



Institute for Fiscal Studies

TLRC Report

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Tax Law Review Committee

Large business tax disputes

An investigation into whether (and if so, why) avoidable disputes are arising between businesses and HMRC as well as why delays occur between the opening and closing of enquiries

Published by The Tax Law Review Committee

Published by **The Institute for Fiscal Studies**

7 Ridgmount Street

London WC1E 7AE

<https://ifs.org.uk>

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ISBN 978-1-80103-148-6

This report was written for the Tax Law Review Committee by Stephen Daly and Heather Self. The Committee has authorised its publication to inform and promote debate in this area. The views expressed do not necessarily represent the views of the Committee. The Institute for Fiscal Studies has no corporate views.

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Executive summary

The purpose of the study is to investigate whether (and if so, why) avoidable disputes are arising between businesses and HMRC as well as why delays occur between the opening and closing of enquiries.

The study combines survey and interview data, as well as the previous literature. Based on all the data available to us, we raise some issues of concern that require further consideration.¹ It is clear that the complexity of large businesses, combined with the need to apply rules concerning international taxation, means that disputes will be inevitable. However, we consider ways in which disputes might be reduced and the length of time during which they are outstanding be shortened.

Should HMRC be required **to publish annual statistics on the number of open enquiries and the average age of open enquiries**?² As HMRC is already considering,³ there might be merit in introducing more **stringent rules applied to enquiries** such as default rules as to when enquiries must be closed (subject to an HMRC application to the First-tier Tribunal)?

We raise the question of whether, in some cases, disputes may arise because HMRC officials are not provided with **sufficient technical training** and whether Customer Compliance Managers (CCMs) lack sufficient understanding of the businesses themselves (which **continuity in the CCM role** would mitigate)?

Issues around expertise and the subject matter of the dispute will also cause delays to occur between the opening and closing of enquiries (the second research question). Governance will certainly play a role. Whilst it might be frustrating for taxpayers that these layers of governance do exist, they were introduced in response to particular concerns about the potential for cosy, sweetheart deals. These layers of governance also ensure consistency of treatment across taxpayers. **To that end, the rationale for governance constraints is sound.** Furthermore, it should be acknowledged that taxpayers and the tax authority **face differing objectives when it comes to resolving disputes.**

But what might assist is better communication with taxpayers as to how the governance process works. Could this be an aspect of a broader potential change which would involve wider use of **mediation training** for CCMs? Would it be useful to consider whether **taxpayers could be involved** (in some way) when issues are being escalated through the higher layers of governance? Are there lessons which could be learned from the experience of the High Risk Corporates Programme (HRCP) which could be applied more generally to disputes?

There are relatively few formal rules governing the relationship between HMRC and taxpayers, and enquiries can be opened for any reason (within defined time limits). This appears to result in the elongation of the period between the opening and closing of an enquiry. There are several questions that might be asked. Should some thought be given to the suggestion that **questionnaires be designed as bespoke** for taxpayers rather than being pro forma? More fundamentally, is it the case

¹ As a result of the shortcomings in the interview and survey data, the report findings are based on a combination of data.

² Also recommended by the CBI: CBI (December 2018), *In need of a reset: HMRC's relationship with large business*, p. 3. <https://www.cbi.org.uk/articles/in-need-of-a-reset-hmrCs-relationship-with-large-business/>.

³ HMRC and HM Treasury (November 2021), *Review of tax administration for large businesses*. <https://www.gov.uk/government/publications/review-of-tax-administration-for-large-businesses/review-of-tax-administration-for-large-businesses>.

that HMRC officials cannot communicate clearly to taxpayers why information is being requested because they are **disincentivised from taking a position?**

Finally, the report finds that the **cooperative compliance framework** is achieving its desired goal in highlighting issues in real time, whilst the **litigation and settlement strategy** was not seen to be a major cause of delays.

Acknowledgements

There are many people who helped move this project along. David Tipping was an excellent research assistant, transcribing the interviews and conducting a comprehensive literature review. Other bodies provided considerable help also during the project, both through disseminating the survey link and providing input. To that end, Pinsent Masons shared the link with its clients and also shared its data on tax disputes in the UK. These data have been obtained through the years using regular Freedom of Information requests in order to obtain details of the 'Tax Under Consideration' within HMRC's Large Business Directorate. The Confederation of British Industry (CBI) distributed the survey link to members (in December 2021 and January 2022) and allowed Stephen Daly and Heather Self to promote the survey at a CBI Tax Committee meeting (March 2022).

Introduction

Finality over tax affairs is important for both the tax authority and the taxpayer. It allows the tax authority to focus its resources on ongoing and future issues, whilst it allows the taxpayer to continue to engage with their business. Uncertainty can affect business decisions and ultimately investment into the UK.

Disputes about tax,⁴ however, are inevitable. The principle of finality underpins the need to ensure that these disputes are resolved as expeditiously as possible. Significant delays between HMRC closure notices and tribunal appeals are undesirable, as are delays between disputes arising and enquiries being closed.

There are two broad issues that need to be tackled accordingly: resolving disputes once they occur and preventing their occurrence in the first place.

The Tax Law Review Committee previously undertook a project reviewing the tax tribunals system,⁵ a component of which is focused on delays between the lodging of tax appeals and tribunal determinations. Of the 42 respondents to the survey conducted for the purposes of that project, 39 identified HMRC as a cause of delay.⁶ The Large Business Tax Dispute Project seeks to complement that review, looking more specifically at delays which occur before a matter comes to litigation.

⁴ For the purposes of clarity in the text, this report uses the term 'dispute' to concern both instances where taxpayers and the tax authority affirmatively disagree about a matter and where the tax authority has concerns that a taxpayer *may* be underpaying tax. Opening an enquiry does not indicate that a dispute has arisen and in the case of a large business may be a matter of course given the complexity involved.

⁵ Michael Blackwell (2021), *The tax tribunals: the next 10 years (Report for the Tax Law Review Committee)*, London: Institute for Fiscal Studies. <https://ifs.org.uk/publications/15554>.

⁶ Michael Blackwell (2021), *The tax tribunals: the next 10 years (Report for the Tax Law Review Committee)*, London: Institute for Fiscal Studies, [A2.24]. <https://ifs.org.uk/publications/15554>.

The purpose of the study is to investigate whether (and if so, why) avoidable disputes are arising between businesses and HMRC as well as why delays occur between disputes arising and enquiries being closed. The objective of this study is to generate quantitative and qualitative data about tax disputes that can be used to inform policy on tax administration. The project is limited in scope, focusing on businesses that deal with the Large Business Directorate of HMRC – the survey respondents and interviewees in the project are the tax directors of a sample of these large businesses. Whilst the number of responses was smaller than the authors would have liked, it has highlighted a number of themes which could be explored in more detail with businesses and HMRC.

This study is timely. Long-running enquiries have been identified as a source of uncertainty by large businesses, as noted in the 2021 ‘Review of tax administration for large businesses’ by HMRC and HM Treasury.⁷ In response, HMRC is working to ‘establish new, objective indicators of long-running enquiries and a clear and transparent process to accelerate their resolution’.⁸

Survey of the area

HMRC governance

HMRC publishes a Code of Governance for Resolving Tax Disputes (‘the Governance Code’)⁹, which ‘sets out the internal governance arrangements for decisions on how tax disputes should be resolved.’¹⁰ The present governance structure differs significantly from the regime which operated in the past. The catalyst for this change lies in the controversy surrounding alleged sweetheart deals given to large multinationals a decade or more ago. Andrew Park, a High Court judge (and former eminent tax QC) at the time, was commissioned by the National Audit Office to write a report investigating these alleged sweetheart deals.¹¹ Whilst Mr Justice Park found that the deals all generated a reasonable return for the Exchequer (in one instance generating more than the law would have required),¹² he did have concerns about the processes by which settlements were reached.¹³

⁷ HMRC and HM Treasury (November 2021), *Review of tax administration for large businesses*. <https://www.gov.uk/government/publications/review-of-tax-administration-for-large-businesses/review-of-tax-administration-for-large-businesses>. It was noted that ‘[t]hroughout the review, businesses emphasised the importance of mitigating uncertainty across all taxes and duties and highlighted the implications of complexity and levels of change, particularly for those operating in the international environment’.

⁸ HMRC and HM Treasury (November 2021), *Review of tax administration for large businesses*. <https://www.gov.uk/government/publications/review-of-tax-administration-for-large-businesses/review-of-tax-administration-for-large-businesses>.

⁹ HMRC (2023), *Code of governance for resolving tax disputes*. <https://www.gov.uk/government/publications/resolving-tax-disputes/code-of-governance-for-resolving-tax-disputes>.

¹⁰ HMRC (2023), *Code of governance for resolving tax disputes*, [1]. <https://www.gov.uk/government/publications/resolving-tax-disputes/code-of-governance-for-resolving-tax-disputes>.

¹¹ National Audit Office (2012), *Settling large tax disputes*. <https://www.nao.org.uk/reports/settling-large-tax-disputes/>.

¹² National Audit Office (2012), *Settling large tax disputes*, [10]. <https://www.nao.org.uk/reports/settling-large-tax-disputes/>.

¹³ See also *UK Uncut Legal Action Ltd v- Commissioners of Her Majesty’s Revenue and Customs Claimant Defendant -and- (1) Goldman Sachs International (2) Goldman Sachs Services Ltd* [2013] EWHC 1283 (Admin).

At the top of HMRC's governance structure are the Commissioners (see Appendix 3), who are ultimately responsible for the functioning of HMRC and derive their authority from the Commissioners for Revenue and Customs Act 2005. In particular, the Tax Assurance Commissioner (TAC) oversees HMRC's governance structure for handling disputes – a structure put in place in 2012. The TAC has no prior involvement with the tax affairs of particular taxpayers and, in theory, can provide a fresh pair of eyes to challenge decision-making.¹⁴ At the other end of the structure are case workers, who make day-to-day operational decisions in order to resolve cases. In more complex cases, caseworkers can draw on the expertise of HMRC's technical specialists. Between these two ends of the governance framework, there exist a number of Governance Boards, who are responsible for overseeing cases and ensuring HMRC takes a consistent approach in difficult or novel cases. The Governance Boards are divided into Case Governance Boards and Issue Governance Boards.

The Case Governance Boards consider and review individual cases that fall within their remit. A number of different Case Governance Boards exist:

- the Customer Compliance Group Dispute Resolution Board (CCG DRB);
- the Transfer Pricing Board;
- the Diverted Profits Board; and
- the Tax Dispute Resolution Board (TDRB).

Beneath the Transfer Pricing Board and the Diverted Profits Board, smaller panels (i.e. the Transfer Pricing Panel and the Diverted Profits Panel, respectively) make preliminary recommendations and decisions regarding smaller risks. The remits of the Case Governance Boards are mutually exclusive: the Diverted Profits Board makes decisions relating to Diverted Profits Tax; the Transfer Pricing Board makes decisions about high-value, high-profile or contentious transfer pricing cases which do not raise DPT issues; and the CCG DRB deals with larger or complex cases that otherwise fall outside the remit of the other two boards.

A caseworker must refer a case to the CCG DRB where there is at least £15 million worth of tax in dispute (in the case of Large Business Customers; at least £5 million in the case of non-Large Business Customers).¹⁵ The CCG DRB can decide the case, offer guidance without deciding the case, commission further work from the referring case worker before making a decision, or refer the case to the TDRB (about which see below). In the vast majority of cases, the CCG DRB will make a decision. In 2021–22, the CCG DRB decided 78 out of 84 cases referred to it; in 2020–21, it decided 66 out of 71 cases referred.¹⁶ A sample of the CCG DRB's decisions is referred on to the TDRB and the Commissioners for review.

Above the CCG DRB is the TDRB. A case may be referred to the TDRB because either a caseworker or the CCG DRB thought the case raises a particularly novel or unusual point, or a Director otherwise

¹⁴ HMRC (July 2022), *Annual Report and Accounts 2021 to 2022*, p. 119.

<https://www.gov.uk/government/publications/hmrc-annual-report-and-accounts-2021-to-2022>.

¹⁵ HMRC (July 2022), *Annual Report and Accounts 2021 to 2022*, p. 120.

<https://www.gov.uk/government/publications/hmrc-annual-report-and-accounts-2021-to-2022>.

¹⁶ HMRC (July 2022), *Annual Report and Accounts 2021 to 2022*, p. 122.

<https://www.gov.uk/government/publications/hmrc-annual-report-and-accounts-2021-to-2022>.

thought it prudent to refer the case.¹⁷ In addition, the TDRB will consider cases that must be decided by the Commissioners and will produce a recommendation about the issues before referring them on. These onward referrals constitute the vast majority of the cases that the TDRB considers: in 2021–22, just four cases out of 38 considered by the TDRB were not referred to the Commissioners; in 2020–21, it was four out of 36.¹⁸

The Issue Governance Boards have cases referred to them which are considered to raise disputed points that arise in multiple cases. If the case raises issues of tax avoidance, it must be referred to the Anti-Avoidance Board (AAB); cases which raise major contentious issues other than avoidance must be referred to the Contentious Issues Panel (CIP). The Governance Code defines a ‘major contentious issue’ as:

‘one that involves a point of law or practice which might have a significant and far-reaching impact on HMRC policy, strategy or operations, affect multiple cases and/or different business areas, or result in major litigation.’¹⁹

If the AAB considers an avoidance risk to have a sufficiently far-reaching impact, it can also make a referral to the CIP,²⁰ somewhat eroding the distinction between the bodies and likely resulting in a duplication of effort.

If a single case meets the criteria for referral to one of the Case Governance Boards and one of the Issues Governance Boards, both referrals must be made.²¹ The Issues Governance Board referral must be made first, because its recommendations will be considered by the Case Governance Board in its decision.

Finally, the apex of HMRC’s governance structure is a panel of three Commissioners, one of whom must be the TAC. Cases in which the tax at stake exceeds £100 million, the maximum possible adjustment exceeds £500 million, or which are otherwise considered to be sensitive, or involve a potential Banking Code breach must be decided by the Commissioners.²² As noted above, the referral is usually made via the TDRB, which also produces a recommendation, although the CIP or the AAB can also make referrals.

In previous studies, it has been suggested that taxpayers appear to have a general concern that HMRC’s governance procedures are opaque and inefficient. Whilst these studies are now some years old, they are nevertheless the most recent available, prior to the current study. Fichardt (2014) reported that ‘a small minority of survey respondents have found the [governance] process efficient

¹⁷ HMRC (2023), *Tax Disputes Resolution Board remit*, [6]-[8].
<https://www.gov.uk/government/publications/dispute-resolution-governance-board-remits/tax-disputes-resolution-board-remit>.

¹⁸ HMRC (July 2022), *Annual Report and Accounts 2021 to 2022*, p. 121.
<https://www.gov.uk/government/publications/hmrc-annual-report-and-accounts-2021-to-2022>.

¹⁹ HMRC (July 2022), *Annual Report and Accounts 2021 to 2022*, p. 23.
<https://www.gov.uk/government/publications/hmrc-annual-report-and-accounts-2021-to-2022>.

²⁰ HMRC (March 2016), *Internal Manual, SIOG1910*. <https://www.gov.uk/hmrc-internal-manuals/specialist-investigations-operational-guidance/siog1910>.

²¹ HMRC (March 2016), *Internal Manual, SIOG1910*. <https://www.gov.uk/hmrc-internal-manuals/specialist-investigations-operational-guidance/siog1910>.

²² HMRC (2023), *Tax Disputes Resolution Board remit*, [1]-[5].
<https://www.gov.uk/government/publications/dispute-resolution-governance-board-remits/tax-disputes-resolution-board-remit>.

in response time (20%), feedback (13%) and decision-making process (7%).²³ The general tenor of the report was that taxpayers did not seem to understand how governance decisions were made. The CBI has described the level of governance as ‘excessive’²⁴ and has said that it creates significant delays in resolving disputes. This is exacerbated by the issues raised above about CCMs, who ought to be the taxpayer’s point of contact for communicating how HMRC functions to the taxpayer. If CCMs are unable or unwilling to make decisions for themselves or feel it is necessary to seek approval for every issue, then this will inevitably create greater reliance on the surrounding governance framework and will lead to further delays. However, it should be noted that this study related to the old governance structure before reforms were implemented. The present structure was introduced following a period of streamlining in 2017–18, when multiple different boards (Enforcement and Compliance, the Large Business and the Specialist Personal Tax Disputes Resolution Boards) were merged together into the CCG DRB as described above.²⁵

Tax administration framework

The tax administration framework in the UK – the legal framework which regulates HMRC’s administrative powers – is very permissive and open in the sense that there are fewer and less constrictive formal rules that govern the relationship between HMRC and taxpayers than is the case in other countries with a more legalistic and rigid framework. Even where these few formal rules are concerned, it is with relative ease that HMRC can trigger them. For instance, an enquiry can be opened for any reason whatsoever within a year of a tax return being filed.²⁶ Once such an enquiry has been opened, HMRC can use its formal information powers to compel taxpayers to provide information which is ‘reasonably required’.²⁷ The time limit of up to 20 years on discovery assessments²⁸ is far longer than comparable jurisdictions.²⁹

How HMRC approaches the task of managing compliance amongst taxpayers, as a result, is largely governed by its own internal policies which determine how its resources are allocated and its legal discretion should be exercised. There are two notable initiatives in this respect which apply to large businesses: cooperative compliance and the litigation and settlement strategy.

Risk rating

HMRC adopts a risk-based approach in allocating resources to ensure taxpayer compliance: the higher the risk that the ‘incorrect’ amount of tax will be collected, the more resources HMRC is willing to commit to the particular issue. This accords both with growing international consensus

²³ Liesl Fichardt (2014), *Revisiting HMRC’s approach to tax disputes: views from industry*, *Tax Journal* 1236, 16–17.

²⁴ CBI (December 2018), *In need of a reset: HMRC’s relationship with large business*, p. 10.
<https://www.cbi.org.uk/articles/in-need-of-a-reset-hmrCs-relationship-with-large-business/>.

²⁵ HMRC (July 2017), *Annual Report 2016 to 2017*, p. 102.
<https://www.gov.uk/government/publications/hmrc-annual-report-and-accounts-2016-to-2017>.

²⁶ As explained by Nugee J in *R (On the Application Of JJ Manangement LLP & Ors) v Revenue And Customs & Anor* [2019] EWHC 2006, [48]. See Taxes Management Act 1970, s. 9A and 12AC; Finance Act 1998, Schedule 18, [24].

²⁷ See Finance Act 2008, Schedule 36, [1] and [21].

²⁸ Taxes Management Act 1970, s. 36(1A), FA 1998 Sch 18, para 46(2A).

²⁹ In Germany, for instance, it is 10 years; though in Greece, the time limit is 20 years also. See generally Pasqual Pistone (ed.) (2020), *Tax Procedures*. IBFD.

around what the OECD calls ‘co-operative compliance’³⁰ and with common sense – in a world of finite resources, there is no point spending a lot of resource on an issue, if it is unlikely to be problematic.

In accordance with this approach, HMRC undertakes a Business Risk Review (BRR+) of large corporate taxpayers and allocates a risk rating. While HMRC acknowledges that large, multinational taxpayers are inherently higher risk than smaller, simpler businesses, it claims that even very large taxpayers can be properly categorised as low risk if they put in place sufficient procedures for managing the risks involved with the scale of their operations.³¹

A company’s CCM will carry out the BRR+ and categorise the taxpayer as either low risk, moderate risk, moderate–high risk or high risk. The assessment is therefore predominantly led and conducted by HMRC.

Other jurisdictions have a different and more consensus-based approach to cooperative compliance. For example, in the Netherlands, large corporate taxpayers can opt in to a system of cooperative compliance and must develop a Tax Control Framework, which is then used by the Dutch Tax and Customs Administration to evaluate the risk posed by the taxpayer.³² The incentives for a taxpayer to be low risk are, in theory, less intense scrutiny by the Revenue authorities and a higher degree of cooperation, although these expectations are not necessarily met in practice.³³ Though the Dutch model is much discussed in the literature, it has recently been redesigned in an attempt to mitigate issues identified with its previous functioning.³⁴

The taxpayer’s rating in the UK is determined by the assessment of three factors by the HMRC official that deals with them (their CCM):³⁵

- Systems and Delivery – understanding how a customer ensures that their systems and process are suitable and sufficiently resourced to enable them to deliver the right tax at the right time while recognising and mitigating risks.
- Internal Governance – understanding the governance framework within which the customer manages tax compliance risk and how this applies in practice along with their openness and cooperation with HMRC.
- Approach to Tax Compliance – understanding the customer’s tax strategy and the structure of business interactions alongside the transparency of their relationship with HMRC.

Each of these factors has eight corresponding ‘low-risk indicators’ – the more indicators present in the taxpayer’s business, the more likely they are to be low risk.

³⁰ OECD (2013), *Co-operative Compliance: A Framework: From Enhanced Relationship to Co-operative Compliance*, Paris: OECD Publishing. <https://doi.org/10.1787/9789264200852-en>.

³¹ HMRC (September 2017), *Large Business compliance – enhancing our risk assessment approach, Consultation*, [2.4]. <https://www.gov.uk/government/consultations/consultation-on-the-business-risk-review>.

³² Dennis De Widt and Lynne Oats (2017), *Risk assessment in a cooperative compliance context: a Dutch–UK comparison*, *British Tax Review*, 2, 230.

³³ Dennis De Widt and Lynne Oats (2017), *Risk assessment in a cooperative compliance context: a Dutch–UK comparison*, *British Tax Review*, 2, 230–241.

³⁴ For a synopsis, see: PWC (April 2022), *Dutch Horizontal Tax Monitoring: will others follow where this historic leader is heading?* <https://globaltaxnews.ey.com/news/2022-5391-dutch-horizontal-tax-monitoring-will-others-follow-where-this-historic-leader-is-heading>.

³⁵ HMRC (April 2016), *Internal Manual, TCRM3341*. <https://www.gov.uk/hmrc-internal-manuals/tax-compliance-risk-management/tcrm3341>.

Previous studies have discussed the functioning of the risk rating system. As with the reports on HMRC's governance structure, these studies are now some years old but they are nevertheless the only studies publicly available.

Research suggests that large, multinational taxpayers simply will not be categorised as low risk given the complexity of their operations.³⁶ More interestingly, it is also not apparent that taxpayers will be enthusiastic to be categorised as low risk. Freedman et al. (2014) found that only a quarter of respondents' boards of directors actively pursued a low-risk rating,³⁷ even though over 80% of respondents recognised the advantages of being low risk.³⁸ Reasons that a taxpayer may choose not to pursue a low-risk rating include believing that the rating does not justify forgoing certain tax planning opportunities of which the Revenue does not approve,³⁹ the compliance costs of becoming low risk are too great,⁴⁰ perceived advantages of being non-low-risk rated (more engagement with HMRC, better response times, proof of tax efficiency, etc.)⁴¹ and scepticism about the impact of risk rating on the day-to-day relationship with HMRC.⁴²

From HMRC's perspective, its risk-based approach can nevertheless be said to be quite successful, although imperfect. Freedman et al. (2014) reported that 68% of respondents described the BRR as having a positive impact on resource allocation by HMRC. In a 2018 consultation about reforming the BRR, HMRC found that 80% of respondents described the BRR as satisfactory or better, but in need of improvement in several ways, including greater consistency across HMRC and greater involvement of the business.⁴³ Several reforms were implemented culminating in the launch of the modern BRR+, on which there are currently no publicly available data on how satisfied taxpayers are with the changes.

Cooperative compliance

The risk-based approach feeds into the cooperative compliance model which is adopted in the UK. The largest businesses are assigned a CCM (formerly a Client Relationship Manager (CRM)) by HMRC, who is intended to act as a single point of contact between the taxpayer and HMRC as part of a so-called 'customer-centric strategy'.⁴⁴ The purpose of the CCM is therefore to ensure that the business pays the tax that they owe, keeping compliance costs and uncertainty to a minimum.⁴⁵ It is apparent that the CCM plays an important role in shaping the relationship between the two, both when that relationship is working well and when it isn't.

³⁶ Judith Freedman, John Vella and Geoff Loomer (2009), *Corporate Tax Risk and Tax Avoidance: New Approaches*. *British Tax Review*, 1, 74–80; Dennis De Widt and Lynne Oats (2017), *Risk assessment in a cooperative compliance context: a Dutch–UK comparison*. *British Tax Review*, 2, 230–237.

³⁷ Judith Freedman, Francis Ng and John Vella (June 2014), *HMRC's relationship with business*, p. 29.

³⁸ Judith Freedman, Francis Ng and John Vella (June 2014), *HMRC's relationship with business*, p. 31.

³⁹ Judith Freedman, Francis Ng and John Vella (June 2014), *HMRC's relationship with business*, p. 29.

⁴⁰ Judith Freedman, Francis Ng and John Vella (June 2014), *HMRC's relationship with business*, p. 32.

⁴¹ Judith Freedman, Francis Ng and John Vella (June 2014), *HMRC's relationship with business*, p. 34.

⁴² Dennis De Widt and Lynne Oats (2017), *Risk Assessment in a Cooperative Compliance Context: A Dutch-UK Comparison*. *British Tax Review*, 2, 230–238.

⁴³ HMRC (March 2018), *Large Business compliance – enhancing our risk assessment approach, Summary of Responses*, 6. <https://www.gov.uk/government/consultations/consultation-on-the-business-risk-review>.

⁴⁴ Paul Riley (2012), *The view from HMRC: working with CRMs*. *Tax Journal*, 1128, 10.

⁴⁵ Paul Riley (2012), *The view from HMRC: working with CRMs*. *Tax Journal*, 1128, 10.

The change in the title from CRM to CCM occurred in 2018.⁴⁶ For the purposes of consistency, this report uses the term CCM throughout (except where ‘CRM’ is used by survey participants and interviewees), even though strictly speaking all references to the CCM pre-2018 should be to the CRM. The change in name resulted from a recommendation from the Public Accounts Committee,⁴⁷ in the context of High Net Worth Individuals, who considered that ‘[t]he name “customer relationship manager” should be changed to something that does not suggest an overly close and inappropriate service to the wealthy’.

The CCM regime has a number of strengths, but also some weaknesses, as charted by previous studies (which are the most up to date available).

Research undertaken by HMRC in 2007⁴⁸ indicated that large businesses preferred to have a consistent single point of contact with HMRC, rather than maintaining ad-hoc relationships with different teams. In contrast to the experience of Local Compliance taxpayers (who are not large enough to be assigned a CCM), who reported a wide variation in their level of contact with HMRC, Large Business Service taxpayers reported that they were ‘generally pleased’ with their CCM.⁴⁹ The CCM could facilitate contact between the taxpayer and relevant specialists and enabled the business to keep HMRC up to date through a single point of contact. This positive view is corroborated by contemporaneous research undertaken by the Oxford University Centre for Business Taxation,⁵⁰ which found that the majority of respondents were generally positive about their CCM.⁵¹ A further study in 2014 found that the vast majority of businesses had a positive experience of CCMs, reporting that 91% of businesses found it easy to contact HMRC staff with enough competence and authority for their problem, in contrast to a 60% figure for non-CCM staff.⁵² This must be contrasted with a study by Clifford Chance, which reported that all respondents felt frustrated ‘at times’ when dealing with their CCM and the majority (71%) felt that their CCM lacked sufficient authority to resolve disputes.⁵³ At first glance, these results might appear contradictory – how can it be that taxpayers are frustrated if the relationship is generally a positive one? This might partly be explicable by the phrasing of the question: it is to be expected in any prolonged relationship that the participants might feel frustrated ‘at times’ and respondents may feel it is simply unrealistic to never be frustrated. It must also be observed that the 2014 survey incorporated many more respondents (approximately 1,800) of varying size, whereas Clifford Chance’s research included just 25 large UK businesses. This could explain the divergence in view on the authority of CCMs to dispute resolution. It is therefore more interesting to look at the issues that respondents raised concerning their CCMs.

⁴⁶ IFF Research (March 2021), *Large Business Survey 2020*, p. 79.

⁴⁷ House of Commons Committee of Public Accounts (2017), *Collecting tax from high net worth individuals*, HC 774, [2]. <https://publications.parliament.uk/pa/cm201617/cmselect/cmpublicacc/774/774.pdf>.

⁴⁸ HMRC (December 2007), *Research to support the implementation of proposals in the Review of Links with Large Business*.

⁴⁹ HMRC (December 2007), *Research to support the implementation of proposals in the Review of Links with Large Business*, p. 11.

⁵⁰ Judith Freedman, John Vella and Geoff Loomer (2009), *Corporate Tax Risk and Tax Avoidance: New Approaches*. British Tax Review, 1, 74.

⁵¹ Judith Freedman, John Vella and Geoff Loomer (2009), *Corporate Tax Risk and Tax Avoidance: New Approaches*. British Tax Review, 1, 74–87.

⁵² Judith Freedman, Francis Ng and John Vella (June 2014), *HMRC’s relationship with business*, p. 16.

⁵³ Liesl Fichardt (2014), *Revisiting HMRC’s approach to tax disputes: views from industry*. Tax Journal, 1236, 16.

The primary concern raised in the study about CCMs is the variability of their quality and experience, which has a noticeable impact on their willingness to reach agreement with taxpayers or decide things in their own capacity. HMRC implicitly recognised this in its 2007 research, when it said:

‘Examples of where the model worked less well included situations where the CCM was not seen to be proactively pursuing a team approach, leaving the business to chase issues and keep individual tax specialists up to date with developments. In these situations, businesses preferred to liaise with HMRC via one of their day-to-day tax specialists or speak directly to other tax specialists about specific issues. It was recognised that these examples did not necessarily indicate a problem with the approach adopted by the Large Business Service, but rather specific issues about the personality and outlook of individual CCMs.’⁵⁴ (emphasis added)

This is supported by the Freedman et al. (2014) study.⁵⁵ Comments in response noted that the seniority and experience of a CCM made a significant difference to their approach to problems and, in particular, whether they want to pass issues on to specialists. While this is a relatively obvious issue – less experienced staff are more inclined to seek expert opinion before making important decisions – it has significant implications. In the extreme, it may result in two taxpayers with CCMs of different seniority paying different amounts of tax, and will not always be to the taxpayer’s disadvantage. A taxpayer who is willing to settle, but whose CCM is unwilling to, may actually pay less tax if the matter is ultimately resolved through litigation and the taxpayer is successful at tribunal.

The other major issue reported in studies is the turnover of CCMs, with many moving between roles on a regular basis. Freedman et al. (2014) observed that a CCM’s tenure varied from a few months to over five years, although with the significant caveat that it was unclear whether respondents were reporting their former CCM’s tenure or the amount of time their current CCM had been in post.⁵⁶ Nevertheless, it was clear that turnover was a significant concern for respondents, not least because of the cost and time required to inform a new CCM about their business. In addition, the CBI has raised concerns about the lack of a standard process for handing over knowledge and experience,⁵⁷ meaning that businesses effectively start anew with each CCM. The CCM model depends on developing an understanding of the taxpayers’ business and continuity in their relationship with HMRC,⁵⁸ which is undermined by a high turnover of CCMs.

Whilst these studies are almost a decade old, the findings chime with responses from stakeholders participating in HMRC’s 2021 ‘Review of tax administration for large businesses’.⁵⁹ In the report, it is noted that ‘[s]takeholders were positive about HMRC’s co-operative compliance model and the CCM model’. However, issues of experience and capability were identified. The respondents felt that the ‘experience could be inconsistent and that HMRC should continue to build capability and increase

⁵⁴ HMRC (December 2007), *Research to support the implementation of proposals in the Review of Links with Large Business*, p. 11.

⁵⁵ Judith Freedman, Francis Ng and John Vella (June 2014), *HMRC’s relationship with business*.

⁵⁶ Judith Freedman, Francis Ng and John Vella (June 2014), *HMRC’s relationship with business*, p. 26.

⁵⁷ CBI (December 2018), *In Need of a Reset: HMRC’s Relationship with Large Business*, p. 11.
<https://www.cbi.org.uk/articles/in-need-of-a-reset-hmrCs-relationship-with-large-business/>.

⁵⁸ Paul Riley (2012), *The view from HMRC: working with CRMs*. *Tax Journal*, 1128, 10

⁵⁹ HMRC and HM Treasury (November 2021), *Review of tax administration for large businesses*.
<https://www.gov.uk/government/publications/review-of-tax-administration-for-large-businesses/review-of-tax-administration-for-large-businesses>.

consistency of experience to support continued improvement in large businesses' experience of tax administration'.

The Litigation and Settlement Strategy

The Litigation and Settlement Strategy (LSS) was introduced in 2007 in order to provide a framework for HMRC's approach to civil dispute resolution and govern its otherwise very wide managerial discretion.⁶⁰ It is purportedly designed to 'facilitate resolution of disputes'⁶¹ by adopting, wherever possible, a non-confrontational approach.⁶² Since 2007, the LSS has on occasion been amended, although this has been described as a 'refresh rather than a re-write'⁶³ and the substance of the LSS has remained relatively unchanged. The LSS permits HMRC to resolve a dispute either by agreement between HMRC and the taxpayer, or by taking it to litigation, recognising that there will not always be a single, correct answer to complex tax issues. A key limb of the LSS is the requirement to consider each individual issue under dispute on its own merits: the LSS does not permit HMRC to agree a 'package' with the taxpayer,⁶⁴ in which HMRC agrees to drop one or more issues in order to secure the taxpayer's consent to others. It follows that, in cases of an 'all or nothing nature' HMRC should entirely stop pursuing an issue if there is an insufficient prospect of succeeding in litigation, even if the taxpayer would be willing to settle the issue for a smaller sum.⁶⁵ While it is clearly preferable that HMRC resolve disputes in accordance with the law, an overly rigid application of this principle will inevitably create inefficiencies for taxpayers and for HMRC.

Previous studies (which again, whilst somewhat dated, represent the most up-to-date publicly available results) show that taxpayers' experiences of the LSS are reportedly mixed. Freedman et al. (2014) found that, of those respondents who were aware of the LSS, 34% reported it was easier to reach a settlement with HMRC as a result of it. 26% were of the opinion that it was harder and 40% thought it made no difference.⁶⁶ Both views are understandable. On the one hand, HMRC caseworkers may be more willing to settle a case if they can justify that decision by reference to a published strategy and they may feel more insulated from criticism either from their line management or one of the governance boards. On the other hand, strict adherence to the LSS may result in HMRC refusing to settle a dispute because it is unwilling to compromise its legal position on individual issues. Interestingly, a minority of respondents (11%) reported examples of agreeing 'package deals' with HMRC, although it does not necessarily follow that these are breaches of the LSS. The authors of the study correctly note that, without more context, it is not possible to know if this is a good or bad development. It does not matter how many disputes HMRC are settling, so long as they are settling the correct cases.

⁶⁰ For more on the breadth of HMRC's discretion, see *Gaines-Cooper v HMRC* [2011] UKSC 47, [2012] 1 All ER 1048; *R (Wilkinson) v HMRC* [2005] UKHL 30, [2006] STC 270; *Inland Revenue Commissioners ex parte National Federation of Self-Employed and Small Businesses Ltd* [1982] AC 617.

⁶¹ HMRC (July 2011), *Litigation and Settlement Strategy (LSS)*, [2]

<https://www.gov.uk/government/publications/litigation-and-settlement-strategy-lss>.

⁶² HMRC (July 2011), *Litigation and Settlement Strategy (LSS)*, [9]

<https://www.gov.uk/government/publications/litigation-and-settlement-strategy-lss>.

⁶³ Julie Hughff and Kevin Elliott (2011), *HMRC's refreshed LSS: a practitioner's view*, *Tax Journal*, 1085, 19.

⁶⁴ HMRC (July 2011), *Litigation and Settlement Strategy (LSS)*, [16]

<https://www.gov.uk/government/publications/litigation-and-settlement-strategy-lss>.

⁶⁵ HMRC (July 2011), *Litigation and Settlement Strategy (LSS)*, [18]

<https://www.gov.uk/government/publications/litigation-and-settlement-strategy-lss>.

⁶⁶ Judith Freedman, Francis Ng and John Vella (June 2014), *HMRC's relationship with business*, p. 57.

These findings are complemented by Fichardt (2014), which found that, on the whole, large businesses were more willing to engage with HMRC because there was a published strategy for resolving disputes. However, a small majority (53%) of respondents were dissatisfied with HMRC's handling of their dispute and 60% reported that they would litigate the issue because of the inability to settle it. The same qualification applies: while litigation may be expensive, it does not follow that HMRC being unwilling to settle is inherently the wrong decision unless it later transpired that HMRC lost the litigation. Another problem is that it is unclear whether the respondents' dissatisfaction can properly be attributed to the overall strategy adopted by HMRC, or is instead caused by operational difficulties regarding the CCM or HMRC's governance structures, that appear to create barriers to resolving disputes.

Objectives of HMRC and taxpayers

The differing objectives and incentives of the two parties to tax disputes should be recognised, as this may go some way to explaining why taxpayers might perceive that issues drag on for some time unnecessarily.

HMRC is tasked with collecting the 'right amount of tax' and should do this as efficiently as possible within its resource constraints. It needs to ensure that its treatment of taxpayers is even-handed, and as set out in more detail in the LSS, it cannot compromise a dispute for less than the tax and interest due, if it considers that it has good technical arguments. HMRC is also constrained by its governance arrangements (again, set out in more detail above): for example, it will be concerned not to concede an issue which could have wider implications across the taxpayer base, without fully exploring the merits of the issue. Relatively young or inexperienced CCMs meanwhile might be disincentivised from taking firm positions due to a fear that their inexperience will be exploited by sophisticated tax practitioners, and may feel that it is safer to keep asking questions rather than to reach a decision which might later be criticised, whether internally or externally.

The taxpayer, on the other hand, will take a purely commercial approach to the dispute and will not be concerned about any wider implications for other taxpayers. In particular, the taxpayer will measure the resources required to deal with the dispute and may therefore be prepared to concede an issue, even if it considers that its views have strong technical merits.

Project background

The central research questions of the project are, first, whether (and if so, why) avoidable disputes are arising between businesses and HMRC, and secondly why delays occur between the opening and closing of enquiries. Whilst some disputes may be unavoidable given the complexity of the legislation and lack of clarity around its application, the focus here is on disputes which arise because of actions or inactions on the part of HMRC and the taxpayer.

The project was approved by KCL Ethics Committee in November 2021⁶⁷ and contains two components: the first is a survey component (developed by Stephen Daly and Heather Self, with input from members of the Tax Law Review Committee), which ran from December 2021 to April 2022; the second is the interview component, which ran from April 2022 to June 2022.

⁶⁷ Ethical Clearance Reference Number: LRS/DP-21/22-26402.

The survey questionnaire and interview questions were developed by Stephen Daly and Heather Self. The development of the questions was aided by the provision of data on tax disputes provided to the authors by Pinsent Masons. These data have been obtained through the years using regular Freedom of Information requests to obtain details of the 'Tax Under Consideration' within HMRC's Large Business Directorate. It was used by the authors to establish what would be the most likely areas of tax where disputes arose, which fed into the structuring of the survey questions. These questions were then distributed to members of the Tax Law Review Committee and to the CBI for input and critique, after which the questions were finalised.

Survey participants were recruited using various means. First, existing contacts of the project investigators, and contacts of other members of the Tax Law Review Committee of the Institute for Fiscal Studies, were approached. The CIOT also distributed a link to the survey to some of its members, as did the CBI and Pinsent Masons.

There were four sets of questions in the survey (**see Appendix 1**): Section A asked for facts about the group; Section B considered enquiries commenced by HMRC; Section C asked for information around the progress of one particular enquiry; and Section D allowed participants to put forward any additional information which they considered important to discuss. The majority of the survey questions provided answers from a list, though some were open ended allowing participants to provide longer answers. These questions were designed as a means of trying to generate qualitative and quantitative data about delays in tax disputes in the UK. **There were seven responses to the survey.**

In the final question of the survey, participants were asked if they would be happy to discuss their answers further in a semi-structured interview. Participants were given a list of indicative questions for the interview (**see Appendix 2**), which again revolved around four sets of questions (facts about the group; UK tax enquiries; progress of enquiries; any other information) and were an opportunity to ask deeper questions of the participants on the basis of their survey answers. There were **four interviews conducted** (one of which did not correspond to a survey response as the questions from the survey as designed were not relevant to that particular taxpayer's situation as there were no outstanding disputes).

This report seeks to encapsulate the findings from the survey and interviews. It does so in light of the findings from similar reports and from publicly available information. Given the limited number of responses to both the survey and the questionnaire, the discussion of these results does not make conclusive determinations but instead puts forward a number of hypotheses for further exploration with businesses and HMRC.

Survey

Section A: facts about the respondent taxpayers

Of the seven survey respondents, six had a global turnover of over £10 billion, and one had a turnover of between £1 billion and £10 billion. In terms of UK turnover, three had a turnover of over £10 billion, two had a turnover of between £1 billion and £10 billion, one had a turnover of between £100 million and £1 billion and one had a turnover of less than £100 million.

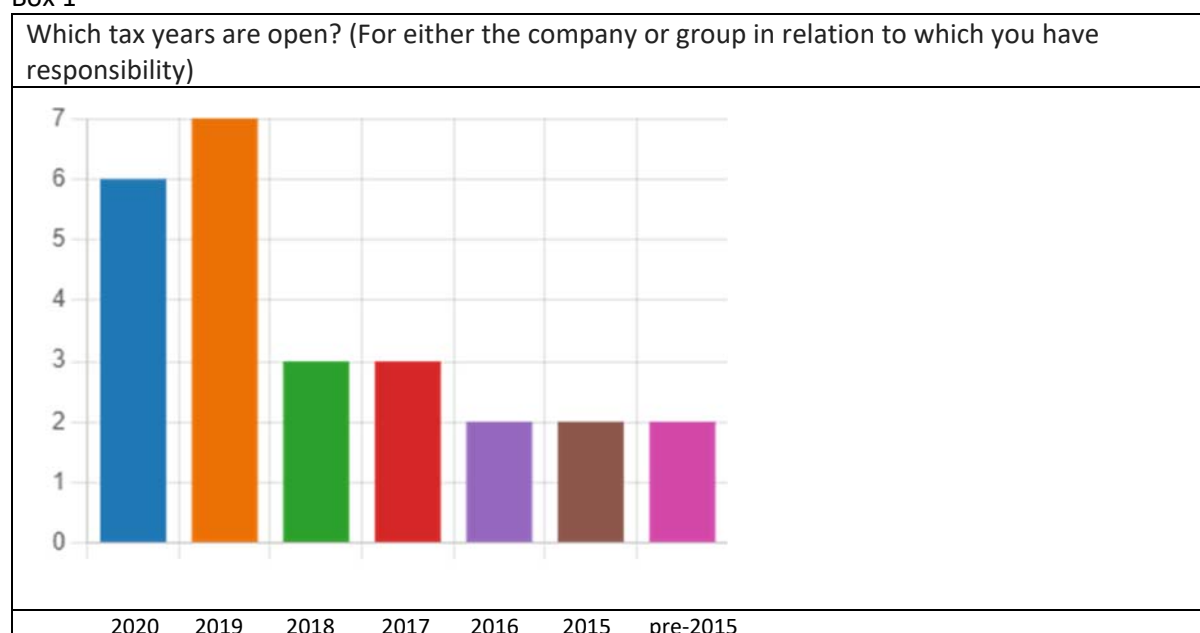
In terms of UK tax paid for the latest financial year, one paid more than £100 million, whilst six paid between £10 million and £100 million. Five submitted more than 50 UK Corporate Tax returns, one submitted between 20 and 50 and one submitted fewer than 10.

All are dealt with by the Large Business Directorate within HMRC, which deals with taxpayers that have a UK turnover of over £200 million or the business is complex/operates in a complex sector.⁶⁸

Section B: tax enquiries – UK only

Six of the businesses had tax years open for 2020, seven for 2019, three for 2018 and 2017, and two for 2016 and 2015. Two of the businesses also had pre-2015 open tax years (Box 1).

Box 1



The main issues under enquiry were transfer pricing (three), Double Tax Relief (two), CFCs and Financial Instruments (two). Participants also selected the 'Other' category to mention specific issues that arose in their enquiries, such as Research and Development Expenditure Credit and Cross Border Loss Relief.

Four of the businesses had a general sense of what prompted HMRC to open the enquiry, which included a general suspicion around tax issues involving intellectual property and the quantum of reliefs.

Section C: progress of enquiries

In this section, respondents were asked questions about a specific significant enquiry.

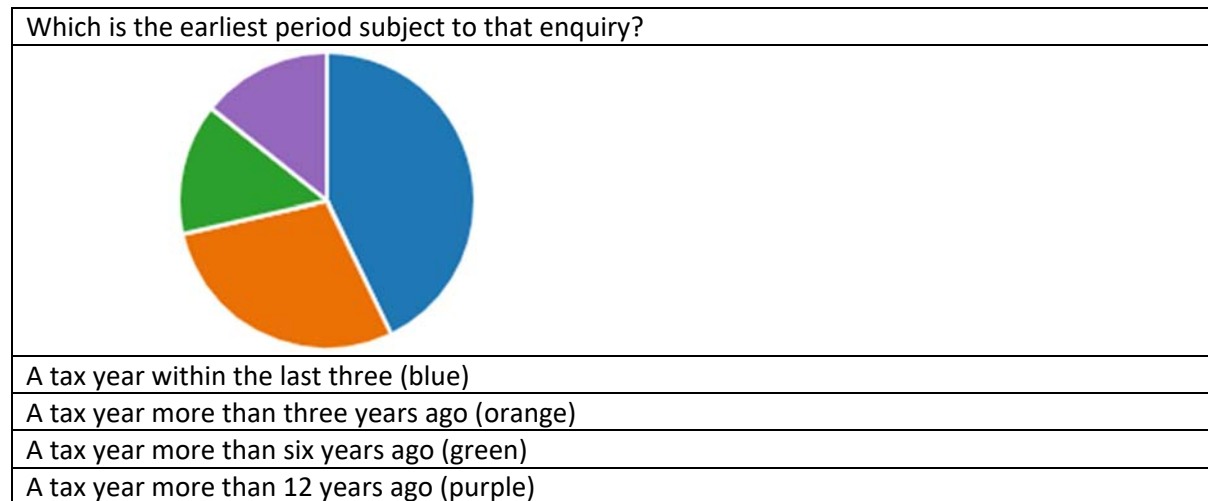
Five of the respondents highlighted the most significant current issues that are subject to an enquiry. These were a Research and Development Expenditure Claim, Thin Capitalisation involving two

⁶⁸ See HMRC (November 2014), *How HMRC works with large businesses*. <https://www.gov.uk/guidance/hm-revenue-and-customs-large-business>.

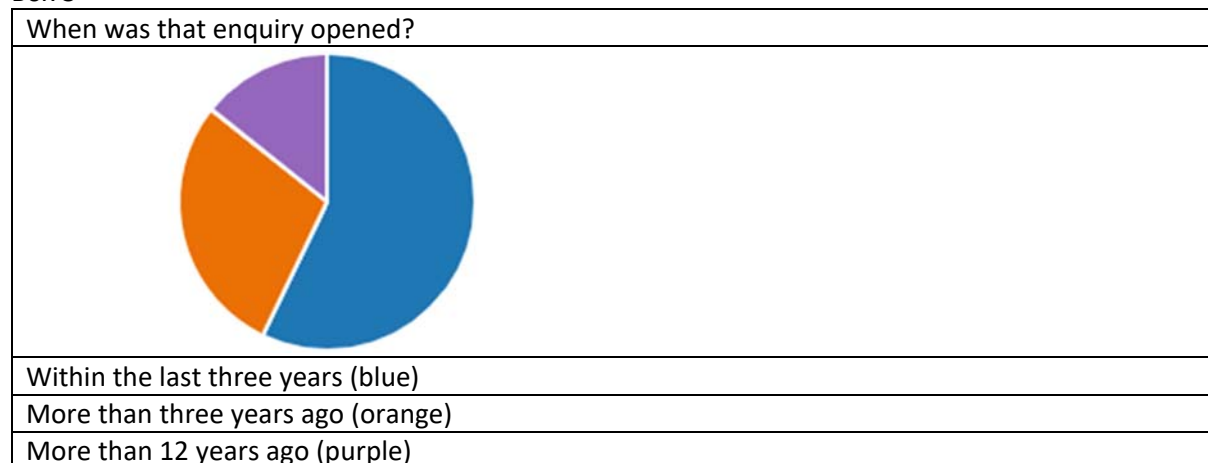
entities, a specific transaction, Transfer Pricing of a funding related matter, and Cross Border Loss Relief claims.

In terms of the earliest period to which the enquiries related, it was a tax year within the last three for three respondents, a tax year more than three years ago for two respondents, a tax year more than six years ago for one respondent and a tax year more than 12 years ago for one respondent (Box 2). The enquiries were opened within the last three years for four respondents, more than three years ago for two respondents and more than 12 years ago for one of the respondents (Box 3).

Box 2



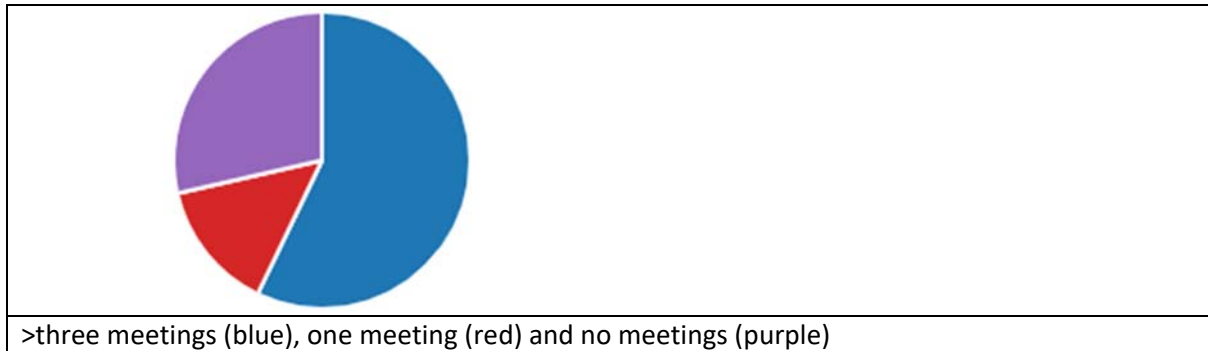
Box 3



Five of the respondents gave further details of their most recent substantive correspondence with HMRC. HMRC communicated with all five within the previous six months. The substance of the communications varied. For one of the respondents, the communication related simply to the opening of the enquiry. For another, HMRC had not substantively corresponded in the prior five years. Meanwhile, one of the taxpayers was in ongoing and direct dialogue with HMRC.

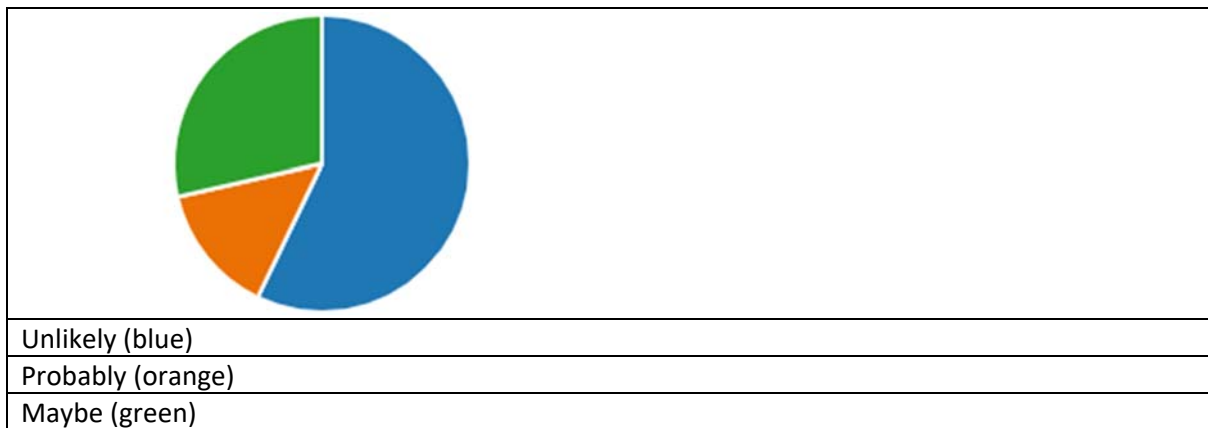
Four of the respondents have had more than three meetings with HMRC in relation to the enquiry, one of the respondents had just one meeting, whilst two had had no meetings with HMRC at the time of responding to the survey (Box 4).

Box 4



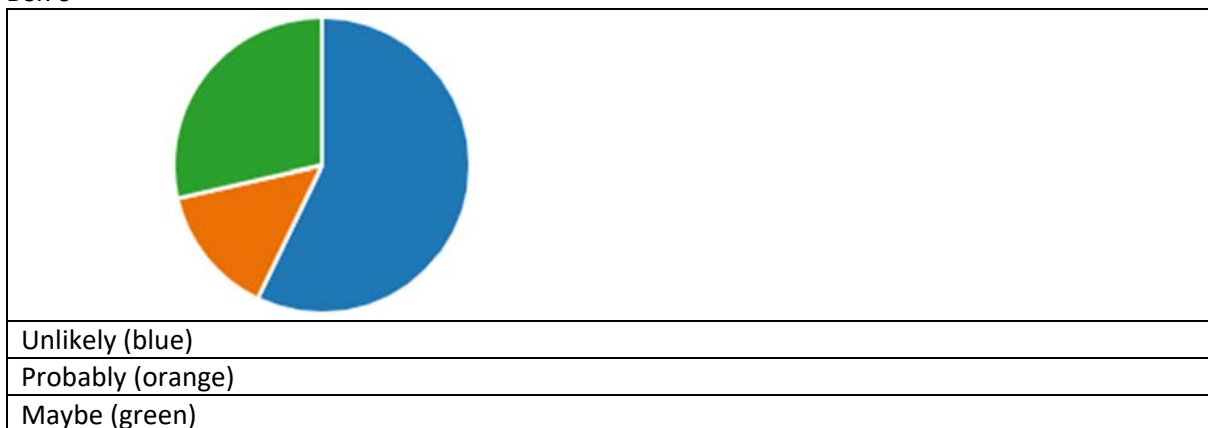
Four considered it was unlikely the enquiry would be concluded within the next 12 months, one thought it probably would and two others thought that maybe it would (Box 5).

Box 5



Four considered it was unlikely the matter would be litigated, one thought it probably would and two others thought that maybe it would (Box 6).

Box 6



No tax authority from another jurisdiction made enquiries into the same matter.

Section D: any other information

In this section, respondents were given an opportunity to mention any other information that might be considered useful for the purposes of the survey. Four of the respondents took up this opportunity and their responses generally revolved around issues of marshalling expertise within HMRC. One respondent suggested that there was a shortage of specialists within HMRC which added significant delay to enquiries and that CCMs appeared to be ‘spread too thin’. Another respondent mentioned a failure of the inspector to take on board the advice of the HMRC policy specialists. The lack of clarity over the ownership of HMRC enquiries was highlighted by another who noted that it was often ‘unclear who owns or manages HMRC enquiries, is the CCM just a post box managing correspondence on behalf of specialist teams or are they driving the enquiries with assistance from specialists?’.

One of the respondents was firmly of the view that the identity of the CCM played a significant role in the resolution of disputes: ‘We had a series of CCMs who were unable to marshal [sic] their technical experts or build any momentum...When we finally got a capable CCM, he managed to unlock the case and we worked with him to reach a settlement relatively quickly’.

Key findings from the survey results

There was homogeneity in terms of overall size of the businesses studied in the project – namely large businesses with sufficiently high turnover (in the case of six of the businesses) or complexity (in respect of the other) to be dealt with by the Large Business Directorate within HMRC (**Section A**).

Large businesses typically have enquiries open into their affairs for the most recent tax years (**Section B**). A majority of taxpayers have a sense of what prompted HMRC to open the enquiry (**Section B**). Open enquiries tend however to take years to resolve, with respondents indicating that enquiries generally take more than three years to conclude and sometimes over a decade (**Section C**).⁶⁹ A majority of respondents believed the enquiry would not be closed within the next year (**Section C**). But when asked whether litigation was likely, most disagreed (**Section C**).

As for HMRC’s engagement with the enquiry, the experiences of taxpayers varied, ranging from constant dialogue to a lack of substantive engagement (**Section C**).

Broadly, the main issues relate to international taxation (**Section B**) and at least for half the respondents, the issues of cross-border taxation represent the most significant area of dispute with HMRC (**Section C**).

The answers in **Section D** meanwhile generally point towards a frustration with HMRC officials not being capable of resolving disputes, whether through lack of authority, resources or expertise.

⁶⁹ During the course of writing the report, the authors also received information from tax advisers which further supports this point. For instance, one transfer pricing enquiry concerned a 2014 transaction which was still the subject of a dispute in 2022 but had not proceeded to litigation. Another transfer pricing enquiry concerned a 2007/08 transaction which likewise was contested but had not proceeded to litigation as of 2021. An enquiry concerning the deductibility of expenses made in 2014 was ongoing as of 2023.

Interviews

In the final question of the survey, participants were asked if they would be happy to discuss their answers further in a semi-structured interview. The follow-up interviews, of which there were four, thus drew from the same pool, thereby ensuring homogeneity in respect of the size of the studied taxpayers (see **Survey, Section A**).

These interviews provided an opportunity for a deeper dive into the answers provided by the participants in the Survey and to possibly generate an indication as to why tax disputes were taking at least three years but at times a decade (**Section B**) to resolve.

Though the questions were not structured in this way (see Appendix 2), the interviewees' answers coalesced around four factors which played a role in lengthening the time between a dispute commencing and it being resolved: 'expertise'; 'governance'; the 'tax administration framework'; and the 'subject matter of the disputes'. Over the course of the interviews, taxpayers also raised some possible recommendations ('taxpayer-suggested recommendations').

These five headings are used to structure the following section accordingly.

Expertise

As suggested by the survey (**Section D**), expertise is a factor which respondents believed played a role in causing disputes and preventing their speedy resolution. Participants A and D explained that the identity of the particular CCM was a relevant factor in resolving disputes expediently:

'[M]y experience of HMRC on this is that each CCM has different priorities and goals and it was very clear that the other CCM would have already set aside or said there is this amount of unpaid tax, we have to go and get it. When the new one joined, he couldn't substantiate what the previous person had put down in their files, so their risk-based approach kind of broke down.' (Participant D)

'[Our former CCM] was quite a senior CCM and we only had him for probably a year, I would say. He's now stepped up, so he's been promoted from the CCM role – and I think with good reason – but he was somebody who had the experience, the gravitas but also the continuity and the determination to bring things to a conclusion when frankly there were things that could have been concluded a long time ago.' (Participant A)

Participant A was complimentary in that respect of their former CCM:

'But, I think a lot of it depends on the individual who is the CCM. Provided you still have a CCM, and you have a good one, then I think you should be in decent shape.'; 'It took getting the right kind of CCM to look at it through that lens, that mindset, as opposed to people who were very formulaic and sort of saying we need to see all of the emails internally about this particular point to understand what the commercial rationale or tax drivers were.' (Participant A)

The respondents observed that there is expertise within HMRC, as underlined by the following observation from Participant C:

'I have interactions with tax authorities all around the world – I don't think HMRC is a bad tax authority. I've seen far far worse. I think, with HMRC, what I find is frustrating is you have

a tax authority that has technical ability, it has really good capabilities, and it has got good commercial understanding, but it's not quite there and it does things that are really frustrating and really inefficient in terms of driving towards resolution.' (Participant C)

The problem, for the interviewees, lies in respect of getting access to the policy experts:

'[S]o I think once we got that direct access to policy and the specialists along with the case team and we were having proper roundtable discussions, that helped move the points of law forward as well.'... 'but I think we would have been able to move an awful lot faster if the experts had been brought in earlier and that applies to the R&D dispute that we had, as well as the TP dispute.' (Participant C)

'I think [the former CCM] was also better at, and this is one of the perennial challenges, at marshalling HMRC's internal experts.... In some cases, he was able to bring the policy people in front of us, so we were able to have that conversation directly with them which was also helpful.' (Participant A)

'[W]e tend to not have the opportunity to deal with those technical experts ourselves, so it feels a little bit like this relationship we have with HMRC wastes our time.' (Participant B)

One participant, however, was particularly frustrated with what they perceived to be a lack of HMRC expertise:

'[There are] new [industry] specialists in HMRC. They're asking us some really quite silly questions about how the [industry] taxation rules work, how the conduct disallowance rules work, really basic stuff' '[another example] is ring-fencing, they're asking why did you do ring-fencing, and it's like really, you're asking that question?... [I]t comes back to there is a massive lack of understanding of us as a group organisation, but there's also a huge lack of industry knowledge.' (Participant B)

That same participant suggested that the level of expertise within HMRC has reduced over time:

'That's partly because – I think there's been a real reduction of experienced colleagues in HMRC, if I'm honest. A whole generation of HMRC – and by the way, just full disclosure, I started my tax career in the Inland Revenue – but you've got a whole generation which disappeared, and you've got and what we've seen, having the benefit of a stable tax team in HMRC dealing with us and therefore getting a really good, thorough understanding of what we do, we've got a turnover within the HMRC team which doesn't help.' (Participant B)

Governance

The interviewees were all of the view that having the same CCM for a number of years was a good thing as the CCM was given the opportunity to build up a knowledge base of the taxpayer's business.

'[T]he complexity in terms of the channels that we're in, how we operate – it takes time to get to know and I think even if you were within [Participant C], people still find out things about the business, you know, 10, 15 years on from joining, so it is really, really complex.' (Participant C)

Conversely, a lack of consistency hampered the prospect of disputes being resolved expeditiously:

'I think the challenge we've had at times ... is the variability in terms of the, sometimes the quality of the CCMs, but also we've gone for periods of time where CCMs have been on long-

term sick leave and there's been a de facto absence. And I think talking to some of my colleagues, that is not untypical. I think there is a challenge around quality and availability of CCMs. I think that is not unconnected with the length of time it took on some of our disputes. We had periods of time where one CCM would be on long-term sick leave, somebody else would be brought in to cover but they themselves would then disappear from time to time and so there was a lack of continuity and a lack of focus and it was remarkable how quickly we were able to reach resolution once we had a capable, consistent CCM in place.' (Participant A)

'[T]he last 3 years, we've had 4 different people on corporation tax matters, again we've got one main allocated person, and another 4 people who are helping assess.' (Participant B)

'[W]hen it does change... there [has been] a very haphazard process for transferring knowledge and making sure there was a proper handover.' (Participant C)

'With the number of CRMs and CCMs that we've had over the years, it does seem that there can be quite a range of outcomes and range in terms of ways of working, depending on who the CCM is. I guess from a broader taxpayer perspective, having inconsistency in terms of ways of working or interpretation is not a good thing.' (Participant C)

The interviewees also acknowledged though that whilst continuity is desirable, 'fresh eyes' on a dispute can be helpful in achieving its resolution:

'We were probably one of the first that went into the, as it was then, the CRM, compliance relationships. We had a period of about 10 years where I think we ended up having 10 CRMs in 10 years, it was just horrendous. We've now had the same CRM or CCM for, I guess, four years, probably something like that – maybe a bit longer, five years perhaps – which has been really helpful, in some ways. In some ways, though, a fresh pair of eyes on some of our enquiries that we've been through might have been helpful in a different way, but it's good to have that continuity.' (Participant C)

'In a lot of cases, I think, his predecessors came with a little bit of, some preconceived notions around some of the issues. It was almost like they felt emotionally attached to some of the issues irrespective of the amounts of money involved or irrespective of the bigger picture of how the various different issues were intertwined.' (Participant A)

The interviewees' expressed their concern that internal governance processes constrained HMRC's ability to resolve disputes. This aligns with the suggestion from the survey (**Section D**) that officials do not have sufficient authority to resolve disputes:

'There was, not quite split the difference, but that kind of approach. I think that was to everyone's benefit. We just don't have that flexibility in the UK and, because we try and put so much governance round it – that's another cause of frustration, the tiers and tiers of HMRC governance.' (Participant A)

'[HMRC] referred it to 'technical', we don't know who and not always when we've asked, or we've been referred to governance and when we seek to understand the governance it's going through, it's governance that we're not privy to, governance that we're not invited to and governance that includes submissions that we have no input to and, so far, every request that has gone through this route has come back with a decline stamp on it from a faceless person within HMRC.' (Participant B)

‘When they sent the demand for payment, it was very clear, it was like we demand this payment, but then if you make the payment we may still ask for more, because we need to go to our approvals to actually agree the payment. Why would you make the payment if it hasn’t been agreed.’ (Participant D)

Meanwhile, the interviewees expressed contrasting views on the issue of whether broader civil service incentives played a role in elongating disputes:

‘It doesn’t seem like you can move up the organisation within your area of expertise. As soon as you seem to grow any expertise in some area, you just have to go sideways into something that you’re not equipped to do and so it feels a little bit like we’re training people up to almost immediately move into something else, because that’s how they get promoted.’ (Participant B)

‘At least from my interaction, I did get the impression that they were just trying to apply the law based on the information that they had. I didn’t get the impression that there were any alternative or ulterior motives in their actions. When we have disputes in other jurisdictions, I do think that is the case. I think they actively want to get to a conclusion irrespective of anything. I didn’t get that with the UK authorities, but I really got the impression that they formed a different opinion that gave them a conclusion, but they weren’t actively trying to prove that at all costs.’ (Participant D)

The ability of HMRC officials to settle disputes efficiently has changed over time, the interviewees suggested, with a stricter approach now taken than that which was adopted in the past:

‘Back [in 2008], it was possible, if you got things to the right level, so that was pretty much to the Dave Hartnett level, it was possible to bring resolution to long-standing issues, to my mind, very much to mutual benefit... He had the seniority, the experience and he could see the bigger picture and see what was value for money for the Exchequer and there was a sweet spot where something was value for money HMRC and also worthwhile for the company.’ (Participant A)

‘We were very open, we were working real-time because we could trust HMRC to discuss something with us, sometimes on a commercially sensitive transaction with the usual confidentiality around it, and typically we would be speaking to them about areas of uncertainty, an unintended impact of legislation, or a flaw or a loophole. As often as not, it was a flaw that might give us a benefit and we would say clearly that’s not the intention, therefore do you agree? The benefit for us of that transparent and that trusting relationship and that real-time relationship was certainty. We would have a sensible discussion and we would agree, well that’s not how the legislation is meant to work therefore the sensible answer is this, we’d both agree to it... We just don’t have that anymore.’ (Participant B)

‘I think they’ve become much more evidence-heavy in the way that they work. I get the sense that they are very concerned about their own internal procedures, about making sure that they’ve got a case file and there are times that you feel you are providing information, not necessarily because it is moving the audit forward, but it’s just going to go in a big lever-arch file and they can say, hey, we’ve got a file on this. I think the evidence requirements are getting harder.’ (Participant C)

Though Participant A did acknowledge why they thought things had to change:

‘I can understand why they got there, with the public outcry and the Margaret Hodge thing, but I think it was a bad move.’ (Participant A)

Tax administration framework

The open administrative framework in the UK allows HMRC to have regular contact, whether these are formal or informal discussions, with tax directors. The interviewed tax directors for their part are content to have this regular contact with HMRC:

‘Where we were previously was we had a lot of interactions specifically on the issues that were under dispute and those interactions – there were occasions where we’d have several meetings in a month and it was an on-going dialogue, but at least at that point we were making progress...We have a more regular pattern where once a year, before we file our tax returns, we will sit down with HMRC and walk them through them so that we can try and anticipate any immediate points there and then.’ (Participant A)

‘And we’ve also offered them pre-filing meetings which were a feature of our previous HMRC relationship.’ (Participant B)

‘Between me and my team, I’d say we’re probably in contact with them or someone in HMRC, I don’t know, every fortnight? It’s pretty regular, just because there’s lots of things going on. We do try and engage with them proactively as well...We always have a pre-filing meeting for the corporate tax returns and then obviously we have whatever meetings are required to progress any enquiries and I would say that there’s probably – we try and have a more formal quarterly meeting.’ (Participant C)

Whilst welcoming cooperative compliance then, some interviewees expressed dissatisfaction with the cooperation they perceived (not) to be forthcoming from HMRC:

‘What we try to do is try to bring things proactively to HMRC and, interestingly, while we’re continuing to do that now, even the biggest issues that were under dispute were matters which were brought proactively to HMRC pre-transaction even – let alone pre-filing – and have still resulted in seven or eight year disputes... So, more recently, we’ve taken some big points to HMRC proactively and we’ve had a good experience of those. We’ve gone to them to talk through a potential SSE (a substantial shareholding exemption) issue, we’ve gone to them and talked to them proactively about changes in transfer pricing models and we’ve had a good experience there.’ (Participant A)

‘I think HMRC feel very – I think they’re worried about being penned in by making a response on one issue when they haven’t seen the whole computation, but it doesn’t really encourage cooperative compliance.’ (Participant C)

Risk rating, which lies at the heart of the cooperative compliance model,⁷⁰ determines the level of interaction that taxpayers will have with HMRC (i.e. more scrutiny for riskier businesses). Given that taxpayers in principle welcome HMRC engagement, it is not surprising that taxpayers may not prioritise reducing their risk rating – a finding which chimes with the Freedman et al. (2014) study.⁷¹

⁷⁰ HMRC (November 2021), *HMRC’s compliance approach for Large Business*.

<https://www.gov.uk/guidance/large-business-strategy>.

⁷¹ Judith Freedman, Francis Ng and John Vella (June 2014), *HMRC’s relationship with business*, p. 29.

For Participant A for instance, their risk rating downgrade has not changed anything materially about their tax structure, but HMRC engagement is seen as an opportunity:

‘I guess our situation was unusual because I think that HMRC all the way along would have said that we were well-governed in terms of the nuts and bolts of how tax is run and it really was just one or two stand out points, that were pretty much in isolation, that were driving that risk rating... They have said they would like to do a more systems and governance review this time round, which we actually welcome. I think it’s very much being seen as an opportunity to validate why we should move down to a low risk rating next time round.’
(Participant A)

Having said this, one participant (D) was frustrated by the reasoning behind their higher risk rating:

‘High risk, so high in everything and their explanation was they have no understanding of our business, which me joining, knowing that we’ve had a CCM for almost 10 years, I was surprised at the level of questions we were having. So we were high risk because they’d lost the file and didn’t have any information on us, but to me that’s not a justification to make a company high risk, that’s on you. If you’ve lost your files and all your communications you’ve had before, that isn’t a reason for you to make us high risk. The other reason we were high risk before was because the communications we would have with HMRC would almost be on the surface. As soon as you would scratch deeper, there would be inconsistencies with something else and they were like we don’t believe you any more. That was the relationship before I joined.’ (Participant D)

Just as cooperative compliance is not seen as an impediment in principle, neither is the litigation and settlement strategy (LSS):

‘I think it was a really helpful step to publish that and to operate within that.’ (Participant B)

‘[W]e got to a point where we knew that’s what we wanted to – that was going to be the best outcome for us, particularly once we’d agreed that we were going to go to MAP, so we just needed to get an outcome that we could take to MAP really. No, I think LSS was good.’
(Participant C)

The answers from the interviewees indicate that the formal legal rules that govern HMRC/taxpayer relations have less impact on their interactions than HMRC rules which are borne out of internal policy (risk rating, cooperative compliance and the LSS). For instance, in respect of the formal rules, statutory clearances were not a big feature for taxpayers:

‘I think the formality of the clearance process in the UK, when you compare it to some other jurisdictions, makes it sort of less attractive and it feels like, with the clearances, there’s also only a limited range of things on which HMRC will give a clearance anyway.’ (Participant A)

‘We do when it’s possible, but our experience of clearances has been that HMRC can be quite reluctant to engage in them and obviously not every pre-filing question that you have is suitable for a clearance anyway.’ (Participant C).

It’s all informal discussions [on pre-transaction clearances]’ (Participant D)

Only one interviewee had applied to the tribunal for a closure notice:

‘It took HMRC 4, 5 years to issue the closure notices on one of our pieces of tax litigation. They only issued the closure notice when we made an application to the tribunal.’
(Participant B)

The others did not, but for different reasons. For Participant A, the decision was borne out of a general litigation aversion. For Participant C, it was used as a quasi-threat in order to get negotiations moving, and for Participant D, it was not thought that a closure notice would be timely:

‘We decided against that because we actually wanted to run it in as amicable a fashion as possible. We didn’t want to end up in the courts on it, we didn’t want to make it seem like we were pursuing an aggressive effort to try and close down enquiries, if you like... We’ve never litigated anything and we’ve not been particularly inclined to do any.’ (Participant A)

‘We didn’t actually apply. We did discuss with HMRC, when we thought the progress was getting really slow, so that would probably be – I’m trying to think of the timelines now. We went into HRCP in January 2020, we settled in November 2020, so I think that at the back end of 2019, we started saying to HMRC, look we’re going to have to apply for closure notices if we can’t move this on because clearly we’re so far apart that we just need to find a way to push this forward and I think maybe that’s what triggered the HRCP, you know, the conversion to HRCP.’ (Participant C)

‘We hadn’t considered a closure notice because we didn’t think that would happen in that time frame.’ (Participant D)

None of the interviewees had been subject to a discovery assessment. The enquiries were opened within the ordinary one-year window, but even then, the interviewees indicated that many discussions with HMRC occurred informally before any enquiry was officially opened:

‘[Enquiries are opened] in fact mostly [as a result of] us bringing them proactively to the attention of HMRC, even pre-filing, sometimes pre transaction.’ (Participant A)

‘No, none of it was discovery.’ (Participant C).

‘When the tax return was filed, so they were asking questions in 2017 and when we filed it in 2018, as soon as it was filed, they opened the enquiry and then started asking further questions.’ (Participant D)

Finally, whilst taxpayers are obligated to respond to requests for reasonably required information where an enquiry is opened,⁷² many requests are informal:⁷³

‘Most of these queries, enquiries that we’re talking about are, they’re unofficial enquiries, they’re not under any statute, they don’t fit with anything HMRC have publicly stated is an important piece of sector work for them and then on the actual enquiries, it takes quite a long to actually go into the legal framework of enquiry.’ (Participant B)

Whether informal or formal requests for information, some interviewees felt frustrated by the questions asked because they looked for information that was not relevant or because it was perceived that there had not been engagement with the information previously provided. To that

⁷² Finance Act 2008, Schedule 36, [1] and [21].

⁷³ The lawfulness of informal queries was confirmed in *JJ Management Consulting LLP & Ors v Revenue and Customs Respondents* [2020] EWCA Civ 784, [2020] STC 1422.

end, the interviewees' answers expressed a complaint which was picked up in the survey about the lack of substantive engagement by HMRC (**Section C**):

'[We would] come out of every meeting with a whole lot of actions and information requests that do not relate to official enquiries'; 'We have requests for mountains of data and information, no explanation as to why they want the data, it's just a never-ending series of questions and requests for data.' (Participant B)

'They would ask a question, so similar to what they're doing now, but they're not realising the bigger picture and I give you an answer. They ask another question and I give you another answer. But no one asks why are you asking these questions? And that was kind of how our audit came to a close because I was like, why are you asking these questions and then will you just explain to me why and once someone has explained why, you can respond. But up until that point, you're just answering questions. I think there was – yeah. Answering questions and spending an extortionate amount on fees responding to them.' (Participant D)

Participant D on whether they felt that HMRC requested information which wasn't relevant:

'Yeah, massively, massively. Let's say it landed on transfer pricing, but then we were having loads of questions about customs, about VAT. I found their audit approach is essentially a scattergun. Ask as many questions as possible and try to piece together the story from that, which I don't believe is the best approach. That's where we're spending a lot of time and they're spending a lot of time. I'll give you an example, but it's outside of this specific enquiry. After this enquiry has taken place, we've done our business risk review and they were asking us the same questions: what's your business? What's all of this? And I've had to answer 200, almost 300 questions about our business over a slow period of time. You have one information request and another one and another one which regurgitates what you've said before and it's gone on more than a year and a half. It's difficult for me to respond to that because I have to review over 200 questions to make sure that, when I answer the next 210 questions, or next 10 questions, that it's consistent and that's one of the issues, especially on this audit, was when you've asked so many questions, it may be good as fact gathering but it means that my ability to respond is reduced massively and your ability to respond has reduced. You being HMRC, have spent a lot of time responding because you've got too much information to work through.' (Participant D)

Subject matter of the disputes

The most significant disputes with HMRC (as designated by the taxpayers) broadly concerned international tax issues, sometimes with an avoidance suspicion. This is in line with the findings from the survey, where, likewise, most respondents noted that international tax issues represent the most significant area of dispute with HMRC (**Section C**).⁷⁴

For Participants A, C and D, the issue was transfer pricing related (though there were other issues involved with Participant A):

⁷⁴ See also DLA Piper (December 2022), *Tax Controversy and Disputes Survey 2022*. <https://finland.dlapiper.com/en/news/tax-controversy-and-disputes-survey-2022>. The three main targets of disputes identified in the DLA report are transfer pricing, indirect taxes and permanent establishment/residence issues. The report supposes that 'the complexity of the system, the potential for subjectivity and the large sums at stake make interventions by the tax authorities very worthwhile to undertake'.

‘There was DPT, there was transfer pricing, there was an application of the foreign branch exemption rules, there was a valuations challenge, there were a whole raft of different strands and I think the previous CCMs and HMRC teams were looking at those very much in isolation.’ (Participant A)

‘[S]o the dispute covered from 2011 through to 2018 and then we rolled forward the outcome of the audit to 2019 and 2020 as well – not under a formal APA but just the settlement agreement that we reached was able to cover events up to the date of the settlement agreement rather than just the audit periods that had been opened. Yeah, that was a really big dispute for us, it covered a long period of time, it went – the audit itself went on for a very long period as well. Again, incredibly complex and some very big numbers involved.’ (Participant C).

‘It was transfer pricing, so it was basically on the valuation of the functions within the UK relative to the rest of the group and where the profit of the overall value chain should be sitting.’ (Participant D)

In the case of Participant C, pricing of intangibles was at issue; for Participant D, it was not a dispute about the law per se but rather a difficulty on HMRC’s part in understanding the nature of the business and how the rules applied as a result:

‘On the transfer pricing side, the big issue was around intangibles transfer pricing. We’d had some discussions previously about product and supply chain type transfer pricing, which had been a bit of a long-running issue, but as not as bad as the intangibles. Before those two big enquiries, we’d really hadn’t had much on a TP basis before.’ (Participant C)

‘[W]hen we responded to them, we initially had to establish the facts and establish the law. As soon as we got to the stage of establishing the facts, HMRC conceded.’ (Participant D)

Participant A was of the view that HMRC was driven by a suspicion of tax avoidance:

‘I think anything which relies on commercial perspective on what was the motivating factor, commercially versus tax, that inevitably is challenging because I think HMRC struggle to understand the commercial context, not unreasonably, but even when we try and set it out, we find they really struggle with that. Part of that may be just because they want to think, they always want to think the answer is something is tax-motivated, that’s kind of their natural suspicion, I can understand that...Our DPT case, I can see how they might have looked at it and said, IP exiting out of the UK into a [non-UK] structure, don’t like it, exiting tax-free out of the UK... I think probably my predecessors were probably crazy to have done it, because it always was the kind of thing that would get their goat because they just look at it and, think of the top 3 or 4 things we at HMRC really hate, one of them is exiting IP tax free and then charging a royalty back.’ (Participant A)

Participant D bucked the trend, as the dispute related not to international taxation, but instead to a Research and Development relief claim:

‘We were quite surprised that the R&D issue escalated the way that it did, because we’ve made R&D claims since the R&D provisions came in. Our view, and the view of our advisors as well, is that we’ve been pretty prudent about these claims, we’ve not gone all out and claimed absolutely everything on the off-chance that it would get accepted, we’ve really been quite measured, so we were surprised that that developed in the way that it did.’ (Participant D)

Taxpayer-suggested recommendations

The interviewees came up with a range of recommendations that could reduce the length of time it takes for disputes to be resolved.

Participant A suggested that there might be some merit in a different team to the one that initiated the inquiry being involved:

‘[M]y personal view is you could take a leaf out of the IRS’ book, you could have a separate group within HMRC that are empowered to look at longer running disputes and try and unlock them, or at least look at them through a different lens and that might be a way to bring these things to a more satisfactory conclusion... maybe a separate group in HMRC who can take a fresh look at cases or find a way to unlock them, because compared to their peers internationally, I think they’re just a long way behind and our experience in the Netherlands, but also in less conventionally taxpayer-favourable jurisdictions, like the US, has been much better than in the UK.’ (Participant A)

Two participants believed that the HRCP was beneficial and, as such, some thought could be given to it being reintroduced:

‘Yeah, I think for us, what really helped move it forward was actually going into HRCP. I think we rather surprised the CCM and he came to us and said, I’m sorry going to have to go into HRCP, our reaction was great, at least we can get this moving now and I don’t think that’s what he’d quite thought we would say, but that really really helped. I would like to use the techniques that we used, we agreed with HMRC in the HRCP process in all of our enquiries going forward. What’s the question of law, what’s the question of fact? What’s the killer point? If we can solve this, what drops away as a result of having solved this? There were some really good dispute resolution techniques that came out through HRCP, the shame was they weren’t being deployed earlier on in the audit and it took a senior HRCP lead to really bring that to the case team.’ (Participant C)

‘It was 2009, 2010, the Revenue under Dave Hartnett undertook an exercise to engage at a boardroom level and to create a new relationship between taxpayer, complex taxpayer, and HMRC. So there was an exercise to tidy up all the existing disputes that existed at that time and have a clean slate going forward. That, therefore, was a game changer. We started with this clean slate, we engaged real-time, we were encouraged to do so...[T]hat exercise, intervention exercise as it was called, I think helped HMRC build up a certain level of understanding, knowledge and pragmatism. Again, I think that then helped in terms of some of the dialogue thereafter... Instead of saying you’ll have to file a return for us to form a view on something, it allowed them to help and assist and some of the discussions we had.’ (Participant B)

Participant D suggested that HMRC should shift away from using standard questionnaires when requesting information:

‘I think the main one for me is very much the way their questions are done. When they’re dealing with tax professionals and they’re asking questions, I always feel the best way to do it is to explain to the person the rationale behind the questions, because that makes it such a clearer process...Give me bespoke questions to my business or work with me to clear out the questions and then I’ll answer your questions.’ (Participant D)

Participant B had several suggestions. The first was that taxpayers could be more involved in the settlement process when it is going through the higher ranks of authority within HMRC:

‘It was completely opaque in terms of when this settlement proposal was going to be made, with no opportunity to review and help them with this submission. That has literally put us back 2, 3 years. How can we address that? Greater transparency on HMRC governance and greater participation in that process would be helpful, but it’s one of these things that is – we get a different explanation of what that process is every time we ask.’ (Participant B)

The second was that there should be more technical training:

‘I do think training’s a major factor, technical competence is something, it takes a long time to get it and you have to have the right framework to achieve it, yeah I think that’s a big cause of problems.’ (Participant B)

The third, though this was more speculative, concerned the merit of decentralisation of some HMRC departments:

‘I’ve often wondered [about] decentralising some of these civil service departments.’
(Participant B)

Discussion

Though the take-up of the survey and interview was low, the combination of the existing literature, survey responses and interview answers give some evidence with which to answer the central research questions of this project. However, acknowledging the shortcomings in the underpinning data, this report will proceed to set out potential hypotheses, which could be tested further, rather than setting out definitive conclusions. We consider that it would be helpful to have further research in this area, perhaps led by HMRC itself.

In particular, we believe there could be clear benefits if HMRC were to be required **to publish annual statistics on the number of open enquiries and the average age of open enquiries**. This would bring transparency and open up the possibility of third parties, such as the Public Accounts Committee or Treasury Select Committee, playing an accountability role in respect of HMRC’s timeliness in conducting enquiries. It would also allow targets to be set for the average time to close enquiries (as are already recorded for transfer pricing disputes in OECD member countries), enabling realistic targets to be set within the department. It is accepted that this may come with some cost consequences for HMRC in gathering and publishing the information. It is notable that, in the key enquiries identified by taxpayers, most open enquiries appear to be taking at least three years, with a number being open for much longer.

As to whether there are avoidable disputes which are arising between businesses and HMRC (and if so, why), the four factors raised in the interviews suggest that certain disputes are unavoidable. The complexity of large businesses,⁷⁵ combined with the need to apply rules concerning international taxation, means disputes will be inevitable. The focus should therefore be on how to make the handling of disputes more efficient, which would result in efficiency savings for both HMRC and taxpayers.

⁷⁵ Participants B and C both spoke of their complex organisations.

Could it be that disputes also arise because HMRC officials are not provided with **sufficient technical training** or could it be that CCMs lack an understanding of the businesses themselves (which **continuity in the CCM role** would mitigate)? The data generated through the interviews and surveys about these complaints align with those made in the Freedman et al. (2014) study and as acknowledged in HMRC's 2021 'Review of tax administration for large businesses'.

Issues around expertise and the subject matter of the dispute will also cause delays to occur between the opening and closing of enquiries (the second research question). Governance will certainly play a role. Whilst it might be frustrating for taxpayers that these layers of governance do exist, they were introduced in response to particular concerns about the potential for cosy, sweetheart deals. These layers of governance also ensure consistency of treatment across taxpayers. To that end, separate from issues around structure and the way it operates, **the rationale for governance constraints is sound**. However, additional expertise within HMRC (in both tax technical knowledge and awareness of business issues), together with an effort to have reasonable continuity of personnel, would help reduce delays.

Furthermore, it should be acknowledged that taxpayers and the tax authority **face differing objectives when it comes to resolving disputes**.

But what might assist is better communication with taxpayers as to how the governance process works. Could this be an aspect of a broader potential change which would involve **mediation training** for CCMs? The benefit of such training would be that HMRC officials would be able to understand from a taxpayer's perspective what issues are material in a taxpayer's affairs or position, whilst conversely it would equip the officials with the skills to clearly communicate to the taxpayer what HMRC's needs are, so as to move a dispute along and through the layers of governance. While some CCMs have received such training if they are part of the Alternative Disputes Resolution (ADR) project,⁷⁶ wider use of such skills – even if the dispute itself is not suitable for ADR – could be beneficial. Would it be useful to consider whether **taxpayers could be involved** (in some way) when issues are being escalated through the higher layers of governance? Taxpayers with experience of HMRC's HRCP process noted that the involvement of a separate team with a clear focus on reaching a decision enabled matters to progress more rapidly, and it may be that lessons learned from HMRC's experience of HRCP have not been fully embedded across disputes more generally. The committee acknowledges that any change along these lines must avoid the creation of a mini tribunal in which both sides put forward their arguments before the relevant governance board, which would then make a determination. But what appears to ultimately concern taxpayers is the accuracy of what is being put to the governance board (whether that is details around the dispute or the taxpayer's argument). If not direct involvement then (whether through allowing tax directors to speak directly to the governance board in disputes, or through working with taxpayers to put agreed information – statements of law or facts, etc. – to the board), HMRC could consider how to increase transparency in relation to the information transmitted to the governance board.

The openness of the tax administration framework also results in the elongating of the period between the opening and closing of an enquiry. Taxpayers did not appear to avail of the opportunities afforded by the tax administration framework to challenge HMRC during inquiries. For instance, only one had applied for a closure notice and it is notable that, of the seven key enquiries highlighted, only one was thought that it would probably be litigated with a further two potentially being litigated. This highlights that research, such as the previous IFS project, which focuses on

⁷⁶ HMRC (2014), *Use Alternative Dispute Resolution to settle a tax dispute*. <https://www.gov.uk/guidance/tax-disputes-alternative-dispute-resolution-adr>.

delays in cases which proceed to litigation will not identify the significant delays which often arise in matters which are eventually settled without litigation.

While none of the taxpayers objected in principle to the idea that HMRC would make various information requests of them, frustration was expressed with the substance of the information requests themselves – not being able to understand *why* HMRC was asking for particular information or *what* it did with that information once it was received. The CBI has also reported frustration amongst large businesses with respect to data requests from HMRC, including delayed requests for data, repeat requests for the same data and data requests that HMRC cannot explain or justify, or which go beyond its statutory powers.⁷⁷

There are several questions that might be asked accordingly. The first is whether **mediation training** could assist with this frustration insofar as officials **could communicate what concerns HMRC** about a taxpayer's affairs or position? Secondly, should some thought be given to the suggestion that **questionnaires be designed bespoke** for taxpayers rather than being pro forma? More fundamentally, is it the case that HMRC officials cannot communicate clearly to taxpayers why information is being requested because they are **disincentivised from taking a position** for the reasons mentioned already?

Perhaps the introduction of 'Guidelines for Compliance', as suggested by HMRC's 2021 'Review of tax administration for large businesses', will play a role in giving taxpayers a better understanding of why HMRC is making the requests that it is. According to HMRC, they will provide 'guidance and greater transparency on the approaches HMRC regards as higher or lower risk and the associated response'.⁷⁸ Guidelines for Compliance go beyond simply translating the underlying tax rules and instead set out the approach to compliance that HMRC would prefer taxpayers to adopt. Concerns have been raised about how these Guidelines will interact with the Senior Accounting Officer and Uncertain Tax Treatment regimes.⁷⁹ In linking with these regimes, Guidelines for Compliance obtain a hard law dimension incentivising taxpayers to go beyond what is strictly required for the purpose of complying with the rules. This might be viewed as undesirable from the perspective of important constitutional principles such as Separation of Powers and the Rule of Law.⁸⁰ As for the former, Guidelines for Compliance give greater scope to officials to determine the scope and meaning of the underlying tax rules: taxpayers are incentivised to comply with HMRC's word rather than the legislation itself. As for the latter, congruence between legislation and its enforcement is of central importance to this guidance function of law.⁸¹ Guidelines for Compliance have the capacity to undermine congruence insofar as HMRC's interpretation deliberately departs from the underlying law.

On taxpayers not taking the opportunity to seek closure of the enquiry, one of the difficulties may be that the Tribunal will not grant a closure notice until HMRC has all the information it has requested, so the opportunity is not available until a later stage in an enquiry. The mere process of requesting a

⁷⁷ CBI (July 2023), *Business Tax Roadmap: A roadmap for 2024 and beyond*, p. 20.

<https://www.cbi.org.uk/articles/business-tax-roadmap/>.

⁷⁸ HMRC and HM Treasury (November 2021), *Review of tax administration for large businesses*.

<https://www.gov.uk/government/publications/review-of-tax-administration-for-large-businesses/review-of-tax-administration-for-large-businesses>.

⁷⁹ Abigail McGregor and Steven Porter (March 2023), *HMRC's new Guidelines for Compliance: what large businesses need to know*. <https://www.pinsentmasons.com/out-law/analysis/hmrcs-guidelines-compliance-large-businesses>.

⁸⁰ Stephen Daly (2023), *Guidelines for Compliance* 5, Tax Point 6.

⁸¹ Lon Fuller (1969), *The Morality of Law*, revised edn, Yale University Press, p. 39.

closure notice can also introduce further delay into the enquiry. Or perhaps there is a perception that closure notice applications are a sure-fire way of aggravating the relationship with HMRC. It is interesting if it is the latter, as this means that taxpayers are afforded little opportunity to amicably bring enquiries to an end, whilst HMRC conversely has little incentive to move an enquiry along. Closure notices may not be the best means of pushing matters along. There are some potential means of redressing this imbalance which should be considered. As HMRC is already considering as part of its 'Review of tax administration for large businesses',⁸² there could be more **stringent rules applied to enquiries** such as default rules as to when enquiries must be closed (subject to an HMRC application to the First-tier Tribunal). This would at least create a requirement for HMRC to justify why its enquiry is ongoing to a third party, rather than imposing the obligation on the taxpayer (as is required by closure notices currently) to explain why an enquiry should be closed.

Finally, the aspects of the relationship which appear to be working well should be highlighted. The fact that none of the enquiries concerned discovery assessments indicates that the closeness of the working relationship between taxpayers and HMRC through the **cooperative compliance framework** is working to unearth issues in real time. Further, the **litigation and settlement strategy** was not seen to be a cause of delays.

⁸² HMRC and HM Treasury (November 2021), *Review of tax administration for large businesses*.
<https://www.gov.uk/government/publications/review-of-tax-administration-for-large-businesses/review-of-tax-administration-for-large-businesses>

Appendix 1: survey

A. Facts about the group

Note: Although this section is focused on Corporate Tax, you will be given the opportunity in later sections to discuss other taxes.

Global turnover	<£100m	£100m–£1bn	£1bn–£10bn	>£10bn
UK turnover	<£100m	£100m–£1bn	£1bn–£10bn	>£10bn
UK CT payable for latest financial year	0	<£1m	£1–£10m	>£10m
How many UK CT returns?	<10	10–20	20–50	>50
Dealt with by Large Business Directorate?	Y	N		

B. Tax enquiries – UK only

Which tax years are open? (For either the company or group in relation to which you have responsibility)

For open years, what are the main issues under enquiry?

- Employment Tax
- Transfer Pricing
- Thin Cap
- DPT
- Double Tax Relief
- Determination of Residence or Permanent Establishment
- Controlled Foreign Companies
- Financial Instruments
- VAT (Partial Exemption)
- VAT (Output Tax)
- VAT (Input Tax)
- VAT (Other than Input tax, Output tax or Partial Exemption)
- Arrangements disclosed under DOTAS
- Other

Do you know or have a sense of what prompted HMRC to open the enquiry?

C. Progress of enquiries

Please identify the enquiry which you consider to engage the most significant current issue(s). What does this enquiry relate to?

Which is the earliest period subject to that enquiry?

- A tax year within the last three
- A tax year more than three years ago
- A tax year more than six years ago
- A tax year more than nine years ago
- A tax year more than twelve years ago

When was the enquiry opened?

- Within the last three years
- More than three years ago
- More than six years ago
- More than nine years ago
- More than twelve years ago

Please give the dates of the last 3 substantive pieces of correspondence between you and HMRC (either from you to HMRC, or from HMRC to you – please specify in each case).

How many meetings have you had with HMRC in relation to this enquiry? List >3 - 0

Do you think that the enquiry will be concluded within the next 12 months?

Unlikely/maybe/probably

Do you think that the matter will be litigated? Unlikely/maybe/probably

Is a tax authority from another jurisdiction making enquiries into the same matter?

D. Any other information

Is there any other information you wish to give about your experience of HMRC enquiries?

Are you willing to be interviewed to discuss your responses in more detail? If so, please provide contact details.

Appendix 2: list of indicative questions for semi-structured survey

A. Facts about the group

Does your business deal with the Large Business Directorate within HMRC?

If so, do you have regular contact with your CCM? Please elaborate by reference to dates etc.

If not, do you have regular contact with one or several HMRC officials? Please elaborate by reference to dates etc.

Do you discuss issues pre-transaction/pre-return with HMRC and does this have a positive impact?

Follow up questions to discuss quality of CCM/HMRC officials and their understanding of tax/business environment.

B. Tax enquiries – UK only

What tax issues are regularly in dispute with HMRC?

Have you noticed a difference between the issues previously disputed by HMRC and those now? If so, please elaborate (Were they different 3 years ago? Or 5 years ago? Or 7 years ago? Or more than 7 years ago? What were those issues?)

In relation to open enquiries, do you know what prompted them? (And would your business be classed as 'risky' by HMRC? [if willing to share risk-rating]) Would it assist in reducing the length of disputes if you did know? (*Follow up questions also to focus on 'risk' in order to determine appropriateness/costs of risk management framework*)

In relation to open enquiries, what has been your experience of HMRC and businesses at:

- Reaching an agreed understanding of the relevant facts and circumstances (including the commercial context)?
- Reaching an agreed understanding of the points of law at issue?
- Reaching an understanding of all parties' analysis of the law and its application?
- Reaching an understanding of any relevant valuation or pricing issues?
- Finding an appropriate way to resolve any dispute or disagreement (in accordance with the law)?

What has been your experience of HMRC changing its approach following discussions in open enquiries? (Not willing to change approach, slow to do so after being made aware of mistakes etc.)

C. Progress of enquiries

Choose a particular enquiry – the one with the most significant issues currently open:

- When did enquiry begin?
- When, how frequent, and how helpful has correspondence been with HMRC?
- When, how frequent, and how helpful have meetings with HMRC been?

In relation to a long running enquiry (international focus):

- Does the enquiry have an international element?
- Is it likely to go to a MAP?
- Are there other reasons concerning this international element which might mean that the progress of the dispute has been delayed?

In relation to a long running enquiry (domestic litigation focus)

- Will the enquiry go to litigation?
- Do you think ADR is relevant?

Information requests: does HMRC ask for unnecessary information? If so, why do you think this arises?

Have you considered applying for a closure notice?

Have partial closure notices been used?

Does the Litigation and Settlement Strategy affect the speed of reaching a conclusion to the dispute?

Does the identity of the HMRC official dealing with the dispute affect the speed of its conclusion?

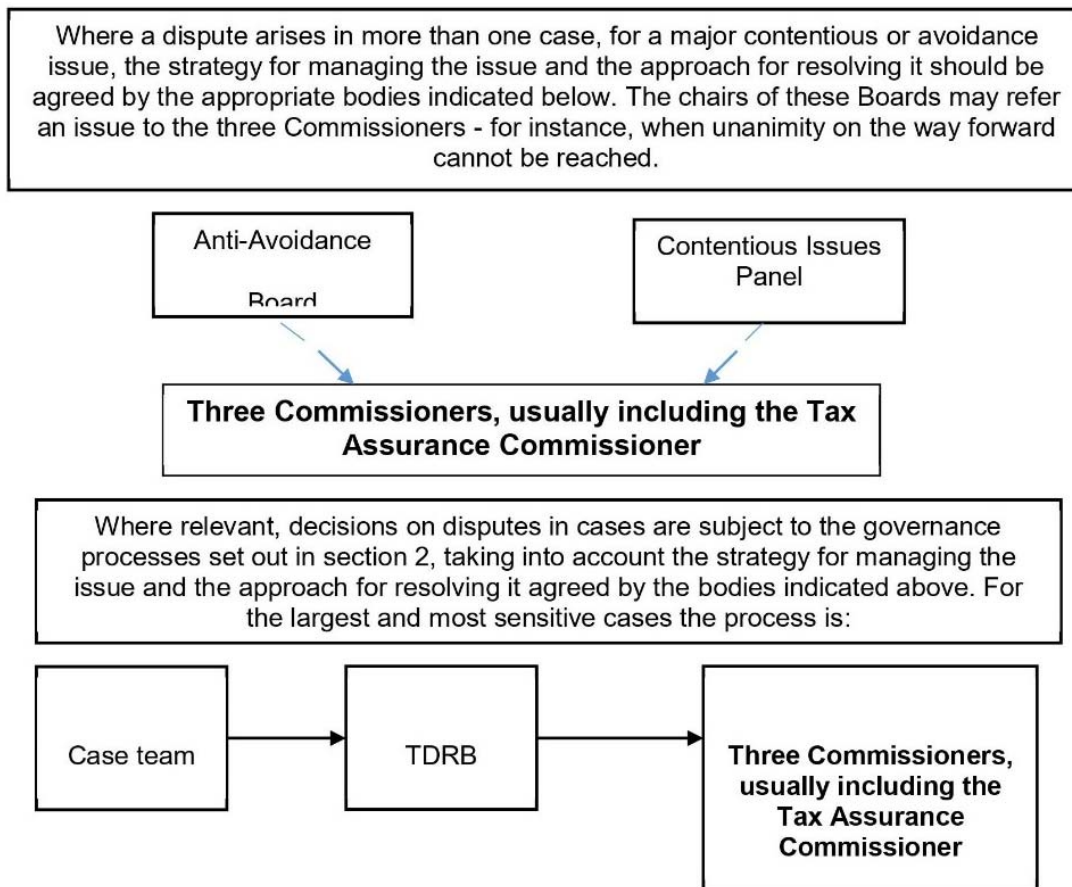
What was the longest length of time between the opening and closing of an enquiry?

- What issues were involved there and what amount of tax was at stake?
- Do you know what prompted the enquiry?
- Were there difficulties in agreeing relevant facts or law? Please explain.

D. Any other information

Is there any other information you think important to discuss?

Appendix 3: HMRC governance model flow chart⁸³



⁸³ No longer available on HMRC's website, cached version found here: HMRC (2014), Code of governance for resolving tax disputes, p. 14. https://webcache.googleusercontent.com/search?q=cache:vd4Jq0smSGIJ:https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/655362/HMRC_Code_of_governance_for_resolving_tax_disputes.pdf&cd=8&hl=en&ct=clnk&gl=uk.