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Insights

COVID-19: IMPACT ON HMRC'S COMPLIANCE ACTIVITIES

Oct 19, 2020

Recently published data casts a light on the ongoing impact of Covid-19 on tax revenue generated from HMRC's compliance activities, and tax appeals going through the courts.

HMRC's compliance yield

It is well documented that tackling tax non-compliance has been, and remains, a key priority for HMRC, as demonstrated by the increase in both the tax regulatory burden placed on taxpayers and HMRC's powers to investigate and enforce non-compliance in recent years. However, despite this, HMRC's latest quarterly performance data indicates that HMRC's compliance yield (the amount collected from HMRC's compliance activities) has reduced significantly during Q1 2020/21 when compared with the same period last year: in Q1 2019/20, HMRC's total compliance yield was around £15.4bn, compared with £7.5bn in Q1 2020/21. This represents a quarterly year-on-year reduction of more than 50%. HMRC has said it expects this year's compliance yield to be lower than in 2019/20 "*due to the economic circumstances and as a result of HMRC's response to the pandemic*". HMRC expects to deliver around £3.8bn in compliance yield in Q2 2020/21, significantly less than the £5.6bn collected in Q2 2019/20.

One of the measures used to calculate HMRC's compliance yield relates to the estimated revenue loss prevented from fraud, criminal activity and other non-compliance. This is of course an estimate but it is a measure that the UK government has in recent times been keen to use to show the impact of the many measures it has introduced to tackle tax non-compliance. The quarterly data published by HMRC shows that the amount of revenue loss prevented by HMRC in Q1 2020/21 was far reduced compared with previous quarters: in Q1 2019/20 the estimated revenue loss prevented was £4.9bn; this dropped to £2.2bn by Q4 2019/20, and reduced even further to £814m in Q1 2020/21.

The data, which overall reveals a significant reduction in HMRC's compliance yield compared with the same period last year, provides some insight into the early impact of Covid-19 on HMRC's activities. HMRC's ability to tackle tax non-compliance and continue expanding its compliance yield during this period will likely have been affected by the vast resources needed to enable HMRC to effectively manage and implement aspects of the government's economic response to Covid-19. It remains to be seen the extent to which these figures will recover, although, by HMRC's own admission, any serious recovery seems unlikely. Despite these challenging economic times, we expect that the pressure on HMRC to increase tax revenue will likely intensify as the cost of the government's unprecedented economic measures expands.

HMRC's success in the courts

HMRC's success rate in the First-tier Tribunal (Tax Chamber) (the "**FTT**") remains high at 84%, just 4% lower than in Q4 2019/20. However, the number of cases recorded as being won and lost by HMRC in Q1 2020/21 is far less than that recorded during the preceding quarter. For example, in Q4 2019/20 HMRC won 408 cases and lost 59 cases; in Q1 2020/21 HMRC won 159 cases and lost 32 cases. This is likely a result of the slowdown in cases being heard at the FTT as it seeks to cope with the backlog of cases.

This slowdown is reinforced when we look at the number of weekly listings in the FTT which have been published since May 2020. The average number of listings per week between May 2020 and the beginning of July 2020 was 9. Recent statistics show that the number of listings per week has been increasing: there were 15 hearings listed for week commencing 7 September 2020; this more than doubled by the end of September 2020 to 32 for the week commencing 28 September 2020. However, the number of listings dropped again to 12 for the week commencing 5 October 2020, 18 for the week commencing 12 October 2020, and 21 for the week commencing 19 October 2020; query whether the reduced number of listings so far in October 2020 is simply an outlier in what is otherwise an upwards trend for the FTT, or whether it spells another decrease in hearings as the Covid-19 pandemic intensifies again.

The picture looks quite different in the upper courts where the number of cases recorded as being won and lost by HMRC in Q1 2020/21 was more than that recorded in the preceding quarter and during the same period last year. For example, in Q4 2019/20 HMRC won 14 cases in the upper courts and tribunals and lost 8 cases; these figures were exceeded in Q1 2020/21 where HMRC won 24 cases in the upper courts and tribunals, and lost 5 cases. This indicates that Covid-19 may not have had as material an impact on the upper courts and tribunals compared with the FTT. The FTT undoubtedly has a far greater case load, and this is likely to intensify as the strain of the current economic climate affects taxpayers. There may also be other factors at play, such as differences in access to technology and resources between the lower and upper courts.

As for criminal cases, the data reveals that the total numbers of prosecutions and positive charging decisions in Q1 2020/21 were much lower than the preceding quarter and the same period last year. For example, there were just 11 prosecutions in Q1 2020/21 compared to 203 during the same period last year, and Q1 2020/21 saw less than half the number of positive charging decisions by independent charging authorities compared with the same period last year. This shows a marked decrease in the number of criminal cases being pursued by HMRC, which is arguably a direct result of the many challenges currently faced by the criminal legal system in response to the Covid-19 pandemic.

Overall, the drop in cases heard by the FTT and the lower rates of prosecutions and charging decisions show that the impact of Covid-19 has been significant. In light of this, taxpayers with ongoing appeals should expect further delays; and taxpayers with long running enquiries may want to consider whether it would be appropriate or desirable to resort to litigation in the current climate.

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