Tax assurance in the UK: How the Business Risk Review+ program is a foundation stone for HMRC

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In this article, we describe how the 2019 Business Risk Review+ (BRR+) program, one of a series of new tax compliance assurance programs being implemented around the world, sits at the heart of HMRC's tax risk assessment activities.

His Majesty's Revenue and Customs (HMRC) has a long history as a leading proponent of effective tax governance. Indeed, it was then-HMRC Commissioner Dave Hartnett who, acting as a part of a tripartite group made up of the Australian, UK and US tax commissioners, first made popular the phrase "tax on the boardroom agenda" almost 20 years ago.

Since that time, the UK's revenue authority, a long-serving, central member of the OECD's Forum on Tax Administration, from where it continues to strongly influence other revenue authorities, has remained at the epicenter of global tax risk management developments.

By constantly pushing for new and innovative approaches to securing higher levels of tax assurance, many of HMRC's programs and approaches have spurred similar activity elsewhere. Related HMRC programs and approaches include – but are not limited to – the following:

- The 2004 introduction of the Disclosure of Tax Avoidance Schemes (DOTAS) program (and the related 2014 Promoters of Tax Avoidance Schemes (POTAS) program)
- The 2009 introduction of the Senior Accounting Officer (SAO) regime[1]
- The 2013 introduction of a General Anti-Abuse Rule (GAAR)
- The 2015 introduction of the Diverted Profits Tax
- The 2017 introduction of two Corporate Criminal Offences (CCO) relating to the facilitation of tax evasion

[1] Since 2017, business falling within the SAO requirements are also required to make their UK tax strategy public.

- The 2017 introduction of the Serial Tax Avoidance Regime (STAR)
- The requirements in Finance Act 2016 for large businesses[2] to publish their tax strategy online
- The 2019 introduction of the Business Risk Review+ (BRR+) (after a 2017 consultation and subsequent pilot program)
- The April 1, 2022, introduction of a new requirement, Notification of Uncertain Tax Treatment (NUTT)

More widely, the UK has long been a hotbed of public, media and non-governmental interest in the tax affairs of both businesses and individuals across the same time period, and there remains heightened political and public interest in tax in 2022. Such interest will likely continue in the coming few years. A common refrain among the tax community globally is that “COVID must be paid for somehow,” and increased tax enforcement sits high on many commentators’ lists as a possible method to raise revenues. The UK is no different in this regard.

As a result of these and other pressures, tax governance — the roles, policies, procedures and practices an organization has to identify, escalate and mitigate tax risks — is rapidly growing in importance. Tax strategy and tax governance have become core elements of a company’s license to not only operate, but to be trusted and, ultimately, be financially and operationally successful. This is occurring against the backdrop of governments now paying for COVID-19; increased interest in environmental, social and governance reporting; and new national-level requirements from many revenue authorities.

Consequently, tax is no longer the dominion of the tax department alone. A wider group of stakeholders — the board, audit committee and C-suite (as well as revenue authorities themselves) — is now involved in setting and monitoring tax strategy and tax decision-making, heralding a new approach to tax governance that impacts every aspect of tax department activity on a day-to-day basis.

A wider global push for tax governance

HMRC is certainly not alone in wishing to push companies in this direction. Revenue authorities globally are moving toward new approaches that aim to ensure that alongside getting the numbers right in the tax return, companies’ governance, processes, controls and systems are demonstrably in place and effective. In essence, tax assurance is becoming a fundamental driver in tax risk management, supplementing (and in some cases, partly replacing) existing cooperative compliance approaches and redefining the very nature of the taxpayer-revenue authority relationship.

After a slow burn of many years, national-level requirements for companies to demonstrate that their tax governance is in place are accelerating in pace and growing in number. BRR+ not only sits at the center of the UK strategy in this regard but is arguably (along with programs in Australia, Germany and the Netherlands) setting the global agenda, with

[2] The requirements apply to UK groups, sub-groups, companies or partnerships that in their previous financial year had either turnover above £200 million or a balance sheet of more than £2 billion.

countries in every region now looking toward similar approaches. This has an impact on the tax department, and many multinationals must now take a hard look at their governance approach – not only because tax governance is an important operational consideration, but because not meeting new requirements in the UK or elsewhere can create painful outcomes.

HMRC, like any other revenue authority, prefers focusing its limited resources on taxpayers presenting the highest compliance risk — the "resource-to-risk" approach. To do so, however, requires some form of segmentation (by risk level); that, in turn, requires some form of assessment program through which all taxpayers must pass, effectively filtering out those that present lower risk and highlighting those at the other end of the spectrum. Compliance interventions – ranging from closer scrutiny to a higher likelihood of being audited – can then be applied to the latter group. The equation comes down to yield: 'from which taxpayers can we increase the revenue yield the most, the quickest and the most efficiently?'

For these reasons, HMRC introduced the Business Risk Review+ (BRR+) program, which built on the Business Risk Review (BRR) program. First piloted in late 2018 and early 2019, the BRR+ program was fully adopted[3] in October 2019 and is the current process by which HMRC evaluates where it thinks a company sits on the compliance spectrum and in particular, whether they meet the criteria for "low risk" status.

BRR+ program in practice

HMRC seeks to meet several key objectives via BRR+, including:

- The program should ideally promote the establishment and maintenance of more effective relationships between HMRC and large businesses operating in the UK, assuring that these businesses pay the right amount of tax at the right point in time.
- The program should permit HMRC to effectively segment taxpayers into one of four risk quadrants (low risk, moderate risk, moderate-high risk and high risk) according to their adherence to a tax compliance spectrum.
- Via such segmentation, HMRC will deploy resources (such as tax auditors) and activities (such as additional risk reviews or a tax audit) accordingly.
- The program provides HMRC with a level of insight and knowledge that can be fed back to the company, promoting continuous improvement and, ideally, movement from one of the higher-risk quadrants to a lower-risk one.

The BRR+ assessment should take place at least annually for companies that are not in the low-risk quadrant. For low-risk customers, a BRR+ will, in general, be carried out on a three-year cycle.

The mechanics

[3] Prior to 2019, a Business Risk Review program segmented taxpayers into either "low risk" or "not low risk" categories.

The BRR+ involves assessing the taxpayer against three factors during an annual assessment meeting with HMRC:

- **Systems and delivery** - The customer's ability to deliver the right tax through systems, processes and skills.
- **Internal governance** - The customer's openness and cooperation with HMRC and the management accountabilities in place to manage tax risk.
- **Approach to tax compliance** - The customer's tax strategy and involvement in tax planning, as well the nature of their relationship with HMRC.

Ratings assigned to each taxpayer will be determined using a set of defined criteria, objectively scoring businesses based on the number of low-risk factors evidenced.

Importantly, BRR+ allows HMRC some flexibility and discretion. In deciding a taxpayer's overall risk level, HMRC will take several environmental factors[4] into consideration, including the size of the business, its overall complexity and the pace of change the business is experiencing internally — but not from external factors such as evolving tax legislation.

Each of the three areas is assessed separately for each tax regime (Corporation Tax, Employment Duties, VAT, Customs and International Trade and Excise), and almost 60 evidentiary metrics that HRMC say would suggest a group is low risk are set out in HMRC's BRR+ guidance online[5].

Low-risk criteria include whether the taxpayer:

- ► Maintains a tax risk and controls matrix and shares this with HMRC on request
- ► Maintains documented tax policies and procedures and shares these with HMRC on request
- ► Has appropriate tax accounting arrangements in place that enable accurate tax reporting to occur
- ► Undertakes assurance checks and testing of their policies and procedures on a regular/timetabled basis
- ► Appreciates their potential liability under the Corporate Criminal Offence legislation and has taken steps to profile and manage the risk of failing to prevent the facilitation of tax evasion
- ► Identifies and communicates any significant uncertainties or irregularities to HMRC promptly
- ► Has a documented tax strategy that is used to steer all tax considerations

Assessment results and final rating

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[4] https://www.gov.uk/hmrc-internal-manuals/tax-compliance-risk-management/tcrm3330

[5] See https://www.gov.uk/hmrc-internal-manuals/tax-compliance-risk-management/tcrm3370 for a full list of the factors

Results are delivered to the taxpayer using a dedicated BRR template, which taxpayers may download and review in advance of their BRR+ assessment commencing[6]. A separate template is used for taxpayers in the banking sector.

Larger businesses and groups are assigned a customer compliance manager (CCM), a dedicated point of contact, when their tax affairs are managed by HMRC's Large Business directorate, and the CCM coordinates the BRR+ process for HMRC. CCMs may be rotated periodically, something that many commentators believe is a particular weakness of the model. The CCM, in discussion with various HMRC tax specialists (i.e., by tax regime) will assess the company against the metrics outlined above, coming to a conclusion on the level of risk associated with each tax type. Individual tax ratings as well as an overall rating for the business/group will then be assigned, and whilst the business can comment on this and feed back to the CCM, the decision on the rating ultimately rests with HMRC. A written narrative is also documented by both HMRC specialists and the CCM, providing the taxpayer with further insight.

HMRC guidance states that if a taxpayer is assessed to be low risk, no new compliance interventions (i.e., risk reviews or tax audits) will be commenced until the next BRR+ for that taxpayer. This excludes certain interventions that may apply to all taxpayers. As noted, as long as the taxpayer achieves a low-risk categorization, HMRC generally will not carry out another BRR+ review for three years, and in the interim generally will not challenge the taxpayers' tax returns or disclosures, though there is no legal guarantee. HMRC guidance notes that sufficient contact should be maintained by both the CCM and the taxpayer between reviews, especially if any taxpayer facts or circumstances change.

In general, where taxpayers have not achieved low-risk status, they can expect HMRC to carry out an annual BRR+ review and a regular risk assessment of ongoing tax returns and disclosures. Taxpayers may receive a higher level of incoming inquiries as HMRC tests information provided more closely.

Interaction with the SAO and CCO legislation

A key difference between the original BRR program and the revised BRR+ is that, assuming they can deliver on the spectrum of low-risk factors set out by HMRC, a taxpayer, regardless of its size or complexity, can achieve low-risk status.

A central way in which the program permits this to occur is via the internal governance assessment. Importantly, this part of the program specifically takes links to other regimes – such as the SAO certification and CCO risk assessment process – into account.

BRR+ guidance, for example, states that to meet the criteria that "The customer [taxpayer] has appropriate tax accounting arrangements so as to enable accurate tax reporting," evidence confirming that statement may include that the taxpayer "*qualifies under the Senior Accounting Officer (SAO) measure and they have a fully open and transparent relationship with HMRC…*" and that "*If the certificate states that tax accounting*

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[6] Ibid.

arrangements have been appropriate or that any shortcomings have already been resolved then this can be taken as evidence that the customer meets this criterion."[7]

Likewise, the BRR+ assessment also has strong links and interdependencies with the CCO legislation. Evidence that the taxpayer appreciates their potential liability under the Corporate Criminal Offence legislation and has taken steps to profile and manage the risk of failing to prevent the facilitation of tax evasion might include a documented conversation with the taxpayer in which they confirm they have carried out a proportionate risk assessment for the facilitation of Tax Evasion, have carried out due diligence, have clear policies and procedures in place to train and communicate with staff, and have (and can demonstrate) top-level commitment to prevent potential liability under CCO legislation. Further, it may also include public statements and published strategies on CCO from the taxpayer.

BRR+ in practice

With BRR+ now in its third full year of operation, a number of common insights can be identified. First, in much the same way that tax audit tactics are also changing – and in common with many other countries' tax assurance programs, HMRC now expects taxpayers to "show, not tell" evidence of the effective function of their Tax Control Framework or similar collection of tax and financial controls. A slide presentation or similar document suggesting the existence of the controls is not sufficient, and CCMs are increasingly asking for additional evidentiary assets, including the results of controls testing and evidence of regular review of tax risk assessment procedures.

Second, more granular information is being sought by HMRC in preparation for the assessment meeting. This includes the use of more detailed questionnaires across the spectrum of risk factors being assessed. While not insurmountable, these questionnaires take time to complete, and in certain cases may contain requirements that have slipped under a group's radar.

Third, and in concert with the deepening level of information being requested, anecdotal evidence (there is no empirical evidence published by HMRC) suggests that securing low-risk status is becoming more challenging.

It is becoming clear that a group publishing its tax strategy has important repercussions, with CCMs more frequently referring to the content of such documents when seeking to better understand how a group operationally delivers against strategy on a day-to-day-basis.

Final thoughts

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[7] Where the customer does not qualify under SAO, evidence might include a high-level description of the key processes the customer has in place to manage significant tax compliance risks, examples of how these processes have worked in practice in relation to significant business events or key risks, and examples of where the customer has identified new tax compliance risks as a result of their monitoring and has put measures in place to mitigate the risks.

The segmentation of taxpayers via regularly scheduled compliance assurance processes such as BRR+ is a fast-growing phenomenon globally. Many revenue authorities are replicating the taxpayer risk rating and segmentation processes developed by Australian, Dutch, German and British revenue authorities, and new pilots and programs are being launched with regularity.

The rise of such programs can be viewed as a logical extension of the cooperative compliance programs that many revenue authorities have implemented. At the same time, though, the new breed of programs has considerable differences: they are becoming increasingly mandatory, especially for larger groups; and they have a far deeper focus on the need for taxpayers to now demonstrate good governance in tax and be more transparent regarding tax risks they face and the protocols used to manage them.

Finally, the new programs have distinct implications: while under cooperative compliance, programs the two parties could agree to disagree — and even walk away without penalty if agreement could not be secured; a similar situation under a program such as BRR+ could result in significantly increased compliance interventions on ongoing basis. This is something that all groups will want to avoid and the majority will wish to take adequate steps to proactively prepare (across multiple markets, for a regional tax function) to prevent an increased compliance burden and ongoing tax uncertainty.

Moving forward is a relatively simple task: your professional services provider in the UK can provide a tool that utilizes HMRC criteria to give a score that helps you understand potential areas for further improvement to address in advance of your formal BRR+ assessment. Service providers can also assist in the preparation for your BRR+ meeting and attend the meeting with you.

Multiple years of pressure on many fronts mean that effective tax risk management is now a boardroom issue for many large UK taxpayers. Some taxpayers may view that as a threat to their activity. They would be wrong to do so. Instead, the present shift in culture and focus should be viewed as an opportunity to gain stronger relationships with the board and executive layer, gain earlier access to business strategy and decision-making, and embed tax more strategically in the business – not to mention improve and sustain the relationship with the tax authorities.