

Tax evasion, and what Westminster doesn't quite grasp

Andrew Park laments HMRC's increasing use of data rather than trained staff to recoup unpaid tax, and MPs' lack of understanding of the issue

The politicians have had a lot to say about HMRC's tax compliance work of late, much of it highly critical. Westminster has woken up to the extent to which HMRC diverted staff away from investigation work during Covid-19, general productivity plummeted and far less investigation and enforcement work got done.

In May of this year, the House of Commons Committee of Public Accounts (Accounts Committee) made public its report on 'Managing tax compliance following the pandemic'. This was informed in large part by a National Audit Office (NAO) report of the same title published last December, as well as evidence taken by the Accounts Committee directly from HMRC. Previously, in October last year, a separate group of MPs in the All-Party Parliamentary Group for Anti-Corruption and Responsible Tax had already attempted to up the ante by jointly publishing their own report in conjunction with lobby organisation TaxWatch on 'Putting a stop to the tax fraud game'.

Certainly, many of the NAO figures highlighted by the Accounts Committee do not make pretty reading:

- the compliance yield fell in 2021/22 to 4.1% of total tax revenue from c. 5.2% pre-pandemic;
- the total drop in compliance yield for 2020/21 and 2021/22 represented a loss to the Exchequer of around £9bn;
- yield per compliance staff member fell to £1.1m from £1.3m pre-pandemic;
- a 12% drop in staff involved in compliance work during 2020/21 as staff were redeployed elsewhere;
- 114,000 fewer compliance cases opened in 2020/21 compared to the previous year;
- a drop in concluded prosecutions from c. 700 per year pre-pandemic to 163 and 236 in 2020/21 and 2021/22 respectively.

The politicians are focusing on those who cheat the system and on HMRC's plans to punish those who cheat the system. They see it as a crucial matter of public policy that deterrence levels should be high and that those who want to pay their tax but find it difficult should not perceive others as finding it easier not to comply. They demand not just that HMRC steps up its compliance activities back to pre-pandemic levels – something which HMRC is reluctant to do because of resource constraints – but that the level of prosecutions, in particular, needs to be far higher.

However, I would argue that our politicians need to much better understand the nature of tax evasion and the difficulties faced by HMRC before being quite so hasty in demanding that HMRC turns over more of its precious resources to criminal prosecution work.

In particular, our MPs need to understand that civil investigations are highly effective in bringing deliberate defaulters to account and have many advantages over criminal investigations – not least:

- the bar is far lower – dealt with as a civil matter, although the burden is still on HMRC, were it to come to it, tax evasion need only be proven to a Judge to the civil standard in any potential tribunal. That is on the balance of probabilities rather than beyond reasonable doubt to a jury of generally unsophisticated lay people, as it would have to be in a criminal court;
- the civil framework is designed to recover all the unpaid tax going back up to 20 years together with late payment interest rather than just, in the main, to punish the errant taxpayer;
- the very secrecy with which civil investigations are handled by HMRC generally encourages taxpayers to be reasonable and to settle with HMRC rather than see their affairs publicly dissected at the civil Tribunal – whereas all successful prosecutions must involve court time and pressure on the court system.

Moreover, the civil investigations process serves to punish tax evaders, too:

- non-compliance penalties are behaviour based and where it is determined that the behaviour was deliberate they can be as high as 100% of the unpaid paid for onshore matters and higher still where there is an offshore element;
- the names of serious defaulters are often published – so-called ‘naming and shaming’.

None of this is at all well understood by the politicians – indeed, the APPG report wrongly asserted that “it is not the tax tribunal’s job to determine whether the taxpayer’s behaviour was dishonest”. It also bemoaned that lawyers and other advisers involved in complex tax avoidance schemes are not being prosecuted, while failing to recognise the obvious lack of evidence that would convince a jury. The Accounts Committee report is more measured – but nowhere does it acknowledge the inherent disadvantages of the criminal process in successfully holding all but the most blatant wrongdoers to account, nor does it recognise that the civil process punishes people too and does so in a way that fills Treasury coffers.

The Accounts Committee is, of course, quite correct that HMRC must carefully consider the deterrent value of its compliance work. However, I’ve known and assisted many such people in putting their affairs right, and I would question whether actual and potential tax evaders pay any attention at all to whether HMRC is prosecuting 900 people a year or 200. Surely any deterrence and the extent to which it is effective is largely based on the level of the sanction, namely the possibility of going to prison and the awareness of that possible sanction. HMRC have made valiant efforts to prosecute public figures in order to raise awareness that tax evasion can mean prison but too often that has proven ill-fated and unproductive – not least, given the aforementioned standard required to achieve jury convictions.

Arguably, to the extent the HMRC deterrence factor has diminished recently, it has actually arisen from a general realisation that HMRC’s mainstream civil activity levels have plummeted and from HMRC’s attempt to rely on computers and low grade staff to mass mail hundreds of thousands of one-to-many letters via ‘nudge letters’ to try to police the system without making traditional human interventions. Endless rounds of nudge letters – many to fully compliant people – increasingly advertises how overwhelmed HMRC now is by data and how little resource it has these days to investigate.

Surely, in the main, HMRC – a tax collection service, after all – has got it right in its apparent conclusion that there is little to be achieved in ramping up its prosecution work. However, the price paid by the Exchequer for the general drop-off in civil compliance work speaks for itself and needs to be urgently remedied. Of the £9bn loss in enforcement yield, only a tiny fraction relates to reduced

proceeds of crime seizures at the end of criminal prosecutions. The deficit relates almost in it's entirety to the drop off in tax, interest and penalties recovered as a result of the collapse in civil compliance cases. Only ramping civil compliance cases back up again can possibly address that.

Politicians should abandon their fixation on trying to cajole HMRC to prosecute more people for tax evasion. They should focus on supporting HMRC in building back its capability to investigate by more quietly effective means. There needs to be less grandstanding and more effort to ensure that HMRC is properly funded to recruit and train more high-quality teams of civil investigators.

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