



HM Revenue
& Customs

Code of governance for resolving tax disputes



Code of governance for resolving tax disputes

This document sets out HMRC's governance arrangements for decisions on how tax disputes should be resolved. These arrangements are one aspect of HMRC's wider governance framework, on which there is more information in Annex B.

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Section 1:

How we aim to resolve tax disputes

Differences of view (or 'disputes') between a tax authority and taxpayers on the correct amount of tax owed - or the timing of payment - are a normal feature of tax administration across the world. They arise in cases of all sizes - this may be because the law is complex or because the way the law is applied in a particular set of circumstances is not straightforward.

Most disputes can be resolved collaboratively and by agreement once the facts have been established and the points at issue discussed, including cases where there is a formal appeal against the view we have taken. Only a very small minority of disputes need to be resolved by legal action, either in a tribunal or a higher court.

Litigation and Settlement Strategy

HMRC's Litigation and Settlement Strategy (LSS) was first published in 2007 and refreshed in 2011 and 2013. It sets out the basis on which we will reach agreement in a tax dispute and emphasises the benefits of a collaborative approach in achieving a resolution. The arrangements described in this code provide assurance that the principles of the LSS are applied consistently in practice to the resolution of tax disputes.

As spelt out by the LSS, we will only resolve a tax dispute consistently with:

- the law, whether by agreement with the customer or through litigation; and
- our objectives of efficiently determining and collecting the correct tax to maximise revenue flows, while reducing costs and improving the customer experience.

More information on the LSS is available here: <http://www.hmrc.gov.uk/practitioners/LSS.pdf>

In addition to the LSS, we ensure that appropriate decisions are made through:

- extensive technical and operational guidance;
- training programmes which ensure our staff have the right skills;
- assurance of decisions by line managers; and
- quality assurance programmes.

HMRC's Tax Assurance Commissioner is responsible for:

- seeing that tax disputes are resolved efficiently and on a basis that determines the correct tax in accordance with the LSS and achieves outcomes that are even-handed across different customer groups;
- ensuring that we have appropriate governance arrangements in place to meet those objectives;
- ensuring that those arrangements are observed in practice in individual cases; and
- monitoring and evaluating the effectiveness of our processes for resolving tax disputes and our governance arrangements, and implementing improvements.

The Tax Assurance Commissioner has no role in the tax affairs of specific taxpayers and no line management responsibility for caseworkers, maintaining clear separation of responsibilities.

Section 2:

Governance of decisions on resolving tax disputes

Our governance framework operates on these principles:

- our tax professionals have the technical and collaborative working skills to make decisions in routine cases, supported by their line managers;
- each HMRC line of business has processes for referring larger, more complex cases and sensitive cases to decision-making bodies, made up of senior tax and other professionals from across HMRC;
- our approach to resolving a major disputed point arising in several cases is decided by cross-HMRC panels, to ensure consistency;
- our governance processes should have no adverse impact on customer experience; and
- our review programme for settled cases checks that processes are being adhered to in practice.

The flow chart in Annex B illustrates the different elements of our governance model and more detail is set out below and in Section 3.

The table below outlines the decision-making process for resolving tax disputes according to the characteristics of the case. Cases for which HMRC Commissioners are the decision makers are first considered by the Tax Disputes Resolution Board (TDRB). The TDRB is the successor to the High Risk Corporates Programme Board but has a broader remit to consider cases arising across HMRC. The Board is made up of senior officials from business areas across HMRC, including from the legal profession, and makes recommendations to the Commissioners as to the appropriate basis for resolving one or more disputed points in a case. More details about the TDRB can be found in Annex C.

Details about the Line of Business Dispute Resolution Boards can be found in Annex D, part 1.

Nature of case	Decision maker	Oversight	Assurance	Consistency across cases
Routine case raising no new or complex issues worked within established guidance	Caseworker, applying established guidance to facts of specific case	Line management	Line of business quality assurance	Where a disputed point arises in multiple cases, individual cases are decided taking account of our agreed approach to that point (see Section 3)
More complex cases	Caseworker and relevant technical specialists by consensus. Legal advice sought where appropriate	Line management. If consensus cannot be reached, case referred up line-management chain, to deputy directors then, if need be, to directors	More than one person involved in decision. Involvement of all relevant business areas provides internal challenge	
All sensitive cases (see Note) or where the tax at stake is at least £100 million	Three tax-expert Commissioners, including Tax Assurance Commissioner, having considered recommendations from TDRB	No proposal to resolve a dispute by agreement can be accepted if the Commissioners do not agree unanimously. If there is no agreement on an appropriate basis on which to resolve a dispute, the case is referred for further work including legal action, if necessary	The Commissioners are the decision makers. Aggregate information from these cases published in annual report	
Sample of cases from Line of Business Dispute Resolution Boards	Commissioners, having considered recommendations from TDRB	As above	As above	

Note. Sensitive cases are those where a decision to resolve a dispute might have a significant and far-reaching impact on HMRC policy, strategy or operations. In consequence they may also be likely to prompt significant national publicity.

Section 3:

How we decide our position on disputed points affecting more than one taxpayer

Deciding our approach on a disputed point that arises in multiple cases - and applying it consistently - is an important part of the even-handed and fair administration of the tax system. Individual cases are worked in line with the agreed approach, but decisions relating to those cases are still made according to the arrangements set out in Section 2.

The key bodies that decide our position, depending on the nature of the point, are set out below.

Further information on the issue panels can be found in Annex D, part 2.

Nature of point in dispute	Decision maker	Role of board	Oversight
Major contentious issues arising in business tax regimes	Business Tax Contentious Issues Panel (BT CIP)	<ul style="list-style-type: none"> Decides strategy for managing major contentious issues Agrees approach for resolving such issues 	If consensus cannot be reached, point referred to Commissioners
Major contentious issues arising in personal tax regimes	Personal Tax Contentious Issues Panel (PT CIP)	<ul style="list-style-type: none"> Decides strategy for managing major contentious issues Agrees approach for resolving such issues 	If consensus cannot be reached, point referred to Commissioners
Avoidance	Anti-Avoidance Board	<ul style="list-style-type: none"> Approves and monitors strategies to handle tax avoidance issues Makes strategic decisions about HMRC's anti-avoidance work 	Recommends handling strategies for major contentious tax avoidance issues to PT and BT CIPs, depending on regime in question

Specific arrangements apply in the specialist area of transfer pricing, set out below:

Nature of point in dispute	Decision maker	Role of board	Oversight
Transfer pricing	Transfer Pricing Board	<ul style="list-style-type: none"> Sets strategic direction for transfer pricing work Approves approach to resolving disputes Considers cases where legal action may be necessary Makes recommendations to TDRB in cases where criteria set out in Section 2 are met Makes decisions on high profile or contentious transfer pricing enquiries and those with £15-£100 million at stake 	
	Transfer Pricing Panel	<ul style="list-style-type: none"> Make decisions on transfer pricing enquiries in individual cases (including whether to open an enquiry) 	

Section 4:

Reviewing processes used in settled cases

We have introduced an internal programme to review settled cases. This is overseen by the Tax Assurance Commissioner, and its findings are reported to our Audit and Risk Committee, which may recommend follow-up actions.

The objective of the programme is to learn lessons for the future and improve our processes, not to re-open cases or review decisions. It considers whether the right processes were followed in working cases in which a dispute arose, including whether the governance arrangements outlined in Sections 2 and 3 were adhered to.

The programme will be overseen by our Internal Audit function and has two key elements, to:

- make sure business areas are quality-assuring work as they should; and
- review samples of cases of different sizes from different business areas.

The review of processes used will consider, for example, whether:

- there is a clear risk assessment;
- there is appropriate documented evidence to support the decisions;
- appropriate authorisation took place when it should;
- where HMRC has agreed a strategy for handling a disputed point (for example, the approach to an avoidance scheme), the strategy has been adhered to or any deviation from it has been accounted for;
- business areas with an interest in the cases have been consulted at the right time; and
- there is a consistency of approach across different business areas.

Aggregate findings from the review programme will be published as part of our annual report on our tax disputes work.

Annex A:

About HMRC

HMRC was established by the Commissioners for Revenue and Customs Act 2005 (CRCA). We are a non-Ministerial Department, which means that Ministers cannot direct day-to-day or operational decisions.

Our status ensures that the administration of taxes is, and is seen to be, impartial and independent from political influence. In this way, Ministers and Parliament are protected from charges of improper intervention in the operation of the tax system. HMRC nevertheless remains accountable to Parliament through the Treasury Ministers who have Ministerial accountability for HMRC and through its Chief Executive who is the Principal Accounting Officer.

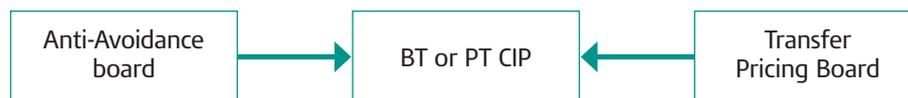
HMRC is led by the Commissioners for Revenue and Customs, who derive their powers and functions from the CRCA. Led by the Chief Executive, the Commissioners are responsible for the collection and management of revenue, which includes direct and indirect taxes, duties and national insurance contributions. The Commissioners also have ultimate responsibility for every decision made in HMRC, although Officers make day-to-day decisions on their behalf. Officers make their decisions within an overall governance framework established when the Department was formed.

Annex B:

Governance model flow chart

Governance flow chart

Where a dispute arises in more than one case, for a major contentious issue, the strategy for managing the issue and the approach for resolving it should be agreed by the appropriate bodies indicated below. Not all issues will be referred to a CIP (please see remits at Annex D for details).



Where relevant, decisions on disputes in cases are subject to the governance processes set out in Section 2, taking into account the strategy for managing the issue and the approach for resolving it agreed by the bodies indicated above. For the largest and most sensitive cases the process is:



Note: Annex D provides information on the Line of Business Dispute Resolution Boards dealing with risks below the TDRB.

Annex C:

Tax Disputes Resolution Board - Terms of reference

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Part 1 - Remit and procedures

Introduction

The Tax Disputes Resolution Board (TDRB) has been authorised by the Commissioners for Revenue and Customs to fulfil the following roles:

- making decisions and recommendations about proposals for resolving significant tax disputes
- serves as the escalation point for cases referred from case Boards within lines of business (see paragraph 7 below).

The TDRB also fulfils an important internal advisory function.

The remit of the TDRB extends to significant tax disputes to be resolved by civil procedures, in any business area.

Operational principles of the TDRB

The following principles should underpin the operation of the TDRB:

- HMRC should have strong governance processes, proportionate to risk, which provide assurance to the Department's stakeholders, staff and customers that decision-making in significant tax disputes is robust and even-handed, in accordance with the Litigation and Settlement Strategy (LSS);
- HMRC's tax professionals should be able to understand and consistently apply those governance processes;
- HMRC's tax professionals are empowered to play the fullest part possible in the progression and resolution of significant tax disputes and feel their work is supported by the TDRB and other HMRC governance boards; and
- HMRC's governance processes should be proportionate, effective and efficient and should not adversely impact compliance delivery and customer experience.

The remit of the TDRB

Trigger points for referral to Commissioners via the TDRB

1. **'£100 million cases'**: The TDRB shall make recommendations to the Commissioners about the resolution of any dispute in a case where the tax under consideration in the case (considered as a whole) is at least £100 million, unless the matter can be resolved without reference to the TDRB under the terms of paragraphs 12 – 14 below.
2. **'Sample cases'**: The TDRB shall make recommendations to the Commissioners about the resolution of any dispute in a sample of cases from the Line of Business Dispute Resolution Boards.
3. **'£500 million adjustments'**: The TDRB shall make recommendations to the Commissioners about the resolution of any dispute on a risk, where the maximum potential adjustment is at least £500m, notwithstanding that the risk would not otherwise be within its remit by virtue of paragraphs 1 – 2 above or 4 – 6 below.
4. **'Sensitive cases'**: The TDRB shall make recommendations to the Commissioners about the resolution of any dispute in a case which is sensitive.
5. **'Sensitive risks'**: If a risk in a case is sensitive the TDRB shall make recommendations to the Commissioners for the resolution of any such dispute.

6. **‘Cases involving unusual or novel features’**: Subject to paragraphs 1 – 5 above, the TDRB may make decisions about the resolution of any dispute in a case which is referred to it on the grounds that the case involves unusual or novel features. The TDRB may choose to make recommendations to the Commissioners for the resolution of any such dispute.
7. **‘Referrals from Line of Business Dispute Resolution Boards’**: The TDRB may make decisions about the resolution of any dispute in a case that has been referred to it by a Line of Business Dispute Resolution Board (Enforcement & Compliance, Large Business, Specialist Personal Tax or the Transfer Pricing Board) unless it is a sample case – para 2. The TDRB may choose to make recommendations to the Commissioners for the resolution of any such dispute.
8. **‘Director referrals’**: Where a dispute does not fall within paras 1 – 6 of the TDRB remit but the Director with operational accountability for a case considers that the nature of the dispute renders it necessary or prudent for referral to be made to the TDRB, the TDRB may make decisions about the resolution of the dispute. (The TDRB may choose to make recommendations to the Commissioners for the resolution of any such dispute).

TDRB advisory function

9. The TDRB may provide guidance and advice in relation to any case or risk where it appears necessary or prudent to the TDRB to do so, whether or not the case or risk would otherwise fall within the remit of the TDRB.

Instances of doubt

10. The TDRB secretariat should be consulted in all instances of doubt or difficulty as to whether and/or when a referral to the TDRB should be made. This would include large cases on the borderline of the monetary thresholds referred to in paragraphs 1 and 3 above.

Decisions to resolve disputes or risks to be unanimous

11. Any decision of the TDRB in relation to the resolution of a dispute in a case or risk shall be made unanimously by all present at the relevant meeting of the TDRB. Where the TDRB cannot reach a unanimous decision the TDRB shall refer the case or risk to the Commissioners or, where appropriate, request that further work is undertaken by the case team.

Circumstances where referrals do not need to be made to TDRB

12. If a customer proposes to agree the full amount of the maximum potential adjustment on a risk and pay 100% of the tax together with any associated interest and/or penalty, the decision to accept the customer’s proposal does not need to be made by the TDRB unless that proposal also forms part of a wider proposal to resolve the case and the case is within the remit of the TDRB. (This paragraph does not cover risks which are non binary or where there are a range of possible outcomes).

13. A decision about how to resolve a risk in a case within the remit of the TDRB does not need to be made by the TDRB if all of the following apply:
- the decision relates to a risk where the tax under consideration is less than £5 million and the amount of the maximum potential adjustment is less than £25 million;
 - the proposal for the risk is not related to discussions concerning the resolution of other risks in the case;
 - there is full agreement between all the relevant HMRC partners; and, where appropriate, the Transfer Pricing Panel or Board has been consulted, and has agreed the basis of resolution;
 - the resolution of the particular risk is in line with any strategy agreed by the relevant Contentious Issues Panel or Anti-Avoidance Board as the case may be;
 - there are no unusual or novel features;
 - neither the case nor risk are sensitive;
 - it is not a risk in a sample case; and
 - the risk is not in litigation and does not impact on litigation in other cases.
14. Exceptionally, the Director with operational accountability for the case may consider that the TDRB's principles are best delivered without reference to the Commissioners for a decision. In such a case the Director should keep a record (copied to the TDRB secretariat) of the circumstances and, as required, be ready to explain to the Commissioners' satisfaction why a referral was not necessary.

Referrals

15. Referrals to the TDRB shall be made on behalf of the Director with operational accountability for the case. In particular, a Director is responsible for identifying cases or risks for consideration by the TDRB on the grounds that the case or risk involves unusual or novel features or is sensitive.
16. Referrals by the TDRB to the Commissioners shall generally be made at the point where there are firm proposals for the resolution of a dispute.
17. The TDRB may exceptionally refer a case or risk to the Commissioners for their consideration prior to any firm resolution proposals being made.

Part 2 - Definitions of Key Terms

Dispute has the same meaning as ascribed to it in the LSS. In summary:

'Dispute' is defined as including all areas of non-agreement between HMRC and a customer or their agent over a substantive tax liability, where that non-agreement has been raised through:

- an enquiry from either side;
- a challenge made by HMRC to a customer; or
- a challenge made to HMRC by a customer where HMRC has decided to take up or respond to the challenge.

This means that in relation to disputes subject to civil law procedures, the definition covers compliance activity from start to finish.

A dispute would not normally cover risk assessment work including situations where customers are asked to provide information before an evaluation can be made of the extent of any risk to HMRC (typically, for example, where an analysis of items in the accounts is requested).

Risk means a particular transaction (or series of transactions) or an item in a return or declaration which causes risk to past, present or future revenue flows.

A **Case** is the sum total of all of the risks that are not finally concluded at any one time in relation to a particular business (which, for the avoidance of doubt, includes all of its group associates) or individual or other entity. It does not matter in which part of HMRC a risk is being dealt with as all risks are aggregated for the purpose of determining the value of a case. Where there is only one risk in relation to a particular customer that single risk will constitute the whole case.

Tax under consideration is the amount of tax or duty attributable to a dispute on a risk after taking into account the impact of losses or other reliefs. It is calculated without regard to the strength of the arguments or the prospects of success and is the amount that would arise if the risk were conceded in full to HMRC. It should include any penalty which, in HMRC'S view, is potentially payable.

It should also include, where appropriate, the Future Revenue Benefit (FRB) that might arise if the risk were resolved in HMRC's favour. Again account must be taken of the impact of losses and other reliefs. Any FRB calculations must be sensible and realistic and any assumptions about levels of profitability and behavioural shift must be evidence-based. FRB projections should not extend longer than five years. The Secretariat should be notified of a potential new case as soon as it is possible to calculate the TUC with a reasonable degree of accuracy and it is likely the TUC exceeds the limit for a referral to the Board. The Secretariat should be consulted in any case of doubt or difficulty and in particular where a re-evaluation or closure of a risk suggests the case may fall outside the remit of the Board.

Whilst interest is not normally included in the calculation of tax under consideration, it should be taken into account where it is a significant factor in the evaluation of the overall amount at risk to HMRC. Typically this would involve enquiries or claims to repayment extending back over earlier years (for example, Fleming claims). Where interest is itself a significant element within any dispute it may be appropriate to refer to the TDRB. The advice of the TDRB secretariat should be sought in all such cases.

Maximum potential adjustment is the adjustment to expenditure, receipts, profits, losses, income or gains that would arise if the risk to which it relates were conceded in full to HMRC. It is calculated without reference to the strength of the arguments or the prospects of success and is the gross amount of the potential adjustment taking no account of losses or other reliefs.

Resolution of any dispute means any decision to resolve that dispute on a particular basis, and includes a decision to take steps that are likely lead to the commencement or cessation of litigation. Resolution proposal should be construed accordingly.

Sensitive cases or risks are those where a decision to resolve a dispute might have a significant and far-reaching impact on HMRC policy, strategy or operations. In consequence, they may also be likely to prompt significant national publicity.

Part 3 - Composition of the TDRB

1. Chair

Director Tax Professionalism & Assurance

2. Permanent Members of the TDRB

Director Tax Professionalism & Assurance

Director Large Business

Director Corporation Tax, International & Stamps (CTIS)

Director Specialist Personal Tax

Director Solicitor's Office, Business Tax Corporate

Director Specialist Investigations

Director Indirect Tax

Director Counter-Avoidance

Deputy Director Local Compliance

Assistant Director Cross Cutting CT & Avoidance, CTIS

Assistant Director International Tax Policy & Structure, CTIS

Director of Business Tax Advisory, Solicitor's Office

TDRB Secretariat Lead

3. Quorum

The TDRB shall not be authorised to make a decision unless there are a minimum of six permanent Board members present at a meeting. Further, no decision is to be taken on any case or risk where a permanent member (or their nominated deputy) who is a significant stakeholder in relation to that case or risk is absent.

4. Conflict of interest

Before any case or risk is discussed, any person who is present at a TDRB meeting will declare any conflict of interest. In this context a conflict of interest is deemed to include any prior contribution to resolution discussions with the customer or prior involvement with the HMRC team as to the basis on which a case or risk might be resolved. Conflicts of interest are to be clearly noted.

Annex D:

Remits of other Boards

Part 1: Remits of other Case Boards

The remits for each case board reflect the risk profile of that line of business. To ensure that the boards remain effective the remits will be regularly reviewed and any appropriate changes made throughout the year.

Enforcement & Compliance Dispute Resolution Board

The Board is made up of Deputy Directors from across E&C, plus representatives from Tax Professionalism and Assurance and Solicitor's Office. The Board makes decisions about proposals for resolving tax disputes in E&C in relation to risks of a qualifying size. The Board is responsible for ensuring a sample of risks goes to the TDRB and Commissioners for decision.

Specialist Personal Tax Dispute Resolution Board

The Specialist Personal Tax Dispute Resolution Board, chaired by the Director of SPT, makes decisions on high value and significant risks in SPT. The Board is responsible for ensuring a sample of risks goes to the TDRB and Commissioners for decision.

Large Business Dispute Resolution Board

The Board, made up of Deputy Directors from Large Business, CTIS, Solicitor's Office and Tax Professionalism and Assurance, makes decisions and provides advice on proposals regarding the resolution of disputed risks that meet the referral criteria. The Board is responsible for ensuring a sample of risks goes to the TDRB and Commissioners for decision.

All of the Dispute Resolution Boards can commission further work from case teams or, if the case board cannot reach a decision or otherwise consider it appropriate, refer a case to the TDRB and Commissioners.

Transfer Pricing Governance

The Transfer Pricing Board will decide on high value cases, and the resolution of high profile or contentious transfer pricing enquiries, not falling within the TDRB remit. Below the Board the Transfer Pricing Panel makes decisions on smaller risks.

Part 2: Remits of Issue Governance Boards

Business and Personal Tax Contentious Issues Panels (BT & PT CIPs)

Contentious Issues Panels decide the departmental strategy for handling major contentious issues. This ensures that cases are handled in a co-ordinated and consistent manner across HMRC.

Where a CIP cannot reach a unanimous decision it may commission further work by the issue owner(s), or refer the issue to the Commissioners.

A major contentious issue is one that involves a point of law or practice which might have a significant and far-reaching impact on HMRC policy, strategy or operations, affect multiple cases and/or different business areas, or result in major litigation.

Anti-Avoidance Board

The Board is made up of representatives from all Directorates involved in tackling tax avoidance. It approves and monitors strategies to handle tax avoidance issues, and makes strategic decisions about HMRC's anti-avoidance work.

