



Response from ICAS

Large Business compliance – enhancing our risk assessment approach

4 December 2017

About ICAS

1. The following submission has been prepared by the ICAS Tax Board. The Board, with its five technical committees, is responsible for putting forward the views of the ICAS tax community, which consists of Chartered Accountants and ICAS Tax Professionals working across the UK and beyond, and it does this with the active input and support of over 60 committee members. The Institute of Chartered Accountants of Scotland ('ICAS') is the world's oldest professional body of accountants and we represent over 21,000 members working across the UK and internationally. Our members work in all fields, predominantly across the private and not for profit sectors.

General comments

2. ICAS welcomes the opportunity to contribute to the consultation "Large Business Compliance – enhancing our risk assessment approach" published on 13 September 2017. It was also useful to attend the roadshows in Croydon and Edinburgh.
3. We agree that a refreshed Business Risk Review (BRR) process would benefit both HMRC and large businesses, provided that it does not increase the tax governance burden on large businesses and that it is supported by adequate Customer Relationship Manager (CRM) resources and a consistent approach to implementation.
4. Greater differentiation, through the introduction of additional risk categories and the ability to consider risk separately for different tax regimes and different parts of the business, should allow more flexibility in approach and timing – if implemented and applied properly and consistently.

Specific questions

Q1. Do you think the current process provides HMRC with a comprehensive view of tax risk within a business? If not, what more should HMRC be doing, and how could this be improved?

5. When properly implemented the current process should provide HMRC with a comprehensive view of tax risk within a business. However, reports we have received, particularly in the last few years, suggest that the process is not always working properly.
6. As noted in the consultation document the BRR should involve HMRC evaluating and discussing with a large business where they think they sit on the compliance spectrum and whether they meet the criteria for Low Risk. The document also notes that the largest and most complex businesses can be classified as Low Risk if they mitigate risks to an acceptable level through their behaviours.
7. In practice this two-way discussion process is not always happening. Some businesses are being told that they cannot be Low Risk, with no satisfactory explanation being given by their CRM. Examples include businesses being told that they cannot ever achieve Low Risk status because their business is international or because they operate in a high risk sector.
8. As indicated in the consultation, the risk rating of a business should be based on its behaviour/how it mitigates inherent risks and its approach to tax and working with HMRC – not solely on inherent risk factors like operating in a high risk sector – but this approach is not being consistently applied in practice. The business may have taken steps to deal with, say, sectoral risks which should be discussed as part of the BRR process. If a business is deemed not to be Low Risk the CRM should also identify and discuss steps the business could take to achieve Low Risk status, so that it has clarity on what it could do to change its rating.
9. Similarly, a risk rating should not be changed without discussion of all factors with the business; for example, a risk rating being changed to Non-Low Risk solely because the business is going through a period of change. Constant change is part of business life and large businesses will generally have mechanisms to deal with it; these should be properly discussed and assessed with the business before the CRM considers changing the rating.

Q2. Do you think the current Low Risk/Non Low risk distinction is optimal for HMRC and/ or business purposes? Would having a wider range of risk distinctions provide more clarity?

10. No, the current binary distinction is not optimal for HMRC or business purposes. The two categories currently include a wide range of businesses with different behaviours; there is too little differentiation.

Non-Low Risk will currently include businesses which do not have adequate tax processes in place (and will not engage with HMRC) and businesses which use aggressive avoidance schemes – but it will also include large businesses which work cooperatively with HMRC and have generally good tax processes but cannot be Low Risk because of an issue in one or two areas.

11. However, a greater level of differentiation will only be helpful for businesses if it genuinely provides more clarity and the process is applied consistently by CRMs. As noted in paragraph 7, businesses are not always being given satisfactory reasons for a Non-Low Risk rating or a proper explanation of how they could achieve Low Risk. Having more risk categories might assist with this, in that it would allow recognition of the fact that a business might be broadly Low Risk and working collaboratively with HMRC but does have one or two areas of higher risk. This more differentiated model would still require engagement and a consistent approach from CRMs.
12. One benefit of the current Low Risk rating, for businesses which can achieve it, is that it is easily explained to, and understood by, stakeholders. Moving to a new approach, with more rating categories, could lead to some loss of clarity. This could be mitigated to some extent by the structure adopted for the new regime.
13. It is important that the benefits of being Low Risk (or in a lower risk category under any new approach) are clear to large businesses. Businesses value collaborative working ('cooperative compliance') with HMRC because it should mean that they can raise complex issues, which are likely to present risks, and obtain input and rulings quickly; this is regarded as the main benefit of the CRM approach, when it is working properly. However, in the last few years we have received numerous reports of businesses wanting to work with HMRC in real time (or close to real time) but HMRC being unable or unwilling to match this, giving rise to significant delays. Some of the problems may be linked to risk ratings (ie CRMs not wanting to devote time to Low Risk businesses) but others seem to be linked to CRM resourcing problems, 'churn' of CRMs, HMRC budgetary constraints (making it hard to arrange meetings, particularly where CRMs have been moved to locations a long distance from the large businesses they work with) and the lack of a consistent approach from CRMs.

Q3. Do you agree the level of risk within a business should influence the frequency of HMRC conducting a BRR? If not please explain.

14. Yes, but there could be more flexibility in the approach to the timing of the BRR. For example, if a business is generally Low Risk but there are one or two aspects of its tax which present higher risks, it would make sense for a full BRR to be carried out every 2-3 years – but for the higher risk areas to be subject to a 'mini-review' more frequently. This would be facilitated by an approach to BRR which differentiated between different tax regimes – see Question 9 below.
15. The consultation document suggests that most Large Business customers (Non-Low Risk) currently have a BRR every year. Some businesses may find this useful for informing board decisions on resourcing for tax departments. However, greater differentiation of risk could support more flexibility on timing. A very high risk business, engaging in aggressive avoidance, which does not cooperate with HMRC will require constant review and monitoring. Others, currently not rated Low Risk, but which would not be in the highest risk categories in a new system might require a BRR somewhere between 1 year and 3 years – particularly if there was scope for 'mini-reviews' of specific high risk aspects more frequently.
16. The consultation document notes that where a large business is currently classified as Low Risk the BRR frequency will usually be 2-3 years but that the CRM will maintain sufficient contact to understand any change in their compliance risk. It is important that businesses in lower risk categories in a new system (or Low Risk in the current system) feel that they have sufficient contact with their CRM and that if they raise an issue which might present a risk the CRM will provide timely support. If this does not happen, there is a perverse incentive for a business not to reduce its risk rating.

Q4. Are there any areas which you think are missing from the inherent risk factors within the current BRR framework?

17. No.

Q5. Are there any areas which you think are missing from the behavioural risk factors within the current BRR framework?

18. No.

Q6. Do you think any of the areas identified should attract a greater or lesser degree of weighting due to their significant impact on overall risk? If so, please expand.

19. We do not consider that a formulaic approach to weighting risk would be helpful. Discussions with large businesses and a detailed understanding of their approach and processes should be sufficient to allow HMRC and the business to reach an appropriate risk rating.

Q7. Is the current approach to the use of tax planning in the BRR assessment appropriate?

20. Yes.

Q8. Is there other evidence of the practical applications of tax risk governance that HMRC should take into account when assessing risk within businesses?

21. No.

Q9. Do you think HMRC should be more explicit around the risks in Corporation Tax (CT), Value Added Tax (VAT), Employer Duties (PAYE/National Insurance Contributions), and/or international tax risks? If yes, please specify and explain.

22. Yes. It would be sensible for risk to be considered separately for different tax regimes and different parts of the business. A business might have very little risk associated with Corporation Tax but significant risks for VAT. As noted in paragraphs 14 and 15 the timing of risk reviews could also be varied in recognition of the different risks.

Q10. Do you think there would be benefits in running a BRR that focusses on specific risk regimes or areas, [for example dropping areas where there is negligible activity or risk] with suitable businesses?

23. Yes, where the business and the CRM agree that this would be a useful approach.

Q11. If HMRC introduced a greater segmentation, what opportunities do you foresee for HMRC and business?

24. It should allow HMRC to target its resources more effectively. If properly implemented it should also give businesses a better insight into their level of risk and what they need to do to move between categories.

25. Of the three suggested models the 'pyramid' model has the advantage of being relatively simple, compared to the other two. In retaining defined categories, it should continue to be relatively easy to communicate to business stakeholders, whilst allowing for more flexibility of approach.

26. It seems unlikely that the 'pyramid' would in fact resemble a pyramid. We would expect relatively small numbers of businesses to be in the Low Risk categories and in the Significant and High Risk categories – with more companies 'bunching' in High-moderate and Low-moderate.

27. The ATO and nine box models are more complex and would be harder for boards and stakeholders to understand. It is hard to see how the 'consequence' aspect of the ATO model would assist in encouraging businesses to adopt low risk behaviours. All businesses covered by BRR will be significant businesses; the process should concentrate on their individual behaviours.

28. Whichever model is adopted, it is essential that it is supported by adequate CRM resources so that proper discussions take place with businesses. Businesses need to understand why they have been given a particular rating and what they could do to move to a lower risk category. As noted in paragraphs 7 to 9 the current system is not always working properly and consistently; the benefits of moving to a new approach may be lost or reduced if this is not addressed.

Q 12. What advantages should HMRC attach to these categories so as to reduce burden on lower risk businesses?

29. We do not believe that specific advantages need to be attached to these categories – if the CRM system is working properly. As noted in paragraph 13 businesses value collaborative working with HMRC ('cooperative compliance') because it should mean that they can raise complex issues, which are likely to present risks, and obtain input and rulings quickly; this is regarded as one of the benefits of the CRM approach. If businesses in the lower-risk categories knew that cooperative compliance would work as intended, that would probably be a sufficient incentive.
30. Conversely, if businesses perceive that becoming Low Risk (or lower risk if more categories are introduced) means that they will not receive adequate support from their CRM, there will be a perverse incentive to remain Non-Low Risk (or higher risk under a system with more categories) rather than working towards a lower risk rating.

Q13. HMRC is encouraging businesses to adopt lower risk behaviours. Can you identify anything else that would further encourage lower risk businesses to maintain or adopt lower risk behaviours?

31. No. Increased public scrutiny and media coverage of tax, combined with the introduction of various measures including the SAO regime, publication of the Tax Strategy and the new Corporate Criminal Offence mean that tax is now a significant issue for company boards and stakeholders. Most large companies are now tax risk averse.

Q14. For those businesses at the higher end of the risk spectrum, what are the opportunities to encourage lower risk behaviours? This could include adopting a Code of Practice on for the highest-risk customers, similar to the Code of Practice on Taxation for Banks (a link to the code can be found here)

32. We do not believe that a Code of Practice would encourage those businesses which choose to remain in the highest risk category to move to lower risk behaviours. HMRC already has extensive powers to tackle this very small number of businesses, including the 'special measures' regime introduced in Finance Act 2016.
33. As noted in paragraph 15 we would expect that a very high risk business, engaging in aggressive avoidance, which does not cooperate with HMRC will be subject to constant review and monitoring by HMRC and that existing sanctions will be applied to those businesses where necessary.

Q15. Do you agree that for a business to be classified by HMRC as low risk it should be expected fulfil the requirements set out for a TCF?

34. Yes, broadly, but we do not support the introduction of any formal legislative requirements around TCF. Large companies are already subject to numerous governance and transparency requirements including Tax Strategy, SAO, Corporate Criminal Offence and Country by Country Reporting. The interaction of these with the BRR could usefully be examined by HMRC.
35. We do not believe additional formal requirements should be imposed. Improving the existing BRR system by introducing increased risk differentiation - and ensuring that it is supported by adequate CRM resources - should be sufficient.

Q16. Does HMRC's existing BRR process already encapsulate the content of a TCF (and more)? If you consider there are any missing areas, please explain.

36. Yes.

Q.17 Are there any other areas of the BRR that HMRC should consider as part of the review of the BRR?

37. No.