

HMRC'S RELATIONSHIP WITH BUSINESS

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DRAFT REPORT 19/06/2014 : NOT TO BE CITED WITHOUT PERMISSION

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Part 1 – INTRODUCTION

The report that follows details the responses to a questionnaire on the relationship between HMRC and businesses sent to around 1,800 companies with 30 follow up face-to-face interviews. The survey follows on from a previous survey conducted by two of the three researchers in 2008.⁴ The new survey questions were based on the responses to the previous survey and also venture into new related areas, especially the question of settlements, which, since the time of the first survey, has been the subject of press reports, parliamentary comment, a National Audit Office report and case law, all referred to below. The new survey reached a large number of businesses and also some smaller businesses than were contacted in the first survey, although the success here was limited due to the greater capacity for the largest firms to respond.

The relationship between HMRC and business, in particular large business, has been under additional public and political scrutiny. Some are concerned that the relationship has, at times, become too close with the result that HMRC have not been sufficiently robust in their dealings with business. This has been staunchly denied by HMRC, supported by a National Audit Office report.⁵ These concerns follow a period in which HMRC actively sought to improve the tone and nature of the relationship with business, moving away from a confrontational to a more cooperative model through its Business Risk Review (BRR) programme. At the time of the first survey this was referred to as the 'enhanced relationship' regime, which did imply favoured status. The regime has now been renamed as co-operative compliance, which does better describe the nature of the relationship.

The idea of co-operative compliance has spread throughout the world since 2008 and the OECD has undertaken its own study of the way in which this has developed and is operating in order to take stock of the developments and evaluate them. This OECD report refers to the 2008 survey undertaken by this group amongst much other literature.⁶ The OECD set out both the successes and the potential problems of the approach but conclude generally positively. In view of the criticisms of co-operative compliance in the UK in particular, but also elsewhere,⁷ there remains a

⁴ Judith Freedman, Geoffrey Loomer and John Vella, 'Corporate Tax Risk and Tax Avoidance: New Approaches', (2009) *British Tax Review*, 74-116. See also Judith Freedman, Geoffrey Loomer and John Vella, 'Analyzing the enhanced relationship between corporate taxpayers and revenue authorities: a UK case study' in Lynne Oats (ed), *A fieldwork guide to taxation*, Routledge, (2012); Judith Freedman, 'Responsive Regulation, Risk, and Rules: Applying the Theory to Tax Practice', *UBC Law Review*, Vol. 44, No. 3, p. 627, 2012

⁵ NAO Settling Large Tax Disputes, Comptroller and Auditor General HC 188 Session 2012-13 14 June 2012.

⁶ OECD, Co-operative Compliance: OECD, *Co-operative Compliance: A Framework from Enhanced Relationship to Co-operative Compliance*, OECD Publishing, (2013). (OECD Co-operative Compliance) This is available at <http://www.oecd.org/ctp/administration/Co-operative-Compliance-Preliminary.pdf>.

⁷ See literature in fn 4 above and IFA Initiative on the Enhanced Relationship Key Issues Report (2012)

need for an informed debate on how to strike the right balance in revenue authorities' relationship with business. Robust checks and balances are undoubtedly required, and, as pointed out in the OECD report, perception also needs to be managed carefully.⁸ On the other hand it is important not to lose sight of the considerable benefits for both sides in having a cooperative relationship. Action 12 of the OECD Base Erosion and Profit Shifting Action Plan foresees the use of co-operative compliance programmes.⁹

This report presents the findings of a research project which seeks to contribute to this debate.

The research sought the views of large businesses on their relationship with HMRC, with a particular focus on three areas. The first is the BRR, which had been previously examined by the authors through a survey of tax directors piloted in 2007¹⁰ and undertaken in 2008. At the time, the programme was still bedding in and some uncertainty remained as to its operation. The programme has since matured and been rolled down to some smaller firms, and it is thus useful to revisit it. The present research examines how the BRR has developed and evolved, how it is working across a range of businesses and whether it is achieving its stated goals. It also looks at two related areas: HMRC staff, who are clearly critical to the relationship, and the Litigation and Settlement Strategy (LSS), which updated and formalised the manner in which HMRC resolve disputes with taxpayers, another critical feature of the relationship and the cause of much current concern. This research project thus aims at improving our understanding of the relationship between HMRC and larger businesses. By shedding light on the current state of affairs, it informs the debate on whether changes ought to be made and what such changes ought to be.

The 2008 survey was carried out through semi-structured hour-long face-to-face interviews conducted by two of the co-authors with 30 tax directors. The same approach is followed in the current survey, however a further stage has been added to the research. A questionnaire has also been sent to the tax/finance directors of around 1800 companies incorporated in the UK, selected using an appropriate methodology. Attempts were made to include smaller firms than in the previous survey, although this presented some difficulties as explained in the methodology.

This Report proceeds as follows. Part 2 explains the methodology employed in

<https://www.ifa.nl/Document/Publicaties/Enhanced%20Relationship%20Project/IFA%20ER%20Project%20Key%20Issues%20Report%20v%203%203%20final%20version%2031%20August%202012.pdf>

⁸ "Managing perceptions is one of the more significant challenges that has to be addressed. It is all too easy for an external (media) and internal perception to arise that companies in this programme are being treated no more favourably than either their peers or smaller enterprises...." OECD, *Co-operative Compliance: OECD, Co-operative Compliance fn 7 above*

⁹ OECD, *Action Plan on Base Erosion and Profit Shifting*, OECD Publishing, (2013). This is available at <http://www.oecd.org/ctp/BEPSActionPlan.pdf>.

¹⁰ Judith Freedman, Geoffrey Loomer and John Vella, 'Moving Beyond Avoidance? Tax Risk and the Relationship between Large Business and HMRC' in Judith Freedman (ed), *Beyond Boundaries: Developing Approaches to Tax Avoidance and Tax Risk Management*, Oxford University Centre for Business Taxation, (2008).

carrying out the research project. Part 3 presents the results of the project. The responses to each question in the questionnaire are reported first. As the interviews were intended to assist in interpreting these results, insights and quotes are then added from these interviews to shed light and help us interpret these responses. The purpose of this report is purely to present the findings of the research project: further analysis and in depth comment is in progress and will be published in due course.

Part 2 METHODOLOGY AND SAMPLE

This research project was undertaken in two stages. In the first stage a questionnaire was sent out to over 1800 companies. In the second stage, face-to-face interviews were held with tax directors from 30 companies.

Stage 1: The Questionnaire

Sample selection

Two competing factors guided our sample selection – the first was to be as wide and random as possible in order to be representative of UK business as a whole. A concern with the 2008 survey was that it focused only on the experiences of large businesses, and so a particular effort was made to include representative samples of small and medium sized companies. The second was to have as high a response-rate as possible. A significant non-response rate was expected for reasons beyond general apathy. Filling in our questionnaire would require some time commitment from participants, there was a high risk of our letters being misdirected or treated as junk-mail, despite our guarantees of confidentiality some might remain somewhat reluctant to disclose potentially sensitive information, and, a considerable portion of the companies solicited might outsource their tax work and thus would not have the requisite expertise to answer the questionnaire. Significant thought was given, therefore as to how to maximise our response rate. These two factors were inevitably in tension, since efforts to maximise the response rate through our sample selection would reduce the randomness of our sample and introduce selection biases.

The sampled companies were identified primarily through the Amadeus¹¹ database (Amadeus). Lists of UK-registered companies were compiled in descending order by revenue. Amadeus did not include companies trading as banks or in insurance, while the FAME¹² database (FAME) did include such companies, so the large companies found on Amadeus were supplemented by those found on FAME. 100 Group companies which were not in our sample were also added.

The 100 Group¹³ helpfully made details of Tax Directors of 100 Group companies available. For other companies reliance was made on the information provided in Amadeus and Fame, as supplemented, were possible by company websites. Random cross-referencing with companies' websites suggested that Amadeus contained up-to-date details of Finance Directors/Chief Financial Officers (CFOs) in the vast majority of cases, so it was assumed throughout that these were stated accurately. Cross-referencing with websites showed that FAME was less consistently accurate in respect of finance directors/CFOs, and so where FAME was used, the finance director/CFO's identity was confirmed through the relevant website. It was assumed throughout that websites gave up-to-date information in this respect.

¹¹ Bureau van Dijk, 2012

¹² Bureau van Dijk, 2012

¹³ Representing the top 100 FTSE companies and some others: <http://www.the100group.co.uk/>

Large companies

The large companies were identified from an Amadeus-produced database of the 1600 largest UK-located companies by turnover, and a FAME-produced database of the 650 largest UK companies by turnover, along with the details of 100 Group members' tax directors. It was thought that the response rate would be increased if correspondence could be addressed directly to the companies' named Finance Directors/CFOs/Tax Directors.¹⁴ Where the Amadeus database included details of companies' Finance Directors/CFOs, those companies were added to the sample. Amadeus and FAME do not have this information for every company in the dataset. It was briefly explored whether Companies House could provide us with details of Finance Directors/CFOs, but they did not collect the information. Our sample was therefore initially restricted to companies whose Finance Directors/CFOs could be identified. We went down the list of UK-located companies, in descending order by turnover, only selecting those with identifiable CFOs through either Amadeus or their websites. To test our hypothesis that this would increase the response rate, and to identify any resultant selection bias, we supplemented this with the 100 largest companies without identifiable CFOs. A problem with this method was that the overwhelming majority of large companies without a CFO identifiable through their website were foreign-owned subsidiaries. Our comparison of these 100 companies with our main large company sample is therefore limited by its not being clear whether differences in response rate are the result of our correspondence not being addressed personally to the CFO, or due to other factors related to being a foreign-owned subsidiary.

Small and medium companies

Due to concerns that the 2008 survey did not report on the experiences of small and medium sized companies, such companies were included in the sample. For this purpose, a 'medium' sized company was defined as one with a turnover of £26m or less (after rounding by Amadeus). This test was a variation on that in section 465(3) of the Companies Act 2006, which identifies medium sized companies by reference to turnover, balance sheet value and number of employees. Similarly, a 'small' company was defined as one with a turnover of £7m or less (after rounding by Amadeus). This test was a variation on that in section 382(3) Companies Act 2006, which is similar in form to that in section 465(3).

The medium companies were identified from an Amadeus-produced database of the 2000 largest (by turnover) companies with a turnover of £26m or less, with the largest companies with an identifiable CFO chosen for our sample. The database from which the sample was drawn was larger than that used for large companies due to the desire to produce a usable sample similar in size to the sample of large companies. The small companies were identified from an Amadeus-produced database of the 6000 largest (by turnover) companies with a turnover of £7m or less,

¹⁴ A. N. Oppenheim, *Questionnaire Design, Interviewing and Attitude Measurement*, Continuum (2000), p. 104.

with the largest companies with an identifiable CFO chosen for our sample. In order to test our hypothesis that correspondence addressed to the named CFO would attract a higher response rate, and to test any selection bias, we additionally selected the 100 largest medium and 100 largest small companies without an identifiable CFO. As the comprehensiveness of UK-company websites correlates with their size, and thus the likelihood that missing CFO data could be garnered from websites, these additional companies were not as likely to be foreign-owned subsidiaries, making them improved vehicles to test any selection bias. However, a significant number of these additional companies were foreign-owned subsidiaries.

General issues

Several of the companies in the sample were under common ownership, and therefore likely to be the subject of common interactions with HMRC. In order to create as broad a sample as possible, where multiple companies in the sample had a common ultimate economic owner, only one would be retained. In identifying the company to retain, parent companies were preferred over subsidiaries, though where the Finance Director/CFO of the parent company could not be identified, a subsidiary might be chosen if this information was provided by Amadeus or the company's website. When choosing between multiple subsidiaries, those with the largest turnover were preferred. A handful of companies under common ownership were included in the sample where it seemed likely that they did not have coordinated tax policies, for instance where their common owner was an individual, a trust, a national government, or a venture capital firm.

Having removed firms under common ownership and those without easily identifiable CFOs, before adding a control sample without identifiable CFOs, the large company sample consisted of 688 companies; the medium company sample of 583 companies; and the small company sample of 553 companies.

The questionnaire

The questionnaire (see Annex 1) covered three main areas: the role and approach of HMRC staff, the Business Risk Review, and the Litigation and Settlements Strategy. Since the survey was being extended to SMEs, who are not subject to risk rating, but on some of whom the Single Compliance Process (SCP)¹⁵ was being piloted, a specific SME section was added questioning them on both HMRC enquiries generally and the SCP specifically.

Questions

Literature on market research was consulted to optimise the response rate to the questionnaire. Technical jargon was avoided where it might lead to confusion or

¹⁵<http://webarchive.nationalarchives.gov.uk/+/http://www.hmrc.gov.uk/news/single-compliance.htm>

ambiguity,¹⁶ particularly important in relation to questions targeted at smaller companies which might have infrequent interactions with HMRC. However in relation to those questions targeted only at larger companies, more technical terminology was used where useful (e.g. ‘Senior Accounting Officer’, ‘Transfer Pricing’). Several drafts were considered and different views canvassed in order to remove ambiguity from the questions and to ensure that choices in multiple-choice questions were mutually exclusive.¹⁷ Sensible ranges for questions about time-scales (e.g. about length of time that Customer Relationship Managers (CRMs) remained in office) were identified by consulting practitioners.¹⁸

Given that those choosing to answer the questionnaire would be interested in the subject matter, it was thought that fatigue effect (questions asked later are answered with less attention) would be reduced. Fatigue was further contained by mixing classification and attitudinal questions and avoiding large ‘batteries’ of attitudinal questions.¹⁹ Significant efforts were also made to keep the time commitment needed to complete the questionnaire down, particularly by avoiding requiring respondents to answer unnecessary questions by asking classificatory questions early. Efforts were made to group questions by subject so that question funnelling could be employed (asking broader questions before narrower questions to remove inadvertent influence and to improve the ‘flow’ of questions).²⁰

As explained further below, the questionnaire was made available both in hard copy and online. The primacy effect (options stated earlier are disproportionately favoured by respondents)²¹, and the fatigue effect, could have been controlled for by varying the order of options in the online survey, but this was impracticable for the paper survey, and in the interests of consistency the options in the online survey were presented in a consistent order to all respondents.²² Lists of options were kept short (between 2 and 5) to reduce the occurrence of ‘satisficing’ (some respondents ignore later options once they have identified an option which roughly suits them, aggravating the primacy effect).²³ Publicly available information which companies might feel reluctant to give on a questionnaire (e.g. turnover) was not sought on the questionnaire.²⁴

Tax directors, practitioners, and a questionnaire specialist were consulted over individual questions as well as over subject areas, which gave rise to amendments to existing questions, layout and the introduction of new questions.

¹⁶ Ian Brace, *Questionnaire Design: How to Plan, Structure and Write Survey Material for Effective Market Research*, Kogan Page (2008), p. 106.

¹⁷ Brace, op. cit., p. 109.

¹⁸ Brace, op. cit., p.113.

¹⁹ Brace, op. cit., p.119.

²⁰ P Hague, *Questionnaire Design*, Kogan Page (1994), p. 45; Oppenheim, op. cit., p. 110.

²¹ Brace, op. cit., p. 118.

²² Hague, op. cit., p. 12.

²³ Brace, op. cit., p. 122.

²⁴ Hague, op. cit., p. 68.

A cover letter was attached to the questionnaire with a summary of the survey's purpose, sampling method, and support from tax directors who are familiar and support the Oxford University Centre for Business Taxation's work, as these were believed to improve response rates.²⁵ Confidentiality was also promised, both for ethical reasons and to improve response rates.

Mail-outs

The questionnaire was sent out twice. Of course, companies which responded to the questionnaire to the first mail-out were not included in the second.

First mail-out

The questionnaires were first sent out by second class post between 5th April and 9th April 2013. To maximise response rate, the questionnaires were sent with a cover letter (Appendix 2). The cover letter invited recipients either to fill in the paper questionnaire, and a second class freepost envelope was included to facilitate its return, or an online version which could be accessed by following a website address noted in the cover letter.

This letter was addressed differently to different firms, depending on which details were held for them and their size. Letters to companies with a known tax director (through the 100 Group database) were addressed to that tax director. Letters to companies with a known CFO or Finance Director (through Amadeus, FAME, or their website) were sent to that CFO or Finance Director. Letters to large companies without a known CFO/Finance Director were addressed to 'Finance Director'. It was decided to address Small and Medium company correspondence, where no CFO/Finance Director/Tax Director could be identified, to the 'Financial Officer'. This was the title which those consulted through randomised telephone calls most often suggested our correspondence should be addressed to.

We were assisted by leading group tax directors Mr Paul Morton of Reed Elsevier and Mr Ian Brimicombe of AstraZeneca, who provided us with a separate letter of support, which was sent out to 100 Group members on 19th April 2013. E-mail correspondence with sampled companies revealed that the website address provided, which contained an underscore, could easily be mistyped. To control against this, we created an additional survey website address which would enable those missing out the underscore to access the survey. Some coding errors in the electronic survey (which made certain combinations of responses impossible to input) were also pointed out, and were rectified.

Second mail-out

²⁵ Oppenheim, op. cit., p. 104.

The questionnaires were sent out for a second time to all companies who had not yet responded between 3rd May 2013 and 7th May 2013. After reviewing the response rates to the first mail-out, it was decided that the response rate could be improved by amending how companies were addressed. Letters to large companies, both with and without identifiable CFO/Finance Directors, were addressed simply to 'Tax Director', to test the hypothesis that questionnaires were not being effectively passed on to companies' tax departments. A potential problem with this approach is that, without a named recipient, the likelihood of the letter being treated as junk-mail might be increased. Letters to medium and small companies for whom a Finance Director could be identified were sent to that Finance Director, it being thought less likely that smaller companies would have a tax director. Letters to medium companies for whom a Finance Director could not be identified were sent to 'Tax Director' on the basis that the response rate to the first mail out was so low that another form of address ought to be attempted. Letters to small companies for whom a Finance Director could not be identified were sent to the 'Finance Director'. All letters in this second round were sent with the letter of support from Mr Morton and Mr Brimicombe.

Response rates

	Large			Medium			Small			Overall
	Paper	Electronic	Total	Paper	Electronic	Total	Paper	Electronic	Total	
1st Mail Out	59	16	75	10	2	12	15	2	17	104
2nd Mail Out	55	18	73	18	2	20	13	1	14	107 (113) ⁺
Total	114	34	148	28	4	32	28	3	31	211 (217) ⁺

Respondents submitting their responses online were asked to report the identification number printed on the paper questionnaire sent to them. Six electronic responses were submitted without an identification number. As a result we are unable to ascertain the identity of these respondents and, therefore, whether they are large, medium or small. For this reason we have not included them in the above table when disaggregating responses by size. When these six responses are included, the total number of responses is 217.

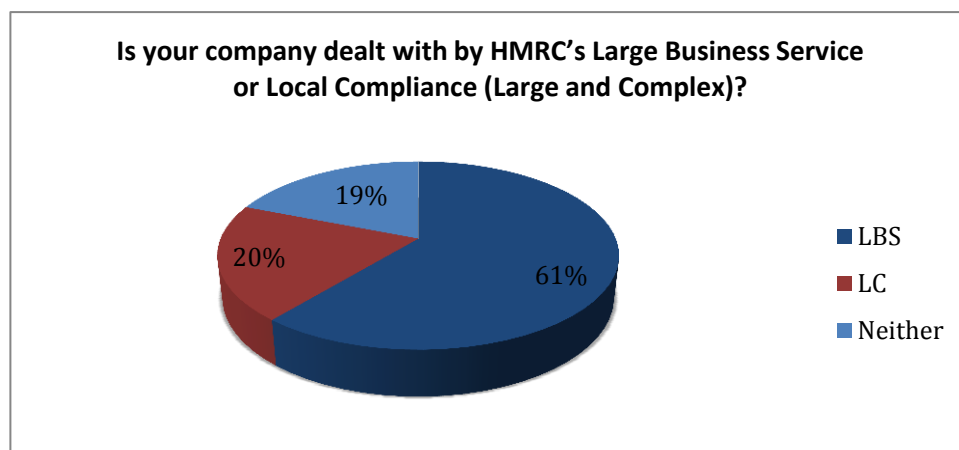
	Large	Medium	Small	Overall
Questionnaires	688	583	553	1824
Responses	157	32	31	211 (217) ⁺
Response Rate	23%	5%	6%	12% (12%) ⁺

Attempts to boost the SME sample by telephoning non-respondents were unsuccessful, over 20 companies were called but none were amenable even to a short telephone questionnaire. Instead, tax practitioners were contacted, and three

⁺ These include the six responses which do not have an identification number.

were interviewed. These interviews will be used in qualitative analysis to assist in understanding how the relationship with SMEs needs to be adapted from that with large companies in order to suit the needs and capacities of SMEs.

Out of the 217 respondents to the questionnaire, 133 (61%) were part of the Large Business Service,²⁶ 43 (20%) were part of Local Compliance (Large and Complex)²⁷ and 41 (19%) were neither. As the identity of companies dealt with by the LBS and LC is not publicly known, we are unable to disaggregate our response rate along these lines.



Stage 2: Interviews

Interview sample selection

Tax directors from 30 companies were interviewed, 25 from the LBS and 5 from the LC. Our face-to-face interviewees were selected based on their answers to the questionnaire and their willingness to be interviewed. The interviews were not intended to substitute quantitative research, but were rather intended to help us understand and interpret our survey results. They were intended to help us understand both majority and minority views, by explaining why such views might have been reported and giving us examples of the type of behaviour which was implicit or could only be alluded to in the answers to the questionnaire. As such, interviewees were selected to give a qualitatively broad range of views rather than a quantitatively balanced sample. Thus, for example, we selected companies who

²⁶ HMRC explain: “[t]he Large Business Service (LBS) is responsible for working with the UK’s largest businesses on a range of taxes, duties and regimes, and works collaboratively with colleagues across HMRC in tackling risk and providing customer service. LBS employs tax specialists, accountants, auditors and is supported in its work by other tax specialists from across HMRC. The LBS looks after 770 of the largest businesses in the UK.” <http://www.hmrc.gov.uk/lbo/index.htm>

²⁷ HMRC explain: “Local Compliance (Large & Complex) (L&C) is responsible for working with the remaining large businesses on a range of taxes, duties and regimes. L&C employs specialist teams covering areas including International Issues, Research and Development, Transfer Pricing, Large Partnerships, and Tax Avoidance/Partial Exemption. L&C is supported in its work by other specialist teams in Local Compliance and across HMRC.” <http://www.hmrc.gov.uk/large-businesses/crm.htm#4>

reported a positive view of the BRR, as well as those who reported a negative view even if the latter were a minority. Interviewing companies with this minority view gave us an understanding of the factors which lead, even if only occasionally, to a negative experience with the BRR. This would not have been achieved if we only interviewed companies who reported the majority view. In the light of this interview policy, readers should note that quotations from interviews are used only to illustrate and explain points made based on the quantitative survey.

In addition, there was a heavy response bias, so further caution must be used in treating our interview sample as representative. The vast bulk of those with whom we could arrange interviews were those whom we had contact details for the tax director/tax manager/head of tax. These were members of the 100 Group, those who published the name of their tax director on their websites, or those whose tax directors had published their job title on LinkedIn. Where the name of the tax director could not be cited over the phone, even where the name of the finance director was given, it was extremely difficult to persuade respondents' administrative staff to put through our calls.

Attempts to increase the proportion of LC companies in our interview sample were thwarted by their relatively low response rate to our questionnaire by these companies. Every LC company who had responded to our questionnaire was telephoned for an interview, but very often it was hard to speak with the tax director on the telephone: virtually every tax director whom we were able to contact by telephone was agreeable to an interview. This difficulty in contacting tax directors of SMEs suggests that any future work on companies within this range will need to be undertaken through intermediaries or other third parties. This would add a different form of bias but may be the only way to reach them.

Companies which were not LBS or LC were not included in our interview sample. The response from this group of companies was low, and most of the companies which responded only answered a handful of questions. Consequently, it was thought misleading to attempt to explain the quantitative data with interviews with these companies and improbable that we would ascertain much detailed information from such an exercise.

Interviews

The interviews were semi-structured and lasted approximately one hour. Except where the interviewee had insisted on a telephone interview, or in the very few instances where the interviewee's location made travelling there not cost-effective, the interviews were conducted face-to-face. The questions varied depending on how the respondent had answered their questionnaire and a list of questions was prepared for each interview. Particular attention was placed on areas in which the respondent could help us understand our questionnaire results, where the respondent had expressed strong views or particular experiences, and on the areas for which their questionnaire responses had led to their selection for interview. Not all areas were covered in every interview. In addition, follow up questions were

asked where earlier answers exposed novel lines of enquiry, and these new lines of enquiry were sometimes pursued in later interviews.²⁸

The interviews were divided into the same three core sections as the questionnaire: HMRC staff, the BRR, and dispute resolution. They were conducted by two of the three authors of this report, although the exact combination varied. Two of the three authors are academic lawyers and the third is currently undertaking his pupillage with leading tax chambers. This is a point which differentiates this research from that undertaken on behalf of HMRC.²⁹ Notes were taken in both long hand and short hand. The short hand notes were transcribed, and then any necessary additions were made to them from the long hand notes.

²⁸ E.g. the possibility that the settlements of issues in exchange for, but not formally conditional upon, each other might be widespread as a way to reach commercially viable agreements without breaching the LSS.

²⁹ Large Business Panel Survey conducted by IFF Research for HMRC
<http://www.hmrc.gov.uk/research/report261.pdf>

Part 3 RESULTS

This part presents the results of the project. The structure of the questionnaire is followed and the response to each substantive question therein is reported.³⁰ The general response to each question is reported first. Where useful, the results for a particular a question are disaggregated following different criteria, such as whether the respondent is in the Large Business Service (LBS) or the Local Compliance (Large and Complex) (LC).³¹ Charts which present all responses to a question are labeled (“All Responses”), charts which present the disaggregated responses of businesses in the LBS and the LC are labeled “LBS vs LC”. Insights and quotes from interviews are added to assist in interpreting the results or to illustrate the point being made.³² To ensure anonymity, gender specific references in interviews are here all reported in the feminine. E.g. if an interviewee said “Our CRM was good, he used to...” It is here reported as “Our CRM was good, she used to...”

The questionnaire asked respondents who were in the LBS or the LC to answer questions in Section I (“Large Business and HMRC”) and Section III (“Disputes, Litigation and Settlements”). Respondents who were neither in the LBS nor the LC were asked to answer questions in Section II (“Small and Medium Enterprises and HMRC”) and Section III. Of the 41 respondents who were neither in the LBS nor the LC 40 answered the first question in the section “Have HMRC engaged your company in a compliance check/enquiry?” 29 answered “No” and thus had no further questions to answer in this section and moved on to Section III. The 11 who answered “Yes” were asked to answer further questions, a majority of which concerned the Single Compliance Process (SCP). Only 2 respondents had experienced the Single Compliance Process. The number of respondents to questions in this section is too low to draw any meaningful conclusions. For this reason, the answers to the questions in this section (Section II) are not reported further in this report.

A. HMRC STAFF

³⁰ Unless the context suggests otherwise, the percentages reported when discussing answers to a particular question, are percentages of participants who responded to that particular question. For example, when the text states “91% of respondents found it very or fairly easy to contact HMRC staff ...”, this means 91% of respondents who answered the particular question at issue and not 91% of respondents to the questionnaire. The number of respondents to a particular question is given in brackets following the question. Also, It should also be noted that respondents which are not in the LBS or the LC were not asked to answer the questions in section I of the questionnaire on HMRC Staff, therefore 41 respondents (who are not in the LBS or the LC) necessarily skipped the questions in this section.

³¹ Where results for a question are presented separately for LBS and LC respondents, the number of respondents from the LBS and from the LC who answered that question is given in brackets by the legend to the right of the chart.

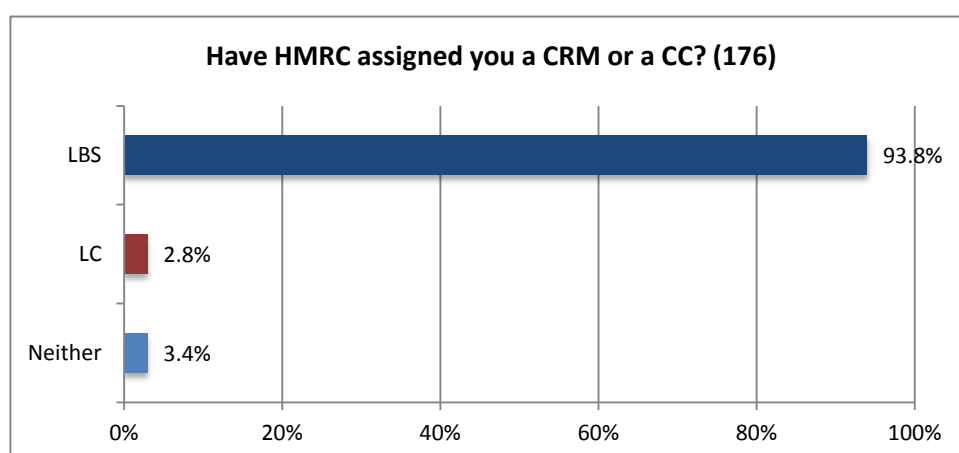
³² Quotes under each question are given a number for ease of reference. Quotes from the same interviewee are placed under the same quote number, meaning that each numbered quote is from a different interviewee. The number of a quote under one question does not link with the numbering under another, in order to prevent identification of any respondent by a series of quotes.

Moving away from the traditional confrontational relationship between HMRC and business required a change in approach from both sides. The questionnaire thus included a series of questions on HMRC staff. Considerable focus was placed on CRMs and Customer Co-ordinators (CC) as these officials play a critical role in the new relationship.

Businesses in the LBS and the largest in LC are allocated CRMs, whose “primary role ... is to manage the relationship between the business and HMRC across all taxes and duties.” Around 2,000 businesses have been allocated CRMs.³³ CCs are allocated to 8,400 large businesses. They “act as a single point of contact between the customer and HMRC... [and] also enable a joined-up, holistic approach to risk.”³⁴

Assignment of a CRM or CC:

All companies reporting that they were in the LBS or LC were asked whether they had been assigned a CRM or an identified CC. The vast majority reported having a CRM, partly reflecting that the CRM scheme has now been rolled out over 2000 businesses,³⁵ and also that our response rate was higher amongst larger companies.



Contact with HMRC

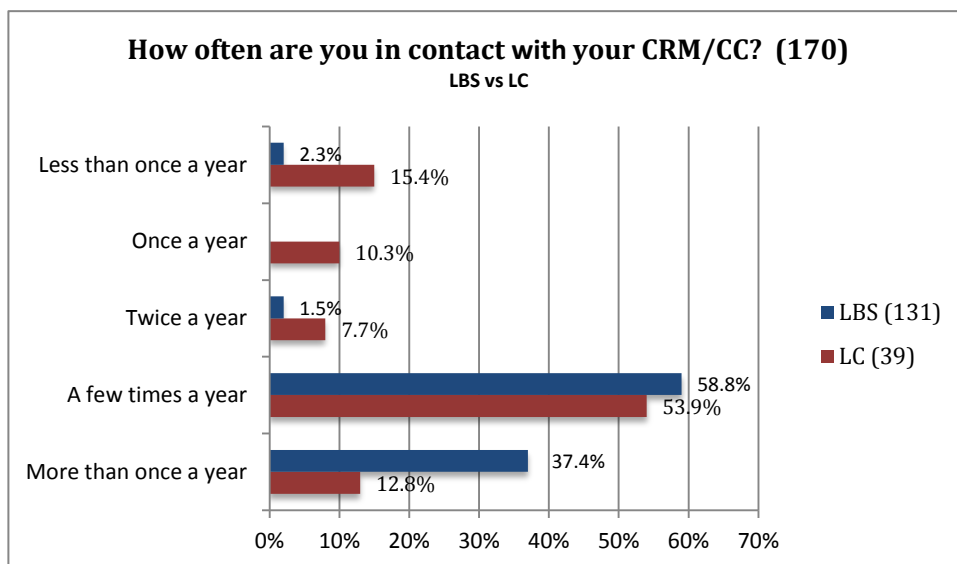
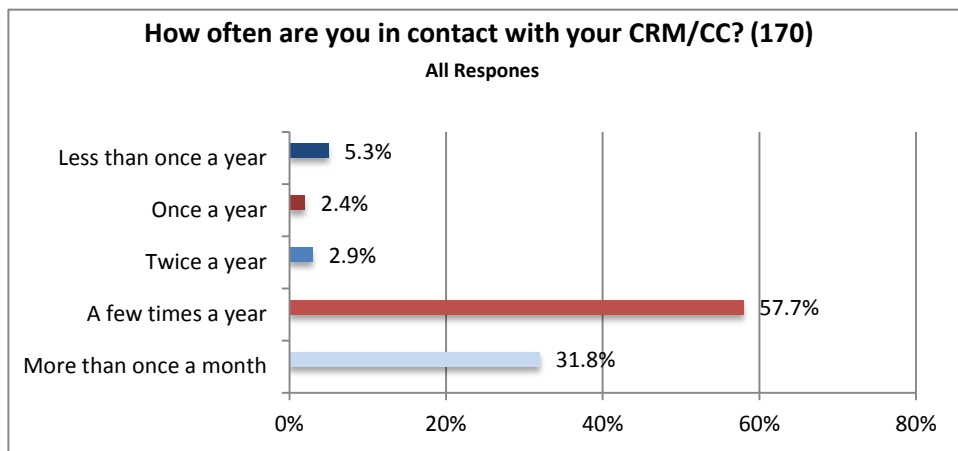
Amongst those who had been assigned a CRM or CC, the vast majority were in regular contact with them. LBS interviewees suggested that monthly or bimonthly meetings were the norm. As could be expected, overall, a higher proportion of LBS companies reported being in contact with HMRC twice a year or less than LC companies. Amongst the 5 LBS companies reporting contact twice a year or less, it was hard to discern any pattern. They were not disproportionately likely to have had frequent turnover of CRMs. They may have had less complex tax issues with a concomitantly reduced need for contact with HMRC staff. This possibility is

³³ See <http://www.hmrc.gov.uk/large-businesses/crm.htm#4>

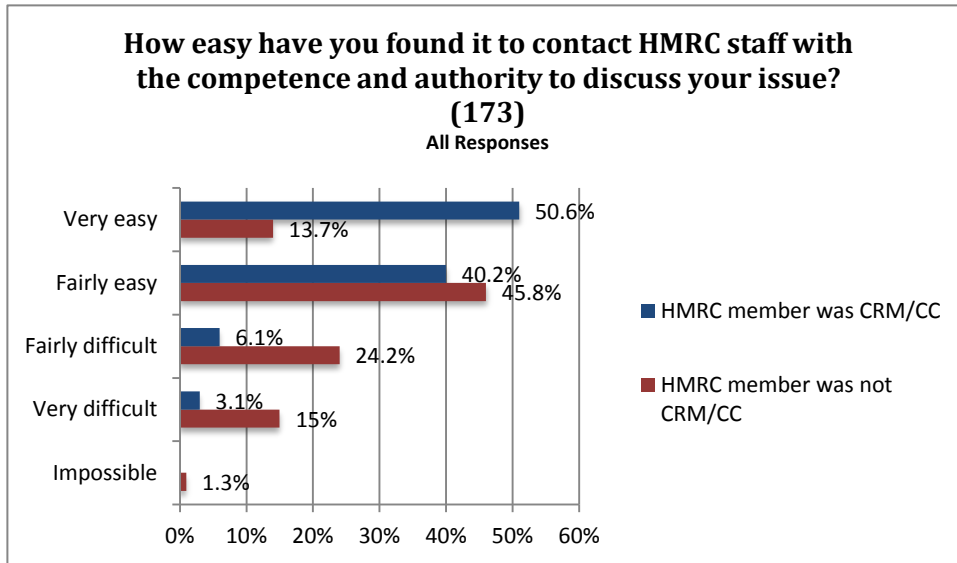
³⁴ Ibid.

³⁵ See <http://www.hmrc.gov.uk/large-businesses/crm.htm>

supported by 4 out of the 5 reporting never having disputes with HMRC, with the other reporting disputes once every few years.

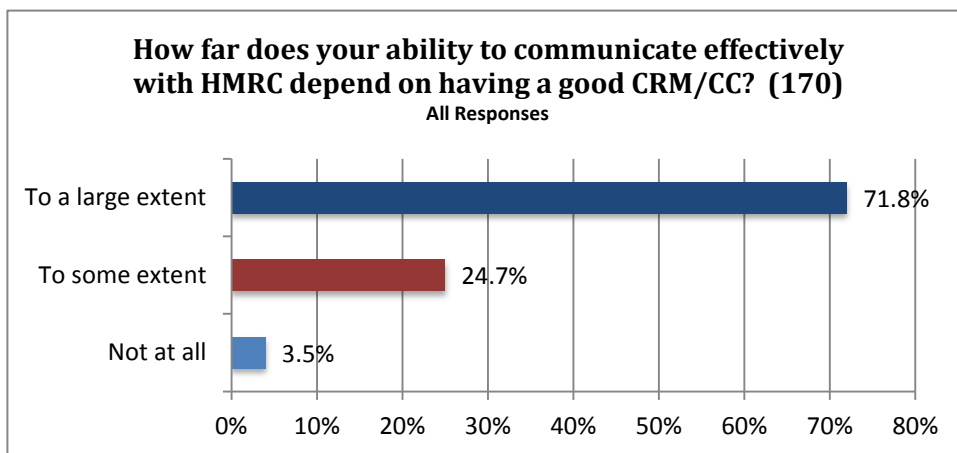


91% of respondents found it very or fairly easy to contact HMRC staff with the competence and authority to discuss their issue, when the staff member in question was their CRM/CC, but far fewer found this to be the case with non-CRM staff. This reflects the positioning of the CRM/CC as the primary interface between HMRC and taxpayers. LC companies reported having slightly more difficulty contacting both CRM/CC and non-CRM staff than do LBS companies.



Importance of CRM/CC

The importance of the office of the CRM/CC is made manifestly clear by the fact that 96% of respondents said that their ability to communicate effectively with HMRC depended, at least to some extent, on having a good CRM/CC. Indeed, 72% responded that communication with HMRC depended ‘to a large extent’ on the quality of the CRM/CC. This accords with HMRC’s stated aim for CRMs to act as managers of the relationship³⁶ but makes the quality and training of individual CRMs extremely important. This issue is discussed further on below.



HMRC Staff Quality

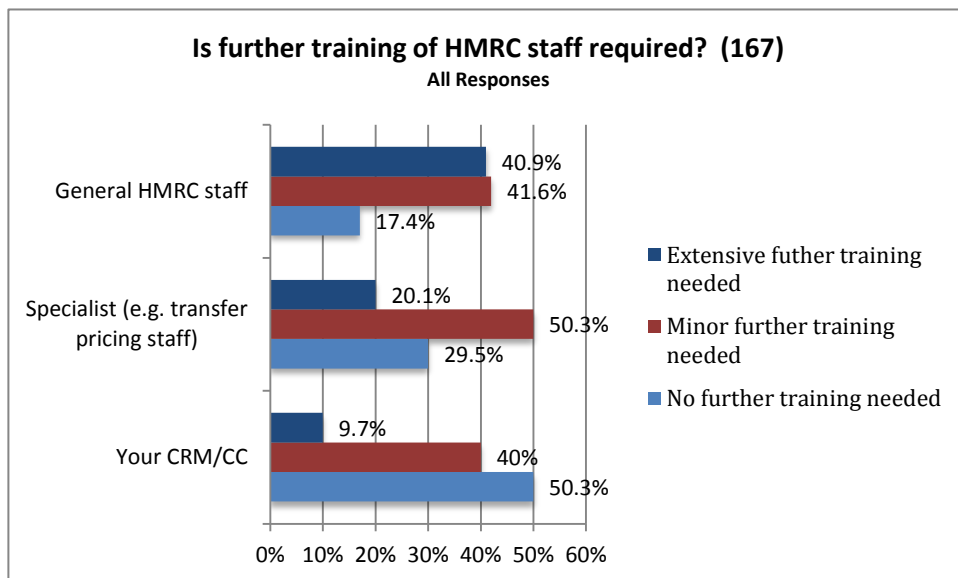
Given the central role played by CRMs/CCs, a number of questions in the questionnaire explored businesses’ perception of their quality. The overall message from the questionnaire responses, as refined by the interviews, is that CRMs are

³⁶ <http://www.hmrc.gov.uk/large-businesses/crm.htm>

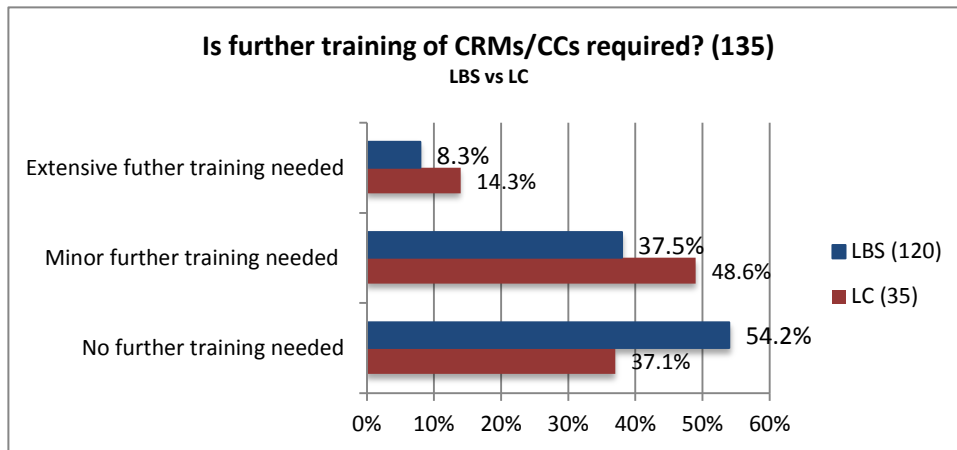
generally deemed to be of good quality and to perform their job well. That said, they do differ in quality and much depends on the personality of the particular CRM. Generally, the view of other HMRC staff, particularly specialists, is less positive.

Further training?

The questionnaire asked whether further training of HMRC staff was required. The responses indicated that training needs were thought to be most acute amongst HMRC’s general staff, followed by their specialist staff, with respondents more satisfied with the training levels of CRMs. At each of these levels of HMRC staff, over 40% of respondents considered that at least minor further training was needed. However, comments indicated that some had chosen the ‘minor further training’ option pursuant to a view that there was always room for improvement, so the extent to which this indicates dissatisfaction is not clear.



LC businesses’ view of CRMs/CCs is generally good although somewhat less positive than that of LBC businesses, as can be seen from the responses reported below. This, in part, might be due to the fact that the better CRMs are moved to larger companies.



Variable quality

Comments made in response to the questionnaire and during interviews frequently suggested that whilst good on average, the quality of CRMs was highly variable. It was often explained to us that the quality, background and personality of a CRM made a considerable difference to the manner in which he/she undertook her role.

Quote 1: *“Some are pragmatic, some aren't. Some are specialists in one area of one tax. It taints their views on things.”*

Quote 2: *“Some are good, some are bad, some are indifferent. The worst came from an indirect tax background and he could not get his head around a multinational.”*

Quote 3: *“There's lots of luck involved. Our last CRM was good – she was a CT specialist, bright and pragmatic. Our new CRM is very new to the CRM role. Very much more an administrator than a technician. She will push things straight to specialists and won't cough without clearing it with a specialist.” “The quality of CRM also makes a difference as to the type of decisions they are willing to take.”*

Quote 4: *“CRMs have been of variable quality. One was motivated to get old issues resolved – She would get in specialists and bully them. The seniority of CRMs matters too – she was very senior. We had an indirect tax specialist CRM who was a massive blocker who constantly asked for more information without deciding things.”*

Quote 5: *“There is variable quality and awareness but nothing we would complain about to HMRC superiors. We just need to get them to focus on the right things. They are doing a good job in difficult circumstances.”*

Quote 6: *“We've had CRMs of different quality, including rookies. One was moved quickly. One was weak and sent all issues straight to the policy people. The current one is good. When we disagree, she stops the relationship deteriorating.”*

Quote 7: *“All CRMs are technically good. But you get variable attitudes in terms of whether they are 'old school' – wanting to check every detail and being non-committal, or more dynamic wanting to move forward quickly and resolve matters*

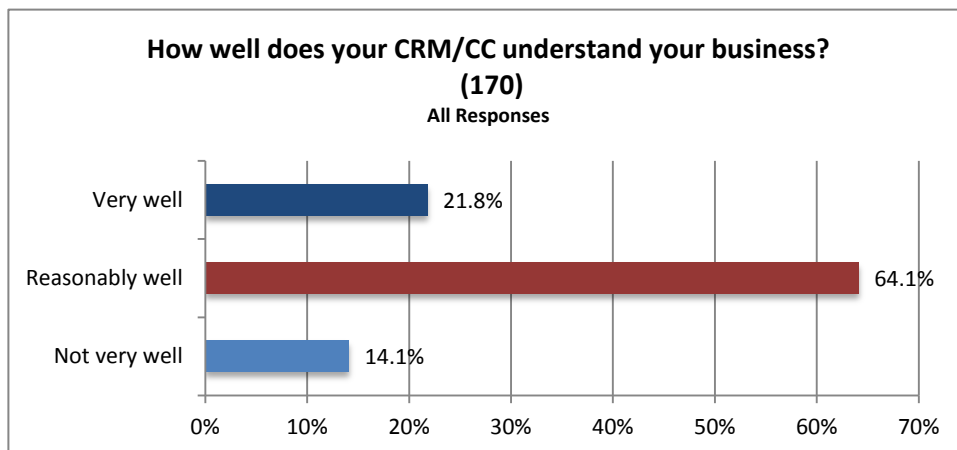
more informally. You need particular types of CRM for different types of business – we’re in a fast-moved business – we need a CRM with similar zeal/dynamism.”

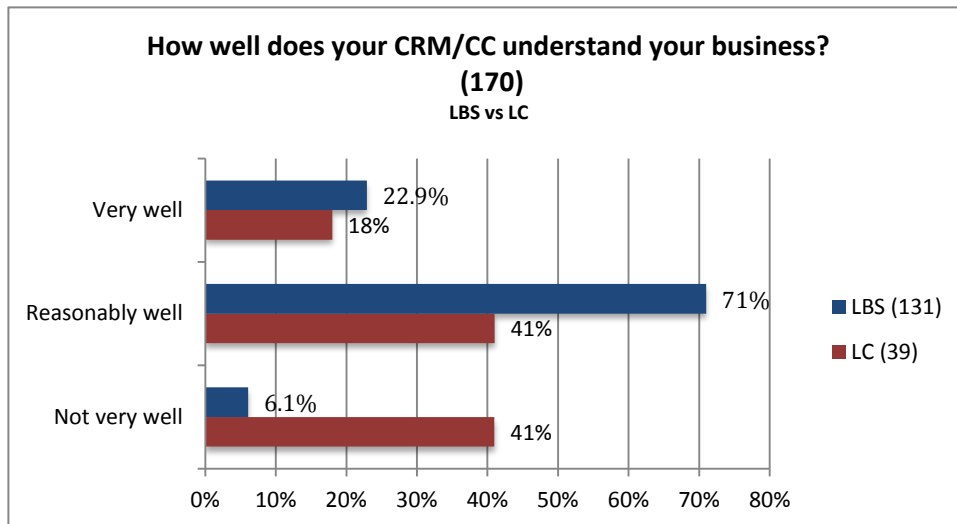
Quote 8: “Having someone who can chase urgent issues is valuable. The down side is that the personal relationship with the CRM and their personal quirks becomes very important. Our last CRM used to give us moral lectures. She was on a moral crusade and lectured on paying more taxes. Our new CRM specialises in trotting out HMRC policy and being nice but not being very useful. We get a lot of nice warm stuff on how nice we are all being. We can’t have real discussions or get real answers to substantive issues. We don’t know if this is because they don’t have the technical capacity to engage in such a discussion or whether they just don’t want to.”

Quote 9: “There are different ‘levels’ of CRMs. We have had ‘good’, ‘bad’ and ‘indifferent’ CRMs. All CRMs have different areas of competence. And all feel there is (i) stuff they feel they can deal with, (ii) stuff they want to get specialists involved for and (iii) stuff they escalate. The categories are fluid amongst different CRMs...It’s probably good to have flexibility in this respect – we need consistency but also we need decisions to be made.”

Commercial understanding

An open collaborative relationship requires a good understanding of companies’ business by HMRC. On a positive note, a large majority of respondents considered their CRM/CC to understand their business well or reasonably well. However, a significant minority did not believe that their CRM/CC understood their business very well, and this was much more common among LC businesses, suggesting that the quality of their CRMs was less high or that they have less time.





Many interviewees commented that CRM commercial awareness was superior to that of other HMRC staff, particularly that of specialists.

Quote 1: *“The CRM has better commercial awareness than other HMRC staff.... Technical specialists are what they are. They are ‘hard going’ and ‘black and white’. The CRM plays an important role in prodding them and giving them commercial context. They don’t respond well – to get them to respond we have to escalate matters.”*

Quote 2: *“CRMs view tax as fitting into the commercial world. They make an effort to understand customers and the business perspective. They take a broad view of public policy and the commercial world. On the other hand, specialists view the world much more narrowly. They simply come up with answers with less regard for commercial outcomes.”*

Quote 3: *“When they [specialists] are brought in you feel you are starting from square one as they do not understand the industry as much [as the CRM]. The relationship with them is also different – the risk assessment programme doesn't go that deep – it hasn’t been fully adopted by specialists.”*

Quote 4: *“The quality of the CRM is very important. Our CRM is very good; she is sharp, knows her stuff and owns the relationship. Much better than the one I had at [previous company]. But her hands are tied by the specialists with ideological axes to grind who are willfully ignorant. The CRM marshals the resources, but new governance approaches have effectively delegated decisions to the specialists. The specialists are not hard working, have a lack of technical knowledge, but the key issue is a lack of business awareness [NB: this company operates in a very specialist area]. They appear to hate business and rich people and approach everything through a political lens.”*

Quote 5: *“Commercial awareness [of CRMs] is better than that of specialists. Either they’ve worked in industry (our current one) or came from Customs & Excise (previous ones), so they have more commercial experience. Specialists tend to ask for reams and reams and reams of information, some of which doesn’t seem to get reviewed by them! We can be looking at 4-5 year old issues. Most of our enquiries*

with specialists tend to concern 4-5 year old issues. When the customer charter refers to real time working etc., it's very frustrating, particularly with high staff turnover, you're being asked for 4 year old e-mails. Backlog builds."

Quote 6: "CRMs are more pragmatic. Specialists don't want to give up on their specialist subject. They don't want to be seen to give up on their subject. They [CRMs] might be more aware about wider impact of settlements. On a [particular] dispute – the specialist just repeated himself – only when new people came in could he be convinced!"

Quote 7: "CRMs are the best of HMRC's non-head office staff. But even they need help understanding the business. CRMs are better at understanding than other staff – but that's because they need to in order to have sensible discussions. Specialists just focus on a small part of the law. VAT specialists also understand the business because they have to – so they visit often – too often – 3-4 times a year."

Quote 8: "We find that we get better people working on us because our industry is important – the need for deep commercial understanding is a red herring. Never had problems from lack of commercial awareness [of CRMs]."

Interviewees often commented on the effort made by them to educate new CRMs about their business and that by CRMs to understand the business. This is an important issue in relation to the turnover time for CRMs and is discussed further below.

General Staff and Specialists

As seen, a larger percentage of respondents believe that general and specialist staff require further training. Significantly, 41% and 20% of respondents believe that "extensive further training" was required for general and specialist staff respectively. The most frequently voiced complaint during interviews was the lack of commercial and sector awareness amongst specialists, a point already noted in some of the quotes reproduced above.

Quote 1: "Technical specialists focus very much on the legislation itself. They're very capable of working through the detail of the rules, but they miss the real world experience of how things operate in practice, and they're a bit blinkered – if you think of a way in which the Big 4 accountants teach people from a blank sheet of paper on structuring – the specialists, on the other hand, start from the legislation. At the junior level, the technical knowledge is too narrow – they've underinvested in basic knowledge."

Quote 2: "These are people with a particular ideology. The CFC technical people had been working on the legislation for many years and felt that they owned it. They couldn't stand the EU developments which were forcing changes to 'their' law."

Quote 3: "The LBS guys are good. They will say no if they have to, but if a specialist gets hold of it the process slows down. In this case it was clear that the LBS did not want this issue to spoil the relationship they have with us. Specialists' job is to look

after 'their' bit of legislation. They are understandably worried about setting precedents which might apply differently in other cases. They are removed from the battlefield. They need to speed up and be less suspicious.”

Quote 4: “Specialists do tend to have less commercial awareness – they tend to assume that everything is done for a tax purpose.”

Two interviewees, however, warned that the solution to this issue is not simply that of increasing training for specialists.

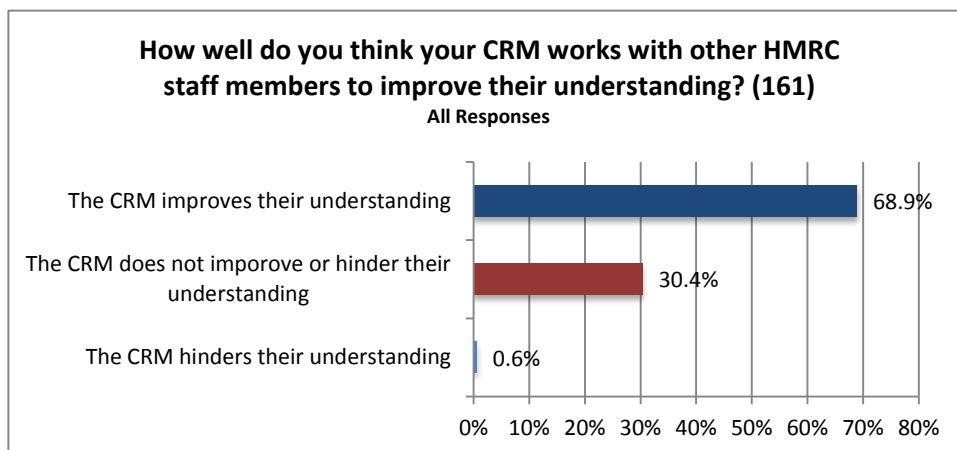
Quote 1: “There is no solution to lack of commercial awareness of specialists. The CRM gains awareness through their role. To improve the commercial awareness of specialists you would have to increase interaction with taxpayers.”

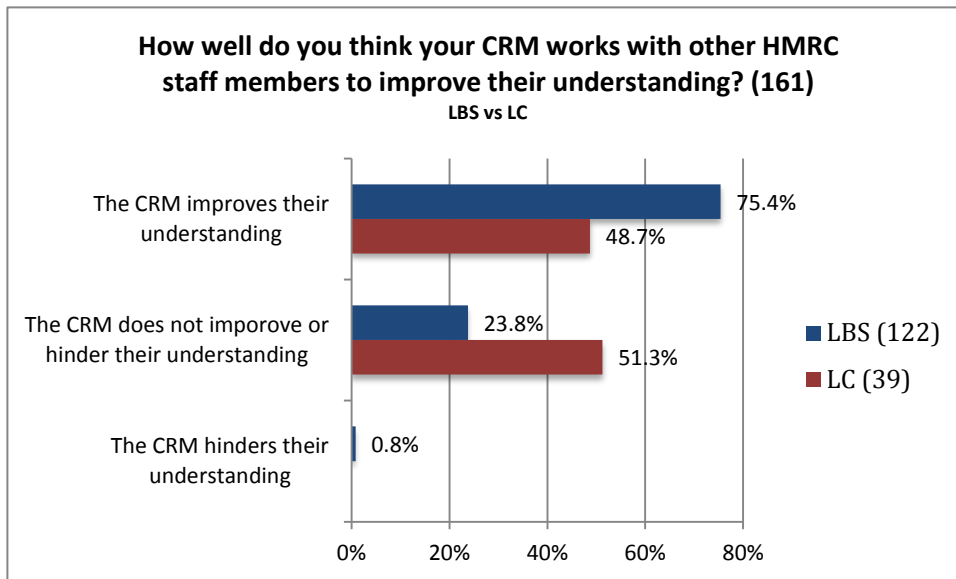
Quote 2: “I am not sure specialists need more training. There is a need to change their objectives. If their aim were to be that of helping to achieve a resolution, things might change. That would be better. All they do now is give an answer to a technical question. If they just give an answer they are inclined to behave the way they do.”

CRM role

CRM effectiveness at improving understanding within HMRC

One important role CRMs are meant to play is that of improving HMRC’s understanding of the taxpayers’ business, which is particularly important given the negative views, reported above, about the specialists’ limitations in this respect. The majority of respondents believed that the CRM improved HMRC’s understanding, but a significant minority did not believe that their CRM affected HMRC’s understanding. Only one respondent believed that the CRM hindered HMRC’s understanding, and in interview they confirmed that this was not the case with all their CRMs. LC companies were much less likely to believe that their CRM improved HMRC understanding, reflecting a broader trend of the CRM scheme being less effective amongst smaller companies.





Interview responses suggest that relevant factors to a CRM’s ability to perform this role include their specialism, their seniority, and their administrative competence. Some comments suggested that specialists could be unwilling to have their views altered by the CRM, and that some CRMs viewed their role as wholly administrative, so that they simply passed issues up to specialists without improving understanding.

Quote 1: *“Tax specialists can get entrenched in their own technical argument. The CRM makes them focus on materiality – they steer them towards important issues.”*
“The CRM makes specialists more willing to listen. Helps them clarify the facts – left to themselves, they tend to take a position and ignore further factual information – the CRM helps with this.”

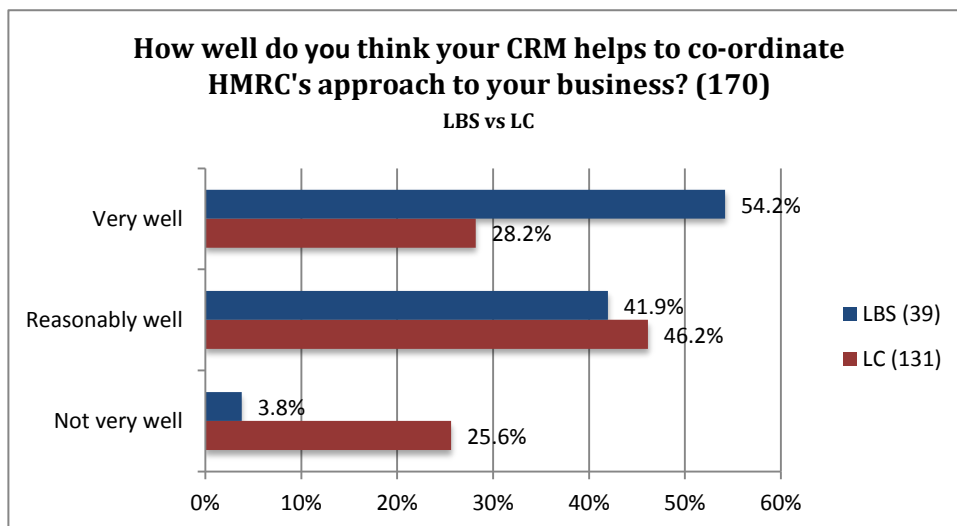
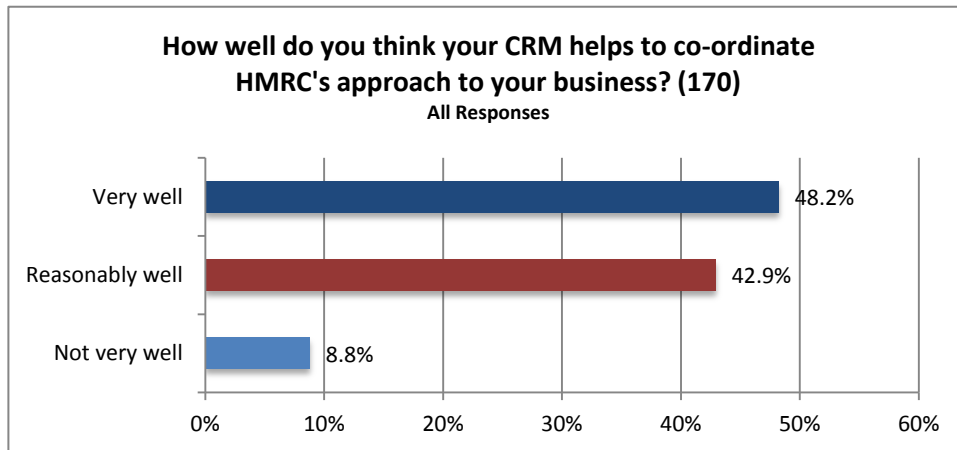
Quote 2: *“The CRM is rarely able to bring specialists on board or to change their views – that’s because specialists are only needed because there’s less expertise around the place. It’s not confined to the period since the media spotlight.”*

Quote 3: *“The CRM gives the appearance of getting frustrated by the specialists at HMRC at times.”... “The CRM sometimes appears embarrassed by specialists. CRMs do challenge specialists if they think they are wrong, but if the specialists stand firm then CRMs have to back down. At times I was told by the CRM that she disagreed with specialists.”*

Quote 4: *“The CRM and I [tax director] leave day to day work with our respective teams. To use a rugby analogy – we function as impact substitutes who come off the bench to sort things out when they go wrong – when the teams get too bogged down in detail. When they do so we come in and pull them back.”*

CRM/CC co-ordination role

91% of respondents thought that CRMs were discharging their co-ordination role reasonably or very well. This was less common among LC companies, again potentially reflecting the broad concern that better CRMs are allocated to the larger companies.



Interviewee comments on this CRM function usually reflected the general responses to the question posed in the questionnaire:

Quote 1: *“The CRM is meant to be a single interface but in practice we have reverted to the old model. On the international side we go directly to head office. On the CT side we tend to go to the CRM. Depends on how hard the CRM works. We tell him when we are speaking or meeting and leave it up to him if he wants to attend. Sometimes he does, sometimes not.” “CRMs don’t have the discretion to decide. But our issues are technical international points which it is reasonable for a CRM not to know. Almost easier to bypass the CRM and go straight to specialists.”*

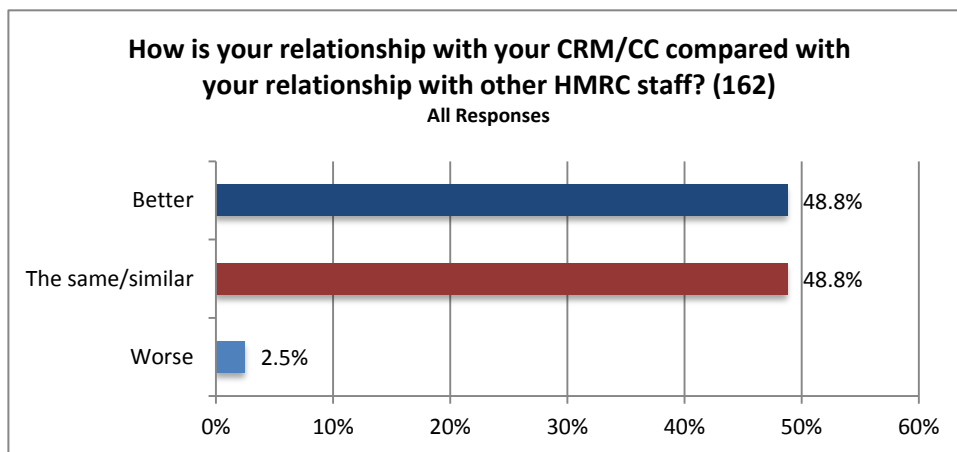
Quote 2: *“Our old CRMs started as normal inspectors but increasingly they understand their role as an interface between us and specialists etc. and they take responsibility for managing processes.”*

Quote 3: *“CRMs are good at managing the day to day team at HMRC.”*

Quote 4: “We have got lucky in this regard. Our one knows the industry very well. He will work weekends to research things, get the right people involved, and co-ordinate things well.”

Relationship with CRM

Finally, given the role played by the CRM it is positive to note that the vast majority of respondents felt that their relationship with the CRM was as at least as good as that with other HMRC staff. Indeed, 49% felt that it was better, with comments referencing the technical proficiency and intelligence of CRMs. Perhaps one would have expected an even higher percentage. This did not appear to be significantly different between LBS and LC respondents. Many respondents commented that the CRM-scheme meant that the CRM was the only staff-member with whom they had direct contact.



Frequency of CRM turnover

It is difficult to assess CRM turnover from the survey responses since it was not always clear whether respondents were saying how long their current CRMs had lasted *so far*, or how long their CRMs usually lasted. The former did not give any necessary indication of turnover levels. In addition, several respondents answered the question ‘for as long as I have been in post’ without further information. It is clear from the responses that turnover levels are highly variable, with the shortest CRM tenures lasting only a few months, while several reported tenures longer than 5 years.

Interviewees raised concerns about the frequency of CRM turnover. Reasons cited for departures included promotion, maternity leave, and HMRC policy. Most of the interviewees asked suggested that it took between 6 months and 2 years for a CRM to familiarise himself with a new business, so that short tenures created disproportionate costs. This wide range could be indicative of differences in experiences with CRMs thus far.

Quote 1: *"We've had 5 CRMs in 6 years, which has been counterproductive. We need to get each new one up to speed, which takes between 6 months and a year. The churn has been due to 'natural waste' – CRMs leaving HMRC, maternity leave, promotion. HMRC are always apologetic about it - it's outside of their control."*

Quote 2: [On time it takes to bring a CRM up to speed] *"It depends on how hard you work at it. When we were told the previous CRM was leaving we arranged a meeting with the new one. We met the new one and took him through the group, explained the business etc. Realistically it will take 2-3 years to get him up to speed. Most left before getting up to speed."*

Quote 3: [On optimum tenure for a CRM] *"4-5 years seems sensible."* [On time it takes to for CRM to get up to speed] *"At least 2 years."* Also: *"In my previous job, I was there for 4 years and had the same CRM throughout – we went on a journey together. She retained independence throughout. We went through the HRCP twice. Our second HRCP saga was hard, we had to escalate things above her to reach a resolution. That demonstrates she was not growing too close."*

Quote 4: *"You need them to stay for 4-5 years (4 years would be minimum). The first year is spent understanding each other. We have invested a lot of time."*

Quote 5: *"CRMs change every 2 years or so. They normally stay within sector, but ours haven't. 1-2 have left for reasons beyond HMRC control. No particular downside to moving every 3-4 years – this stops the relationship from getting into a rut. They can learn enough about the business within 6 months. LBS CRMs are very clever people. There is a broad spectrum of people working at HMRC – CRMs are right at the top of that heap."*

Quote 6: *"Our current one has lasted 4 years. There are benefits from avoiding the CRM churn. We say this to HMRC. We don't want the CRM to change every 2 years. We've had 3 since 2006. Our current CRM indicated that she will be changed soon. At one stage HMRC was considering a 5 year maximum on CRM postings."*

Quote 7: *"If you invest time it takes about 1-2 years for them to get up to speed. Our CRM's other companies are in the same sector, but this CRM is not from the industry... It doesn't matter to her, but it matters to us."*

Quote 8: [They had had 6 in 5 years]. *"It is healthy to move CRMs every so often but this is too much."*

Quote 9: *"The turnover of CRMs used to be worse... The last guy was deliberately rotated after 5 years. It took the new one 6 months to get up to speed. 5 years is about right for a CRM's tenure. Longer – might get too comfortable and lose sight of what is going on."*

Quote 10: *"We have had 2 CRMs – the current one has been in her role for 18 months. She was reasonably up to speed within 6 months, but her caseload is considerable – normally they have about 8 major groups, and she has many more. Our previous CRM pre-dated me, and was here for 6 years. She changed because it*

was felt that she had been with us too long – HMRC didn't want her to get too close."

Quote 11: *"They've stayed for 3 years or so." [On short tenures:] "You can't get any trust' [in a year]. It takes about a year to get them up to speed, though they'll be able to do things earlier." [On why CRMs had left:] "One retired, one moved, one was deliberately moved as part of HMRC policy to stop them getting too cosy, which is understandable." [On effort needed to get CRMs up to speed:] "A bit, but it's much less labour intensive than the old process of answering silly enquiries from unaware people."*

Quote 12: *"The churn was hugely problematic – on disputed issues, we had to constantly start over. HMRC don't always see it as a long term position – they've appointed high flyers with the post merely a stepping stone for later promotion. This is a complex industry – it takes at least 6-12 months for a CRM to get up to speed. But our incoming CRM has been in the industry for a long time. We had engaged in an 18 month handover period for the new CRM to come in, but then the replacement got a better offer and went somewhere else! So we had to have a new handover period for the new replacement."*

Quote 13: *"Since 2007 we've had 6 CRMs – but it takes 12 months to familiarise them with the business. So the turnover is too high. It's helped that, before becoming CRMs, 2 of them were already senior corporate tax inspectors assigned to our company. Some have stayed within the same sector."*

Quote 14: *"A CRM needs time to get familiar with the business – so it does not make sense to have a CRM for 12 months."*

B. BUSINESS RISK REVIEW

The Business Risk Review (BRR) is at the heart of HMRC's approach to "working with large business customers to manage their compliance risk".³⁷ It is the "collaborative process between the customer and HMRC"³⁸ through which HMRC decide a businesses' overall level of tax compliance risk. Businesses are classified on a number of factors (which concern inherent risk and behavioral factors), and are awarded an overall classification of either Low Risk or non-Low Risk. The BRR differs from some other systems of co-operative compliance, which rely on specific framework agreements between the revenue authority and the business such as that in the Netherlands.³⁹ Nevertheless, it has some degree of formality.

Board interest in BRR

Respondents reported a high board interest in the BRR, but only a quarter of respondents' boards actively sought a low risk rating.

As an interviewee explained, boards that do not set a specific risk rating should not necessarily be viewed as abdicating from their responsibilities: "*[t]he board shouldn't express a preference on overall risk rating. They should decide strategy and big issues, and the resultant risk rating can follow.*" Other interviewees similarly explained:

Quote 1: "*[t]he board is focused on overall tax strategy, management of global risks and the relationship with all tax authorities along with global planning strategy and global business operations but not on being low or high risk. They will ask about low and high risks but there is no debate about moving to low risk.*"

Quote 2: "*Risk rating doesn't mean much to the board. They're not told about the risk rating. But they do care about the nature of our relationship with HMRC.*"

Quote 3: "*We aren't driven by HMRC's attitude to our risk profile. We have a board approved strategy and they make clear how risky they want us to be.*"

Overall board interest was lower among LC companies which might be thought to suggest that boards of these companies are less engaged with tax matters, though they were more likely to seek a low risk rating. While no respondents' boards sought a non-low risk rating, one interviewee said that, were they to be given a low risk rating, board members might raise concern that planning opportunities were being

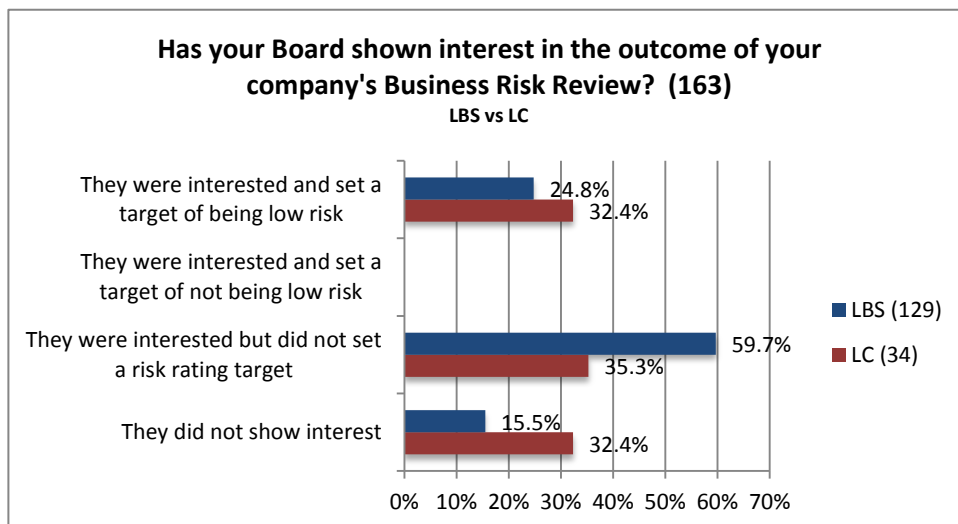
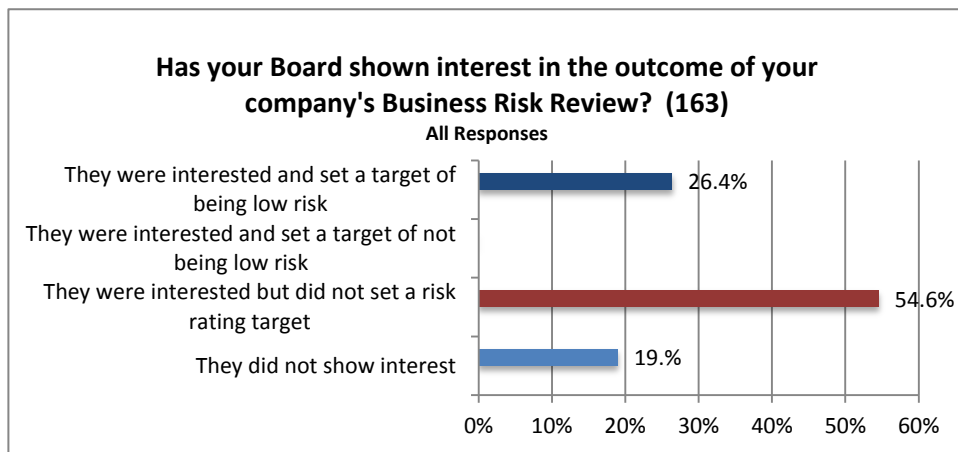
³⁷ See the Tax Compliance Risk Management Manual at <http://www.hmrc.gov.uk/MANUALS/tcrmanual/index.htm>

³⁸ Ibid.

³⁹ Cooperative Compliance: A Framework OECD (2013) p. 24 et seq, http://www.keepeek.com/Digital-Asset-Management/oecd/taxation/co-operative-compliance-a-framework_9789264200852-en#page25

missed. Another interviewee explained “[e]ach year I am asked by the board if low risk is still justified. Is it a good deal for the company?”

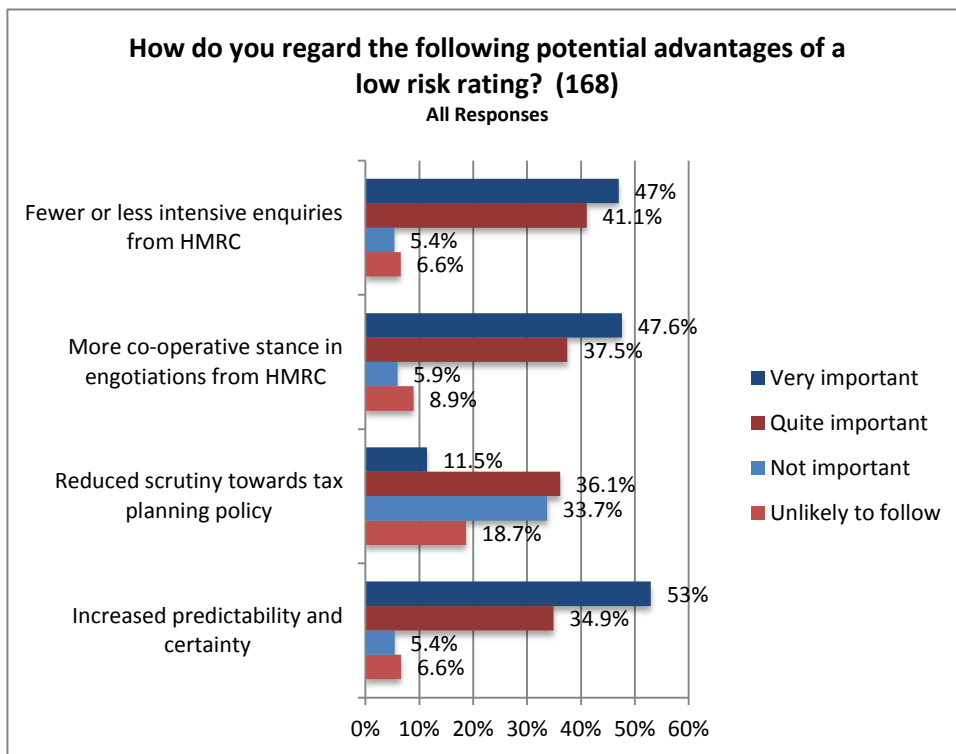
Unsurprisingly, respondents reporting larger frequency of disputes were less likely to have boards seeking low risk rating. 51% of respondents which never had disputes with HMRC had a low risk rating set by their board, compared with 20% of respondents which had disputes once every few years or every year and none of those reporting disputes more than once a year, although the sample for the last group was very small.⁴⁰



⁴⁰ Only 5 respondents reported having a dispute more than once a year.

Perceived advantages of a low risk rating

In the 2008 Survey, it emerged that some companies were uncertain about the advantages of being low risk. This was problematic, because the benefits of becoming low risk must be clear if the objective of encouraging companies to become low risk is to be achieved. Well over 80% of respondents viewed the potential advantages of a low risk rating (that is reduced enquiries, more co-operative negotiations, and increased certainty) as quite or very important, and fewer than 9% believed that they were unlikely to result. Reduced scrutiny toward planning was considered quite or very important by nearly half of respondents, though the extent to which this can play a part in the decision to become low risk may be questionable, given the importance of planning in HMRC's risk assessments.



With one exception, interviewees who were low risk confirmed that their risk rating led to fewer or less intensive enquiries. The exception, who had since become non-low risk, reported that while enquiries had reduced during the three years between becoming low risk and their next risk review, at the next risk review it became apparent that HMRC had saved up all of their enquiries and made them during the review. The result was that they received the same number of enquiries, but all at once, which was more difficult to deal with.

Quote 1: *“Each year I am asked by the board if low risk is still justified. Is it a good deal for the company? I refer them to the time when we were not low risk – we had lots of outstanding disputes with concomitant uncertainty.*

Each time we filed a return we would receive a raft of enquiries. Some had provisions made, some didn't. Since we became low risk we have cleared the backlog – there are still some things outstanding, but not much and we know where we stand on them. Clearing up the past is an advantage of being low risk.” “Real time working started when we became low risk. We feel we can now ask for non – statutory clearances. We don't always get them but we get a hearing and a sense of how they think.” “Another benefit of low risk is credibility in discussions with HMRC and HMT, even in terms of further legislative change.” “We didn't change our approach to planning to become low risk – we were already risk averse in terms of planning. Now we have low risk, our status might be a factor when deciding on planning.” “We had to invest a lot of time and effort to show them how they do things. They weren't just looking at risk – also finance government generally for their internal information. We had them in for a morning.”

Quote 2: “We got fewer questions during the 3 years that we were low risk. However, when the time came for the next risk review, they'd been saving up the enquiries they would have made had we not been low risk and made them all at once! So we had the same number enquiries, but with 3 years' worth of questions concentrated into the risk review period. So we might as well have not been low risk.” “If you want certainty, you can access clearances whether you are low risk or not.”

Quote 3: “It's hard to judge if HMRC are more lenient on substantive issues with low risk businesses. They will trust our accounts of the facts. It isn't black or white on whether we get favourable treatment.”

Many non-low risk companies reported in interview that their relationship with HMRC was more important than their specific overall risk rating. They explained that they enjoyed sufficiently co-operative relationships with the Revenue despite not being overall low risk. Some said that they enjoyed de facto low risk relationships because they were only non-low risk in certain areas (e.g. planning).⁴¹ Others reported that the advantages did not offset the costs associated with becoming overall low risk. Indeed, they explained that whilst there are benefits in moving away from high risk, the additional benefits that would follow from becoming overall low risk were not as clear. At least they did not justify the costs that would entail.

Quote 1: “Theoretically there are clear benefits but not in practice. HMRC has said that they expect us to never be low risk overall, though we are low risk on certain parts of their criteria. We are not motivated by our rating but by our own desire to have good mechanisms. Don't think low risk would give benefits, though we think that there would be benefits of moving from being high risk to being low risk, but not from moving from medium to low.”

Quote 2: “I care more about the relationship than about the label HMRC give to it. My job is first and foremost about adding shareholder value which involves actively managing tax and planning so we're unlikely to be regarded as low risk but I still want an open, transparent and collaborative relationships which can be had without

⁴¹ Note that HMRC recognise that “customers who are not Low Risk cover a wide spectrum of tax compliance behaviour.” TCRM2500

low risk and with planning they don't like." "I don't feel we are missing out by not being low risk. They say you would get a lighter touch but this doesn't mean anything - if you have the right relationship they are focused on what they want to look at anyway." "Those who are low risk and perceive advantages might be comparing their improved relationship to the bad old days rather than what they would have had if they weren't low risk."

Quote 3: "Our relationship with HMRC has changed – we have a more open and honest relationship/dialogue. But we don't lose out on benefits by not being low risk. The board doesn't make any judgment on what level of risk we should be. They accept our high rating. On a cost benefit analysis it is still better to be high risk and do the planning you like."

Quote 4: "HMRC say that we could be low risk, but we would have to do a lot of work on our systems/processes and give information about transactions etc. which would be very high administrative burden. The advantage of low risk would be low intervention, but it would be easier to have them intervene! We like to have the intervention, low risk businesses have said that they get less time allocated to them by HMRC." "There is a spectrum of non-low risk companies. Being very high risk would be bad."

Quote 5: "Overall rating is irrelevant, because if you are a large business dealing with HMRC what matters is where the risks are. And after the risk review HMRC investigates identified risks. We are high risk due to planning so HMRC review our planning transactions. But they don't investigate low risk areas and the high-risk rating does not change the nature of our relationship. HMRC suggest that low risk gives less attention, but overall risk rating is not important. The overall risk rating is oversimplified – it is more sophisticated than that." "HMRC do suggest that there are advantages in being low risk – e.g. receiving fewer enquiries but I think it just does not work like that." "I don't feel we are losing out by not being overall low risk."

Quote 6: "I have always been in large and complex groups. I have never seen any benefit in being low risk. I don't think that bit of the BRR really works."

Quote 7: "If we became low risk HMRC would presumably look at our computations with a lighter touch, but they are already adopting a pretty light touch on things that are not interesting." "Might be more light touch in enquiries with low risk companies. We are upfront with our avoidance – nothing is buried in our return."

Quote 8: "We are low risk except in size and complexity, so we are effectively low risk overall. At other companies which are more aggressive, the revenue are less willing to help."

Quote 9: "We're happy to be low to medium low. There are no tangible benefits from going from medium to low risk and so we'll not go out of our way to become low risk."

Quote 10: "There is a big benefit if you are initially high risk going to low risk. However if you're a large/complex company which is low to medium risk the benefits of becoming low risk are not as clear, especially given the resources both HMRC and the company have to commit before being certified as low risk." "I talk to the CRM

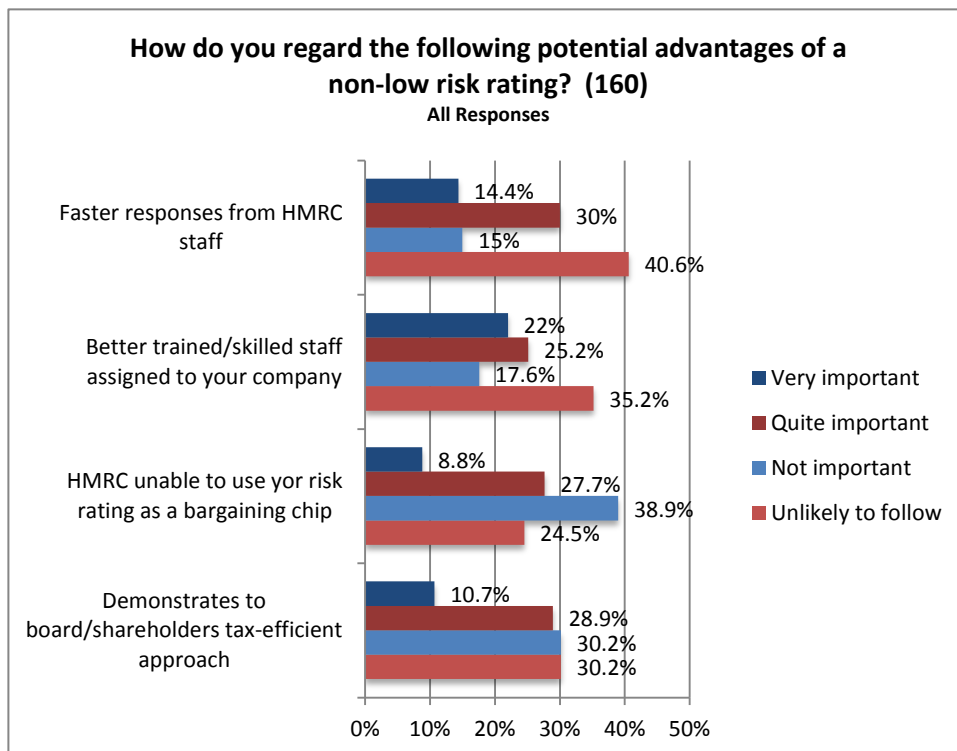
three times a month – if we went to low risk I might only have to talk twice. Low risk would entail giving them lots of detail on every system we have in place – it would also be a big cost to the Revenue who would have to put people on to analysing those systems, and they'd have to renew the review periodically and every time we changed something.”

Perceived advantages of a non-low risk rating

A number of possible advantages of a non-low risk rating (based on responses we had received to our 2008 survey questions) were listed in this question. A large minority of over 30% considered each possible advantage quite or very important. In interview, most of those seeing advantages to non-low risk ratings did not favour the rating *per se*, but rather the ability to engage in planning which would preclude low risk rating, and in the saved investment from laying out all of their procedures to HMRC.

Quote 1: *“It’s a mistake for a business to say they want to be low risk because for me it is a question of shareholder value – and in a commercial relationship you don’t want to show all of your cards to a counterparty. At least one FTSE company has said it wants to be low risk, I think that is mad.”*

Quote 2: *“Board would be worried about efficiency if we went to low risk. They would ask “Why? Are we losing out on some planning?”*



Risk rating's effect on HMRC's focusing resources

Views on whether the BBR was improving allocation of resources were mixed, but 68% of respondents considered it to be having a positive effect. There were similar indications in interviews. This is also reflected in the answers to questions on dispute resolution, as shall be seen further on, with some commenting that requests for excessive information were decreasing.

LC companies were less likely to consider the risk rating approach to have led to more focus, suggesting that the BRR is being utilized more efficiently within the LBS. The comments were mixed. One respondent complained that, notwithstanding improvements, the BRR could still be implemented in a 'surprisingly formulaic' way. Others suggested that the effect of the BRR was different in different areas of tax, or that 'many departments still tend to do their own thing'. Many reported no change in approach, but, critically, most suggested that this was because their pre-existing relationship was already co-operative.

Quote 1: "HMRC's approach has become more specific – they used to take a scattergun approach – now more focused. HMRC now focus on key risk areas. HMRC interventions are down to 2-3 per year."

Quote 2: "It has not led to any difference in our relationship with HMRC but it's a good idea. We use it to enter into dialogue with HMRC and it is less confrontational than if there were a discussion in the context of a dispute. HMRC set out their understanding and if they are wrong we can explore it with them and attempt to correct them. The new CRM has inherited the old BRR and made the same comments that the old one did (reproduced them almost blindly). I have made comments. Not sure she takes it on board but still a good opportunity to have this conversation. Sometimes we agree. Sometimes I can explain why I disagree. I think they will be more open in context of risk review – less technical."

Quote 3: "HMRC are now much more focused than 5 years ago, but I'm not sure that that's down to risk rating as much as to broader changes."

Quote 4: "The RRA has been a good experience for us. We are in a much better position than we were before. The change in the tone of the relationship as a result of the RRA is a major change. The tone has improved – it is now based on mutual trust and professionalism."

Quote 5: "It's been a positive development. We have been through it for a few years. We have had a new CRM who has been more pro-active about risk review. The old one just used the previous year's and made minor amendments. The new one tries to assess exactly where risks are. The revenue have preconceptions about where risks are and are sometimes wrong – you need to educate them to stop them requesting irrelevant information. Enquiries are probably now better focused."

Quote 6: *“Generally a good thing for HMRC and business – good that HMRC spend time on risky areas and don’t waste time. There has been a big difference in focus.”*

Quote 7: *“Before I was working for other MNEs and there was a tendency to focus on wrong/immaterial issues by HMRC. We would get questions suited to a SME rather than an MNE, for example on repairs and maintenance of buildings. So the BRR led to a more focused approach.” “The tone of the dialogue between HMRC and Businesses probably changed too but personally, the tone I had was always been professional and designed to focus on the right areas. But this has not been universal, other tax directors and other HMRC staff have different approaches.”*

Quote 8: *“It’s good that they’re thinking about how they view us, and that we know how they view us. We have always been high risk and if they give us reasons which show a lack of understanding about our systems/business, we can now correct that. However we don’t really like enquiries into our systems/business because they take up time.”*

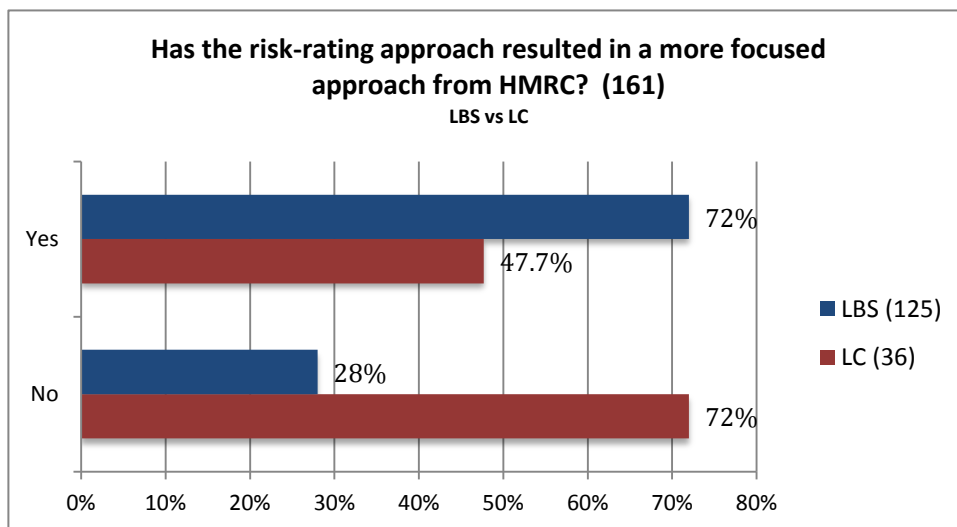
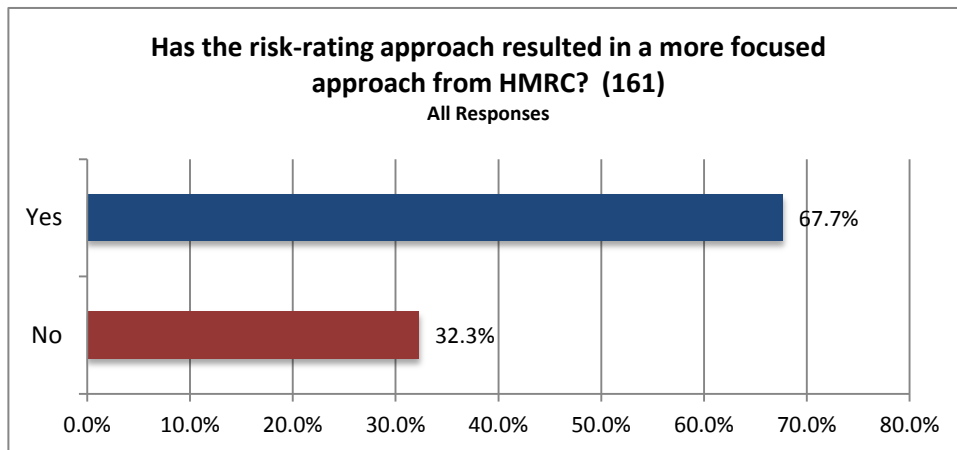
Quote 9: *“Absolutely – but we have always had a good relationship with HMRC...We (in the UK) have a good system compared to the Indians, the Koreans, and even the Singaporeans. HMRC should get plaudits for this.”*

Quote 10: *“The BRR has not improved anything because our relationship with HMRC was always good. I personally always had positive and open relationships with HMRC; even before HMRC tried to convince everyone to do so. However, the risk rating helps by bringing rigour.”*

Quote 11: *“Risk reviews are useful – they tell us how HMRC view us. We can then take that to our auditors, to the CFO, to the board. It also enables HMRC to focus their resources. It allows us to help them understand high risk areas. It allows them to look further or look something else.” “One benefit of this approach is that it allows businesses to know where HMRC’s interests lie. It is good to know how HMRC view you. It helps develop a relationship with HMRC and to identify which areas you agree on and those which you don’t. As a head of tax, this is also useful because I can show it to the CFO and board, and thus show them how we are viewed by HMRC.” “It has enabled HMRC to concentrate more on important things. We can take transactions to HMRC to get their view. These days they do not waste time on a small allowance around corporate entertainment anymore.”*

Quote 12: *“Personal engagement/interaction between teams has been significantly enhanced both in formal and informal contact. So it has improved the processes significantly. Whether that has made a significant difference to the extent/nature of enquiries raised is more of a moot point – the jury’s still out (and has been for a long time) on whether the company*

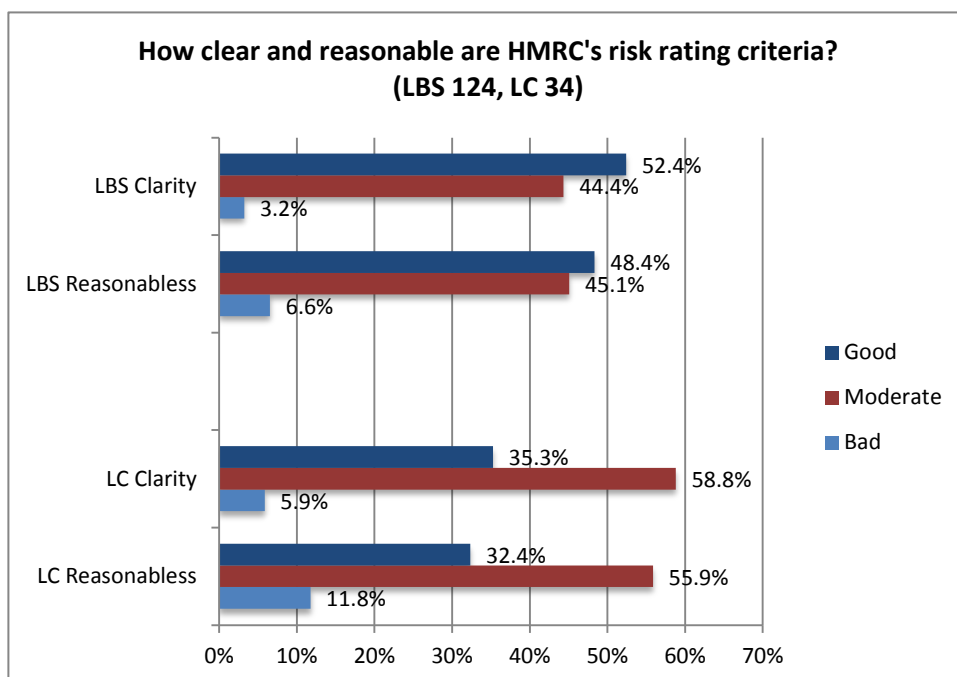
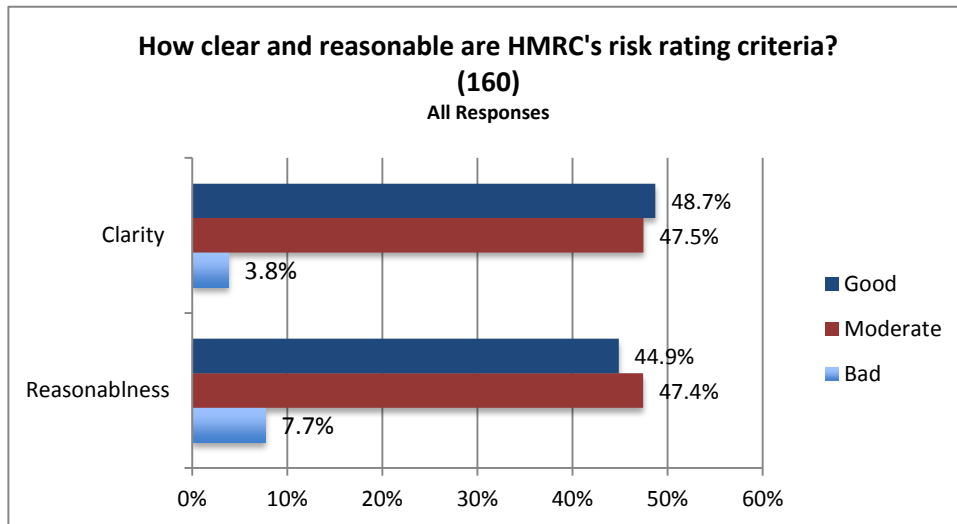
gets any benefits in these terms. What tends to happen now is, we get lots of informal enquiries which take time and effort – formal enquiries have reduced, but the informal ones are just as challenging and time consuming. Sometimes informal enquiries are harder to deal with harder because they're less focused."



Clarity and reasonableness of risk rating criteria

The vast majority of respondents were either neutral or positive, with under 4% regarding the level of clarity achieved as ‘bad’, and under 8% regarding the level of reasonableness attained as ‘bad’. While matching the broad trend, LC companies were less likely to regard both as ‘good’, and slightly more likely to regard them as ‘bad’. Some interviewees reported that the criteria were not necessarily being followed, and that decisions were made prior to the risk review meetings. Some comments complained of lack of transparency in the risk review process, and of different CRMs taking different approaches. One respondent complained that their risk rating had been awarded due to the CRM lacking familiarity with the business, but that the CRM was not taking steps to familiarise themselves and had refused

briefings. Some respondents used their comments on this question to say that they did not believe that their risk review affected HMRC's approach, one describing their BRR as an 'annual non-event'. Some complained about lack of transparency in how criteria are to be weighted

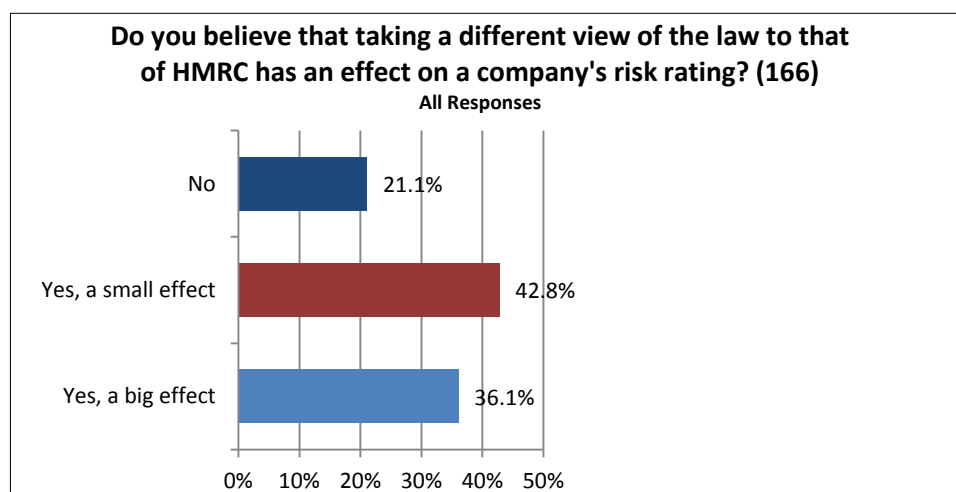


Disagreements on law affecting risk rating

One of the behavioural risk factors on which a company's risk rating is based is tax strategy.⁴² In the authors' previous survey some tax directors reported that the use of this factor undermined their ability to engage in behaviour that they felt they could defend in the courts. The OECD report published in 2013 explicitly states that:

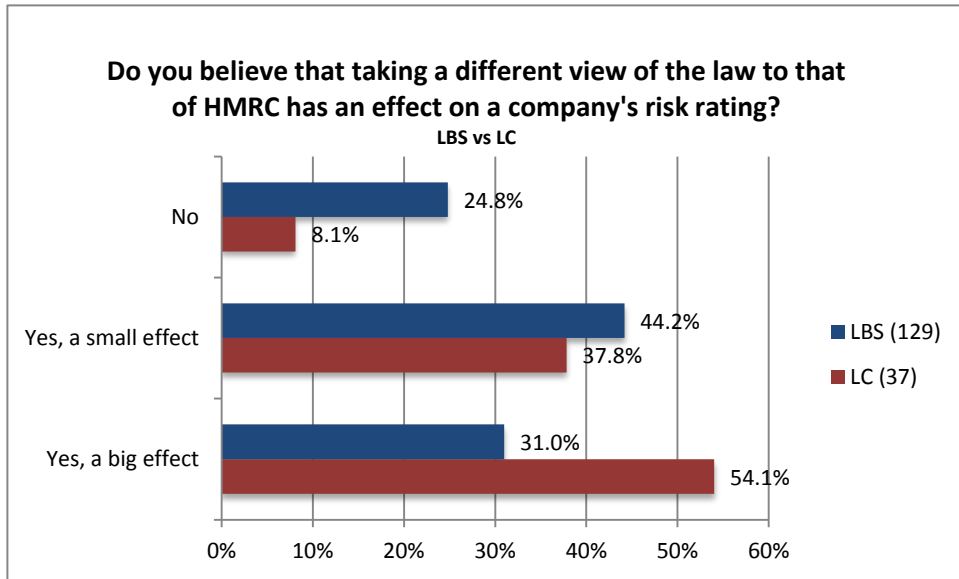
"Co-operative compliance should not give the revenue body an 'advantage' in terms of interpreting the law and this could lead to the establishment of 'soft law' created by the revenue body supplanting legislative changes decided by parliament or case law decided by the Courts."⁴³

For this reason the questionnaire addressed the question of the extent to which taking a different interpretation of the law has an impact on a company's risk rating. A large majority believed that this affected companies' risk rating, though there was disagreement over the extent. In addition, many comments confirmed that the effect would be highly context-specific, depending on the type of disagreement (e.g. whether the relevant transaction was 'avoidance', who was found to be correct, the reasonableness of the company's view, the amounts at stake, the extent of disclosure). A small number of comments indicated that the respondents believed that any sort of disagreement would affect risk rating – e.g. "[w]e have had bizarre discussions with HMRC about our 'risk rating' going up following making of legitimate claims - on the basis it ties up more resources on their side" and "[r]egardless of compliance measures taken etc, a different stance to HMRC = a challenge to HMRC = a higher rating." LC companies were more likely to believe that legal disagreement had an effect on risk rating, and were more likely to believe that the effect was big.



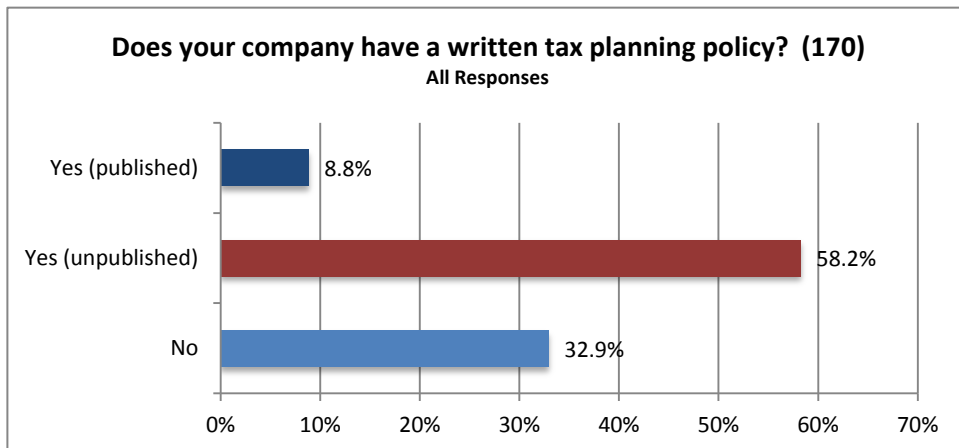
⁴² See Tax Compliance Risk Management Manual, TCRM3330.

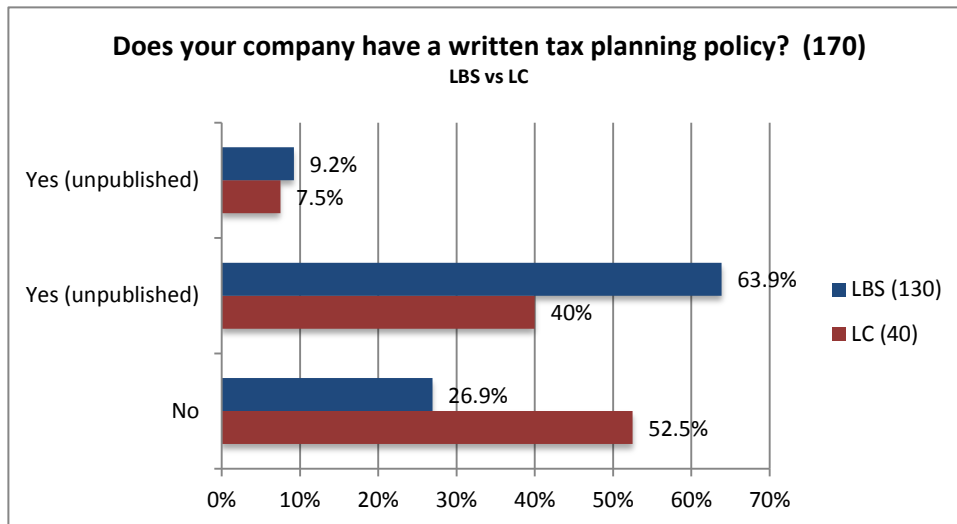
⁴³ OECD report at p49



Prevalence of written tax planning policies

Given the importance of a company's tax strategy to its risk rating, the questionnaire asked whether respondents had written tax planning policies. 67% of respondents had a published or unpublished planning policy, although, predictably, the percentage was considerably higher for LBS respondents relative to LC respondents (73% and 48% respectively).





The actual significance of such policies was explored during the interviews. Interviewees tended to either report policies written with extreme brevity (e.g. “we will pay all tax due under the law at the appropriate time”), or couched in terms of the commerciality of transactions. Many interviewees reported having published extracts of unpublished policies, or having policy statements, in other publicly available documents (e.g. annual reports).

Quote 1: *“We don't have a formal tax strategy. We have policies and procedures. We also have an internal risk register. There has been no pressure from HMRC to have a tax strategy but they did ask to see our policies and procedures – e.g. who has what responsibilities, who can sign things off. We are normal for large companies.”*

Quote 2: *“We have a board approved strategy and they make clear how risky they want us to be.”*

Quote 3: *“Our tax strategy emphasises the pursuit of shareholder value. Not shared with HMRC yet, but we have shared that mindset. We want an open relationship, but we will do things which you don't like. HMRC understand. If you set your strategy in the context of the type of relationship you want HMRC are fine with it.”*

Quote 4: *“We have a formal tax strategy which is reviewed annually by the board. In the last 18 months we have got less aggressive but that was down to the board's risk appetite rather than the RRA. There's been no change in composition of the board in this time but some of the board members have had bad experiences ... Our board members include [people] who don't want bad coverage. The executive directors are more aggressive because they have targets to meet.”*

Quote 5: *“Our policy is not detailed. We also record how we approach planning – it is basically just a common sense approach. The board have seen it because they have to be happy with it. HMRC have also seen the policy. We have not published it yet but we are considering publishing parts of it. It says things like: 'our approach to transfer pricing is to use the arm's length principle', 'we pay the right amount in the right place at the right time', and ' we only undertake planning if it has a commercial purpose' (this is mostly because otherwise it wouldn't work).”*

Quote 6: *“We review our tax strategy with the board every year. We've shared it with HMRC. It's at a high level – talks about aligning tax strategy with business. No reference to the spirit of the law. We may look at the CBI statement of principles and, if we agree with them, we might tell HMRC so but we would not make a public statement about that. We have not published our policy.”*

Quote 7: *“Our tax strategy doesn't constrain behaviour and is couched in a way that leaves plenty of latitude. The revenue are interested but I recommend that the strategy is not too tight.”*

Quote 8: *“Board signed up to our tax policy. It has been disseminated – we reference it in our final statements. Relevant parts are shared with HMRC. It's important that the board sets the tone for what the group is prepared to do. We are open about being mindful of shareholder value. The board are very interested in tax. When we first discussed the tax strategy they commented about how we were perceived by the Revenue. Some board members did not want us to be low risk. The Chairman said we should do 'clever things' but we are broadly risk averse. We are conscious of commercial and reputational risk. Does the strategy stop us doing things we might otherwise have done? No. We in the tax department self-constrain our behaviour more than the strategy.”*

Quote 9: *“No published planning policy, but we've published responsible business document including a section on tax. This is only dipping our toe in the water. It is our first move in engaging with public on our tax affairs.”*

Quote 10: *“We have an unpublished tax policy – it is not formally approved by the board, but it's been presented to them. It was prepared by interviewing all board members to get their views on what the strategy should be. It was an informal tax strategy which we refer to. There were different appetites for tax planning amongst directors, but it levelled out to our current approach – we want to be fully compliant with the law in the countries we operate in. We shared a one page summary with HMRC – they raised no questions. Does it constrain our behaviour? No. We treat tax like any other cost, but have governance in place to make sure that we comply with the law of every territory.”*

Quote 11: *“Our planning policy was drafted in the knowledge that the SAO regime was coming in. Nothing substantive which required changed behaviour.”*

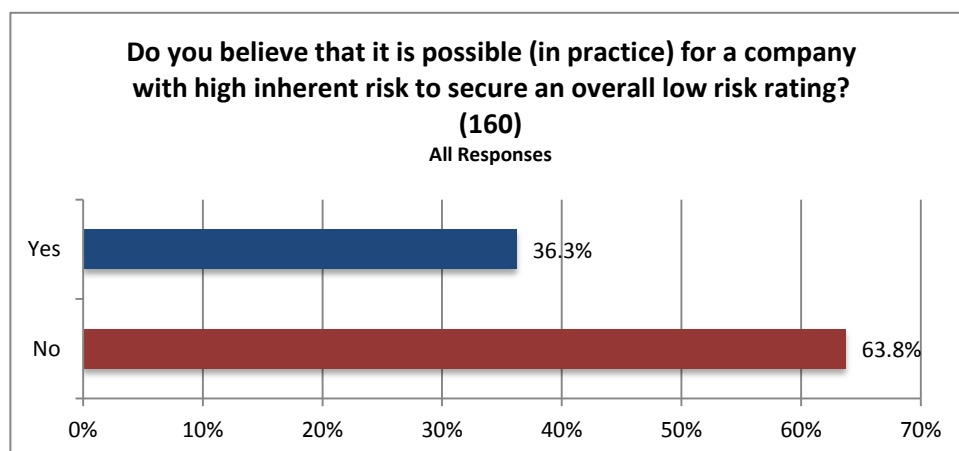
Quote 12: *“Our tax policy provides useful clarification and helps manage relationship with HMRC. Senior executives sometimes ask why we can't do dubious planning – I can say 'because of the policy' without having to explain in detail the downsides. We share the principles of the policy with HMRC – not the detail because of what's in it (things which have stopped us becoming low risk).”*

Quote 13: *“We have a tax strategy but we have not shared it with HMRC. Essentially it states that we want to have a sustainability of earnings and we will only undertake planning if it is commercial. We have told HMRC what the policies in the strategy are. When we do planning, we won't do it for tax only – but within that framework we will optimize our tax position. We will use all available reliefs – as David Gauke puts it - that's why they're there.”*

The possibility of a low overall risk rating, high inherent risk notwithstanding

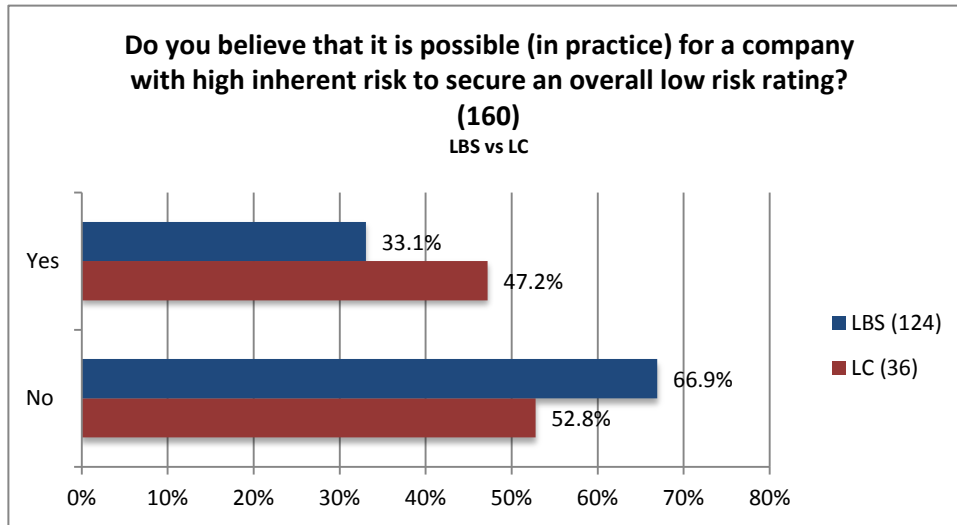
The Tax Compliance Risk Management Manual explains that “[a] customer may have inherent factors that potentially create major tax compliance risk, but they can still be Low Risk if they effectively manage these inherent risks through their behaviours. This is not purely theoretical. There are already a number of highly complex Large Business customers who we have identified as Low Risk.”⁴⁴ The 2008 survey found that despite HMRC’s assurances to the contrary a number of respondents still believed that companies with a high inherent risk (e.g. large complex multinationals) were unable to obtain an overall low risk rating. Despite the HMRC comments, significantly, 64% of respondents to the questionnaire in this survey believed that it was not possible for those with high inherent risk to receive a low overall risk rating. Some respondents’ comments and interview responses claimed that HMRC had explicitly told them that they could never be low risk given their high inherent risk. However, others had been told the opposite, and at least two large, complex multinational companies revealed during our interviews that they have been given low overall risk ratings. If there is a widespread belief that complex businesses cannot obtain a low risk rating (regardless of whether it is justified), then the utility of the risk-rating approach as an incentive for companies to lower behavioural risk will be limited. The authors have argued that this should not be the role of cooperative compliance in any event, but one way or the other this issue appears to require further thought on the part of HMRC.⁴⁵ As one respondent states (see quote 7 below), bracketing those with very complex affairs with those who engage in aggressive tax planning is unhelpful.

LC companies were more likely to believe that high inherent risk could be consistent with low overall risk (though the majority of LC companies still thought the opposite). Those with a high frequency of disputes with HMRC were less likely to believe that high inherent risk could be overcome by low behavioural risk. Comments from those who believed that a low risk rating could be achieved by those with high inherent risk emphasized the need for processes to manage the inherent risk.



⁴⁴ TCRM 3310.

⁴⁵ Freedman, Loomer and Vella, BTR.



Quote 1: *“They've agreed to split risk rating between PAYE, VAT and CT. VAT and PAYE are both low risk, but CT is 'tends to low' because we are a large multinational. ... HMRC ... said we cannot be low risk because of our inherent factors. They are happy with our processes – they audited our CFC software and were happy with it. We don't feel that we're missing out on anything by not being low risk.”*

Quote 2: *“HMRC say that we could be low risk, but we would have to do a lot of work on our systems/processes and give information about transactions etc. which would be very high administrative burden.”*

Quote 3: *“We are living proof that you can be large, international, and low risk. Inherent risk can be counterbalanced by procedures and systems. Is the process of getting low risk expensive? We had to invest a lot of time and effort to show them how we do things. They weren't just looking at risk – also finance governance generally for their internal information.”*

Quote 4: *“I'm not sure we can be low risk because of inherent factors.”*

Quote 5: *“If you are a multinational with operations in tax havens (because we trade in them!) with complex structures and transactions then you are not in the low risk bucket. We've had 2 reviews, but they had already predetermined the outcome. They did not give us adequate responses on why we are no longer low risk. They merely repeated the party line on this. The first time, we were low risk...But notwithstanding our low risk rating, they never really believed that we were low risk.”*

Quote 6: *“We have high inherent risk but are “tends to be low” overall. So it is possible. Its' about management.”*

Quote 7: *“Our CRM tells us that our rating is acceptable and because of the nature of the business/pace of change, we can't be low risk overall. But other taxpayers tell us that they've got a low risk rating despite being e.g. in the tech industry. A lot*

depends on who the CRM is and on which large business office deals with you. They've told us this explicitly – two CRMs have said this."

Quote 8: "A large business can be low risk but when you go through the categories there will be lots of high risk areas. We have positive conversations with our CRM – she thinks we are international and complex but do not do risky tax planning. This is where the low/high risk dichotomy breaks down. We should not be bracketed with aggressive planners – that is not helpful in the current climate. We have never had a conversation with HMRC about becoming low risk, but we did at [tax director's previous employer]. They said we could be low risk but at the next review they categorized as high risk because of our size and complexity – so there is an issue there."

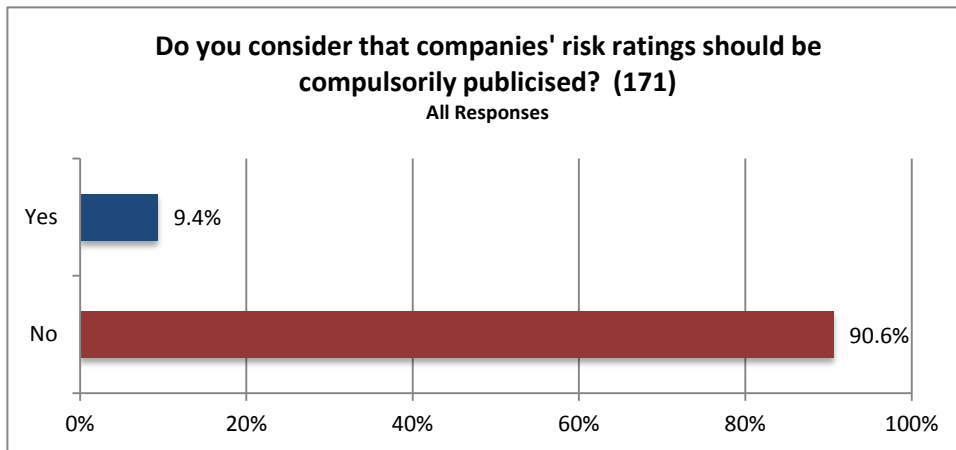
Quote 9: "High inherent risk is consistent with low overall risk: This will depend on the individual business, and the individual inspectors. We are low risk but we are large and complex. We are under the impression that good governance trumps inherent risk. This may not survive the current political climate following the media spotlight and the pressure on HMRC to look for avoidance motives everywhere."

Quote 10: "It appears that a large and complex multinational, despite HMRC's rhetoric, has little or no chance of getting a low risk rating. Our CRM has said that, notwithstanding what is said publicly."

Risk Rating disclosure

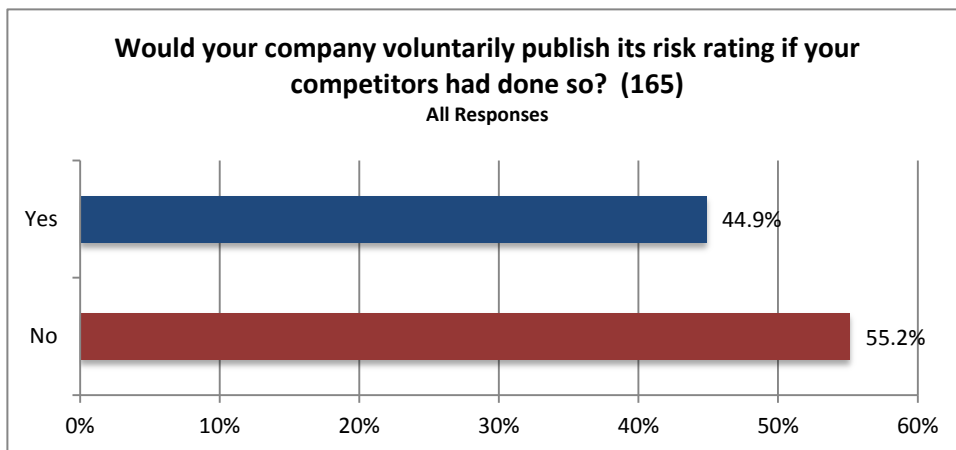
Compulsory publication of risk rating

Over 90% of respondents did not favour compulsory publication of companies' risk rating. Given the lack of necessary correlation with behavioural risk, recent media stories on tax 'avoidance', and concerns about transparency in the risk rating process, this is unsurprising. One interviewee warned that *"if HMRC said they would publish our risk rating the company would want more involvement in the rating process, we would make more of an effort to ensure that it is correct. There would be more disputes about risk rating if it carried reputational consequences. At the moment you would not make too much of an issue if you disagreed with HMRC on your risk rating."*



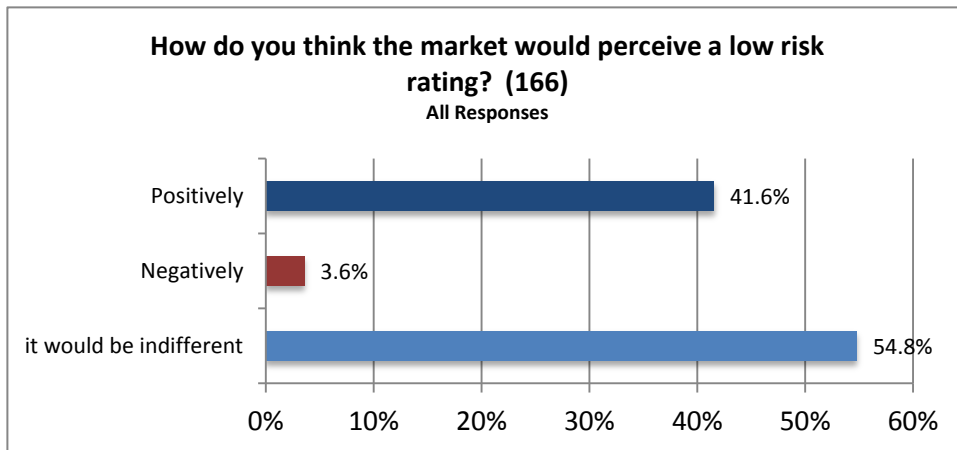
Reaction to competitors publishing their rating

45% of respondents said that they would publicize their risk rating if their competitors did so.

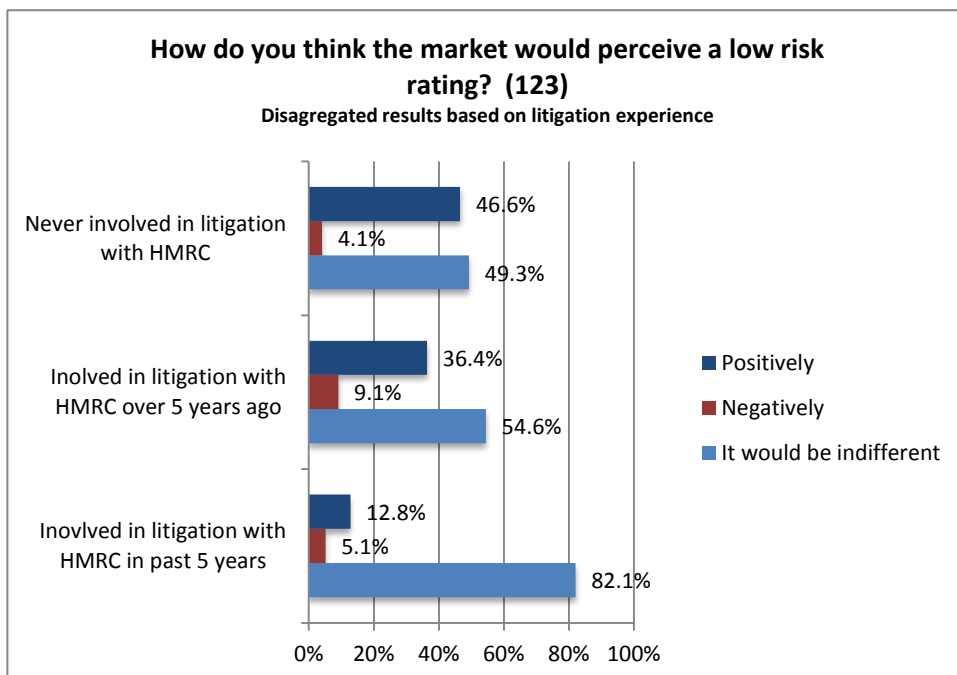


Market reaction to low risk rating

A majority of respondents reported their belief that markets would be indifferent to a low risk rating. If this is so, it is not clear why a vast majority objected to the compulsory publication of risk ratings. One interviewee also speculated that there might have been a change in recent years in this respect: *“[i]f we were low risk there might be an investor reaction – it might have raised eyebrows a few years ago but maybe the pendulum has swung the other way and there would be a positive reaction.”*



It is interesting to note that the percentage of respondents who thought that the market would be indifferent was higher amongst respondents who had litigation with HMRC in the past five years than amongst those who had litigated but over five years ago or those who had never litigated.

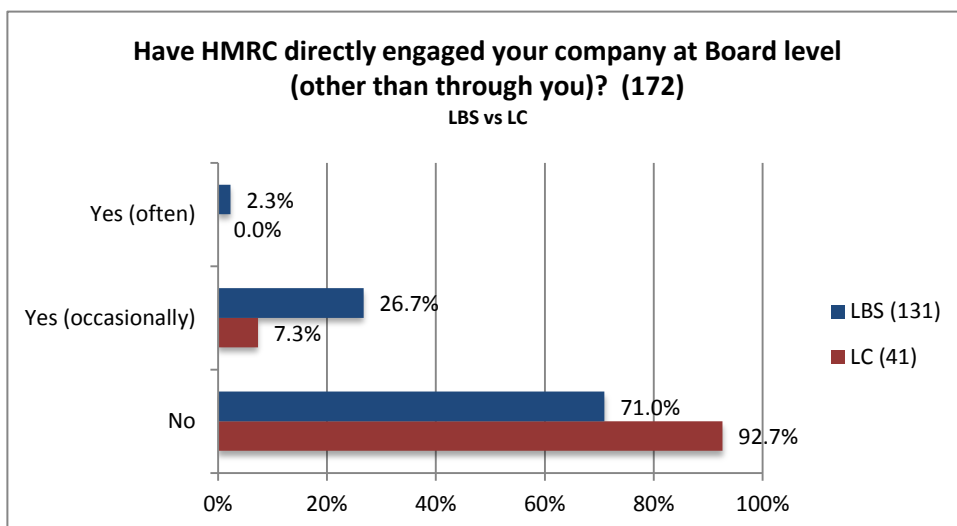
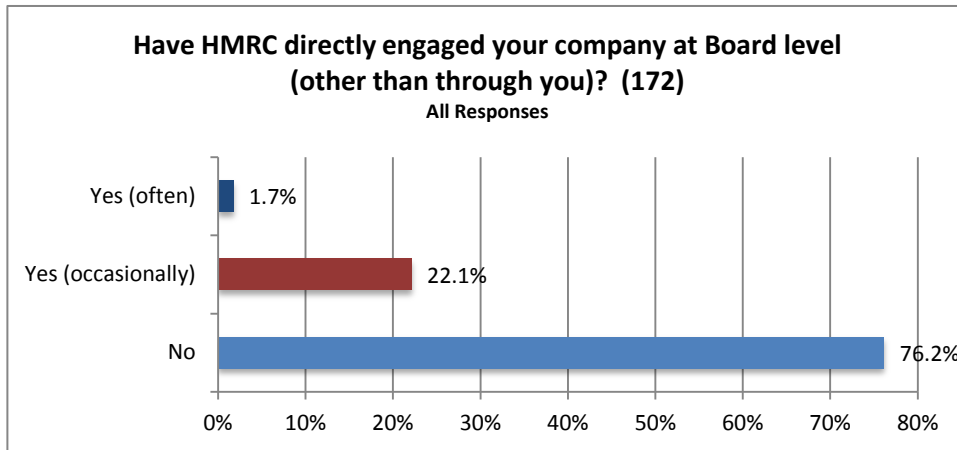


Board level engagement by HMRC

HMRC board engagement had occurred in relation to 24% of our LBS and LC respondents, though it was much more common amongst LBS companies.

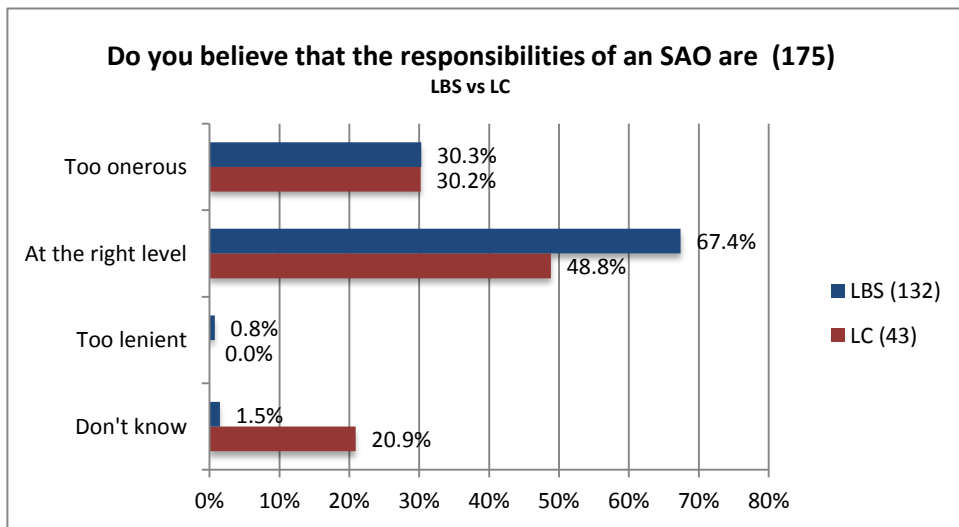
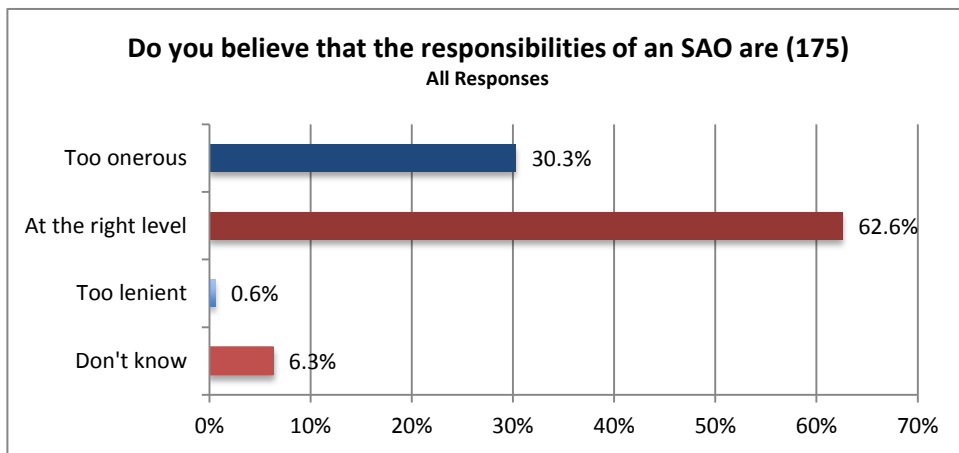
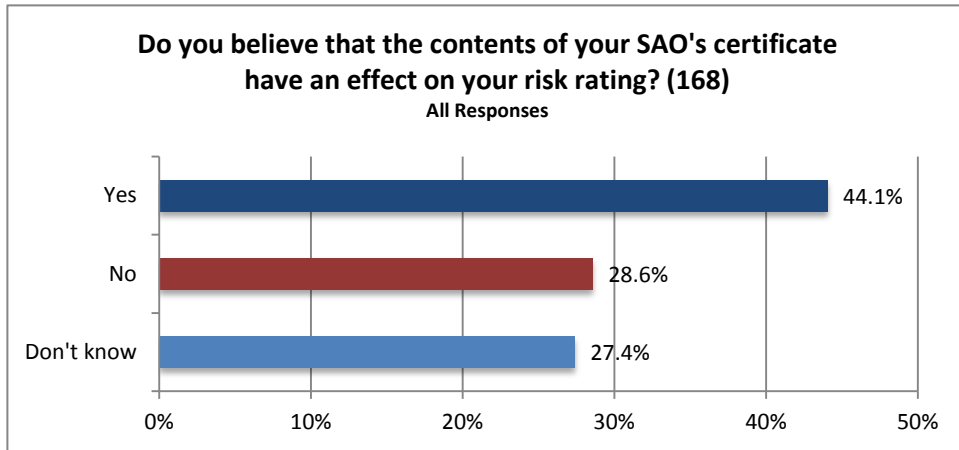
Quote 1: *“Common in the last two years – now less common [following changes in HMRC]. We used to have annual board-to-board sessions and they had lots of settlements with board involvement, though no direct negotiation by the board. Our strategy is not influenced by HMRC but we have open dialogue with them.”*

Quote 2: “We already had established board level engagement –.... We had an open door policy between senior members of HMRC and our people – not increased or diminished by spotlight.”



Senior Accounting Office’s (SAO) certificate

Views on the effect of SAO certificates on risk rating were varied, with 44% of respondents believing the contents of their SAO certificate affects their risk rating. A majority (63%) believe that the responsibilities of an SAO are pitched at the right level, with the majority amongst LBS companies even higher (67%).



One interesting point which arose during interviews concerned the impact of the SAO regime within companies. A number of interviewees explained that the SAO regime gave the tax department leverage with other parts of the company. This view, however, was not universal.

Quote 1: *"[The SAO regime] helps raise the profile of tax amongst accounting people. I can and do use it to beat people over the head. Personal liability gets people's attention but the people don't worry about it because the amounts are small. Accounting people are used to procedures and controls (e.g. under SOX) and the SAO regime bring tax under that umbrella. Once tax is under that umbrella people will pay attention to it."*

Quote 2: *"The SAO regime has helped us pay attention to things that we had not paid attention to before. It has also raised the profile of tax within the company. SOX had this function too."*

Quote 3: *"[Has the SAO affected tax's profile within your group?] No. To sign a return for a FTSE 250 company, you have to be confident in your processes to the point that the SAO regime requires, so the SAO rules just add additional administration. Personal liability just makes it take longer to get the CFO to sign off – it focuses his mind but he wouldn't have signed a dodgy return anyway."*

Quote 4: *"[Has the SAO regime affected how seriously company staff take tax?] Not really. The attitude of the board is that I have to make sure that tax is not a problem."*

Quote 5: *"[The SAO regime] has changed the profile of tax internally, particularly in general finance areas. It's a relatively invasive procedure. We have taken it seriously. It didn't require us to compile new substantive information, but it gives leverage over non-tax staff. Personal liability doesn't matter to the CFO – in cash terms what is £5K in relation to his £multi-million salary? But I can go to lower staff and reference it. I can say 'I am seriously worried about this, there is a personal liability on the CFO if you get this wrong.' The SAO regime is worth the extra effort on my part for the leverage it gives me. It codifies what we were doing and gives us a big stick to get other staff to take tax seriously and get things right."*

It's a big shame that it is becoming another HMRC industry, like risk rating. The original guidance was around 10 pages long, the new one is massive, and HMRC will start looking at lots of technical rules and lose sight of why it's there. People who were given charge of the SAO regime want to build it into something bigger and they go off track by making it an end in itself."

Quote 6: *"The SAO regime is very important. All CFOs want a full job to be done. They care about what they are signing. As a result of this regime we instigated better processes, or to be more precise, better documentation of our processes. The SAO regime has brought better focus by accountants who are not in the tax team. It has given the tax team leverage with the staff outside the tax team. I don't mind the regime at all."*

Quote 7: *"It's very hard for someone to have oversight on such a broad range of issues. The buck has to stop somewhere but it's very difficult for an individual to be absolutely certain that the correct procedures in place, and if bad information is put in somewhere down the line, incorrect results will follow. The SAO regime does improve the profile of tax within the company, and personal liability for the SAO helps in this."*

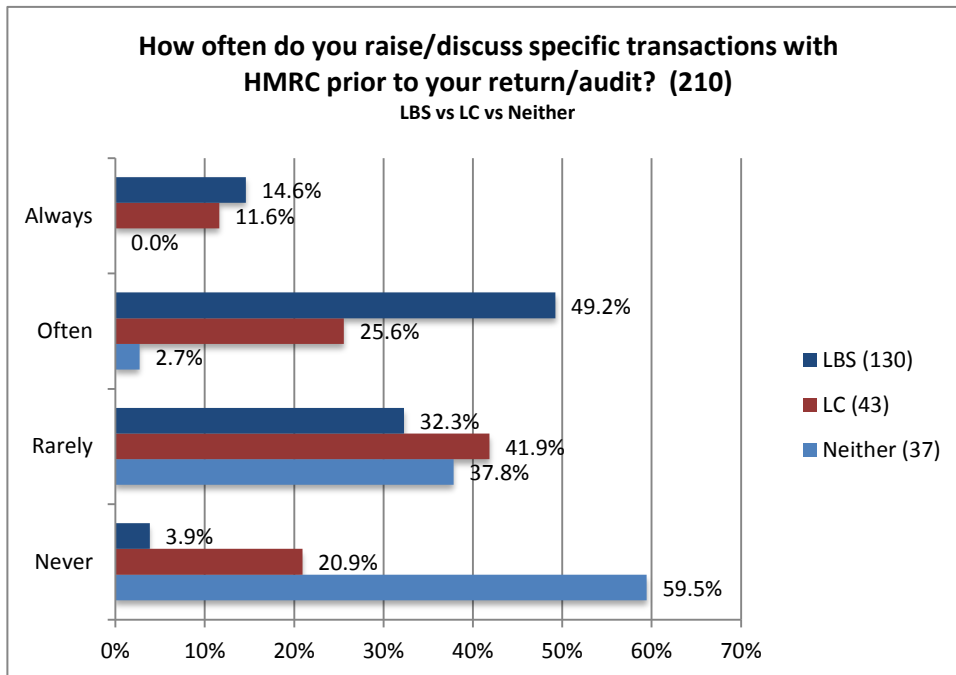
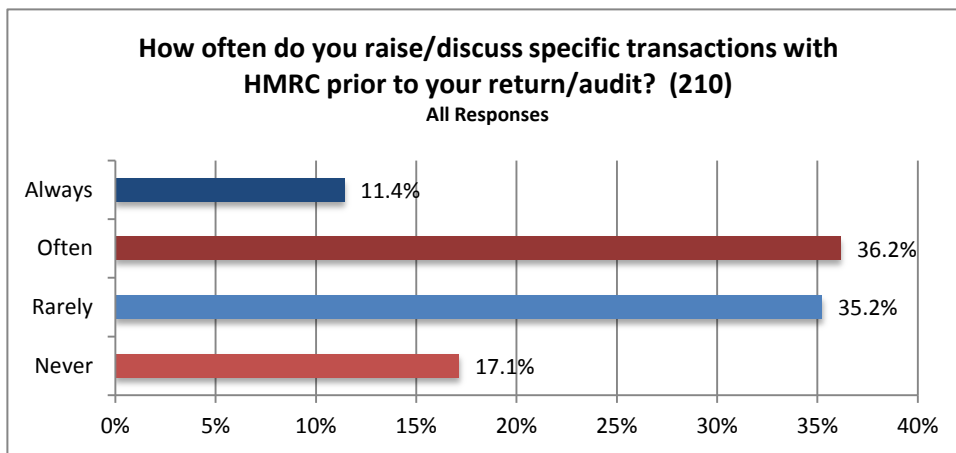
Quote 8: *“If people don't pay heed to process, I can raise the SAO regime to make people tax seriously. The personal liability of the CFO helps in this respect, though it's more the effect of a default on their CV – most people's insurance would cover any fine.”*

C. DISPUTES, LITIGATION AND SETTLEMENTS

Raising transactions prior to return

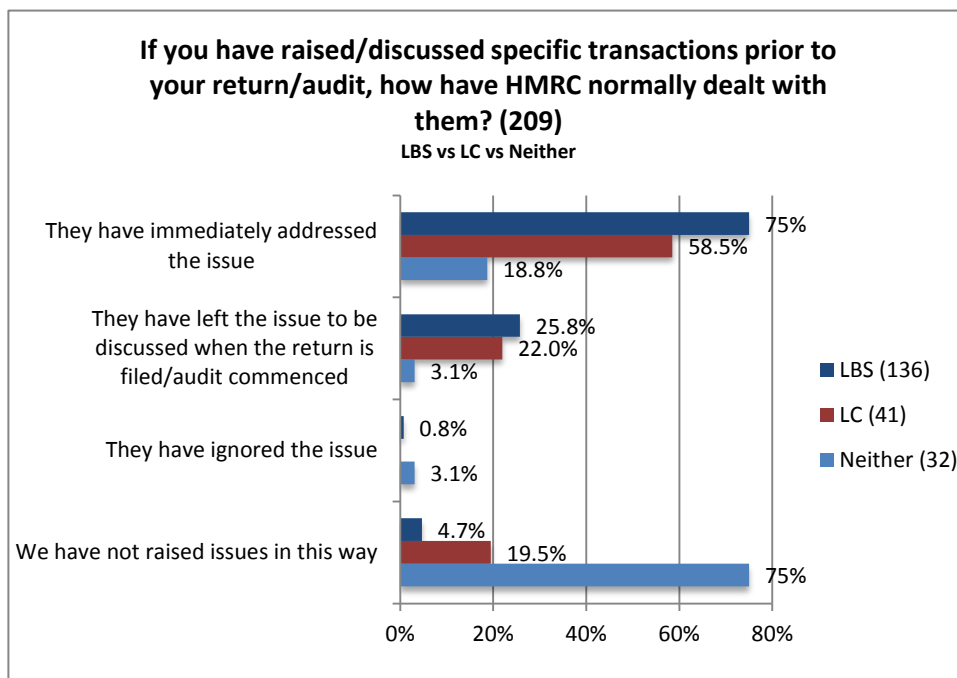
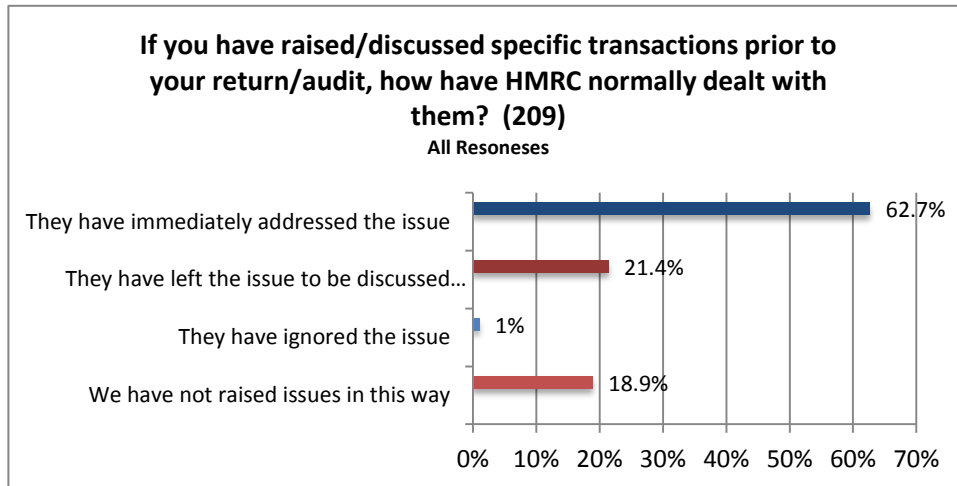
Raising transactions

Responses were almost equally divided between those who always/often raised specific transactions with HMRC prior to their return or audit and those who rarely/never did so. Predictably, the percentage of respondents who “always” or “often” raised specific transactions prior to their return or audit was considerably higher amongst LBS than LC companies, and both were much higher amongst companies that were neither LBS nor LC. Indeed, 60% of companies in the latter group never raised issues in this manner and 27.8% did so “rarely”.



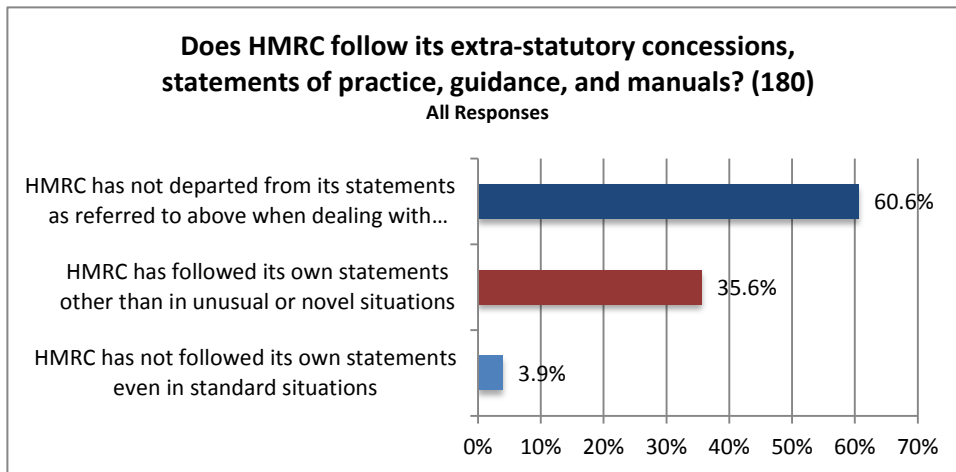
Response

63% of respondents reported that HMRC addressed the issue immediately when raised in the manner described above. Amongst LBS companies, the percentage to report an immediate response was even higher (75%).



Extra-Statutory Concession, Statements of Practice, Guidance and Manuals

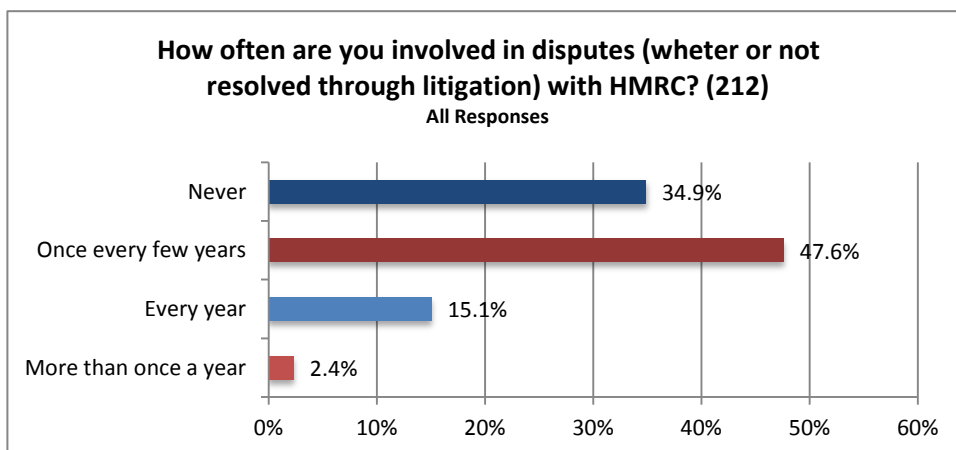
An overwhelming majority of respondents reported that HMRC has either not departed from its own statements when dealing with their tax affairs or only did so in unusual or novel situations.



Dispute/Litigation Frequency

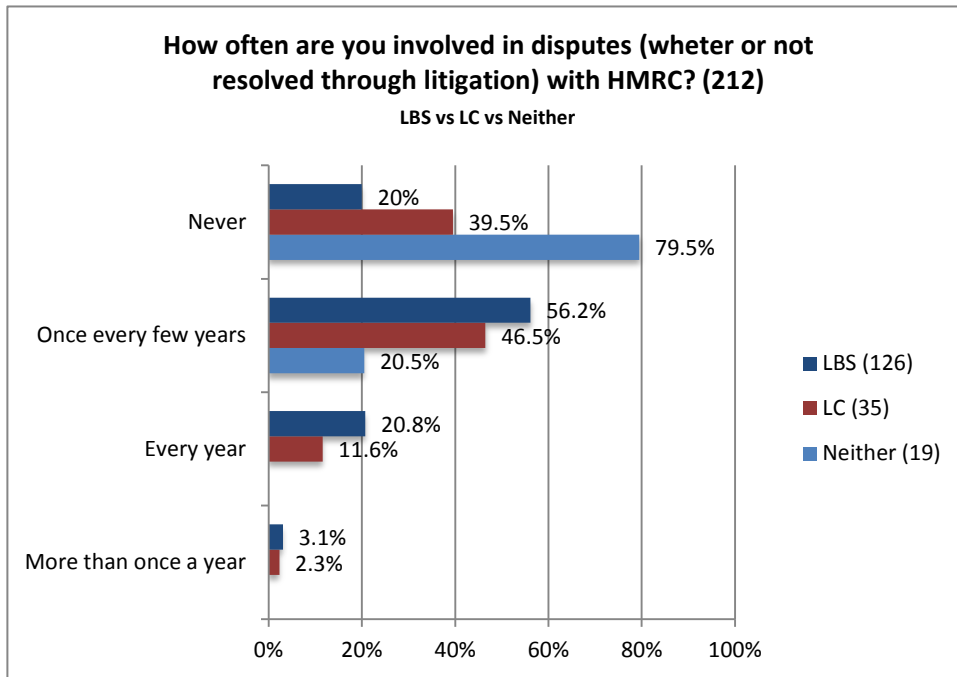
Disputes

Only 35% of our respondents reported never having been involved in disputes with HMRC. Disputes are defined by HMRC broadly to comprise “all situations in which HMRC and the customer or their agent have a difference in view over what is the “right tax at the right time”.⁴⁶ Of those who reported having been involved in disputes, the majority had disputes every few years, a sizable minority had disputes every year and only a small number had disputes more than once year. LBS companies reported a higher frequency of disputes; indeed the percentage of LBS companies which reported never having had disputes with HMRC (20%) was half that of LC companies (40%) and a quarter of companies which were neither LBS nor LC (79.5%).⁴⁷



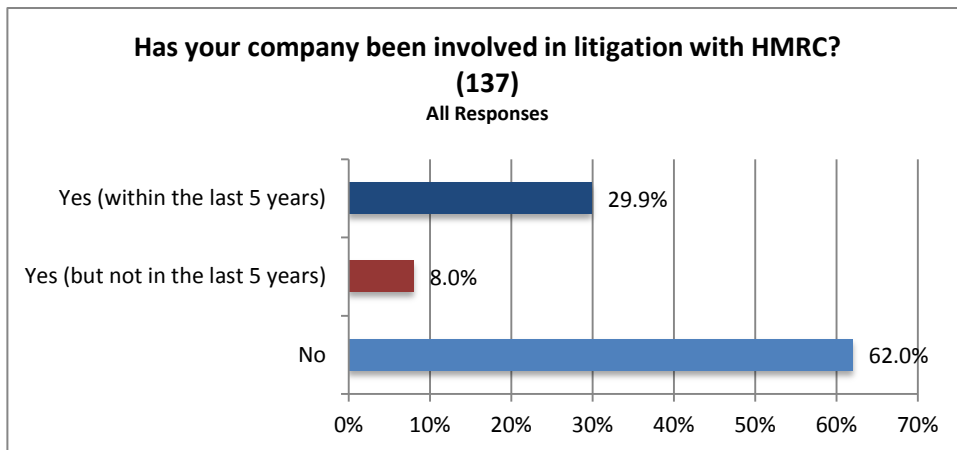
⁴⁶ LSS [4] (our emphasis)

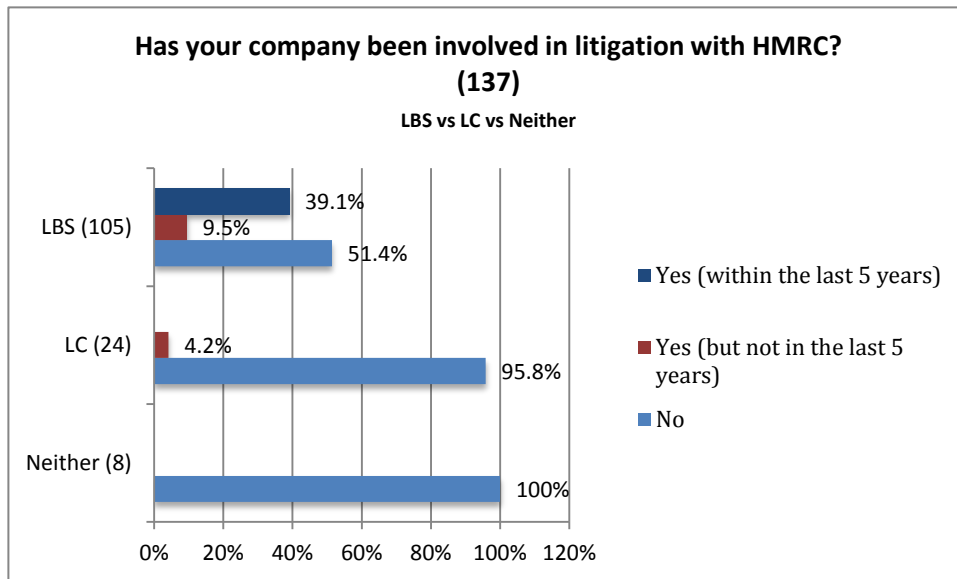
⁴⁷ Note that respondents who answered “Never” came to the end of the questionnaire. Respondents who chose one of the other three answers available proceeded to the last part of the survey. This explains the drop in responses for the remaining questions presented in this report (save for the question “Are you aware of the LSS?” - this was asked before the question being currently discussed but is presented later to allow for a better flow).



Litigation

38% of respondents have been involved in litigation with HMRC. The percentage of LC respondents who reported having been involved in litigation is significantly smaller than that of LBS respondents. In fact, whilst 49% of LBS respondents reported having been involved in litigation, only 4% of LC respondents reported the same. The small number of respondents who were not in the LBS or LC and answered this question have not been involved in litigation.





Litigation and Settlement Strategy

The Litigation and Settlement Strategy (LSS) “sets out the principles within which HMRC handles all tax disputes subject to civil law procedures.”⁴⁸ As noted above, ‘disputes’ is given a very broad meaning in this context. The LSS, which is accompanied by guidance, was introduced in 2007 and refreshed in 2011. The LSS guidance was further ‘refreshed’ in 2013 to reflect a report by the National Audit Office,⁴⁹ but this was after the survey was completed.

As a starting point it should be remembered that HMRC:

“have a wide managerial discretion as to the best means of obtaining for the Exchequer from the taxes committed to their charge the highest net return that is practical having regard to the staff available to them and the cost of collection.”⁵⁰

The LSS provides a framework for the exercise of this discretion, which is important where such a wide discretion is granted. However, concern does arise if the LSS overly restricts this discretion thus inhibiting settlements that might properly be reached and alternatively driving HMRC and business to find creative ways of reaching settlements, as some of our interviewees suggest below. This may reduce the efficiency of the settlement process for HMRC and taxpayers alike. It may also undermine the objective of consistency of settlements because there may be variation in ease of reaching a settlement depending on the attitudes and experience of particular revenue officials and the tax directors concerned.

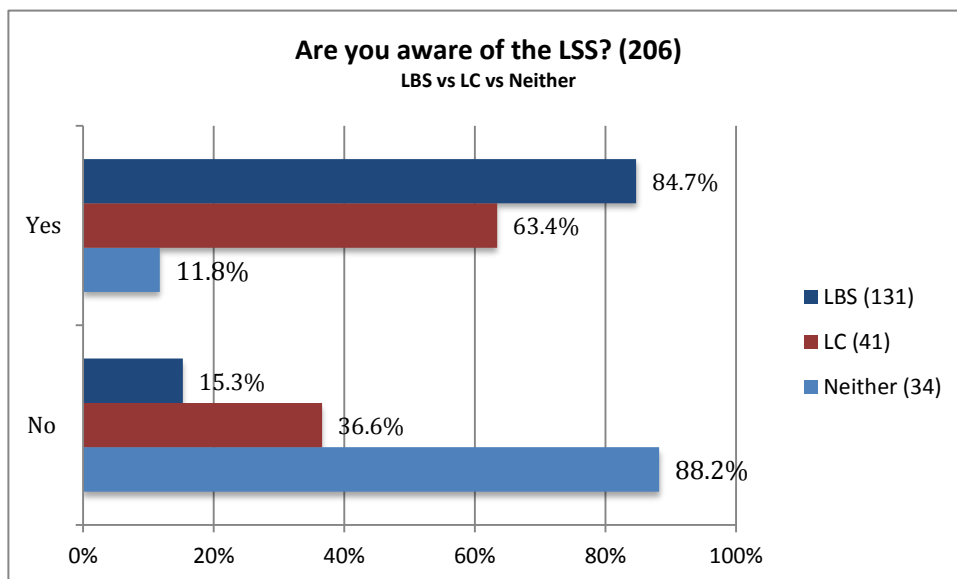
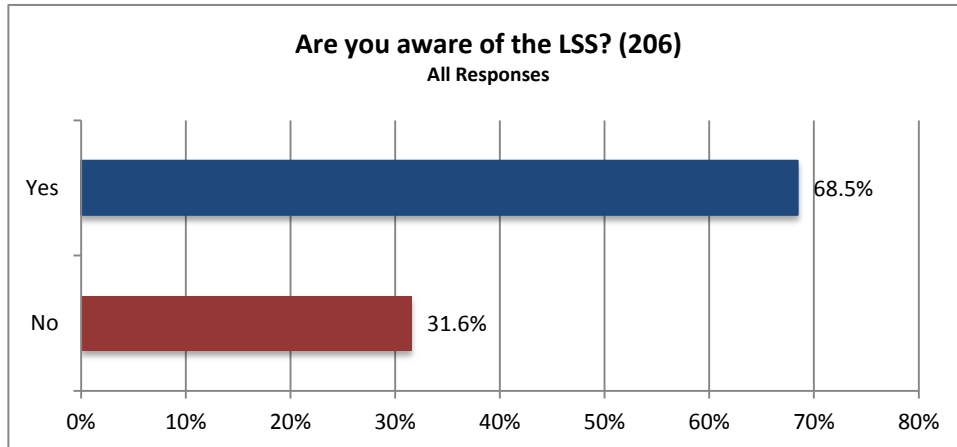
⁴⁸ HMRC, ‘Resolving tax disputes – Commentary on the litigation and settlement strategy’, November 2013, p. 6.

⁴⁹ NAO 2012 fn 5 above.

⁵⁰ Inland Revenue Commissioners ex parte National Federation of Self-Employed and Small Businesses Ltd. [1982] AC 617 See also R (Gaines-Cooper v HMRC [2011] UKSC 47; UK Uncut Legal Action Ltd v HMRC [2013] EWHC 1283.

Awareness

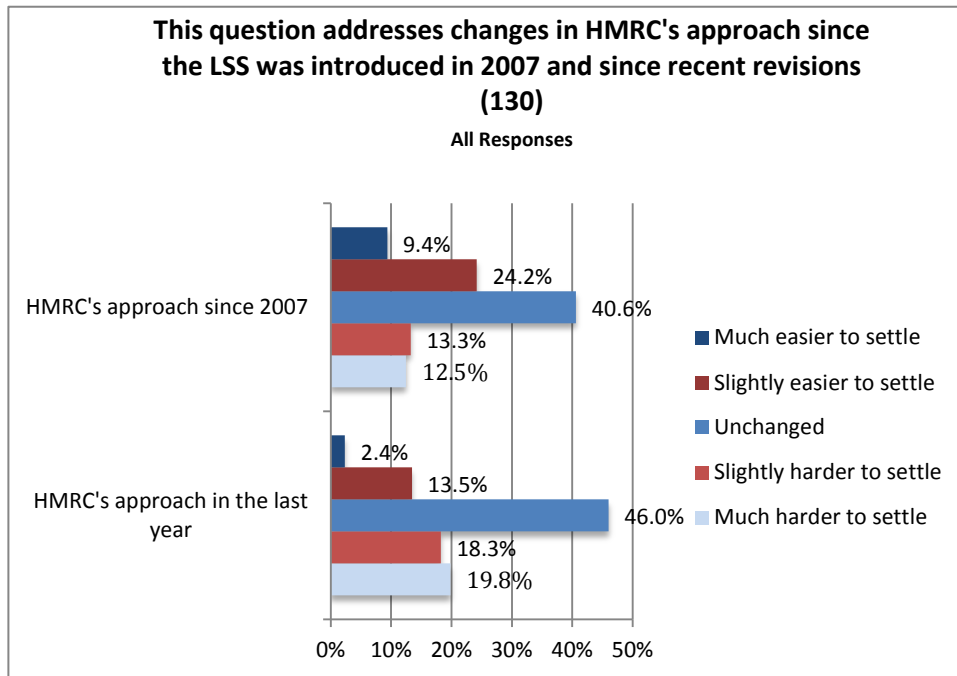
69% of respondents were aware of the LSS, and, as could be predicted, awareness was higher amongst LBS companies, lower amongst LC companies and lower still amongst companies that were neither in the LBS or LC.



Impact of LSS

Responses on the impact of the LSS varied considerably. 34% of respondents reported that it was easier to reach settlements since the introduction of the LSS, indeed, 9% reported that it was “much easier”. On the other hand, 40% reported no change and 26% reported that it was harder. Without more context, it is impossible to judge whether becoming easier/harder to reach a settlement is a positive or negative development. It is a positive development if it became harder to reach settlements in “undeserving” cases which were previously reached because of lax

HMRC standards and controls. It would be a negative development if it became harder to reach settlements in “deserving” cases as a result of an overly restrictive LSS.



The interviews provided some insights into the ways in which the LSS is thought to have made a difference. A couple of interviewees explained that the LSS gave HMRC a sense of legitimacy to reach settlements and that it ensured a coherent approach by HMRC towards taxpayers. Frequently, however, the view was put to us that the LSS restricted HMRC’s ability to reach a settlement, or as one interviewee put it “HMRC made a rod for their own back.” As discussed below, this was often qualified by the observation that there were ways round this restrictiveness. A few interviewees commented on the improvement brought about by the 2011 revision.

Quote 1: “LSS has been a positive development. The biggest difficulty has been that it has not been consistent in the past 2/3 years because of internal politics. There were instances in which HMRC did not follow procedures (e.g. Goldman) and that has made them more wary of settling anything because they are concerned about being criticised if they settle. But this was a governance, rather than LSS issue - but HMRC staff they think it safer not to settle. This happened over the past 18 months.”

Quote 2: “The LSS was a sensible approach. HMRC realised that having lots of money tied up indefinitely in disputes and high litigation costs was counterproductive. Also there is a lot of risk involved in litigations. LSS is ‘massively positive’ and makes commercially sensible settlements easier and much better than the bad old days when everyone got very entrenched. [Can the LSS be a hindrance to a settlement?] We’re generally able to find a way to get agreement – to reach the right conclusion. The LSS makes HMRC more comfortable about settling, it provides them with more legitimacy to settle, because they are complying with some rules. That is a good

thing. To this extent the LLS has been empowering for the HMRC. [Why?] As I said, it gave them a sense of legitimacy in reaching settlements. Some thorny CFC issues might not have reached settlement without LSS...That said the LSS rules can sometimes be inconvenient. We can't explicitly split the difference but you may well get the same answer. E.g. HMRC are willing to agree that if 80% of a company's profit is UK-taxable, then the motive test is passed and it doesn't come within the CFC regime. Of course this rather begs the question as to 80% of what?"

Quote 3: "Practical application is challenging for them. You would expect the LSS to lead to lots of litigation but they don't have the resources. So we know they are going to settle, so we take a harder line. As a customer you dig your heels in. They have to go through an alternative route...HMRC have built a rod for their own back through LSS – if they can't meet you half way what do you do?"

Quote 4: "Has it made a difference? Difficult to understand – when we made package deals in the past we would have to justify each item individually internally, so not much changed (though we could compromise one on poor terms if the overall deal was good). When the LSS came out it was like HMRC staff had found religion. They were very inflexible. They would insist on 100% on an item if they thought they had more than a 50% change of winning in litigation. The LSS was then amended so it became a bit clearer. Also, it could be that the LSS has been communicated better within HMRC...LSS introduced new discipline on HMRC and that is probably no bad thing. As long as people understand its limitations, particularly on transfer pricing, you can live with it."

Quote 5: "The LSS made it harder to settle. Sometimes our CRM has said that they would like to settle but can't. They realise that they have boxed themselves into a corner [which is bad] because they need the money! They can work around the LSS although they cannot be seen to go against it."

Quote 6: "The LSS approach is fine, but they don't take materiality into account. The cost of litigating can be equal to the amount of tax under dispute...The LSS by its nature makes it harder to settle. The LSS forces sensible taxpayers to construct portfolios of issues. If you don't have a portfolio they won't settle. We have an issue heading toward litigation. There are technical issues which might make it a non-binary issue but they won't settle because such a settlement would be favourable toward us. We don't need to plan to create a portfolio – instead we take very aggressive stances in our return with a view to conceding them later....Therefore, the theory around the LSS is good but it forces taxpayers down certain behaviour."

Quote 7: "The LSS reduces flexibility. It does tie HMRC's hands."

Quote 8: "Since 2007 – seems like local officers have less discretion. You used to be able to settle one issue in exchange for them dropping another. You spend far more time trying to get resolution – you reach stalemate on every open enquiry. This approach has made it harder – particularly given their resource constraints, both for HMRC and taxpayers."

Quote 9: "The 2011 revision was good. I can see the logic behind the original idea but it was flawed. HMRC wanted to be consistent amongst taxpayers. But if one taxpayer drags their feet and litigates then everything is blocked for everyone. This

has not been a problem at [current employer] but at [previous employer] we were not able to settle an issue which both we and HMRC wanted to settle early on: we had to wait till a dispute was resolved in court – it took 2-3 years to settle...HMRC are forced to find ways around the LSS to make things happen..."

Quote 10: *"You get consistency now between different taxpayers. Consistency was probably happening already but now you see it."*

Quote 11: *"The LSS is a good idea – it gives predictability, but HMRC must be consistent." ...HMRC changed their position/argument over this issue. HMRC gave us assurances and then backed away from them – e.g. that they will decide things quickly and that they'd only press their position where they were strong. They took a long time to decide if something is all or nothing, but this should be a simple exercise. It took them three years to decide if it was 'all or nothing'. If they had said it was all or nothing earlier, we would have litigated earlier! If we had adopted the approach HMRC adopted on this issue, HMRC would have said they are not able to deal with a company which acted in this way. Why have they been inconsistent? It was a difficult technical area and the sums involved were large."*

Quote 12: *"Before the LSS, they litigated everything. We told them they would get a massive backlog of litigation if they continued, and they eventually adopted the LSS which improved things."*

Quote 13: *"In certain respects the LSS has been unhelpful because HMRC are less able to settle one thing in return for another. It constrains HMRC. When we were negotiating on these issues, HMRC would explain that they had a number of red lines that could not be crossed. At one stage we agreed on something, but a day later we were told that that crossed a red line so we had to start afresh. We had to find a different way of settling it...This system is better in terms of perception. In the past you would call [a senior revenue official] and he would sort it out. I am sure, in a reasonable way and on good grounds but this system gave a bad impression."*

How restrictive is the LSS?

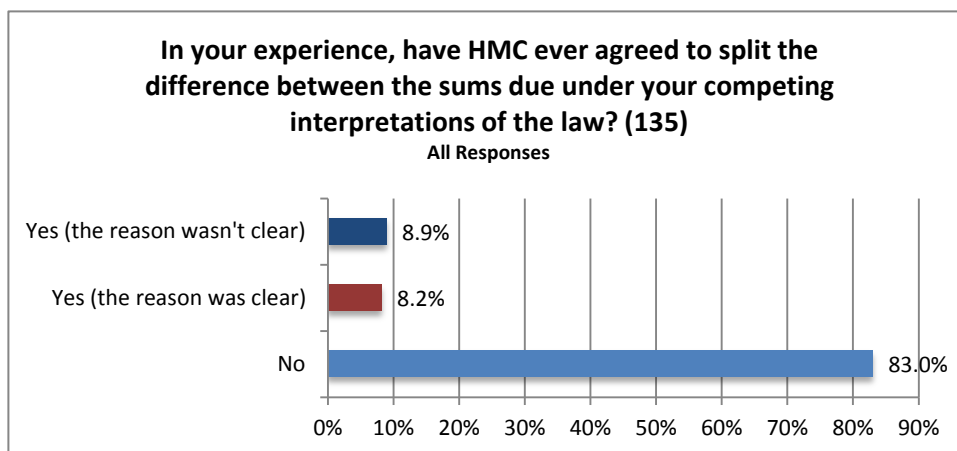
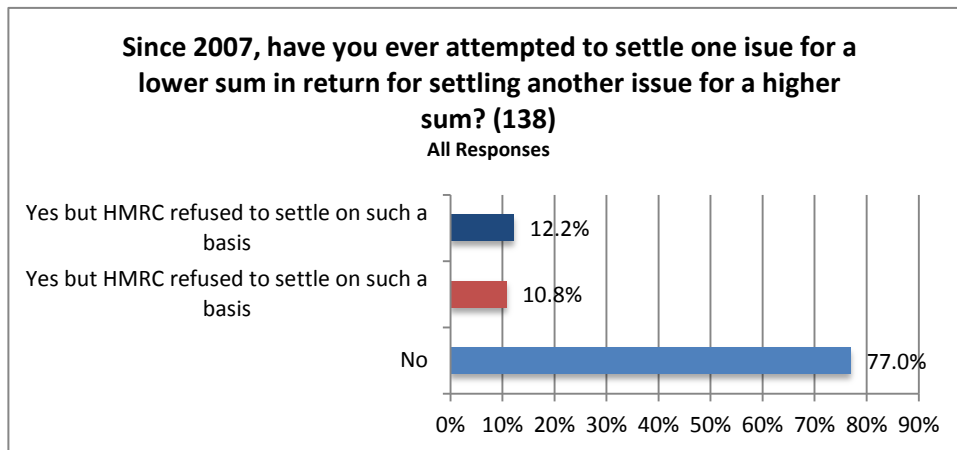
Respondents might have responded that it is harder to settle since the LSS was introduced because it broadly prohibits package deals and splitting the difference if a dispute was genuinely all or nothing. The LSS thus prescribes that "[w]here there is more than one dispute between a customer and HMRC, each dispute must be considered and resolved on its own merits, not as part of any overall 'package deal'."⁵¹ Also,

"[i]n relation to a dispute which is genuinely of an all or nothing nature: Where HMRC believes that it is likely to succeed in litigation and that litigation would be both effective and efficient, it will not reach an out of court settlement for less than 100% of the tax, interest and penalties (where appropriate) at stake. It therefore follows that, if the customer is unwilling to concede in such cases, HMRC will seek to

⁵¹ LSS [16]. Note however that since the survey was undertaken the LSS guidance was revised to allow for package deals "exceptionally". LSS Guidance p. 28.

resolve the dispute by litigation as quickly and efficiently as possible. Where HMRC believes that it is unlikely to succeed in litigation it will, in the majority of cases, concede the issue... In such cases, HMRC will not attempt to 'split the difference' between its own and the customer's view of tax, interest and penalties (where appropriate) at stake."

Respondents however reported instances of both 'package deals' (11%) and 'splitting the difference' (17%). For the reasons described below, these numbers must be treated with caution.



These responses cannot necessarily be interpreted as indicating instances of breaches of the LSS. This is so for a number of reasons. First, the High Court has recently ruled that the LSS does not apply in 'exceptional cases' or to situations which the LSS 'does not have in contemplation',⁵² although it is not entirely clear what either phrase means. Second, when asked how settlements were reached in practice, a number of interviews described a number of mechanisms which led to results similar to package deals and splitting the difference. These mechanisms stretched but did not necessarily breach the LSS.

⁵² *UK Uncut Legal Action Ltd v HMRC* at [38].

It is important to note that none of these interviewees suggested that the settlements reached through these mechanisms were not in compliance with the law or in the public interest and the interviewers were not in a position to judge this.

In this context it is important to recall the wide discretion of HMRC, referred to above,⁵³ and the role of the LSS in achieving efficiency and consistency within that discretion. The question is whether the LSS as currently drafted, together with the guidance to it, achieves that objective.

One interviewee explained:

“The LSS creates a lack of certainty... it seems unclear the extent to which the CRM is the decision maker and the interaction with other aspects of the tax affairs. There is a very clear message that you’re not fighting/dicing and looking for portfolio agreements. But it’s hard to see in each case whether HMRC will be flexible or will take extreme positions.”

This suggests that some further clarification of the LSS wording might promote the objectives of transparency and evenhandedness whilst ensuring that settlements are reached in compliance with the law.

The mechanisms described by interviewees can be grouped under five headings:

a) Alternative view of the facts

Quote 1: “Even before the LSS, we never split the difference. There are usually 3-4 ways of understanding a transaction, so it is about chasing the most appropriate one and look for one we can agree on, which is normally somewhere in between the ones we’d each initially adopted. So you look for a third way of looking at an issue and reach a result that almost leads to the same conclusion as splitting the difference. If there is only one way of understanding an issue we would only have taken our position if we were 100% confident in it, so we will not settle.”

Quote 2: “We were once negotiating a settlement but there was a red line HMRC could not cross. So HMRC re-interpreted the facts in a way that was not natural but not illogical either and this allowed us to reach a satisfactory result. In another case HMRC agreed to view the transactions in an artificial way to reach a satisfactory result. In yet another case, HMRC – in the spirit of collaboration accepted an improbably high interest rate to reach a satisfactory result. It is important for a tax director to be able to hold a conversation on two levels – one explicit and one implicit.”

b) Break down issue into smaller issues

Quote 1: “You take each issue and break it down into its component parts. So part of the art is to find separate items out of 1 big item. You start off with one headline number but

⁵³ Footnote 5 and text thereto

once you break it down to separate items you can concede or not concede each component and up with ¾ of the headline number to pay in tax. But you would not have reached a package deal or split the difference.”

c) Different disputes settled “in the context” of each other

Quote 1: “You are in a better position if you have lots of issues, so that they don’t have to split the difference. The LSS drives you to have a portfolio of issues, because if you have only one you either litigate or you don’t. Package deals still breach the LSS but you have to get a settlement. If you cannot settle one thing for another then how are resolutions actually reached? And they are being reached somehow... HMRC have had to find a way of operating that allows them to close disputed items without litigation, because they cannot actually litigate everything – they don’t have the resources for that... HMRC have a very transparent governance process and they are settling issues following this process but they are doing so sensibly. They go through each issue and discuss who has strongest argument. They do not agree on issue in return for another but negotiations are taking place within the context of broader negotiations.” “They say that they’ll litigate if they have a more than a 50% chance of success in litigation. But when we enter a planning arrangement, we’ll only proceed if we have counsel’s opinion that we stand a more than a 65% chance of success – we’d be very surprised if HMRC counsel give them more than a 50% chance. But they often do – they’ll go to counsel who are not well known – we have to google them – who have given them more than 50%.”

Quote 2: “You can resolve issues at the same time. That is not a ‘package deal’ and HMRC will not concede one issue for another but they will settle other issues at the same time, which can be helpful. Each issue is viewed individually but they are all negotiated in the same context.’ [Are you saying that having multiple issues gives you an advantage in settlement negotiations?] ‘That would be the logical consequence of what I’m saying, but I didn’t say that.’

Quote 3: “Having a portfolio of issues is useful. One settles each issue individually but ‘in the context’ of the others. I currently feel under pressure to take aggressive positions. We implemented a very aggressive (8/10) structure last year. The CEO and CFO want another aggressive structure to be implemented so that they can settle one for the other.”

Quote 4: “Before you would have a portfolio of issues so you could have some to settle on. This is not done any more. HMRC now take a view on each issue on its own merits. Issues are settled in context of each other but each is settled on its own merits.”

Quote 5: “HMRC were always clear even before 2007 that they would not do package deals (horse trading). I suspect that once they may not have looked as hard as they might have because we’d settled a different issue, but I don’t know what went on in their minds. So I do think that decisions on one issue could be influenced by the fact that other issues are being discussed.”

Quote 6: “Quote X: “It’s fair to ban package deals because they give taxpayers an incentive to have a portfolio of planning. However, it’s still good to have multiple

issues (but you probably want to have commercial deals). HMRC won't settle avoidance schemes. You want to have lots of commercial issues."

d) Distinguish similar issues with other businesses

Quote 1: "HMRC are forced to find way around the LSS to make things happen. For example, they need to distinguish the issue before them from similar issues with other businesses. [When I was at my previous employer] we both wanted to settle an issue. At the meeting their expert spoke for 10 minutes explaining their position and we didn't understand what he was talking about. Afterwards we realized it was really their justification for agreeing with us. It was a convoluted justification which at the time we did not understand designed to avoid to tying their hands with other taxpayers..."

e) Careful instruction of counsel

Quote 1: "They can work around the LSS although they cannot be seen to go against it – e.g. I have a friend who was working for a FTSE 100 group on a big HRCP settlement 3-4 years ago. He said that there were outstanding issues, and that if HMRC instructed counsel in a particular way then they could get a deal, if they didn't they would not have settled. They reached a settlement without litigation."

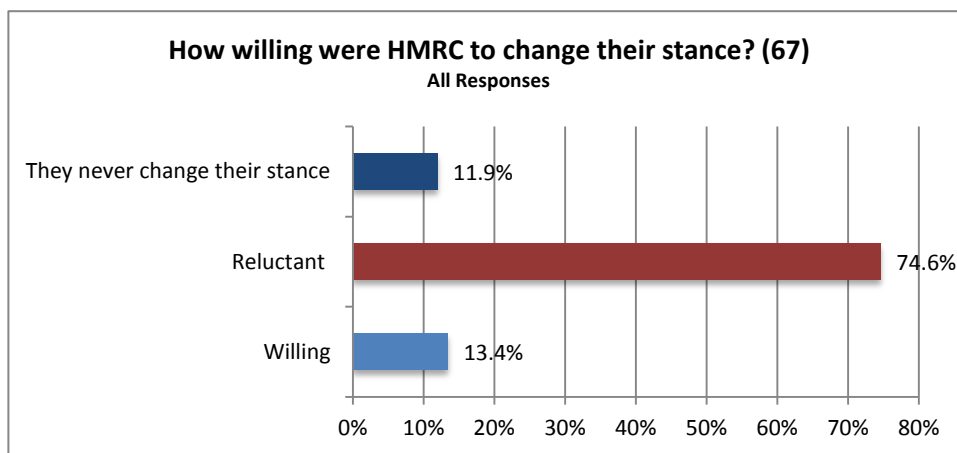
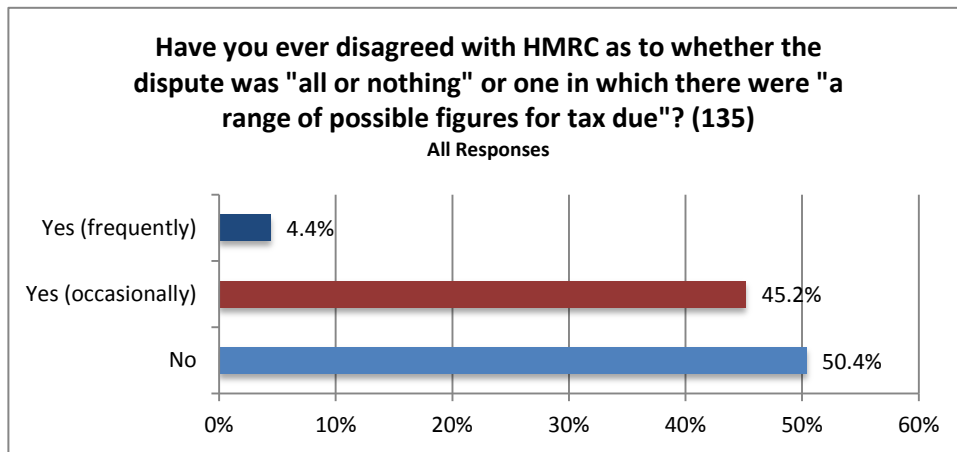
Quote 2: "Are there ways around them? Quite often policies have unintended consequences. HMRC have a policy of litigating more to discourage the speculative creation of issue portfolios. But when you can't split the difference on a single issue you are encouraged to have lots of issues! Because essentially the only way you can settle if you cannot split the difference is to give up one issue for another. It is easier if you have lots of issues....A ban on package deals is effectively a ban on settlements. If you follow all the rules you can never reach a settlement. Instead you have to follow their interpretation of the rules – as long as they satisfy themselves that an issue has been settled on its merits. They can make themselves look weak on an issue for this purpose, even by instructing counsel carefully, and are willing to do so if you have settled another issue on favourable terms for them. They won't propose the deal - almost all settlements are proposed by taxpayers."

All or nothing disputes

Whether a dispute is all or nothing⁵⁴ is of particular importance because it determines whether HMRC are willing to split the difference. Disagreements on this issue are bound to arise, with taxpayers arguing in favour of "a range of

⁵⁴ This is defined by the LSS Guidance in the following terms: "An 'all or nothing' dispute (sometimes also called a 'binary' or 'black and white' dispute) is one which has only two possible outcomes (e.g. a given amount of tax is either due, or it is not)."

possibilities”. In fact, 50% of respondents reported having disagreed with HMRC on this issue. These respondents further reported HMRC’s reluctance to change their stance on this issue. 75% reported that HMRC were reluctant to change their stance, whilst 12% reported that they never change their stance.



Interviewees gave a number of insights into the context in which “all or nothing” disputes arose:

Quote 1: “[They] [a]rise in the context of what HMRC call ‘marketed’ avoidance schemes.”

Quote 2: “Big issue on transfer pricing [it had to do with internal financing]– they thought we should be getting x return on a loan and they refused to discuss it – ridiculous. You cannot have an all or nothing in this case because transfer pricing issues do not work like that. We ended up meeting them half way...Other issue on CFCs – they’ve recently started talking about the ‘alternative approach’ – they know that we have to settle. But whether a company comes within the CFC rules or not is really all or nothing.”

Quote 3: “HMRC took a long time to decide if something is all or nothing, but this should be a simple exercise. It took them three years to decide if it was ‘all or nothing’. If they had said it was all or nothing earlier, we would have litigated earlier! If we had adopted the approach HMRC adopted on this issue, HMRC would have said they are not able to deal with a company which acted in this way.”

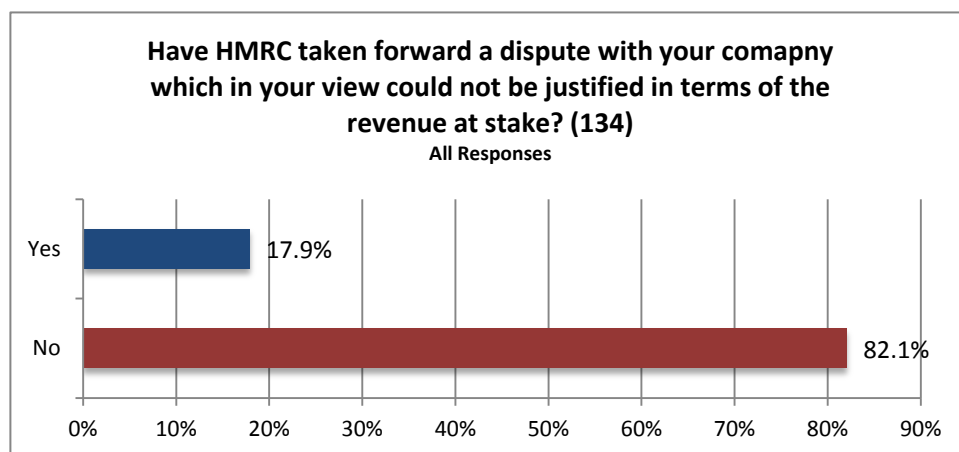
Quote 4: “We had internal financing producing with a DOTAS code. They thought all DOTAS schemes were binary. We said it could be seen through transfer pricing rules, so that a range of possible figures could be reached. It was part of a commercial transaction. Might that have been because of the rule against settling avoidance schemes, rather than the ‘all or nothing’ rule? Maybe.”

Quote 5: “Transfer pricing is the issue on where we’ve disagree on all-or-nothing. Hard to find comparable which they’re comfortable with.”

LSS operation: positive aspects

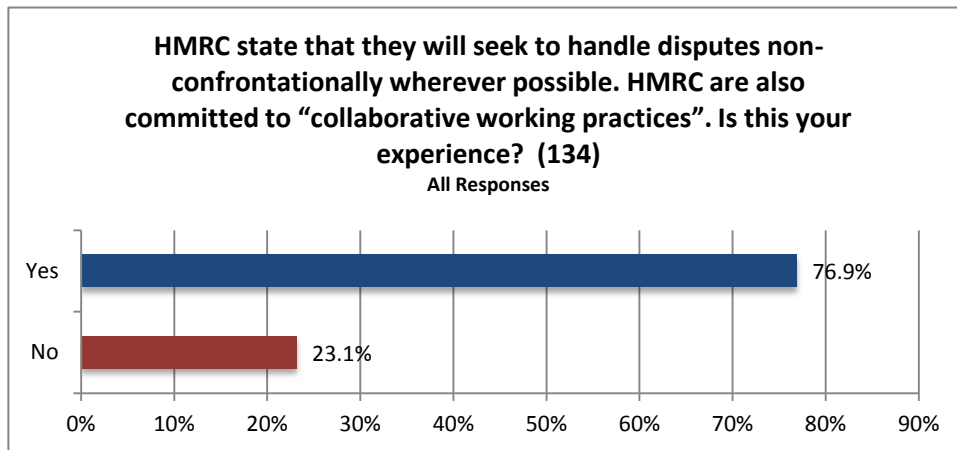
A majority of respondents reported a positive view of certain aspects of HMRC’s operation of the LSS. A considerable majority reported that HMRC has not taken forward disputes which could not be justified in terms of the revenue at stake, HMRC adopted collaborative working practices, HMRC staff were familiar with the law and facts underlying the dispute, and they could understand why HMRC was litigating a particular issue.

Disputes justified in terms of revenue at stake

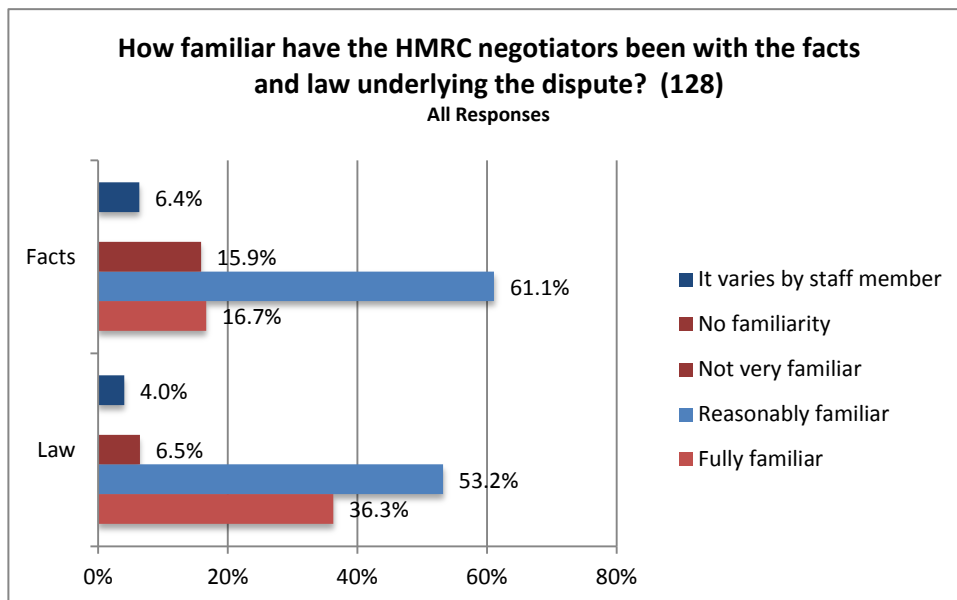


Respondents who reported that HMRC had taken forward disputes which could not be justified in terms of the revenue at stake either gave specific examples or explained that this is usually the case “where matters of HMRC ‘policy’ are at stake (even though tax negligible)” or because of “1) fiscal neutrality; b floodgates.”

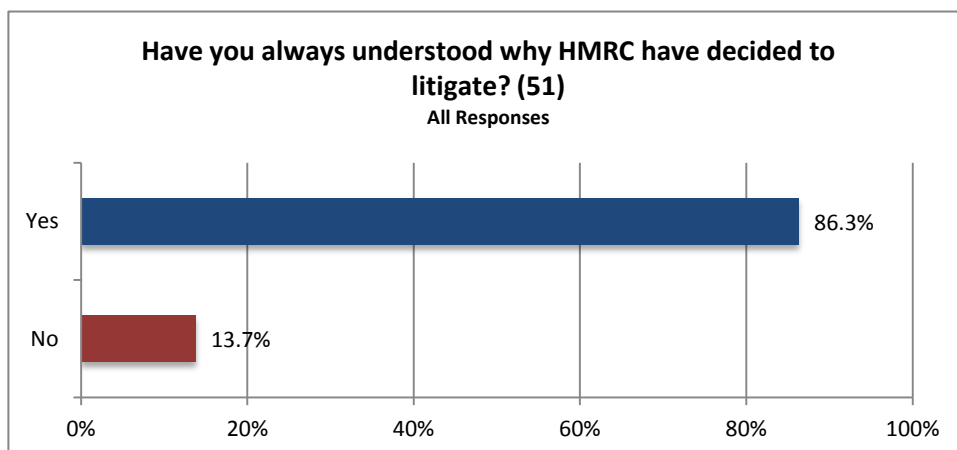
Non-confrontational handling of disputes



Familiarity with facts and law

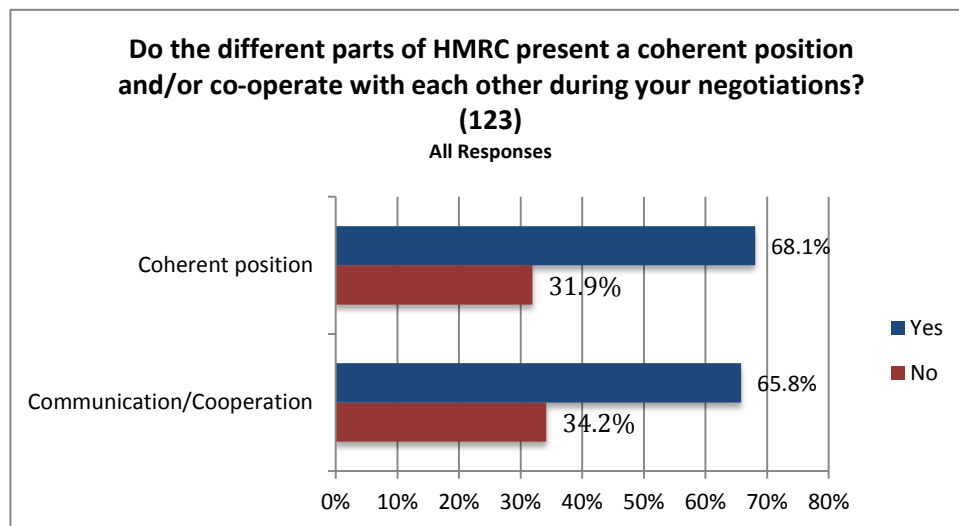


Decision to litigate



Coherent position and cooperation

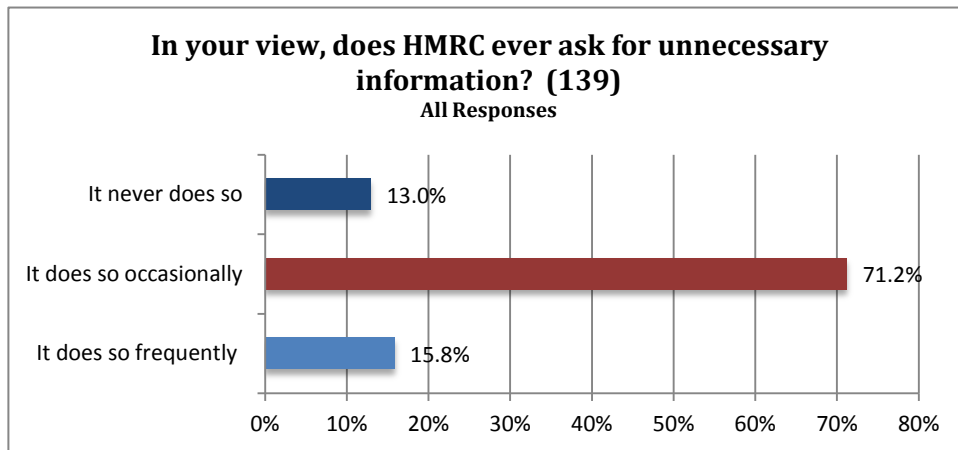
Around two-thirds of respondents reported that HMRC present a coherent position and cooperate with each other during negotiations.



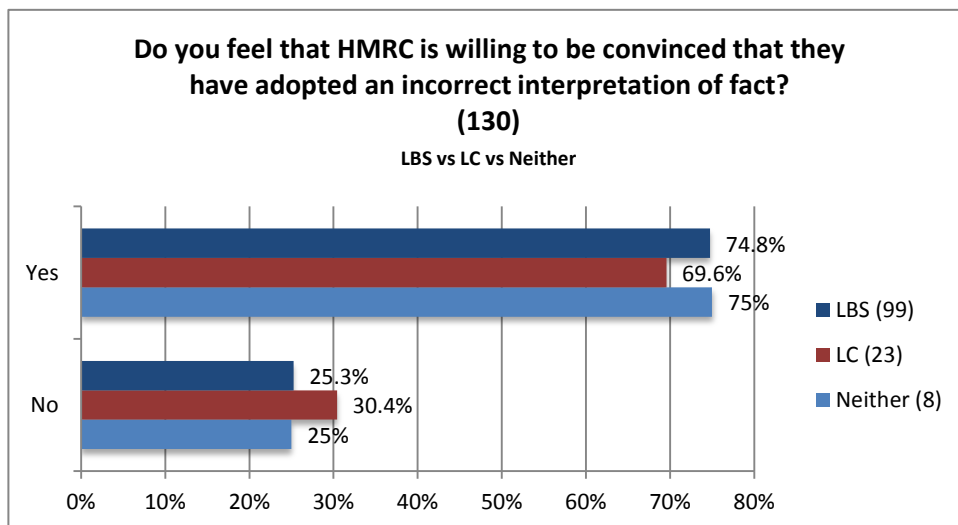
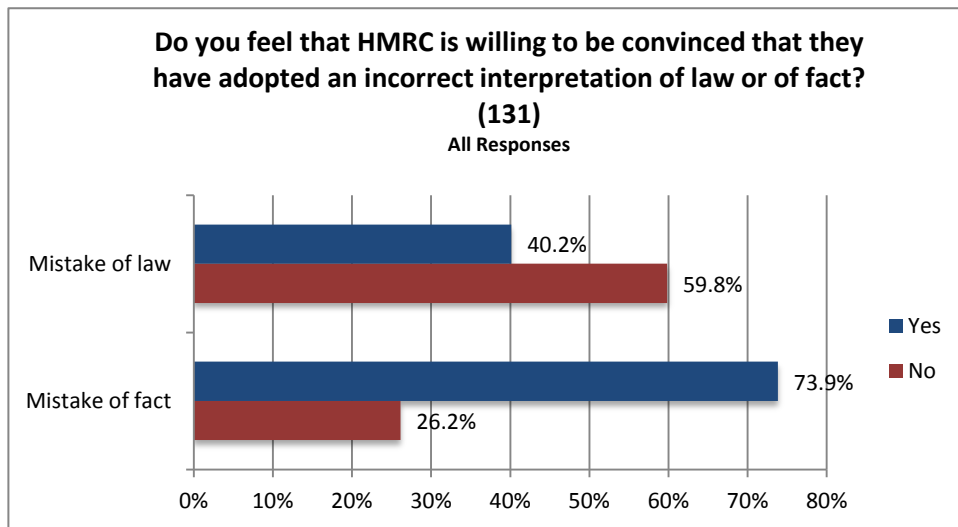
LSS operation: mixed results

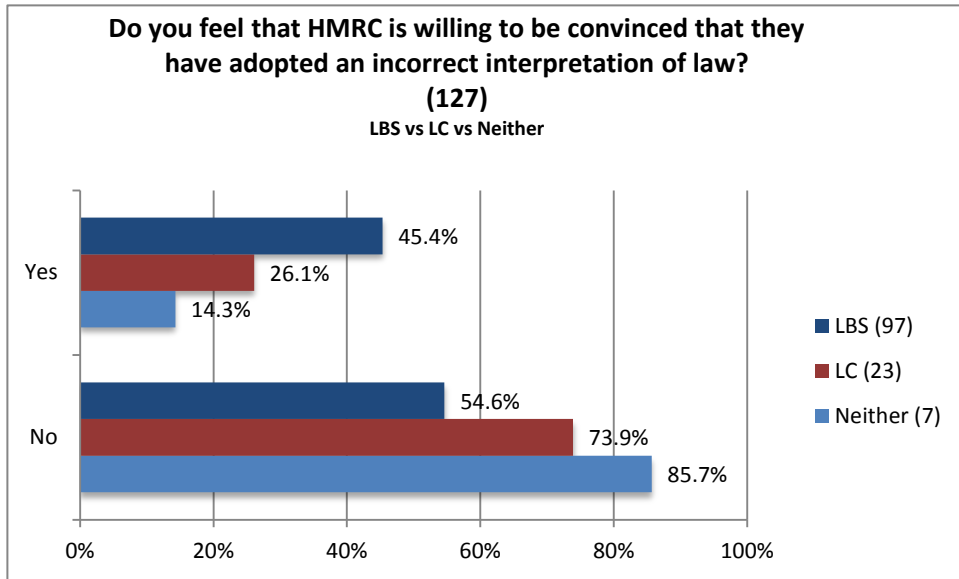
On the other hand, responses to other questions reveal a more mixed view on other aspects of HMRC's operation of the LSS. A majority of respondents reported that HMRC occasionally asks for unnecessary information and that they are unwilling to be convinced that they have adopted an incorrect interpretation of the law (although a majority believe HMRC are willing to be persuaded they have adopted an incorrect interpretation of facts). The percentage of respondents who reported that HMRC are unwilling to be convinced that they have adopted an incorrect interpretation of the law was higher amongst LC than LBS respondents. Finally a very small number of respondents reported either that HMRC did not respect confidentiality or did so "most of the time" although interviews suggested that this result ought to be treated with some caution.

Unnecessary information



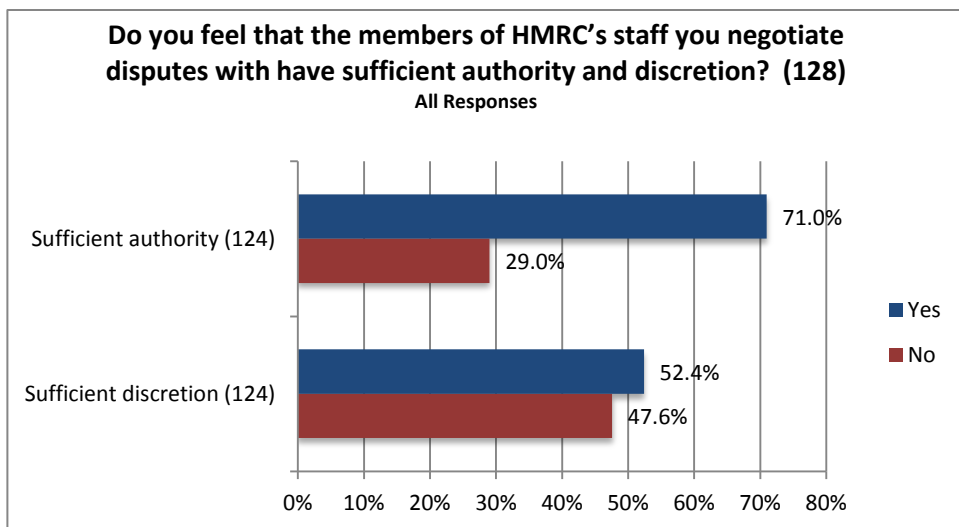
Willingness to be convinced that incorrect interpretation of law/fact

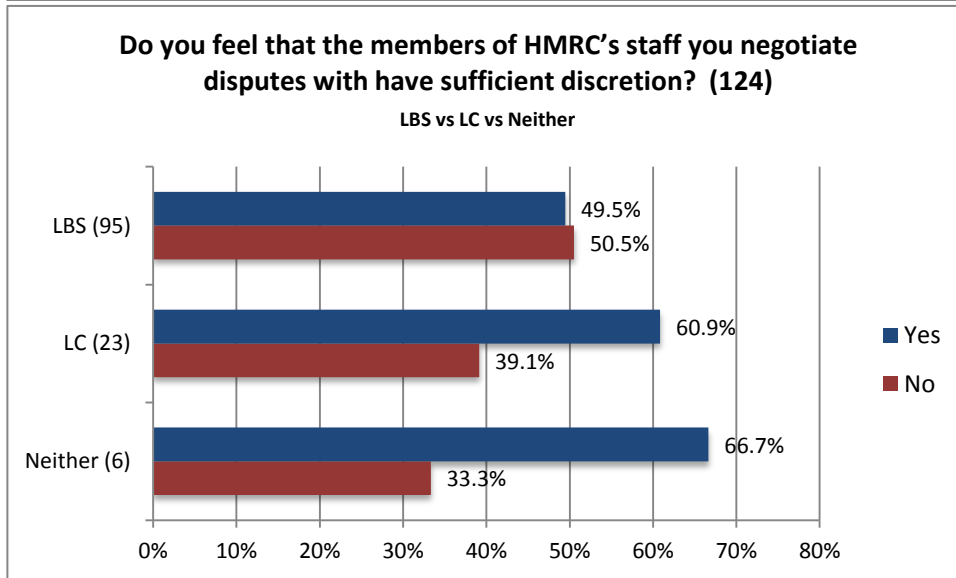
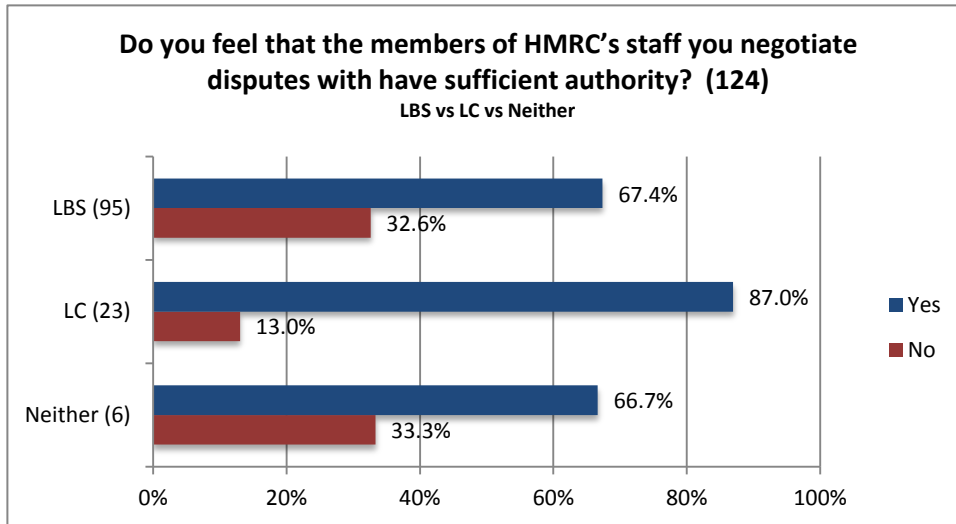




Authority / discretion

Whilst a significant majority reported that the members of HMRC staff they negotiated disputes with had sufficient authority, only half of the respondents reported these staff members had sufficient discretion. LBS respondents were less likely than LC respondents to report that HMRC staff they negotiated with had sufficient authority or discretion. Indeed, only half of the LBS respondents reported that the HMRC they negotiated with had sufficient discretion. Of course this is a subjective view and this is only of concern if it is preventing or delaying settlements that properly should be reached within the objectives of efficient care and management of the tax system. Some lack of discretion is the necessary outcome of a framework intended to control the exercise of discretion. To the extent possible, this was explored further in interviews.





Taxpayer confidentiality

85% of respondents reported that HMRC have respected taxpayer confidentiality during and after negotiations. 12% (16) of respondents reported that HMRC respected taxpayer confidentiality “most of the time” and 2.33% (3) of respondents reported that they did not. Only four respondents left comments in the comment box accompanying the question and three of these comments were by respondents who reported that HMRC respected taxpayer confidentiality “all of the time”. The fourth respondent reported that HMRC have not respected taxpayer confidentiality. The comment explained “a previous leak on a major issue to the press at a previous employer, directly after a meeting.”

This issue was raised with a small number of interviewees who had reported that HMRC do not always respect taxpayer confidentiality. One interviewee said that he might have made an error in ticking that box as he could not think of any example. Another interviewee also wondered if he had ticked the box in error and said that

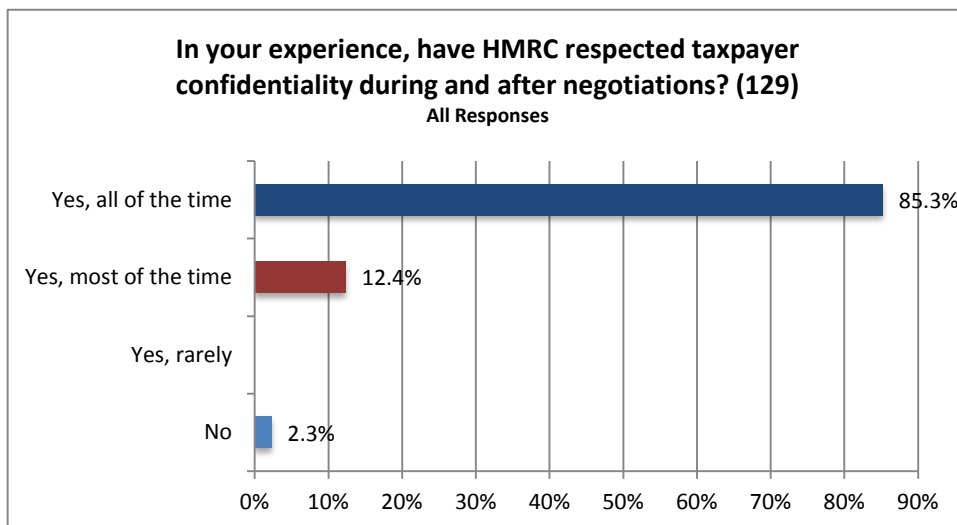
the only instance he could think of was where HMRC approached them with an idea for a customs duty saving saying that others in the industry had used it.

Taxpayer confidentiality was raised during interviews from a different perspective. Some interviewees remarked that HMRC used taxpayer confidentiality in their favour.

Quote 1 “They have always respected confidentiality in negotiations. They will hide behind confidentiality when we ask if they are raising similar issues with other companies – you have to take their word that they are treating other companies consistently.”

Quote 2: “HMRC at times say things which they do not back up. They recently went back on previous indications that we were going to settle on an issue because, they said, another taxpayer had conceded the same issue. We don’t know anyone with similar facts and I actually cannot think of who this might be. Taxpayer confidentiality meant that we couldn’t assess whether the facts were actually similar – it could be a very small player who just didn’t want to litigate or there might have been a very small amount at stake. This works in HMRC’s favour.”

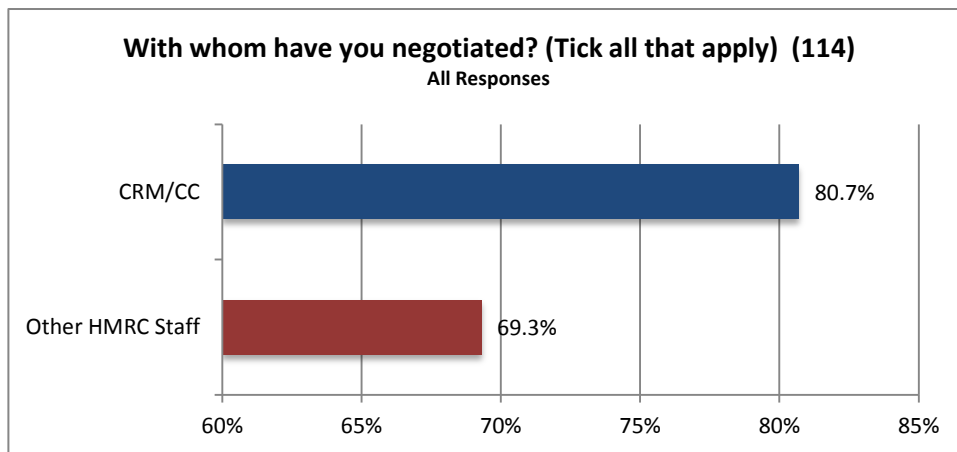
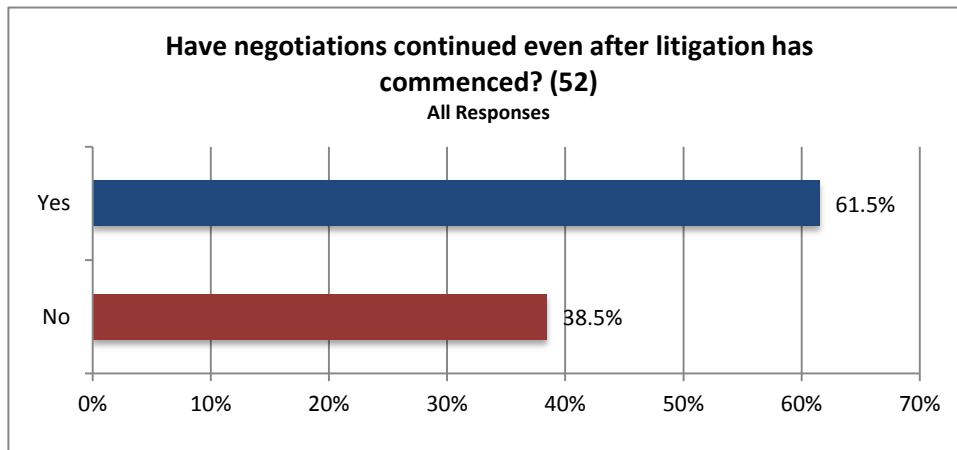
Quote 3: “When we ask them to reach a similar agreement to one they reach with someone else, they often refuse by saying that their facts are different. We can’t check this due to taxpayer confidentiality.”



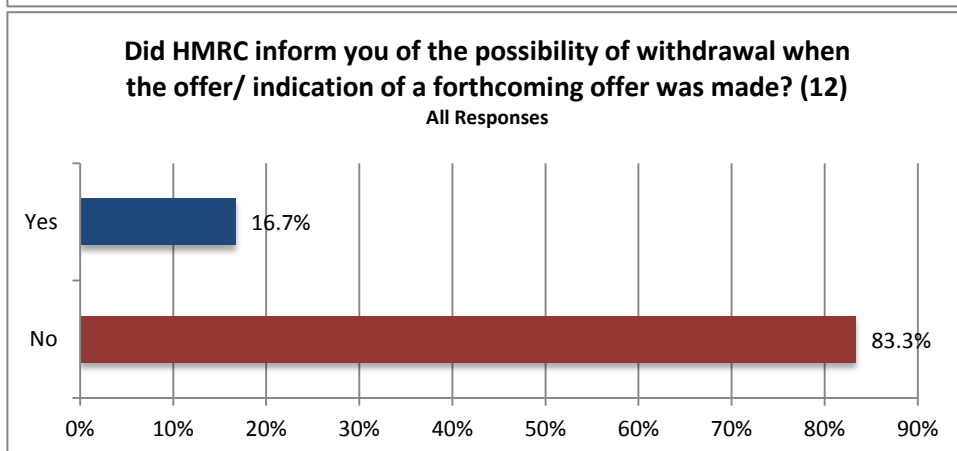
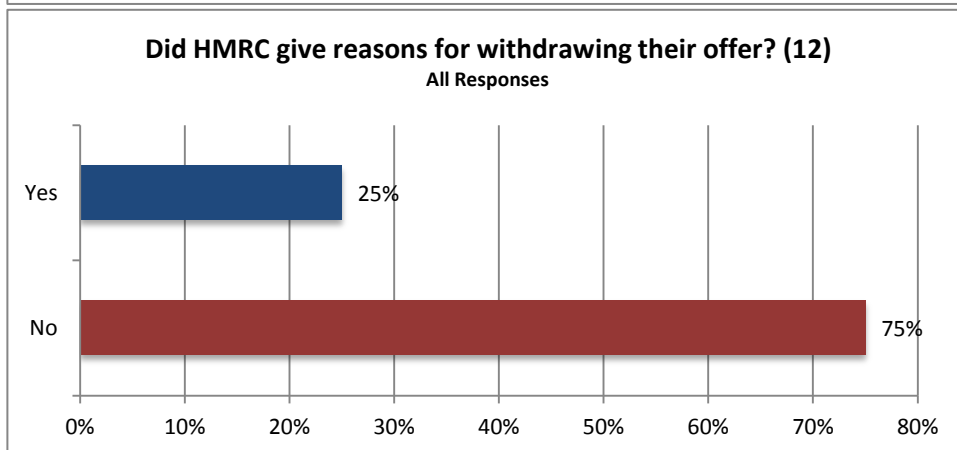
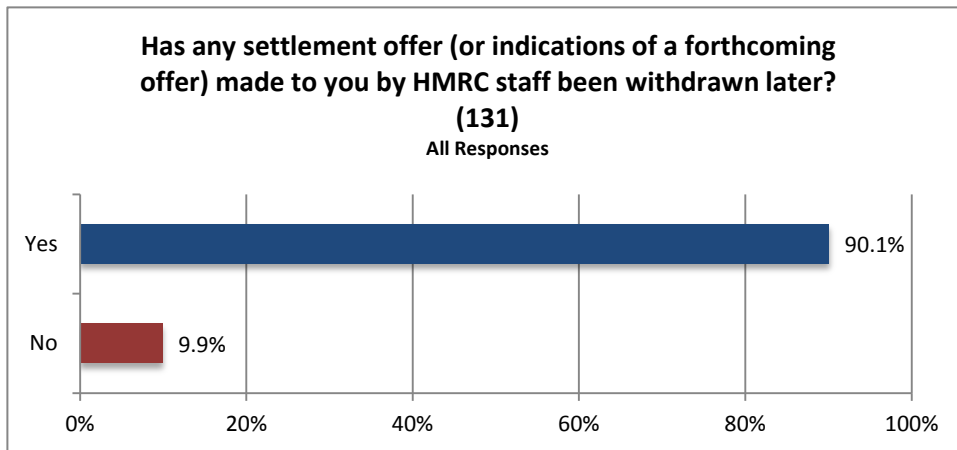
Further insights

A number of questions sought insights into the manner in which negotiations are carried out and offers for settlements are made.

Negotiation

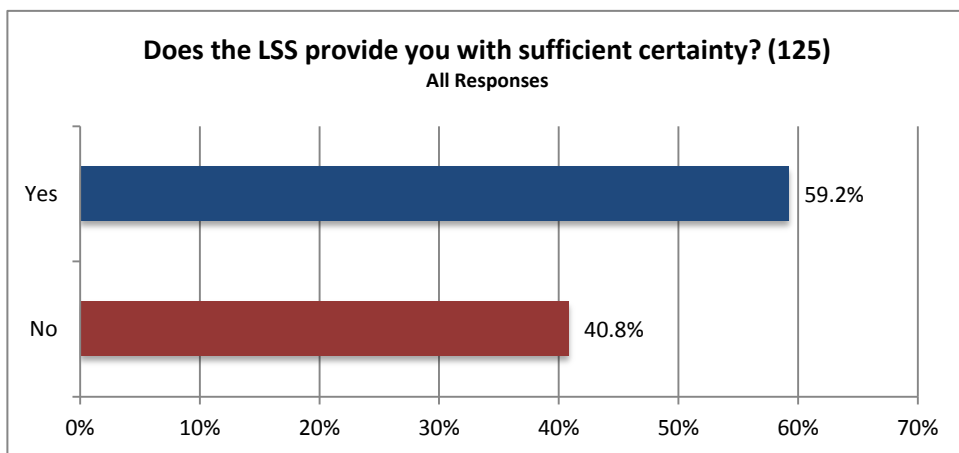
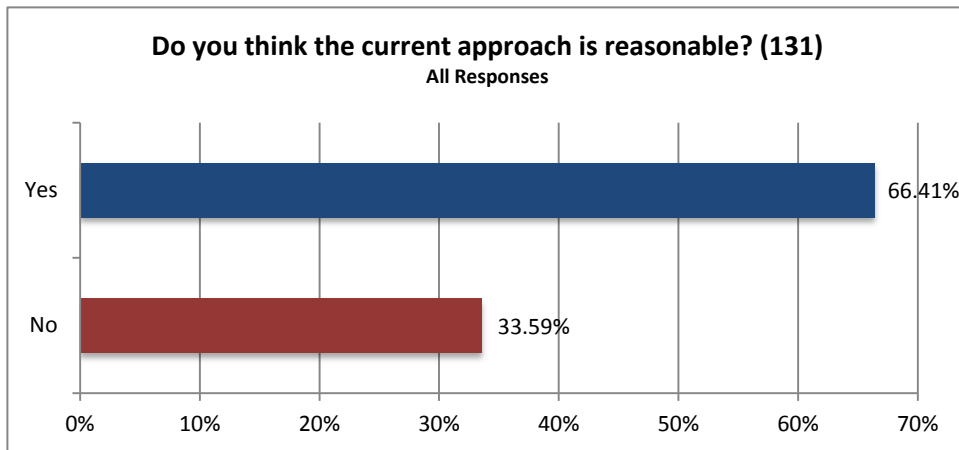


Settlement offers



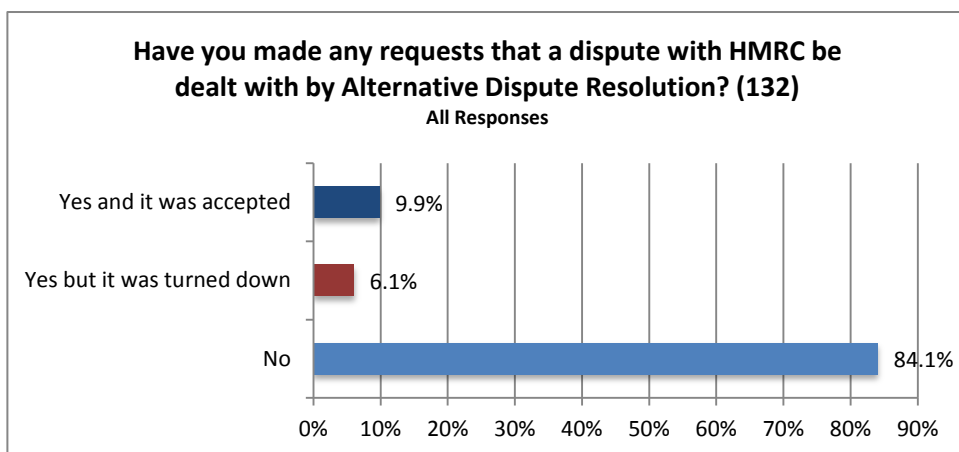
Satisfaction with LSS

A majority of respondents reported a positive view of the LSS. 66% reported that the current approach is reasonable, and 59% reported that it offers certainty. One interviewee who told us it does not lead to sufficient certainty continued that “*that’s the nature of the beast.*”



Alternative Dispute Resolution

The questionnaire briefly explored the newly introduced Alternative Dispute Resolution (ADR) route. 16% of respondents made requests that a dispute with HMRC be dealt with by ADR. In a majority of cases this request was accepted.



These respondents were asked how well HMRC engaged with the ADR process – nine responded and the responses were mixed:

Quote 1: *“This was not a fair test I feel.”*

Quote 2: *“Well in theory but the team lacked the necessary skills at first.”*

Quote 3: *“It took a while, but eventually it worked very well (HRCP process).”*

Quote 4: *“A very helpful process.”*

Quote 5: *“High Risk Corporate Programme ongoing. Engaged well at first but lost momentum. Hard work trying to conclude with so many different stakeholders.”*

Quote 6: *“It ultimately was rejected and due to the amount we decided not to pursue further.”*

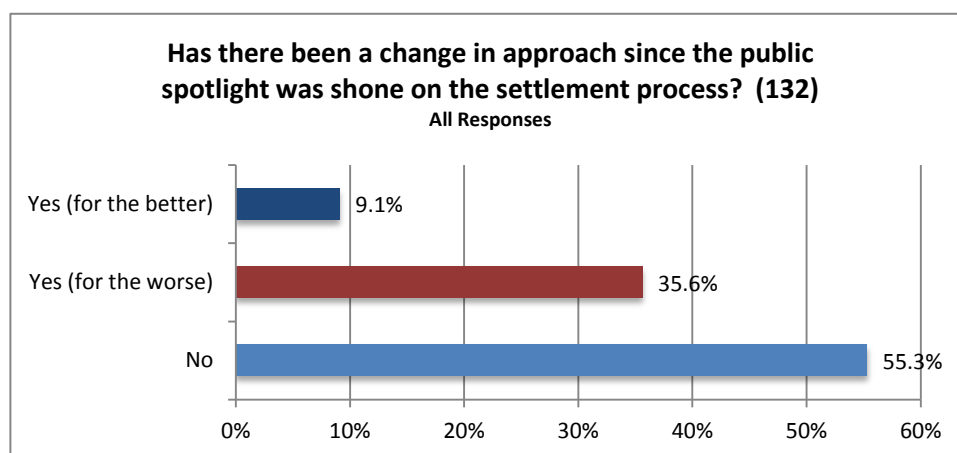
Quote 7: *“Poorly - didn't understand what ADR was about.”*

Quote 8: *“Very well.”*

Quote 9: *“HMRC performed a full technical review and responded in writing - albeit reasserting their position.”*

Impact of recent press/political attention

Mixed responses were given on whether the recent press and political attention given to the settlement process has made a difference. 55% responded that it did not, 9% that it had a positive affect and 36% that it had a negative effect. Some comments suggest that a number of respondents who answered “No” had done so as they had no interaction with HMRC since the attention started.



This issue was explored further during interviews. A number of interviewees explained that they had not had disputes with HMRC since the public and political

attention turned to the settlement process and so could not judge yet. Amongst those who did have disputes the answers were mixed, some reporting no change. The ones who reported a change offered a number of insights: some said HMRC worry about being criticized by the Public Accounts Committee (indeed HMRC staff told them so explicitly) which leads to HMRC adopting a more entrenched position during negotiations thus making it harder to settle. Ultimately, this will lead to more litigation and a congested system. Others said that certain HMRC staff feel emboldened to adopt a more aggressive stance. Positively, most who reported a change in HMRC's approach during dispute negotiation also said that their broader relationship with HMRC has not changed.

Quote 1: "No change in our relationship with HMRC, however, recently in negotiations they have stuck to their guns a bit more than before and they justified this on the basis of 'tax policy'.... HMRC have started to look at issues they have not looked at before. For example they're starting to reference the 'spirit' of the law (from around January 2013). During a meeting last January (2013) they said that a transaction was not within the intention of Parliament/spirit of the law. This had never happened before. This led to a whole wave of new inquiries with less focus on interpreting the law.

Quote 2: "Sensing change. HMRC can't do deals so have to litigate. HMRC feel the only way they can back down is if a court tells them they are wrong. The process then becomes much slower. We had an instance in which we made an offer which our advisors told us was too generous. We spent 18 months discussing this issue with HMRC. HMRC rejected it without giving any reasons – they merely said we don't agree with you technically so no settlement. We and our advisors are still baffled as to why. We think it's because they were scared of being seen to do a deal."

Quote 3: "There's been no effect in our working relationship with HMRC (though we did not have difficult disputes in the past year). ...We haven't had any difficult settlements in the last year, but I've heard from my peers that it has got slightly harder – HMRC are now more concerned about governance and process and are not taking risks which leaves them open to criticism."

Quote 4: "We haven't had any negotiations with HMRC since the spotlight. It's getting out of hand. ... HMRC don't want to be in the press either. They are becoming entrenched: don't want to be seen to be giving in. If we are seen to do something then HMRC are seen to have agreed to it. HMRC is commercial – they don't want unnecessary litigation – it costs a lot and causes delays. HMRC need to collect revenue and they know that litigating delays this. Time will tell if the spotlight will change the nature of the relationship with HMRC. The state of the economy is driving the need for HMRC to settle."

Quote 5: "HMRC brought [the press/parliamentary comment] upon themselves. They made the right changes but there was always a danger they would overstep....[We asked if the "spotlight" has caused a change in their relationship with HMRC e.g. are HMRC staff more cautious now?]. "HMRC are now more aware of the media, they are more aware of the danger of being on the front page of a newspaper, but this has not made a considerable effect in practice. HMRC was generally doing a good

job before and are doing a good job now. That said, perhaps this contributes to specialists not wanting to (or be seen to) “cave in”.

Quote 6: “They are much more aggressive at the moment. They feel that they have public opinion on their side. We feel real increase in pressure in the last 18 months. They are more willing to litigate...In a number of different for a HMRC have said that they feel public pressure. There is a definite feeling of frustration in HMRC about this. In LBS forum HMRC have expressed frustration. HMRC are frustrated with Hodge. They almost say to us that we have to deal with it because of taxpayer confidentiality. HMRC and MNEs are pointing in the same direction. We are in agreement that we have to react to criticism. They are accused of incompetence which must be demoralising. We are being demonised. But I do not think this will create more tension between MNEs and HMRC.”

Quote 7: “We did not get a sense that HMRC was effected by the Goldman Sachs story during [the process of negotiating a number of disputes]. But we’ve only had one contentious issue which we thought might litigate. We spent a lot of time on it and the longer it went on the more we felt HMRC were refining their arguments and hardening their stance. This was at the same time as the media coverage on the Goldman settlement. But there were other factors too – our advisors said that HMRC had initially thought that it was quite an unusual issue, but were increasingly realising that hundreds of companies had done the same thing so there was a lot riding on the issue for HMRC. They didn’t explicitly reference the media coverage.

Quote 8: “HMRC are under pressure from the PAC – they’re having to justify themselves internally and this drives behaviour. Reports have been produced by HMRC which seem to have been written for Ms Hodge.”

Quote 9: “There were instances in which it was alleged that HMRC did not follow procedures (e.g. Goldman) and that has made them more wary of settling anything because they are concerned about being criticised if they settle. But this was a governance, rather than LSS issue - but HMRC staff they think it safer not to settle. This happened over the past 18 months...So HMRC will refuse to settle where 2 years ago they would have settled on the same issue. While new governance procedures have been introduced there has been a vacuum. The issues are stacked up for litigation. Whether they will actually go to litigation or not we have to wait and see... There are waves of HMRC enthusiasm for litigation. At some stage they will say they will litigate, then cases stack up and then 3 years later they take the decision to settle the inevitable backlog and clear it up! I can remember at least 3-4 cycles like this. We’re starting to go back into the settling the backlog phase.”

Quote 10: “Currently, the approach is not reasonable and certainty frustrating: new governance structures not tested yet. There are delays in HMRC providing technical analysis for their reasons. Twice had HMRC staff say – ‘you’ve got to think about how this will play with Margaret Hodge.’ They feel they have less discretion...[Has your relationship with CRMs worsened?] CRMs are worried about Hodge and being accused of striking sweetheart deals. .. Because everyone within HMRC is afraid of being dragged before the PAC and Hodge, nobody is willing to overrule the specialists. Other [tax people] think the same. This will lead to more litigation....There will be more litigation and fewer settlements because HMRC are nervous about how things will be judged. Hodge even reopened individual issues (e.g. PE and transfer

pricing enquiries)...Since the spotlight, HMRC paralysed – they feel that someone's looking over their shoulder. Their decision making has become worse.”

Quote 11: “I have not really had issues post spotlight so I cannot really comment about this. But there has not been a change in approach from HMRC after the spotlight on the issues we have been negotiating.”

Quote 12: “No effect on HMRC. However, they are conscious that deals will be subject to scrutiny.”

Quote 13: “If the relationship got more confrontational as a result of the political climate, this would be bad. But there's no sign of this happening. Officials and ministers are alive to the problem. But HMRC staff are now looking over their shoulders – e.g. in risk rating, they're concerned to make sure they have lots of information on which to make decisions. I have had a whiff of HMRC looking over their shoulders and thinking not “what am I happy with?” but “What would the PAC/NAO want to see?”...There's a risk that this will undermine UK competitiveness. e.g. We're trying to portray ourselves as operating a one-stop shop in which those considering inward investment are able to get a quick decision on how the UK will apply the transfer pricing rules – but that won't work if there's the possibility that it will be 'reviewed' by the PAC.”

Quote 14: “Because of the time we have invested in the relationship, HMRC trust us and so the ‘spotlight’ has not made a difference to our relationship with HMRC”

Quote 15: “[Why has it become harder to settle in the past year?] The publicity, the PAC. The Revenue are like a rabbit in headlights – they don't know what they can/can't do and what level of criticism they'll get. It means that effectively CRMs are emasculated – they don't know if they'll be criticised internally/publicly for trying to make progress...They're very conscious of improving their internal procedures but are keen not to let it impact businesses. But inevitably it does, particularly at junior level. Some are scared to progress matters, or feel emboldened to take more aggressive stances. Harder to get agreement. Often the tax inspector isn't the one who is responsible for pursuing matters through the court – easy to refuse agreement and litigate instead, only to agree at the door of the court once the barristers get involved...CRMs should be more empowered to deliver results for HMRC – need to push a bit harder and be a bit more confident.”

Quote 16: “No change in HMRC stance and tone towards us.”

Quote 17: “HMRC can use confrontational language. ‘We are right and you are wrong’. Might just be my CT inspector. In last year they are less inclined to take our view.”

Quote 18: “I haven't noticed any change in HMRC. But the current debate in the media is appalling. HMRC have done their best to be fair.”

Quote 19: “Since the public/political spotlight, we have less confidence that a deal will be reached. Our relationship with HMRC? They are under attack too, but this has not affected our relationship. They have tightened up and we help each other to defend ourselves.”

Quote 20: *“HMRC has also changed – they have over-reacted to not be seen as cosy with big business. There is a form of paralysis about making decisions where they see difficulties, even if none exist. They will not give detailed views of the law – if you ask for their view of the law, it leaves sufficient uncertainty that you don’t feel 100% confident and comfortable to go along with it. Clearances are now less forthcoming. The PAC played a large part in this. Before the PAC/media spotlight, they were being told to understand business and help reach resolution of tough matters and raise as much tax as possible. They were coming to sensible agreements. We would think we are paying too much and they would think we are paying too little but we both would be ok with it. I can’t think of an example when we turned them over or had them over a barrel. We have even settled when we thought we were 100% right to avoid litigation uncertainty and publicity. Now no-one at HMRC is empowered at the junior level – they just read the manuals. At the senior level it will be passed up to policy who will be formulaic – they won’t try to understand the heart of the issue. They will just look at the letter of the law...The swing from empowerment to obsession with due process leads to paralysis. It is driven by the PAC publicity, UK Uncut litigation etc. Things started to move in the wrong direction 18 months ago. It is bringing back the cops and robbers struggle...It will cost the revenue.”*

Quote 21: *“It hasn’t affected our relationship with HMRC yet, but it’s too early to tell. We don’t have royalty payments in our transfer pricing. They won’t just say ‘we want to re-open your transfer pricing’. At the lower level, most ordinary inspectors are already pretty aggressive anyway.”*

Quote 22: *“I haven’t noticed any change in HMRC’s approach.”*

Quote 23: *“We all mutter sympathetically to each other. They have not become less willing to settle. They will probably become more careful.”*

Quote 24: *“HMRC worry about being called in front of Ms Hodge whenever they reach a settlement. There is definitely a sense of nervousness because of her. They claim they are not but they are being extra-careful about everything.”*

Quote 25: *“I think this is having an effect on HMRC. Just after Starbucks voluntarily paid we were asked by HMRC (CRM and Deputy Commissioner) if we would also make a voluntary payment. On the 1 hand they are under pressure. On the other hand the moralisers in HMRC feel vindicated by the PAC. They keep raising reputational risk with us. They raised it 3 times in a recent conversation, as if we had never thought of it ourselves!”*

Quote 26: *“In the last year the ability to settle got worse – linked to political climate.”*

Accuracy of HMRC portrayal and need for defence

During our interviews discussion on the impact of the recent public attention on corporate tax affairs on the relationship between HMRC and business often led to discussion on related topics. Interviewees frequently commented that the image of HMRC as soft and incompetent painted in the press and by the Public Accounts

Committee was false; that HMRC compared favourably to other revenue authorities around the world; that HMRC should be more robust in its defence and that there was a need to do so to restore public confidence and trust.

Quote 1: *“The HMRC portrayed in the press and by the PAC is not we recognise.”*

Quote 2: *“The picture presented of HMRC is just not true. It should be better at explaining and defending its actions.” “Relationship between HMRC and LBS is grown up. UK tax system is very civilised compared to other countries. The UK and Dutch are reasonable – everywhere else is terrible. US, Italy and Canada are terrible. When they deal with Canada they think ‘the CRM system is great!’”*

Quote 3: *“There is a need to restore public confidence in the tax regime and how it is managed by HMRC...HMRC are going a good job. They're not soft on business. But trust has to be restored. PAC has sullied the environment in which the debate is being carried out.”*

Quote 4: *“HMRC are not soft.”*

Quote 5: *“HMRC have always been robust. Sometimes too robust – continually asking for more information and delaying things.”*

Quote 6: *“HMRC, business and the Big 4 have not been as robust and have not been allowed to be as robust (by the harrying approach to questioning by Hodge) as they ought to be.”*

Quote 7: *“Most tax practitioners don't recognise “sweetheart deals” as part of HMRC practice. HMRC need to be more robust in their own defence. They must explain that they do get things wrong once in a while but that generally they do a good job. The HMRC ‘poodle’ portrayed in the press and the PAC is not an HMRC we recognise. Hiding behind taxpayer confidentiality doesn't work. Neither does publishing short summaries of the rules. They should talk through their scrutiny processes, and repeat often. M Hodge repeats the same thing over and over again and the tax community should do the same in response...There is a danger that corporates just withdraw their cooperation and they just go back to the old adversarial system.”*

Quote 8: *“HMRC are not soft. HMRC are happy to argue any point till red in the face. They can dig their heels in.”*

Quote 9: *“The media is really very dangerous. Margaret Hodge has been incredibly bad for Britain. She has made companies look corrupt and HMRC inefficient. Neither is true. I am not sure how HMRC keep their staff despite the criticism they face and their low pay. I am surprised Lin Homer doesn't just walk away...The UK has become a very good place to locate, but companies must be asking whether it makes sense to come here if they might be dragged through the mud by Hodge... HMRC compare extremely favourably to other revenue authorities. They are far ahead of most other authorities, save for a few, such as the Netherlands.”*

Quote 10: *“HMRC do the best job they can and get attacked needlessly. It is reasonable to make settlements which save money and time. People used to be terrified of Dave Hartnett.... Most would cross the street to avoid him.”*

Quote 12: *“HMRC need to explain that the changes they made [co-operative compliance and settlements] have led to more tax being collected, old issues resolved which had been tying down resources for years. One or two anomalous cases have given the outside world the wrong view. People think that large businesses pull the wool over HMRC’s eyes but that is false. Same with transfer pricing – most TP issues are dealt with well.”*

Quote 13: *“I haven’t noticed any change in HMRC. But the current debate in the media is appalling. HMRC have done their best to be fair.”*

Impact on internal profile of tax

A number of interviewees also commented on the impact of the increased public attention on the internal profile of tax. Some interviewees explained that it had increased their board’s interest in tax matters, however a few explained that it had made no such difference. Interviewees from both groups explained that it had made a difference to how they communicated or prepared themselves to communicate about tax to the outside world.

Quote 1: *“The spotlight has no effect on how the board see tax. They are in a lot of contact with me so are well briefed. No change.”*

Quote 2: *“No effect on the board but they were involved in tax anyway.”*

Quote 3: *“..if I asked [the board] I’d expect them to say that we shouldn’t reduce our planning, but we need to be prepared for the spotlight falling on us and consider how we will react if it does....The board are more aware of tax and concerned about reputational risk. But this may not mean that they are willing to plan less and pay more tax.”*

Quote 4: *“The board are now more concerned about the profile of tax. I spend more time now speaking to the board and to its members individually. It is something we are aware of – how far do we want to pursue something if it will end up on the front page of the Guardian. We are of public and media interest because we get many government contracts.”*

Quote 5: *“Not much impact on [the board] but now there is consciousness of tax among our PR and investor relations people which was not there 18 months/2 years ago.”*

Quote 6: *“The board are now more cautious – they asked me why no contrived schemes had come to their attention – I told them that it was because I hadn’t brought them to them!”*

Quote 7: *“It’s required a huge increase in the amount of [our] public engagement. The tax director now has to engage with the media relations team. The nature of the tax department’s conversation with the audit committee/board has changed because, along with the internal consideration of tax policy, you’re also focused on public perception and misrepresentation.”*

Quote 8: *“It is having an effect within the company since tax is now more of a boardroom issue.”*

Quote 9: *“We don’t want bad publicity – that would be damaging from a reputational perspective - and have briefed our CFO and CEO in case they are called to the PAC. There’s a risk that suppliers would refuse to deal with us and so might buyers if we had embarrassing publicity.”*

Quote 10: *“The board are more interested. They are keen on understanding reputational risks.”*

Quote 11: *“Our CFO was always interested in tax. However, the profile of tax within the company has changed in that more people are interested. PR departments are more switched on about it.”*

Quote 12: *“Has the internal profile of tax been affected? Yes, but not because of the PAC. We have had more questions internally. We have quarterly internal briefings in which we’ve been asked about avoidance. The Board asked questions but this is part of general governance.”*

Quote 13: *“PAC has increased the profile of tax within the company. It is an issue you need to be concerned about but I am not sure what you can do about it.”*

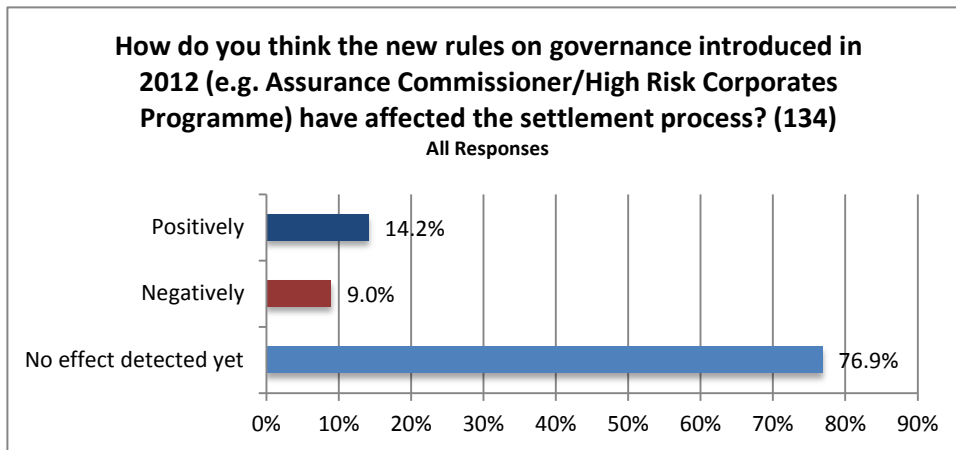
Quote 14: *“We’re now more concerned – we always had a policy of not doing things we would not like to see on the front page of the Financial Times, but now we ask whether we’d be happy defending it in the PAC. But often people look bad defending the fact that they’ve incurred capital expenditure etc., so it may not matter what you do any more.”*

This last comment shows how over inclusive attacks by the media and parliament might be counterproductive.

Oversight

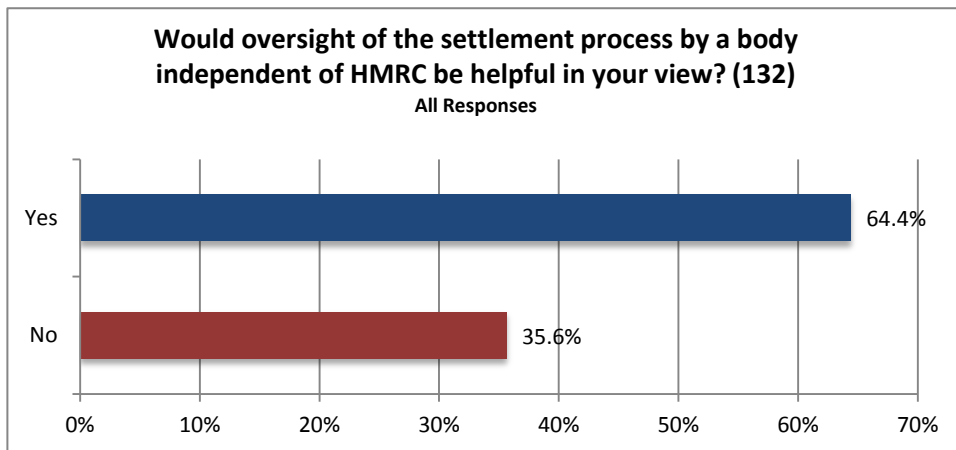
New rules of governance

A considerable majority of respondents reported not having detected an effect of the new rules of governance on the settlement process. This was to be expected given that at the time the questionnaire was sent out these processes had just been introduced.



Further oversight

64% of respondents favoured oversight of the settlement process by a body independent of HMRC.



Views amongst interviewees were mixed, thus allowing us to explore the reasons behind favourable and unfavourable positions on this issue. Reasons for favouring independent oversight included that this might be necessary to restore public confidence, it would be preferable to the current ‘oversight’ exercised by the PAC and it might stop rogue behaviour. Reasons for opposing independent oversight included that it would be hard to preserve anonymity, it would make settlements harder to reach and that new governance arrangements had already been introduced thus obviating the need for further oversight. Some interviewees who opposed this suggestion also pointed out that independent oversight would not make a difference since activists would not be appeased in this way, and, indeed, they had ignored the conclusions of Andrew Park’s review. Interviewees from both camps pointed out the potential difficulties in identifying the right individuals to carry out the oversight.

Quote 1: “[What do you think of periodic review of randomly sampled settlements a la Park?] *Behind each settlement there is stuff that doesn't get into the final papers. It will also be hard to keep anonymity – see the Park report.*”

Quote 2: *“The premise (public concern over settlements) may be flawed – I’m not sure if there is public distrust – there have been statements by politicians and stories in the media, but that might just be because they smell an interesting story. It will be interesting to see whether the PAC stops talking about it when Hodge leaves...Independent review is already being conducted by the assurance commissioner. External review risks creating a situation where settlements are harder – even for tax directors – Park J said that one taxpayer had paid too much! I wouldn’t like to be that taxpayer. It’ll be even worse in HMRC...There aren’t many people like Andrew Park. Even amongst the judges, a lot of nonsense is said.”*

Quote 4: *“Should we have someone like Park J sample some settlements? That's what he did, and his message was completely ignored! But no problem with this idea in principle – wouldn't mind having out settlements being reviewed by Andrew Park. I am not against this idea as long as it is done by people who know about tax...There is a need to restore public confidence in the tax regime and how it is managed by HMRC.”*

Quote 5: *“The QA Commissioner provides sufficient oversight. Otherwise you can create a monster.”*

Quote 6: *“HMRC do this already. Troup is not involved in negotiations, so is independent. Getting settlements will be more difficult.”*

Quote 7: *“New governance structure should satisfy people who matter and logically should satisfy everyone. But won’t change views of people who don’t like any settlements. This is therefore an intractable problem. Extra review is not needed.”*

Quote 8: *“We need something to replace Hodge- oversight with a better structure. HMRC staff feel lost and frustrated. They have been castrated. The oversight board could be composed of people who act like non-executive Commissioners.”*

Quote 9: *“Independent review might stop ‘rogue’ behaviour.”*

Quote 10: *“Not necessary. It is always easier for activists, the media and politicians to focus on the big numbers like £6 bn in the Vodafone case rather than the details. Nobody cared that Park said the Vodafone case was reasonable. The activists didn’t care about that so this would not make a difference to them. Independent review would just slow this down and introduce more bureaucracy.”*

Quote 11: *“Not if the reviewer could undo the settlement – too uncertain. Otherwise OK, but we already have review by the commissioners.”*

Quote 12: *“Might help but there are difficulties. Would it be independent? Who would select panel? Would they feel under pressure to find things not to be ok?”*

Quote 13: *“Can't see a downside of independent review...”*

Quote 14: *“It wouldn’t restore public trust. This used to be the job of the HMRC board, who had a good reputation for impartiality. That would be far better.”*