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How HMRC resolves tax disputes

by Tax Faculty Team
on 11.07.2014 15:35

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The Tax Assurance Commissioner's Annual Report 2013-14

This is the second Annual Report and is the first to cover a full 12 month period [How we resolve Tax Disputes](#) [The Tax Assurance Commissioner's Annual Report 2013-14](#).

HMRC was heavily criticised by the Public Accounts Committee (PAC) when it reported in 2011 on how HMRC handled disputes with large businesses which was a part of the PAC examination of HRMC's 2010-11 Accounts. The NAO was instructed to carry out an investigation and appointed retired judge Sir Andrew Park to report on five settlement cases which he did in June 2012.

In announcing the results of the investigation Amyas Morse head of NAO stated:

'... our concerns over the processes by which the settlements were reached have been confirmed. It was not appropriate to set up governance arrangements specific to certain cases or to fail to apply processes correctly. Poor communication with staff also undermined confidence in the settlements.'



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But in the meantime HMRC had announced in February 2012 changes to their governance arrangements for settling large tax disputes. This led to the appointment of Edward Troup as the first Tax Assurance Commissioner in July 2012 and the Tax Disputes Resolution Board (TDRB) was then set up in November 2012. The Tax Assurance Commissioner's first annual report covered the genesis of the new arrangements and the first few months of the work in the period to March 2013.

In the year covered by the second Annual Report to March 2014 the TDRB held 14 meetings and considered 63 referrals from case teams of which 46 were referred to a panel of 3 Commissioners who have the ultimate authority to reach a decision in these cases. The cases referred related to decisions involving £3,869m in tax of which 28 worth £1,167m were accepted while 12 were rejected worth £472m. Other cases are still on-going requiring further work before a decision can be reached.

Under the new arrangements there are also three Resolution Boards for the HMRC business lines, Enforcement and Compliance, Large Business and Personal Tax, as well as Transfer Pricing Panels and these make decisions to resolve smaller cases and are responsible for referring a sample of cases to the TDRB and Commissioners.

There are then 'issues' where a disputed tax point may arise for a number of different taxpayers and so it is important to have consistency for all those potentially affected. There is a Contentious Issue Panel for Business and Personal Tax and the Anti-Avoidance Board monitors new avoidance schemes and makes decisions as to how HMRC should respond. The Contentious Issue Panel met 20 times in 201/13 and dealt with 263 referrals which reflected a significant number of legacy cases.

The first chapter of the Annual Report makes it clear that in accordance with the Litigation and Settlement Strategy (LSS) HMRC will, wherever possible, handle disputes non-confrontationally and will work collaboratively with the taxpayer to resolve the dispute. In cases where the dispute cannot be resolved then HMRC will now consider whether it would be beneficial to use alternative dispute resolution (ADR) methods which might involve mediation or a facilitated discussion between the parties.

If the matter cannot be resolved by agreement, or through ADR, then the case may move to litigation. However before that point is reached the taxpayer may ask for a review of the HMRC decision which will be carried out by HMRC staff which are independent of the teams that have worked the particular case. In 2013-14 HMRC carried out more than 38,500 reviews which was slightly less than the previous year because of a drop in the number of

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There were 7,000 cases in 2013/14 that went to appeal of which 6,500 were closed: 38% were as a result of a formal hearing while 62% were settled by agreement before the hearing. HMRC won 76% of cases heard by the tribunal.

Part way through the year covered by the Annual Report, in November 2013, HMRC updated the [Commentary on the LSS](#) and updated the [Code of Governance for Resolving Tax Disputes](#) to include details of the Business Lines Resolution Boards and the Contentious Issues panels.

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