

HMRC has almost halved the number of transfer pricing i...

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In January this year HM Revenue & Customs launches a new tax amnesty for large businesses in the UK. [As I noted at the time](#):

HMRC have announced a new tax amnesty. And this time it is for big business. It's called the [Profit Diversion Compliance Facility](#), and what it basically does is to permit multinational companies that have been less than candid with their transfer pricing arrangements to now bring their past defaults to the attention of HM Revenue & Customs and make amends with limited risk a penalty apply.

Why is HMRC doing this? The clue might be in para 4.4.1 (some of us have been reading the small print) which says:

"Our investigations into Profit Diversion to date have established that in a **large number** of cases the factual pattern outlined to HMRC at the start of an enquiry does not stand up to scrutiny once tested. That may be a result of a careless error (for example individuals within a group being unaware of what the actual facts are) but it may also be a result of a deliberate behaviour, that is a group knowingly submitting a TP methodology in a Corporation Tax Return based on a false set of facts. A common issue is an overstatement of functions performed, assets used and risks assumed in entities taxed at lower rates, and an understatement of the functions performed, assets used and risks assumed in the UK."

I added the emphasis.

This begs questions. In particular:

- a) What is the total estimated value of trade subject to transfer pricing a year?
- b) How many TP specialists does HMRC have?
- c) How many investigations do they do a year?
- d) What is the value of transactions subject to enquiry annually?

- e) How many of those enquiries resulted in the view that “the factual pattern outlined to HMRC at the start of an enquiry [did] not stand up to scrutiny once tested”?
- f) What is the sum recovered?
- g) How many of those enquiries were subsequently referred to Fraud Investigation Service?
- h) What is the anticipated yield of this current exercise?

HMRC needs to be saying a great deal more.

Angus MacNeil MP tabled questions on this issue and three answers have now been received. The first is quite depressing, saying:

The Treasury has provided the following answer to a written parliamentary question from Angus MacNeil MP (220147):

Question: To ask the Chancellor of the Exchequer, with reference to HMRC's January 2019 Profit Diversion Compliance Facility, what estimate he has made of the value of transactions through transfer pricing arrangements in each of the last five years; how many transfer pricing specialists HMRC employs; and how many transfer pricing investigations HMRC has undertaken in each of the last five years. (220147)

Tabled on: 12 February 2019

Answer: **Mel Stride:**

On 10 January 2019 HMRC introduced a new Profit Diversion Compliance Facility for Multi-National Enterprises using arrangements targeted by the Diverted Profits Tax (DPT) to give them the opportunity to bring their UK tax affairs up to date.

HMRC does not hold the information about the value of transactions through transfer pricing arrangements in each of the last five years.

HMRC has increased the number of staff dealing with international tax risks, including transfer pricing. As at 30 April 2018, there were 365 full time equivalent staff working on international risks, including transfer pricing and DPT. HMRC recognises the importance of identifying and tackling international tax risks and is invested in building the capability of the staff involved. These skilled staff work with other expert industry and tax specialists to tackle those cases that represent a substantial risk of tax loss to the Exchequer in line with HMRC's “resource to risk” compliance policy.

Transfer pricing investigations include enquiries into tax returns, pre-return investigations, and investigations that precede Advance Pricing Agreements (APAs) or

Advance Thin Capitalisation Agreements (ATCAs). The numbers of transfer pricing investigations HMRC initiated in the years 2013/14 to 2017/18 were:

2013/14 2014/15 2015/16 2016/17 2017/18

Number of Investigations 462 427 384 250 244

The answer was submitted on 20 Feb 2019 at 17:31.

So what we now know is that HMRC do not know.

Despite that, The number of investigations of transfer pricing abuse started by HM Revenue & Customs has almost halved in the last five years. And so, despite the massive focus given to this issue, HM Revenue & Customs have reduced the effective scale of their activities on it. The deterrent effect of its activities has been reduced. It is exceptionally difficult to explain why this is the case because they could not have known in advance the outcome of such enquiries, which are explained by the second answer:

The Treasury has provided the following answer to a written parliamentary question from Angus MacNeil MP (220149):

Question:

To ask the Chancellor of the Exchequer, with reference to HMRC's January 2019 Profit Diversion Compliance Facility, what estimate he has made of the value of the sums recovered from HMRC investigations into transfer pricing arrangements in each of the last five years; how many HMRC investigations into transfer pricing arrangements have been subsequently referred to its Fraud Investigations Service in each of the last five years; and what estimate he has made of the value of HMRC's current investigations into transfer pricing arrangements. (220149)

Tabled on: 12 February 2019

Answer:
Mel Stride:

On 10 January 2019 HMRC introduced a new Profit Diversion Compliance Facility for Multi-National Enterprises using arrangements targeted by the Diverted Profits Tax (DPT) to give them the opportunity to bring their UK tax affairs up to date.

In the years from 2012/13 to 2017/18, HMRC secured £6.5 billion of additional tax by challenging the transfer pricing arrangements of multinationals.

Total Amount £504 m £1,137m £707m £853m £1,618m £1,682m

The information requested regarding how many HMRC investigations into transfer pricing arrangements have been subsequently referred to its Fraud Investigation Service in each of the last five years is not readily available and could only be provided at disproportionate cost. However, in appropriate cases transfer pricing cases are referred to HMRC's Fraud Investigation Service for their consideration.

HMRC cannot reliably predict the value of its current investigations into transfer pricing arrangements because the outcome is highly dependent on the facts that are determined during the enquiries' progress.

The answer was submitted on 20 Feb 2019 at 17:46.

It has to be acknowledged that the yield per enquiry has improved. Assuming all investigation opened closed in the same year (which is unlikely) the trend would be:

Yield per investigation £2.46m £1.66m £2.22m £6.47m £6.89m

It could, of course, be argued that HMRC became massively more efficient. It could equally be argued that they got lucky. And third, it could be argued that all they proved was that there was a massive problem to be tackled to which they were not devoting nearly enough by way of resources.

Which seems likely? Only one of them, unfortunately, and that is the last. Why else announce the amnesty if anything else was true? It would make no sense. After all, if they could really pinpoint the errors with accuracy, and could deal with them because it was cost effective to do so (and this must be true) then why offer a free for all admission process instead?

The fact that the basis on which the amnesty has been declared is also dubious is supported by the third answer supplied, which says this:

The Treasury has provided the following answer to a written parliamentary question by Angus McNeil MP (220148):

Question:

To ask the Chancellor of the Exchequer, with reference to HMRC's January 2019 Profit Diversion Compliance Facility, what estimate he has made of the value of transactions under investigation; and how many inquiries resulted in the view that the factual

pattern outlined to HMRC at the start of an enquiry did not stand up to scrutiny once tested in each of the last five years. (220148)

Tabled on: 12 February 2019

Answer:
Mel Stride:

On 10 January 2019 HMRC introduced a new Profit Diversion Compliance Facility for Multi-National Enterprises using arrangements targeted by the Diverted Profits Tax (DPT) to give them the opportunity to bring their UK tax affairs up to date.

HMRC does not hold the information about the value of transactions under investigation.

HMRC does not hold information about how many inquiries resulted in the view that the factual pattern outlined to HMRC at the start of an enquiry did not stand up to scrutiny once tested in each of the last five years.

However, in circumstances where HMRC believes it may have been misled by information provided by customers in the context of transfer pricing investigations, the matter will be referred to its Fraud Investigation Service.

This does not make sense. In announcing the amnesty it was said that:

*Our investigations into Profit Diversion to date have established that in a **large number** of cases the factual pattern outlined to HMRC at the start of an enquiry does not stand up to scrutiny once tested.*

But when asked to explain what a 'large number' means HMRC cannot do so. The suggestion that they are making their claim up would seem appropriate in the circumstances.

So what is really happening? I suggest five things.

First, the threat from HMRC to any company is falling: that is the inevitable consequence of a decline in the number of investigations.

Second, because HMRC does not know the quantity of transfer priced trade they are looking at they have no idea what risk they are facing.

Third, as a result the use of their resources is bound to be misdirected, at best.

And fourth, growing yields show random patterns by year: there may be as much chance in this as anything else.

The announcement of an amnesty on the basis of a claim about data that they do not

apparently hold suggests that this is highly likely to be true.

This is no way to run a tax authority. I wish that one day it could be rationally accountable for its actions and show as a result that it is using its resources for the best benefit if society. Nothing in this data suggests that to be the case. Instead, the exact opposite may well be true. And the possibility that the tax gap in this area is vastly higher than they state it to be has to be very high.