

HM REVENUE & CUSTOMS' ZERO TOLERANCE STRATEGY TOWARDS TAX AVOIDANCE

By Ron Horne

George Osborne's first budget identified some bold new revenue raising-ideas, but it missed a trick in not looking closer to home where millions of pounds of revenue are lurking.

HM Revenue & Customs' current zero tolerance strategy towards tax avoidance produces less in revenue than it does in expensive, heavy-handed litigation. This approach, designed to suck in billions of pounds of uncollected tax, demands to be revisited in a new era where public sector staff cuts and lack of litigation funds make a return to a conciliatory approach more appropriate. A successful strategy would allow HMRC access reach into gap between tax that is easily collectable and disputed theoretical tax liabilities, which has been estimated to contain between £3.7billion and £13.7 billion per annum

Prior to 2004, tax avoidance was dealt with in a more relaxed fashion, but in that year Chancellor Gordon Brown decreed that tax avoidance was unacceptable.

The shift brought an end to the era where outstanding sums were pursued through negotiation, with both parties agreeing a realistic deal on what could be paid, rather than the authorities pursuing the full amount through the courts at the expense of other taxpayers.



It is important to remember that there is a fundamental and critical difference between tax evasion and tax avoidance. Tax avoidance or "tax mitigation" uses existing legislation to legally minimise taxation.

It has always been recognised that the individual has the right to organise their tax affairs to minimise their liabilities. Tax evasion on the other hand is unlawful and normally involves an act of deliberate concealment or indeed fraud.

Evasion is rightly viewed by HMRC as a criminal act, with those involved being pursued and severely dealt with. However in recent times, HMRC's view of the difference between avoidance and evasion has become somewhat clouded.

These numbers, released in a vague form almost 6 years ago, have never been updated, and HMRC now refuses to update the figure.

Shortly after Brown's policy statement, HMRC introduced specific legislation requiring accountants and other parties involved in avoidance planning to provide early information to the government of tax avoidance schemes or tax planning arrangements.

Over the years these requirements have been significantly extended and tightened through the introduction of a number of adjustments to counter tax planning which HMRC deem to be an unacceptable or an abuse of tax legislation.

In October 2005 Dave Hartnett, now the Revenue's permanent secretary for tax, then the director general of HMRC, announced a major change in the campaign against tax avoidance, going as far as saying that "tax avoidance would be stamped out by 2008".

His attitude drove a hardening of response by HMRC, leading to a policy of non-negotiation. Instead of negotiation, officials would immediately resort to litigation if they did not agree that a particular planning strategy was within the law.

As might be expected against a background of steadily rising taxation, the degree of tax planning or tax avoidance grew proportionately. From HMRC's own figures, based on some 1,100 avoidance cases in 2005-2006 had doubled to some 2,035 in period to 2009-2010.

This growing case-load occurred against a background of staff cuts to HMRC and also shrinking resources. Needless to say, it has resulted in a substantial backlog of tax schemes under challenge by the Inland Revenue, waiting to be heard either at tribunal or through the courts. There is no information available on how long this list might be.

The proposals in the recent Budget to introduce a general anti-avoidance regulation would seem to me to be a step too far, and indeed similar proposals thrown out in 1999 over fears that such laws would be proverbial sledgehammer to crack a nut.

Existing legislation or specific amendments to that legislation should be enough to counter tax avoidance. Given recent events in the global economy and the urgent need to raise funds for the exchequer expressed in the coalition government's emergency Budget, there is indeed a case for HMRC to soften its approach from litigation to negotiated settlement.

Given the substantial backlog (a case heard in the Courts this year was originally lodged in 2003) there is an appetite amongst long-suffering tax payers to settle outstanding differences in interpretation of legislation. Agreeing such settlements would at least give those in dispute more clarity and certainty about the financial position going forward.

Such a move would also relieve pressure on HMRC staff and save litigation costs for everyone involved. All this could be achieved without impinging on HMRC's stated policy of robustly challenging tax avoidance arrangement, or its power to litigate as and where appropriate.

Indeed the Revenue would retain the ability to move (in some cases completely remove) the goal posts during the game. That surely gives them an advantage without recourse to sweeping anti-avoidance rules.

The Government and HMRC should remember that the surest way of reducing the need for tax avoidance or tax planning is to introduce a fairer and more competitive tax system in this country. The requirement to make tax contributions in accordance with circumstances and ability to pay at a reasonable level is by far the simplest and clear way to proceed both for business and for Her Majesty's Revenue and Customs

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