The key findings are set out below:

- Many corporates now have a lower appetite for tax risk. 57% of respondents said that the most important factor driving the change in their approach was the risk of increased scrutiny from HMRC, with 38% attributing their change in appetite to concerns over reputational risk.
- Taxpayers are concerned about the increasingly interventionist approach of HMRC, with 67% of respondents saying that the increase in tax regulation has had a significant impact on their businesses. The practical consequences are that corporate taxpayers are allocating more resource and incurring more expenditure in dealing with tax risk and disputes, including through seeking professional advice.
- Delay on the part of HMRC is a major issue facing taxpayers involved in tax disputes, with 67% of respondents saying they have experienced delays in resolving disputes with HMRC. Respondents believe that such delays have been caused by a range of factors, including: lack of resource at HMRC; change in personnel; and a failure on the part of HMRC to understand the facts in dispute. However, in many cases HMRC has not provided any explanation for the delay. This was identified as a major problem in the House of Lords Economic Affairs Committee Report, *The powers of HMRC: treating taxpayers fairly*, and formed one of the bases on which the Committee concluded that the balance of power had tipped too far in favour of HMRC. In the current climate, it is not clear how or when these delays will start to reduce.
- Where applicable, we asked respondents to evaluate their relationships with their CCMs. While the relationship between large corporates and their CCMs is generally positive, as CCMs generally facilitate an open chain of communication, a common theme is that CCMs have their limitations as they do not have the authority to make decisions.
- 50% of respondents said that the number of enquiries raised by HMRC has increased over the past few years. Such enquiries relate to a wide range of taxes, particularly corporation tax and VAT. Going forwards, the number of enquiries into transfer pricing and diverted profits tax is expected to rise.
- Given concerns over reputational risk, and the inherent uncertainty involved in litigating, 57% of respondents said that they will always seek resolution by agreement with HMRC. 33% of respondents said that they would only litigate in exceptional circumstances.
- Achieving settlements with HMRC is likely to remain difficult given the government's target for collecting an additional £2bn by 2023/24. In practice, 39% of respondents have found the main challenge to achieving resolution is that HMRC becomes entrenched in its technical position. The main obstacle for 27% of respondents was that HMRC did not understand the factual or commercial background to the transactions in dispute.

Overall, two of the key themes which emerge from the survey are that relationships between corporates and HMRC could be improved were HMRC to engage more collaboratively and at an earlier stage in an enquiry, and if delays in resolution were minimised, so as to allow certainty and finality for taxpayers. ■

Kate Ison (kate.ison@bclplaw.com) & Jessica Hocking (jessica.hocking@bclplaw.com), Bryan Cave Leighton Paisner

Non-residents CGT returns

Is it possible that this unhappy episode could be coming to a conclusion?

It will be remembered that non-residents must file a non-residents capital gains tax (NRCGT) return within 30 days of completion of the sale of a UK residential property, even where there is a loss, and penalties have routinely been imposed by HMRC for failure to do so. This has given rise to a degree of dissatisfaction – and appeals to the tribunal.

Some tribunal judges have taken a firm view that being unaware of the requirement to submit a NRCGT return within the 30 day period can (in appropriate circumstances) represent a reasonable excuse.

HMRC has argued that there can be no reasonable excuse because:

- non-residents have a duty to stay up to date with UK legislation;
- ignorance of the law is no excuse; and
- the obligation to file the NRCGT return is neither obscure nor complex.

One judge rejected these arguments as 'claptrap' and 'preposterous' – even pointing to the fact that HMRC explained the requirements incorrectly in its published materials, which rather supported the suggestion that the law must be obscure or complex if HMRC itself did not get it right.

On the other hand, another group of tribunal judges have taken the opposing view that ignorance of the law is no excuse and that failure to adhere to these statutory obligations inevitably gives rise to a penalty.

To have such judicial inconsistency cannot be good. (It resonates a bit with the length of the chancellor's foot – and that was not good either.)

The latest case of *Kirsopp v HMRC* [2019] UKFTT 217 might be thought to be just another in the increasing catalogue of conflicting decisions, creating yet further discontent… but perhaps not. This case might just bring the debate to a close.

The distinguished Upper Tribunal judge Charles Hellier (sitting in the FTT for this case) brought his authority to bear on this subject. He explained that there was a divergence of opinion among FTT judges on the matter. He drew attention to the decision of the Upper Tribunal in *Perrin v HMRC* [2018] UKUT 156, which held that it was a matter for the judgment of the FTT in each case to determine whether it was objectively reasonable for the particular taxpayer to have been ignorant of the requirements in question.

Judge Hellier specifically rejected HMRC's argument that a taxpayer has an obligation to keep up to date with the law. He held that there is no such obligation. A penalty may arise from an inexcusable breach of the law, but not from the failure to keep up to date.

Kirsopp might just bring the debate to a close

In the circumstances of Mr and Mrs Kirsopp, Judge Hellier concluded that they had displayed a reasonable regard to complying with their tax obligations and remedied their failure within a reasonable time after they discovered the true position. They therefore had a reasonable excuse.

I would respectfully suggest that this must be right. It surely cannot be reasonable for HMRC to suggest that non-resident individuals have a duty to keep up to date with all aspects of UK tax legislation which could possibly affect them – and must regularly read all HMRC publications and be completely familiar with its website. It would follow from this reasoning that everybody in the world must have this duty. And why should this obligation not extend to all UK legislation – not just tax.

Can you imagine what the chairman of HMRC might say if he went to Sweden and was immediately fined a large sum of money by the authorities there? Why have I been fined? Because you have contravened one of our rules. You have a duty to be up to date with Swedish law (and with all the materials published by the government – all in Swedish), so pay up. But that is just silly, he would say. Well, yes. ■

Peter Vaines, Field Court Tax Chambers (pv@fieldtax.com)