

Litigation and Settlement Strategy

Scope and purpose

1. HMRC's Litigation and Settlement Strategy ('LSS') is the framework within which HMRC seeks to resolve tax disputes through civil procedures:
 - a. consistently with the law, whether by agreement with the customer or through litigation; and
 - b. consistently with HMRC's customer-centric business strategy objectives of maximising revenue flows, whilst at the same time reducing costs and improving customer experience.
2. This document refreshes the previous LSS guidance published in 2007.
3. The LSS is designed to facilitate resolution of disputes in relation to a wide range of taxes, duties and associated payments and the term 'tax' should therefore be interpreted accordingly.
4. 'Dispute' is interpreted as covering all situations in which HMRC and the customer or their agent have a difference in view over what is the 'right tax at the right time', whether in the context of an enquiry into a return, an audit, pre-return work (whether undertaken on a pre- or post- transaction basis), or challenges to HMRC's legal interpretation brought by the customer. The definition of 'dispute' includes a disagreement with a customer on tax liabilities with respect to a particular issue in a return, transaction or arrangement, but not a disagreement with a customer over several, unrelated issues.
5. 'Litigation' refers to the resolution of a dispute through a statutory appeal to an independent body, including the Tribunals and the Courts, a common law claim to the Courts or an application for Judicial Review. It does not cover statutory internal reviews, litigation to recover debts, HMRC employment or commercial litigation.
6. The LSS applies to all tax disputes resolved through civil procedures and to all decisions taken by HMRC in relation to such disputes, at whatever level.
 - Specific disputes governance arrangements within HMRC are there to give effect to the principles of the LSS in particular cases or for particular issues.

Minimising the scope for disputes

7. A key part of HMRC's overall customer strategy is to help reduce the likelihood of situations arising which may give rise to a dispute.
 - Disputes are costly for both HMRC and its customers and therefore HMRC is committed to supporting its customers to get their tax right without the need for a dispute.
 - There are many strands of existing HMRC activity which play a significant part in helping to minimise disputes (e.g. well-framed legislation; guidance; rulings and clearances processes; HMRC's risk based approach to compliance work; relationship management for large and complex customers; etc).

Engaging in disputes

8. HMRC seeks to secure the best practicable return for the Exchequer, and to do that it must apply the law fairly and even-handedly. Entering into, or taking forward, disputes can contribute to maximising overall revenue flows in a fair and even-handed way.
 - The objective of maximising revenue flows involves considering not only the tax at stake in the dispute itself but also – in circumstances where a precedent may be set, or where HMRC is seeking to influence customer behaviour – potential tax liabilities of the same or other customers.
 - In general, HMRC will not take up a tax dispute unless the overall revenue flows potentially involved justify doing so.

Handling disputes

9. HMRC will seek to handle disputes non-confrontationally and by working collaboratively with the customer wherever possible. In the majority of cases, this is likely to be the most effective and efficient approach.
 - A collaborative approach requires all parties to be open, transparent, and focused on resolving the dispute.
 - Working non-confrontationally can offer benefits in terms of effective and efficient dispute resolution in all civil cases, including where disputes are ultimately resolved through litigation.
 - HMRC will foster a non-confrontational approach with the customer, but will not be deterred from efficient and effective dispute resolution by other means if collaboration is not forthcoming.
 - HMRC will seek to articulate clearly the point(s) in dispute and timescales for reaching key decision points will be set and adhered to wherever possible.

10. Where there are good grounds to believe that evasion is involved, HMRC will consider whether a criminal investigation is appropriate.
11. In any dispute, HMRC will seek to establish and understand the relevant facts as quickly and efficiently as possible.
 - A non-confrontational approach is likely to help identify and establish relevant facts. For example, HMRC will aim early on to articulate the basis of its enquiries – in terms of tax risks perceived. Wherever possible, HMRC will also seek to clarify and confirm its understanding of the relevant facts with the customer.
 - Where needed, however, HMRC will make use of its statutory information powers in order to obtain the relevant facts and documents quickly and efficiently.
12. In complex cases, once sufficient facts have been established, taking early specialist advice, refreshed as appropriate to make sure it is current, can bring important efficiency savings. However no single piece of advice is necessarily decisive in determining HMRC's position.
13. HMRC will seek to work with the customer to understand fully the relevant facts and law, sharing and testing the strengths and weaknesses of HMRC's own arguments, and fully understanding and testing the strengths and weaknesses of the customer's arguments, before reaching a considered view on the strength of its case.
 - HMRC will always seek to ensure that respective arguments are fully shared. This will however not normally require the exchange of copies of Counsel's or other legal opinions, as opposed to the substance of the arguments supported by such opinions, and HMRC would not normally expect legal professional privilege to be waived in respect of confidential legal advice.
14. HMRC will always consider whether something which initially appears to be an 'all or nothing' issue is genuinely all or nothing or is in fact a case where there is a range of possible figures for tax due.
15. HMRC will aim to work disputes to the same professional standard whether or not the disputes are ultimately resolved by agreement or through litigation. Furthermore, HMRC will not usually persist with a tax dispute unless the revenue flows potentially involved justify doing so and HMRC has a case which it believes would be successful in litigation.

Resolving disputes

16. Tax disputes must, in all cases, be resolved in accordance with the law.
 - HMRC must be satisfied that both the substance of any decision leading to dispute resolution and the way that resolution is put into effect are fully in accordance with the law.

- Where there is more than one dispute between a customer and HMRC, each dispute must be considered and resolved on its own merits, not as part of any overall 'package deal'. As a matter of process, however, it may be that a number of disputes will be resolved at the same time (each on their own merits), for example as part of a process of bringing a customer's tax affairs up to date.
 - In certain cases Alternative Dispute Resolution can help support the resolution of disputes either by facilitating agreement between the parties or by helping the parties to prepare for litigation.
17. Tax disputes may be resolved either by agreement or through litigation, depending on which is likely to secure the right tax most efficiently. Where there is a range of possible figures for tax due, the terms on which HMRC will settle by agreement will also take into account which outcome secures the right tax most efficiently.
- In considering how to secure the right tax most efficiently, HMRC's objectives of maximising revenue flows and reducing costs will have regard to future as well as immediate revenue flows, costs and the deterrent effect on customer compliance.
 - In considering settlement terms for one dispute, HMRC will take account of the potential read across to other open or prospective disputes as well as the impact which settling the dispute could have in releasing HMRC resources to work on other disputes.
 - In order to ensure that overall current and future revenue flows and HMRC costs are not prejudiced, the terms on which disputes are resolved will take into account their likely impact on customer behaviour both generally and in relation to the customer concerned, including any question of avoidance, evasion, or a failure to take reasonable care.
 - In most cases, resolution by agreement is likely to offer the most effective and efficient outcome. However, HMRC will not compromise on its view of the law to secure agreement, and in that context there will be cases where litigation offers the most effective and efficient means of resolving disputes. In such circumstances, HMRC will seek to reach resolution of the dispute by litigation as quickly as possible.
 - Where there is a range of possible figures for tax due, HMRC will not settle by an agreement for an amount which is less than it would reasonably expect to obtain from litigation.
18. In relation to a dispute which is genuinely of an all or nothing nature:
- Where HMRC believes that it is likely to succeed in litigation and that litigation would be both effective and efficient, it will not reach an out of court settlement for less than 100% of the tax, interest and penalties (where appropriate) at stake. It therefore follows that, if the customer is unwilling to concede in such cases, HMRC will seek to resolve the dispute by litigation as quickly and efficiently as possible.

- Where HMRC believes that it is unlikely to succeed in litigation it will, in the majority of cases, concede the issue. In such cases, HMRC will not attempt to 'split the difference' between its own and the customer's view of tax, interest and penalties (where appropriate) at stake. Taking a case to litigation where HMRC believes it is unlikely to succeed would need to be justified by the particular circumstances, such as a very large amount of tax at stake (in the case itself or from immediate precedent value where a large number of customers is affected), or a fundamental point of principle or behaviour at issue.
19. A decision to litigate (whether it relates to an all or nothing issue or not) does not mean that HMRC will stop taking steps to ensure an efficient and effective resolution to the dispute.
- A decision to litigate should be implemented expeditiously and opportunities for collaboration should continue where it could help reduce the costs or uncertainty of litigation for both parties.
 - HMRC will continue to be open to considering the impact of any new information and / or analysis which may be put forward by the customer.