



# HOUSE OF LORDS

## ECONOMIC AFFAIRS COMMITTEE

### FINANCE BILL SUB-COMMITTEE

#### Roundtable with tax practitioners, 17 October

The Economic Affairs Finance Bill Sub-Committee hosted a roundtable meeting to discuss the practical impact of Making Tax Digital for VAT and HMRC powers for tax practitioners on Wednesday 17 October. All nine members of the Sub-Committee were in attendance, as were Elspeth Orcharton and Robina Dyll, Specialist Advisers to the Sub-Committee. The session was attended by eight tax practitioners, including chartered accountants, tax advisers, and tax dispute resolution advisers.

The group held a general discussion about the Sub-Committee's two topics of interest for its *Draft Finance Bill 2018* inquiry—Making Tax Digital for VAT, and the powers of HMRC.

This note summarises the discussion.

#### **Making Tax Digital for VAT**

##### *Implications for clients*

One participant raised a concern about rural clients. The vast majority of their clients managed their accounts either entirely using paper records, or using very primitive spreadsheets. Another participant noted that the criteria for exemptions from the Making Tax Digital for VAT regime seemed too harsh. One client had been told, when reporting that they had no access to broadband, to go to a library. On responding that they did not know how to use the system, they were told to ring a customer service line while in the library.

Some clients used industry specialist software that would not be compliant with Making Tax Digital. When asked, the software providers had said they did not have the resources to change their software, designed for businesses' purposes, to meet tax requirements.

Participants considered the costs of Making Tax Digital difficult for many small businesses. One participant noted that in practice, the proposals would not make 'tax' digital, but 'transactions'. If it were simply tax, then accountants could digitise clients' records for them, but Making Tax Digital requires changes to businesses' record-keeping systems. This would be costly and disruptive, particularly for small businesses with low profits. Another participant said that the purpose of records in small businesses was not to pay taxes, but to run the business by recording sales, expenses, and profit.

##### *Expected benefits of Making Tax Digital*

Several participants noted that, despite the significant disruption caused by Making Tax Digital for VAT, HMRC would receive the same information from customers using the new 'bridging' software as under the current system. The original vision, and benefits, of Making Tax Digital, had assumed that HMRC would have access to the full audit trail, rather than the same "four numbers" as always. Participants also disputed HMRC's claim that Making

Tax Digital would reduce errors, and one said that moving to a software model would just produce “different errors”.

### *Consultation*

The mechanisms for consultation with HMRC were criticised. One participant raised the example of an online forum for small agents, in which the HMRC moderator would often remove threads they did not like. Another noted that in previous years, agents would have contacts in local tax offices. The Working Together scheme, now disbanded, was also acknowledged as a good idea.

## **The powers of HMRC**

### *Culture*

There was general agreement that HMRC has in recent years adopted a “guilty before innocent” approach in its enforcement activity. Investigations would be commenced on the assumption of guilt, with undue onus on the taxpayer to prove innocence.

There was a suggestion that reduced resources had hardened the attitude of HMRC towards taxpayers. One participant, who had previously worked for HMRC, described pressure on staff not to undertake a ‘nil’ inquiry—an inquiry concluding that no tax was due. This raised the question of what staff were to do if their investigation indeed suggested that no tax was due.

One participant said agents were “treated as the enemy”, when in practice they do their best to ensure clients pay the tax that is due. There was frustration with formal consultation documents, which participants said often ignored significant opposition to proposals.

### *HMRC delays*

The Sub-Committee was told by participants that, in their view and under some circumstances, poor customer service from HMRC amounted to an abuse of power. One participant shared an example of a client who, amidst a dispute about an employee benefit trust over a “life-changing” amount of money, did not get a response from HMRC for eight years. During this period, interest was accruing on the disputed debt. A response was only received after a Supreme Court case (*RFC 2012 Plc (in liquidation) (formerly The Rangers Football Club Plc) v Advocate General for Scotland (Scotland) (2017) UKSC 45*) had established liability for employee benefit trust arrangements. Another participant said that the accrual of interest during delays in disputes has been compounded by the abolishment of certificates of tax deposit, which would allow taxpayers to pause the accrual of interest while they disputed amounts of tax owed. One participant also noted the disparity between HMRC’s power to require answers within 30 days, and their tendency to take several months to respond to taxpayer enquiries.

Participants raised further delays in the use of ‘Requirement to Correct’ legislation. While this was passed in November 2017 in the Finance Act (No. 2) 2017, letters requesting information were not issued until the following August. In one case of its use, 42 pieces of information were requested, most of which had already been provided to the inquiry. This increased the costs to the client, whose insurance cap had passed, and incentivised them to

settle with HMRC. While they had the resources to continue their challenge, many would not.

#### *Targeting the wrong taxpayers*

Several participants thought that HMRC were targeting the wrong taxpayers. One shared an example of a nurse, who ran a cleaning products business in their spare time, who was subjected to an extensive inquiry over a £200 tax bill. The nurse was left “terrified” of HMRC. Another noted an example of a painter-decorator targeted in error for undeclared modelling income, when the correct taxpayer was simply someone with the same name whose mother lived on the same street.

Participants raised HMRC’s treatment of contractors. One noted that HMRC often issued statements as if they were law, and another stated that HMRC often had a very different view of what constitutes ‘employment’ than contractors themselves.

#### *Oversight of HMRC*

There was some support for independent oversight of HMRC to tackle these problems. One participant argued that change was only possible if HMRC were subject to some kind of external oversight. Another called for the independent arbitration of tax disputes, noting that internal review was not sufficient. One participant qualified that the number of total disputes was low in their experience. Others responded that the number of transgressions was likely far larger than the number of complaints, since the existing complaints procedure was considered convoluted.