

**Panel of International Academic Expertise on business tax**  
**2 July 2009**  
**HM Revenue & Customs, 100 Parliament Street, London**  
**11.30 - 14.30**

**Attendees**

Prof John Tiley (Chair), University of Cambridge  
Prof John Hasseldine, University of Cambridge  
Prof Judith Freedman, University of Oxford  
Prof Michael Devereux, Oxford University Centre for Business Taxation  
Prof Peter Melz, University of Stockholm, Sweden  
Prof Chris Evans, University of South Wales, Australia  
Prof Peter Essers, Tilburg University, Netherlands  
Mervyn Woods, CBI  
Prof Jim Hines, University of Michigan  
Ali Noroozi, Australian Inspector General of Taxation  
Dr Partho Shome, HMRC  
Judith Knott, HMRC  
Kate Ramm, HMRC  
Chris Davidson, HMRC  
Miles Gardiner, HMRC  
Gabs Makhlouf, HMRC

**Apologies**

Dave Hartnett, HMRC  
Ian Brimicombe, 100 Group  
John Connors, 100 Group  
Brigit Bracco, HMRC  
Huw Stephens, HMT  
Paul Morton, 100 Group

**1. Role and responsibility of the Australian Inspector General of Taxation**

Ali Noroozi (AN) gave a brief overview of his role and tax administration issues in Australia. The Australian system includes a lot of scrutiny (eg ombudsman, Australian National Audit Office (ANAO), various Parliamentary Committees and others) and the inspector general of taxation forms part of this system of checks and balances. The ANAO is similar to the British National Audit Office (NAO) but it has a broad remit whereas the office of the inspector general of taxation is specific to the administration of tax. Its scope allows it to look at some legislative issues but not at tax policy or individual complaints. Individual complaints are dealt with by the ombudsman, and the board of tax deals with tax policy. There is no position in the UK similar to the Australian inspector general of taxation.

AN inherited four reviews when he took over as inspector general. One was about settlements and another was about the non-lodgement of returns, in which the first objective was to determine the size of the problem. The third was about public binding advice - they operate a system of public rulings which are binding and private rulings for individual enquiries - and the fourth was about objections to notices of assessment, where the problem was around the treatment of self-assessments. The reports on these are now complete but not yet released by the Minister, so AN was not able to discuss them in detail.

AN was particularly interested in learning something about the HM Revenue & Customs (HMRC) board, as there is nothing similar in the Australian system.

New reviews which the office of the inspector general of taxation has kicked off since AN took over the role include:

- a review into allegations that the Tax Office changes its mind and seeks to apply new rulings retroactively
- a review of the private ruling system
- a review of super guarantee charge pensions
- a large business audit
- a 'Top end of SME' audit
- another superannuation review

Discussion included some clarifications about, and comparisons with, the USA system. In the USA, private letter rulings are not binding on the IRS and they can also be retracted. In practice though, they are accepted 99 per cent of the time. Public regulations rulings can be retroactive - the logic for this being that they set out the correct interpretation of the law and that if it is correct when issued it would also have been the correct interpretation at some earlier time. In practice, though, they are only applied retroactively in abusive situations. The USA has a tax payer advocate, who is within the IRS but is actually appointed by Congress and can not be dismissed by the IRS. He or she can direct the IRS to take certain actions - but the Commissioner also has the right not to accept the direction.

Asked whether lobbying of the inspector general of taxation is an issue, AN explained that they always listen to all sides on any issue which is raised with them, and they recognise that individual tax payers can be reluctant to speak to them and that confidentiality is **very** important in encouraging them to do so. The proceedings are subject to the Freedom of Information Act, but in redacted form, and there are rules limiting access to sensitive individual tax papers.

## **2. Code of Practice on taxation for banks**

Chris Davidson (HMRC) introduced the consultation document which was published on Monday 29 June and invited comments and discussion. There was a discussion of different approaches to consultation. The main subjects of debate in this meeting were:

The expression 'spirit of the law' is used in this consultation document from a policy, rather than a legal, perspective. It is intended to influence behaviours rather than legal decisions on what is done. Some panel members were concerned that influencing behaviour is not a proper aim or activity of a tax administration and that businesses have to take opportunities to reduce their tax payments. Others accepted that tax administrations have to be concerned with tax avoidance and evasion and that this inevitably involved attempting to influence tax payers' behaviours.

Clarity - The document was thought to be too loosely worded for use in Australia where businesses would demand tighter definitions. It was suggested that the use of specific examples would help this aspect.

Role of the administration - HMRC accepted that their role is not to try to tell banks how to run their business and the 'Code of Practice' is not meant to be interpreted in this way. Work is being undertaken on guidance to summarise HMRC's approach on this.

Scope - HMRC clarified that the code of practice would apply to foreign banks operating in the UK who would be expected to comply and confirmed that there is already a mechanism which businesses can use to ensure that the same standards are applied to all and that competitiveness is maintained.

### **3. Dispute resolution in the UK tax administration**

Gabs Makhoul (HMRC) gave an update of the work HMRC is doing to review and improve the dispute resolution process.

HMRC has looked at the practice in other countries. The USA approach was discussed as it provided the biggest contrast with the separation of the 'audit' and 'settlement' functions whereas in the UK the roles are combined. The different approaches have their origins in the history of tax and public administration in their respective countries. A change on the lines of the US system was not recommended as it would involve significant change without guaranteeing an equivalent improvement in dispute resolution. The US also had a legislature-imposed emphasis on the independence of the appeal function but there were questions about how independent and unbiased an 'independent' in-house reviewer would be perceived by the tax-paying public. The Indian system, which has an independent Commission which considers proposed settlements and was staffed by retired officials, was also discussed. This has reduced the number of cases moving to litigation but does generate bureaucracy. The proposed UK approach aims to resolve disputes as early as possible, including through the use of alternative dispute resolution techniques. There was also a proposal to create

greater central focus on dispute resolution, building on the recently-introduced optional review process. Options for reducing the costs and the number of disputes were discussed, including the use of incentives in the system as a whole and discouraging disputes that were exploiting the system to benefit from delay).

#### **4. Project Wickenby - public knowledge, education and debate**

Chris Evans introduced the meeting to this Australian example. It is a cooperative partnership between the Australian Tax Office, the Australian Federal Police, the Australian Crime Commission, the Australian Securities and Investments Commission and the Commonwealth Director of Public Prosecutions, with support from the Australian Transaction Reports and Analysis Centre and the Australian Government Solicitor.

Project Wickenby is an example of a reactive approach to controlling tax avoidance and evasion. It was triggered by a chance discovery of a list of names of possible avoiders/evaders and has resulted in a number of high-profile convictions. The pro-active element was to follow up on this discovery through a broad programme of education and debate, mostly with the intermediaries.

Interesting comparisons were drawn with the UK's Serious Tax Defaulters measure and approach recently announced, and it was noted that HMRC has a far more intense relationship with taxpayers than the US Internal Revenue Service or the Australian Tax Office. In the UK, the serious tax defaulters measure is very specifically about **evasion**, in the USA, cases are routinely under the public eye and important examples are highlighted.

In Sweden, the tax administration publishes the names of tax planning schemes which it considers to be too extreme, and Australia uses a system of 'tax payer alerts'.

#### **5. Future meetings**

Dr Shome informed the meeting that KAI are organising a conference on analytical approaches taken by tax administrations, to be held in 21 and 22 September. Attendees and papers are invited. Details will be mailed out to attendees of this meeting.

The next meeting will be scheduled for December. Candidates for the agenda include:

- dispute resolution
- banking code update

- education programmes (ie in schools)

Jonathan Bates  
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3 July 2009