cases seen by the line of business case boards in 2013-14

Enforcement and Compliance Dispute Resolution Board

21 referrals from April 2013 to March 2014	Referrals
Taxpayer position accepted by the Board	7
Taxpayer position accepted with conditions	0
Taxpayer position rejected	5
Board remitted the referral for further work before re-referral	3
Referral sent to TDRB and Commissioners as sample case	6*

*Five of these cases reached the Commissioners in 2013-14

Large Case Management Board

Seven referrals from April 2013 to March 2014	Referrals
Taxpayer position accepted by the Board	4
Taxpayer position accepted with conditions	0
Taxpayer position rejected	2
Board remitted the referral for further work before re-referral	1

Specialist Personal Tax Dispute Resolution Board

Five referrals from April 2013 to March 2014	Referrals
Taxpayer position accepted by the Board	0
Taxpayer position accepted with conditions	0
Taxpayer position rejected	1
Board remitted the referral for further work before re-referral	4

Annex 4. Overview of dispute outcomes at review and appeal 2012-13 and 2013-14

Where taxpayers disagree with a decision made by HMRC, they can ask for a review, make an appeal to an independent tax tribunal, or take both actions. HMRC case-workers have to make a very large number of decisions each year, including more than a million in VAT alone, of which the most common relate to tax assessments and penalties. Taxpayers ask for reviews and make appeals in relation to a very small proportion of these decisions.

This annex contains information about reviews of and appeals against HMRC's tax decisions for the period 1 April 2013 to 31 March 2014, and includes comparisons with published figures for previous years, where appropriate.

It also includes figures for 2012-13, which were not available for inclusion in last year's annual report. Further information was published in November 2013 and can be found on the gov.uk website⁶.

Reviews

Reviews are carried out within HMRC by an officer who was not involved in the original decision.

Most reviews relate to late filing and late payment penalties, many of which are issued automatically when a return or payment is not received on time. A review by HMRC gives taxpayers an early opportunity to challenge these decisions and put forward an explanation.

There are differences across regimes in the pre-review process. The figures below are set out under key headings.

Non-penalty cases include liability decisions, closure notices and refused claims. These decisions often involve significant discussion between HMRC and taxpayers. HMRC upheld its decisions in two thirds of such cases. In one third of cases, HMRC's decision was varied or cancelled at the review stage, which shows that review can often have a positive outcome for both parties.

Where taxpayers submit their VAT return or pay their VAT late, HMRC writes to them to warn them that future late returns or payments may lead to a penalty. After repeated defaults a default surcharge penalty is issued. This penalty will be waived if the taxpayer has a reasonable excuse for the late payment and the VAT penalty review process provides taxpayers with the opportunity to explain why a payment is late. The number of VAT penalty decisions cancelled on review represents a small

Taxpayers ask for reviews and make appeals in relation to a very small proportion of HMRC decisions

6. www.gov.uk/government/uploads/system/uploads/attachment_data/file/267713/131202_Reviews_and_Appeals_Statistics_2012-13.pdf

proportion, just over 2%, of the total number of VAT penalties issued, and in almost all cases simply means that HMRC accepts the explanation offered by the taxpayer for a late return or payment.

Overall, reviews provide an early, cost-effective opportunity to resolve issues, and most taxpayers do not go on to submit an appeal to the tribunal.

Review outcomes

All non-penalty cases (decisions excluding penalty decisions)	2013-14		2012-13	
Upheld in HMRC favour: review complete	4,224	66%	4,008	68%
Deemed upheld in HMRC favour: time limit expired	40	1%	15	0%
Varied	415	7%	343	6%
Cancelled	1,683	26%	1,566	26%
Total	6,362		5,932	

VAT penalty cases	2013-14		2012-13	
Upheld in HMRC favour: review complete	7,180	40%	8,579	43%
Deemed upheld in HMRC favour: time limit expired	1	0%	0	0%
Varied	1,975	11%	1,809	9%
Cancelled	8,953	49%	9,658	48%
Total	18,109		20,046	

Other penalty cases	2013-14		2012-13	
Upheld in HMRC favour: review complete	8,330	59%	8,420	64%
Deemed upheld in HMRC favour: time limit expired	11	0%	22	0%
Varied	263	2%	366	3%
Cancelled	5,546	39%	4,370	33%
Total	14,150		13,178	

Appeals

Taxpayers made 7,081 appeals to the tribunal in 2013-14. Of these, 6,626 cases were settled either by a formal hearing by the tribunal, or by agreement before the hearing. Most of the cases that were received but not closed are on hold awaiting a decision in a related lead case.

The table below shows the outcome of cases decided at tribunal. In 2013-14 62% of cases were resolved before the formal hearing.

Hearing	2013-14		2012-13	
In HMRC's favour	1,943	76.2%	1,095	76%
Partially in HMRC's favour	164	6.4%	101	7%
In taxpayer's favour	443	17.4%	237	17%
Total	2,550		1,433	

These figures are not comparable with the figures published by HM Courts and Tribunal Service (HMCTS). This is because HMRC data does not include appeals regarding applications and interlocutory matters, those made prior to 1 April 2009, or those where information has been requested by HMCTS.

Further details have been published in our annual report on Reviews and Appeals on GOV.UK



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