

RESOLVING TAX DISPUTES

COMMENTARY ON THE LITIGATION AND SETTLEMENT STRATEGY

Comments on this guidance and its use should be addressed to:

HMRC Dispute Resolution Unit

Dispute.resolution@hmrc.gsi.gov.uk

Please note that we cannot guarantee the security of emails you send to us or we send to you over the internet. Information sent by email over the internet is not secure and is at risk of being intercepted and read by people other than those it was intended for. Any information you send to us by email is at your own risk.

If you have any doubt about the authenticity of an email you receive which claims to come from HMRC please do not follow any links within the email, disclose any personal details or respond to it. Forward it to us at: phishing@hmrc.gsi.gov.uk

Summary of acronyms used in this guidance

AAB	Anti-Avoidance Board
ADR	Alternative Dispute Resolution
BTCIP	Business Tax Contentious Issues Panel
CDR	Collaborative Dispute Resolution
CRM	Customer Relationship Manager
CTIAA	Corporation Tax, International and Anti-Avoidance
FA	Finance Act
HMRC	Her Majesty's Revenue and Customs
HRCIP	High Risk Corporate Programme
LBS	Large Business Service
LLP	Limited Liability Partnership
LPP	Legal Professional Privilege
LSS	Litigation and Settlement Strategy
MCRP	Managing Complex Risks Programme
NICs	National Insurance Contributions
PAYE	Pay as You Earn
PTCIP	Personal Tax Contentious Issues Panel
SAO	Senior Accounting Officer
TPB	Transfer Pricing Board
TPP	Transfer Pricing Panel
VAT	Value Added Tax

RESOLVING TAX DISPUTES

PRACTICAL GUIDANCE FOR HMRC STAFF ON THE LITIGATION AND SETTLEMENT STRATEGY

Contents

Section	LSS para	Sub sections	Page
1. Introduction	-	Using this guidance Background Why tax disputes arise A framework for fair and even-handed resolution of tax disputes	4 4 6 6
2. Scope and purpose	1 2 3 4 5 6	Tax disputes resolved through civil procedures Tax disputes to be resolved consistently with the law Refresh to 2007 LSS guidance Definition of 'tax' Definition of 'dispute' Definition of 'litigation' Responsibility for decision making HMRC governance for significant tax disputes or issues	7 7 7 7 8 8 9 11
3. Minimising the scope for disputes	7		14
4. Engaging in disputes	8	Role of disputes in supporting tax compliance Deciding which disputes to take up How does a risk-based approach fit with the principle of agreeing the right tax at the right time? How does a risk-based approach fit with 'relentlessly pursuing those who bend or break the rules'?	15 15 15 16
5. Handling disputes	9 10 11	What is 'collaborative working'? What are the benefits of collaborative working? Is a collaborative approach to dispute resolution always possible / appropriate? Fostering a non-confrontational approach Articulating the points in dispute Agreeing timescales Impact of statutory time limits Should reasons be given with closure notices? Continuing collaboration in a litigation Possibility of criminal investigations Establishing and understanding the relevant facts Establishing facts as quickly and efficiently as possible	17 18 18 19 19 19 20 20 20 20 21 21 22

		<i>A best practice approach to establishing facts</i>	23
		<i>Verifying that all relevant information has been provided and that tax planning / avoidance transactions have been implemented as suggested</i>	24
	12	<i>Specialist advice</i>	24
	13	<i>Sharing and testing views / arguments</i>	25
		<i>Legal Professional Privilege</i>	27
	14	<i>'All or nothing' issues</i>	28
	15	<i>Working disputes to the same professional standard, however resolved</i>	29
		<i>Conceding non-worthwhile cases</i>	30
6. Resolving disputes	16	<i>Disputes must be resolved in accordance with the law</i>	31
		<i>The way dispute resolution is put into effect must also be in accordance with the law</i>	31
		<i>No package deals</i>	32
		<i>Alternative Dispute Resolution</i>	33
	17	<i>Disputes where there may be a range of possible figures for tax due</i>	33
		<i>Securing the right tax most efficiently</i>	34
		<i>Potential for litigation</i>	34
	18	<i>Genuinely all or nothing disputes</i>	35
		<i>What if HMRC believes it is likely to succeed?</i>	35
		<i>Full settlement</i>	35
		<i>Expeditious resolution</i>	35
		<i>What if HMRC believes it is unlikely to succeed?</i>	35
		<i>Splitting the difference</i>	36
	19	<i>Handling of cases in litigation</i>	36
Annex 1	-	Litigation and Settlement Strategy	37
Annex 2	6	Summary of HMRC governance processes	42
Annex 3	9	Examples of the potential benefits of adopting a CDR approach	43
Annex 4	11	Template for a timetable in large and / or complex cases	44
Annex 5	11	Outline of a best practice approach to fact finding in large and / or complex cases where both HMRC and the customer are working collaboratively	45

1. Introduction

Using this guidance

This is practical guidance for HMRC staff on the application of the Litigation and Settlement Strategy. It is designed to provide context and background to the LSS. It can also be used for reference when considering individual paragraphs of the LSS, which means there is inevitably some repetition to allow the guidance on individual paragraphs to stand alone.

The guidance applies across HMRC but does not aim to be comprehensive nor will every element of it be applicable in every case. For example, special considerations might apply to the resolution of disputes involving NICs, where a dispute may affect a customer's contributory record as well as the amount of contributions payable, one involving PAYE, where the outcome of a dispute may impact on an employee's tax liability, VAT, where the outcome may affect other customers in the supply chain, and so on. Similarly, there will be tailored guidance or Standard Operating Procedures applicable to processes in particular Lines of Business.

This guidance should therefore be read alongside other more detailed operational and policy guidance which is also available.

Background

The Litigation and Settlement Strategy (LSS) – [Annex 1](#) – sets out the principles within which HMRC handles all tax disputes subject to civil law procedures. This includes most of HMRC's compliance activity.

The LSS encourages HMRC staff to:

- Minimise the scope for disputes and seek non-confrontational solutions;
- Base case selection and handling on what best closes the tax gap;
- Resolve tax disputes consistently with HMRC's considered view of the law;
- Subject to that, handle and resolve disputes cost effectively – based on the wider impact or value of cases across the tax system and across HMRC's customer base;
- Ensure that the revenue flows potentially involved make any dispute worthwhile;
- (in strong cases) settle for the full amount HMRC believes the Tribunal or Courts would determine, or otherwise litigate;
- (in 'all or nothing' cases) not split the difference;
- (in weak or non-worthwhile cases) concede rather than pursue.

The LSS reflects all three of HMRC's key strategic objectives (see http://intranet.active.hmrci/sda/content/customer_strategy/customer_centric.htm) by considering:

- the overall effectiveness of disputes handling (to maximise revenue flows);
- how to reduce the scope for disputes arising and settle those that do arise as quickly and efficiently as possible (to improve customer experience); and
- the efficiency of disputes handling (to reduce costs).

The two key elements of HMRC's approach to tax disputes are:

- i. supporting customers to get their tax right first time, so preventing a dispute arising in the first place; and
- ii. resolving those disputes which do arise in a way which establishes the right tax due at the least cost to HMRC and to its customers, which in most cases will involve working collaboratively.

Resolving disputes 'cost effectively' does not mean HMRC making compromises on what it believes to be the right tax liability consistent with the law. It means securing the right tax liability consistent with the law, fairly and even-handedly across all taxpayers, in a way which minimises unnecessary costs. This means that the concept of cost-effective dispute resolution in this guidance may be different from the generally understood concept of cost-effective resolution of a purely commercial dispute.

The following factors are likely to be relevant to HMRC's consideration of what may or may not be 'cost effective' in relation to the resolution of a particular tax dispute:

- The potential tax at stake in the current year(s), as well as any prior or future years, for that particular customer;
- The potential tax at stake in any year(s) for other customers (including the wider impact of any HMRC intervention, such as through behavioural responses);
- An assessment of the potential impact/ effort or cost/ benefit analysis of the different ways of taking forward the dispute (or not taking forward the dispute);
- Strength of HMRC's view;
- Overall assessment of whether taking a particular course of action (e.g. litigation) is likely to be a better use of HMRC's resources than taking forward other activity which might otherwise be undertaken (likely to be relevant to governance bodies or Directors and Director Generals).

The LSS covers the whole life cycle of a dispute and therefore applies from the very beginning of any compliance activity. In many cases, the nature of the approach taken and the extent to which the parties work together can significantly influence the overall efficiency and effectiveness of HMRC's compliance activity.

The LSS was introduced in 2007 and was refreshed in July 2011. The refreshed LSS is supported by this guidance which is organised around the main headings of the LSS, and aims – in the following sections – to explain in more detail the main elements of HMRC's approach to tax dispute resolution.

Why tax disputes arise

There will often be differences between HMRC and its customers over what is the right amount of tax due or when the tax is due. HMRC compliance activity such as risk working, compliance checks, responding to a clearance application, etc, are all examples of activity that may result in disagreements which need to be resolved in order to establish what is the right tax due or when it is due.

Some of the main reasons why disputes become entrenched are because:

- a) the parties have not established or fully understood the relevant facts;
- b) one or both party(ies) have made assumptions about particular facts;
- c) there are differences of opinion between the parties about how the law applies to the relevant facts; or
- d) the parties have not discussed or fully understood their respective positions.

A framework for fair and even-handed resolution of tax disputes

Effective handling and resolution of tax disputes helps to maximise revenue flows both in ensuring that the right tax is established in particular cases, and in acting to protect the tax base and to deter non-compliance and avoidance across HMRC's customer base.

However, a dispute inevitably involves costs for both HMRC and the customer and can be very expensive, both in terms of resources and legal fees. Minimising the scope for disputes, and reducing the costs to HMRC of resolving disputes is likely also to reduce customer costs, improving the customer's experience and making the UK a better place to work and do business.

In resolving those tax disputes which do arise in a way which establishes the right tax due at the least cost to HMRC and to its customers, HMRC also needs to apply the law fairly and even-handedly. Line management procedures, processes for risk working and compliance checks in Lines of Business, and cross-HMRC governance arrangements such as the High Risk Corporates Programme Board or Counter Avoidance Group all support a fair and even-handed approach to tax dispute resolution. But to do this they need a single framework for how tax disputes are to be handled and resolved which applies consistently across HMRC – this is the Litigation and Settlement Strategy.

Status of this guidance

Where there remains any doubt as to the application of the LSS of this guidance you should rely on the wording of the LSS.

2. Scope and purpose (paragraphs 1-6)

Paragraph 1

Tax disputes resolved through civil procedures

The LSS applies only to tax disputes to be resolved through civil procedures - it does not apply to criminal prosecution cases. Guidance on HMRC's handling of criminal prosecutions cases is set out in the Enforcement Handbook (available for HMRC staff http://bus2.hmce.gov.uk/strategy/Enfh/enfh_index.shtml).

Tax disputes to be resolved consistently with the law

The LSS cannot set aside the law, and for the avoidance of any doubt it makes clear that the outcome of a tax dispute, when achieved by agreement with the customer, must be consistent with the law.

The law provides a statutory basis for tax appeals to the Tribunal to be determined by agreement between HMRC and the customer – notably s54 Taxes Management Act 1970 for direct taxes and s85 Value Added Tax Act 1994 for indirect taxes.

For cases settled out of court, the LSS makes it clear that settlement terms, in every case, must be fully consistent with the law. This applies both to the amount of tax agreed to be due, and to the rationale in law as to why that tax is due.

At the simplest level, for example, if HMRC believes that the law requires Income Tax of £125,000 to be due, and not Income Tax of £100,000, it cannot settle for Income Tax of £100,000. Similarly, if HMRC believes that the law gives entitlement to relief for a Capital Gains Tax loss of £300,000, and not for an Income Tax loss of £300,000, it cannot settle on the basis that relief for an Income Tax loss of £300,000 is due.

Where discretion is properly exercised under the Commissioners for HMRC's legal powers of collection and management not to pursue an amount of tax, then the outcome is consistent with the law (see guidance set out in relation to LSS paragraph 16). The scope of this discretion is described in the Admin Law Manual [here](#).

Paragraph 2

Refresh to 2007 LSS guidance

The 2007 guidance has been updated in the light of developments in the Courts and Tribunals, to align the language more closely with HMRC's Vision, Purpose and Way and Customer-centric Business Strategy, and to reflect changes in the way HMRC is organised as well as HMRC's experience in effective and efficient tax dispute resolution, including opportunities for use of [Alternative Dispute Resolution](#) (please follow link for further guidance).

Paragraph 3

Definition of 'tax'

The term 'tax' in the LSS is used as a short-hand for all taxes, duties, and associated payments administered by HMRC. The principles of the LSS therefore cover all

disputes over substantive tax liabilities, interest and penalties, with the exception of cases handled via criminal proceedings.

Paragraph 4

Definition of 'dispute'

A 'dispute' is generally defined as a 'disagreement' or 'argument'. This clearly goes wider than issues which are in a formal dispute process, such as litigation, and covers all situations in which there is not yet agreement over a substantive tax issue and the parties are engaged in pursuing a difference in view or opinion.

In the context of HMRC's work, it is often difficult, if not impossible, to specify at what moment an enquiry (whether raised by HMRC or by a customer or agent) spills over into a difference in view or opinion, and it is easier to distinguish instead between areas on which there is agreement and areas on which there is not (or not yet) agreement.

For the purposes of this guidance, 'dispute' is defined as including all areas of non-agreement between HMRC and a customer or their agent over a substantive tax liability, where that non-agreement has been raised through an enquiry from either side, including pre-transaction or pre-return clearances work, through a challenge made by HMRC to a customer, or through a challenge made to HMRC by a customer where HMRC has decided to take up or respond to the challenge. This means that in relation to disputes subject to civil law procedures, the definition covers compliance activity from start to finish.

Although this is clearly a broader definition than the generally accepted interpretation of 'dispute', it has the advantage of positively encouraging the reaching of agreement between HMRC and customers at all stages in the determination of tax liabilities, and not just once non-agreement has crystallised into definitely opposing positions being adopted by either side.

Paragraph 4 makes clear that a 'dispute' should be interpreted throughout the guidance as covering each distinct issue on which there is non-agreement. So in a single case, or for a single tax return, there may be a number of disputes. This is to ensure that each issue in dispute should be considered on its own merits, and resolved in accordance with the law, rather than allowing multiple issues to be traded off against each other in a package deal (see further guidance on LSS [paragraph 16](#) below).

Please note that reference in this guidance to a customer should wherever appropriate be taken as including also the customer's agent.

Paragraph 5

Definition of 'litigation'

Litigation is a subset of dispute resolution work, and refers to the taking of tax appeals or other areas of dispute through a formal judicial process, involving the Tribunals and the Courts. This does not include statutory internal reviews or ADR procedures.

Further HMRC guidance on litigation and rights of appeal, judicial review and statutory internal reviews can be found in the Appeals, Reviews and Tribunals Guidance (see [here](#)).

Paragraph 6

Responsibility for decision making

The LSS is a statement of HMRC's strategy for handling tax disputes, consistent with the law and with HMRC's key objectives, and therefore the LSS applies to the handling of all tax disputes across the department.

The LSS applies as much to the resolution of a dispute over a small business customer's taxable profit or turnover as it does to the resolution of a complex tax avoidance transaction involving a multinational corporation or wealthy individual. It applies whether the dispute is being considered by the Commissioners for HMRC or in a local office. And it applies whether or not there are formal governance procedures in place to assist in reaching decisions on the handling of a particular dispute.

Paragraph 6 refers to 'decisions taken by HMRC' in relation to disputes, and this includes decisions on:

- how disputes should be progressed towards resolution (including questions over the appropriateness of litigation, ADR, or other routes to resolution); and
- the terms on which HMRC should be ready to resolve the dispute (in the absence of a finally binding outcome from litigation).

Such decisions may be taken by individual HMRC officers or teams, in accordance with local Line of Business procedures, although where responsibility for decision making rests with more than one Line of Business such decisions will be made by consensus on a partnership basis.

The following table sets out the most common partnership interests according to the type of dispute: for large and/ or complex issues the general rule is that all parts of HMRC with a significant interest in the dispute must be part of the consensus-based decision-making process. Solicitor's Office is not included in the table below, but in all cases the legal advice from Solicitor's Office will be an important factor in decision making.

Type of dispute	Partnership interests
Disputes on points of facts	<ul style="list-style-type: none"> • Case owner • Civil Investigation of Fraud team/ Specialist Investigations • Valuation Office Agency/ Shares and Assets Valuation
Matters of technical interpretation: uncertainty about the meaning of the law, with little or no dispute as to the facts, but not constituting avoidance	<ul style="list-style-type: none"> • Unit that owns the legislation (i.e. Product & Process Group or Central Policy) • Case owner
<p>Issues of mixed fact and law, including many international issues such as transfer pricing and company residence, but excluding avoidance.</p> <p>These disputes in practice revolve around determination of facts that are used as evidence to resolve a legal issue.</p>	<ul style="list-style-type: none"> • The unit that owns the legislation. • Case owner
<p>Avoidance cases, which by definition revolve around purely legal points, not including any concealment or misrepresentation of facts (although fact finding for the purpose of evidence will often be an important aspect of litigation). Typical characteristics of avoidance include:</p> <ul style="list-style-type: none"> • The existence of transactions or arrangements that would not have been entered into but for tax considerations; and/ or • A result that undermines the intended effect of legislation 	<ul style="list-style-type: none"> • Anti-Avoidance Group (within Corporation Tax, International and Anti-Avoidance ('CTIAA')) • Owners of the legislation or principle(s) being challenged by the avoidance (typically the Product & Process Group owner) • Case owner • Avoidance project manager (if project managed) • Specialist Investigations
Cases which initially purport to be avoidance but which, on closer inspection, appear to have elements of potential negligence or fraud because the transactions did not actually take place as described in the scheme	<ul style="list-style-type: none"> • Case owner / operational office holding the case • Anti-Avoidance Group (within CTIAA) • Avoidance project manager (if project managed) • Owner of the legislation
Disputes around administration issues, including judicial review	<ul style="list-style-type: none"> • The owner of the principle or decision that is being tested (typically Central Policy) • Case owner

If exceptionally agreement cannot be reached by consensus between the relevant HMRC officers or teams, and the case or issue does not fall within the special governance arrangements for significant tax disputes or issues covered below, it

should be escalated, where necessary to the relevant Directors, with a view to reaching consensus among the respective partnership interests.

HMRC governance for significant tax disputes or issues

Cross-HMRC governance procedures are in place to ensure that HMRC decisions across significant issues or in significant cases are made even-handedly and in accordance with the LSS.

Relevant cross-HMRC governance procedures (and links to further information on each of these) are set out below. A flowchart summarising the relevant HMRC governance processes is enclosed at [Annex 2](#).

High Risk Corporates Programme ('HRCP') [further guidance is available **for HMRC staff** http://lbo.inrev.gov.uk/business_tax/content/hrcp.htm]

The HRCP Programme Board is chaired by the Director, Large Business Service ('LBS'), and consists of Directors, or their deputies, of major stakeholder Directorates. The HRCP Board is responsible for deciding whether a case is included as a project within the programme, issue resolution (where appropriate) in accordance with the LSS, programme priorities, budget and programme development and governance.

In addition, where:

- the total tax under consideration in any case is greater than £100m; and
- there is a proposal for HMRC to concede one issue or more, and/ or to accept less than 100 per cent of the total tax under consideration, or where the case and issues are particularly sensitive;

the case should be referred to the HRCP Board for approval.

In any cases where the tax under consideration is greater than £250m or where the case has potential to create adverse national publicity, cause questions to be raised in Parliament or represents a significant departure from previous HMRC policy, the issue must be referred to the Commissioners for HMRC. The referral to the Commissioners will be managed by the HRCP Board.

Where a customer is within HRCP, the HRCP Board will make the final decision where:

- the tax under consideration is above £20m for an issue, or above £50m in any combination of issues;
- exceptionally there is disagreement between the stakeholders as to how the issue should be resolved;
- there are issues or circumstances of particular difficulty or sensitivity; or
- these issues have significant wider policy or operational value.

Where a customer is within HRCP and none of the preceding conditions are met, the issue can be resolved on a partnership basis in line with the guidance on [partnership interests](#) above.

Managing Complex Risk Programme ('MCRP') [further guidance is available **for HMRC staff** http://bus3.hmce.gov.uk/bst/Inc/Local_Compliance/Groups/Large_and_Complex/content/managing_complex_risk.shtml]

The MCRP Board is chaired by the Deputy Director or Assistant Director, Large & Complex, and consists of representatives of major stakeholder Directorates. The MCRP Board is responsible for deciding whether a case is included as a project within the programme, issue resolution (where appropriate) in accordance with the LSS, programme priorities, budget and programme development and governance.

Where a customer is within the MCRP, the MCRP Board will make the final decision where:

- the tax under consideration is above £5m for an issue;
- litigation is considered appropriate for an issue;
- there are issues or circumstances of particular difficulty or sensitivity; or
- the issues have significant wider policy or operational value. Where appropriate these issues may be referred by the MCRP Board to the HRCF Board.

Where the customer is within MCRP and none of the preceding conditions are met, the issue can be resolved on a partnership basis in line with the guidance on [partnership interests](#) above.

Business Tax Contentious Issues Panel ('BT CIP') [further guidance is available [for HMRC staff](#) http://lbo.inrev.gov.uk/lbs/content/directorate/man_cont_iss.htm]

The BT CIP is chaired by the Director, CTIAA, and includes representatives from major stakeholder directorates. The BT CIP takes decisions about the strategic management in accordance with the LSS of major contentious issues affecting large business customers.

BT CIP does not make decisions on individual cases.

Personal Tax Contentious Issues Panel ('PT CIP') [further guidance is available [for HMRC staff](#) http://lpo.inrev.gov.uk/ptg/pt_news_2011/March/contentious_issues_panel.htm]

The PT CIP is chaired by the Director, Charity, Assets & Residence ('CAR'), and includes representatives from major stakeholder directorates. The PT CIP takes decisions about the strategic management of major contentious issues affecting personal tax customers.

PT CIP does not make decisions on individual cases.

Anti-Avoidance Board ('AAB') [further guidance is available [for HMRC staff](#) http://lbo.inrev.gov.uk/aag/content/counter_avoidance.htm]

AAB is chaired by the Head of Anti-Avoidance Group (within CTIAA), and is responsible for designing the delivery plan for HMRC's anti-avoidance strategy.

Where an issue involves tax avoidance and it is project managed, AAB will:

- Decide whether HMRC should look for a policy and/or operational response;
- Agree the strategy for tackling the issue in accordance with the LSS;
- Prioritise which issues are to be addressed through litigation.

AAB does not make decisions on individual cases.

Transfer Pricing Board ('TPB') and Transfer Pricing Panels ('TPP') [further guidance is available for HMRC staff <http://lbo.inrev.gov.uk/tpg/index.htm>]

The TPB is accountable for the delivery of the transfer pricing group's objectives and sets the strategic direction for how transfer pricing specialists work in HMRC. The TPB works with and through two TPPs, who are the main decision-making bodies for transfer pricing enquiries in LBS and Local Compliance.

Where an issue involves transfer pricing, TPB or TPP must approve the opening of the enquiry and the settlement terms. The level at which approval is required will depend on the size and complexity of the case.

The exception to this is that where the case fall within MCRP or HRCP (or within the monetary criteria for referral to MCRP or HRCP), the TPB will make a recommendation on settlement terms to the MCRP or HRCP Board (or in exceptional circumstances to the Commissioners) who will make the final decision.

Transfer pricing cases where litigation is being considered will be considered by the TPB.

3. Minimising the scope for disputes (paragraph 7)

HMRC's Customer-centric Business Strategy is built on supporting customers to get their tax right as the best way of getting the right tax at the right time. Reducing the scope for disputes to arise in the first place, reaching agreement on what is the right tax before a disagreement has crystallised, is therefore fully in accordance with that Strategy and the starting point of the LSS.

Paragraph 7 lists a number of ways in which HMRC is actively seeking to reduce the scope for disagreement.

Where possible, much uncertainty may be resolved through dialogue on a pre-return and perhaps pre-transaction basis. Sharing risk assessment information in particular cases can be a valuable way to encourage taxpayers to make returns in ways that allow HMRC to accept them without further enquiry.

4. Engaging in disputes (paragraph 8)

Role of disputes in supporting tax compliance

HMRC's aim is to minimise the scope for disputes where possible and to encourage and help customers to get their tax right without the need for a dispute. At the same time, taking up tax disputes is a key part of HMRC's work to ensure and encourage compliance with the tax system. The choice of which cases to take up, and which challenges to respond to, is at the heart of HMRC's risk-based approach.

HMRC will charge penalties when people do not pay the right tax at the right time because they do not take care with the documents they submit. The purpose of the penalty provisions is to seek to influence behaviour by supporting those who try to meet their obligations and penalising those who do not. Establishing that a penalty is due in cases of evasion handled through civil procedures, or in cases where there has been a failure to take reasonable care, is therefore an example of HMRC entering into potential disputes in order to ensure and encourage compliance with the tax system. As indicated above, this guidance applies to disputes over penalties in the same way as to disputes over substantive tax liabilities. Further detail of the circumstances in which HMRC will charge penalties for inaccuracies is set out in the Compliance Handbook [here](#).

Deciding which disputes to take up

HMRC cannot, and should not, take up every possible potential risk and, in general, HMRC will not take forward a tax dispute unless the overall revenue flows potentially involved, including any wider impact, justify doing so. A decision is likely to require a consideration of:

- The potential tax at stake in the current year(s), as well as any prior or future years, for that particular customer;
- The potential tax at stake in any year(s) for other customers (including the wider impact of any HMRC intervention, such as through behavioural responses amongst customers);
- Strength of HMRC's view (if known at this stage);

and/or (implicit in the above):

- An initial assessment of the potential impact / effort or cost / benefit analysis of taking forward the dispute (or not taking forward the dispute).

There may also be circumstances where HMRC takes forward a dispute where the amounts at stake across all cases are relatively low (which is why paragraph 8 specifically includes the words "*In general*"). For example, this might include a situation where a particular policy principle is at stake which, if not defended, could potentially lead to a distortion of competition between businesses.

Decisions regarding which disputes to take up should be taken in accordance with the guidance on [paragraph 6](#) of the LSS above.

How does a risk-based approach fit with the principle of agreeing the right tax at the right time?

Decisions on whether to take up (and subsequently whether and how to pursue, or resolve) any case will always be taken in the light of the impact on the issues involved in that case, including the likely impact on the future compliance behaviour of the customer concerned, as well as the likely impact on other cases and the tax base more generally. Ensuring that all decisions taken by HMRC are consistent with the law is a vital element in encouraging future compliance and supporting compliance across the tax base.

Where, however, there may be differences in view as to what is the right tax (which by definition includes cases which are taken to the Tribunal), HMRC needs to take a risk-based approach as to which cases it is worthwhile to pursue in the light of its objective of maximising revenues, on a sustainable basis, more widely. Such judgement in particular cases will need to be exercised in accordance with the procedures applicable in the relevant area or Line of Business.

How does a risk-based approach fit with 'relentlessly pursuing those who bend or break the rules'?

HMRC's Vision, Purpose and Way makes clear HMRC will 'relentlessly pursue those who bend or break the rules'. The LSS supports this approach, by ensuring that HMRC applies its limited resources to those risks where the overall revenue flows potentially involved justify doing so and by ensuring that HMRC does not concede issues of disagreement it is likely to win in litigation where the amounts involved would make litigation worthwhile (see guidance on LSS [paragraphs 17](#) and [18](#) below).

5. Handling disputes (paragraphs 9 – 16)

Paragraph 9

What is ‘collaborative working’?

Collaborative working practices are already commonplace between HMRC and many of its customers, across the different customer groups. Specific examples of a Collaborative Dispute Resolution (‘CDR’) approach include:

- Discussing issues / transactions on a ‘real time’ basis (i.e. pre-transaction or pre-return);
- Applying an “Openness and Early Dialogue” approach which sets out the specific tax risk identified and avoids unnecessarily wide-ranging opening enquiries;
- Early discussion of a particular issue which is under enquiry in order to understand fully the relevant facts and the law which might apply to those facts (e.g. a discussion of the particular issue to enable HMRC and the customer to get a shared understanding of what *are* the relevant facts, which will enable HMRC to tailor any subsequent information request accordingly);
- Jointly agreeing a timetable with key milestones and target dates for:
 - Establishing facts
 - Providing information / documentation
 - Reviewing documentation
 - Reaching decisions
 - Testing conclusions;
- Providing regular updates on progress towards key milestones;
- Clarifying understandings of relevant facts;
- Agreeing the form in which particular information is to be provided;
- Discussing, sharing and testing of technical arguments to assess relative strengths and weaknesses in analyses (but see guidance on LSS paragraph 13 about sharing copies of legal advice);
- Establishing a decision tree (i.e. agreeing the key questions which need to be answered in order to resolve a dispute);
- Exploring possible alternative interpretations of the facts/relevant law that might give a different outcome from those initially proposed by HMRC/customer;
- Working with the customer or agent to agree any additional liability.

Where a dispute has reached an apparent impasse, it is still possible for the parties to work collaboratively in order to try to unlock the process (e.g. by jointly agreeing to appointing a third party mediator – see guidance on LSS [paragraph 16](#)). Similarly, parties should not stop working collaboratively simply because one (or perhaps both) consider(s) that a dispute can ultimately only be resolved by litigation. As such, the process of preparing for litigation should not automatically default to an adversarial process and, wherever possible, the parties should continue to work collaboratively in order ensure that the resolution of the dispute through litigation is as efficient/cost effective as possible.

Some examples of how HMRC and the customer could (continue to) work collaboratively where a dispute is proceeding towards litigation might include:

- Agreeing the key question(s) which need to be determined by the Tribunal/ Courts;
- Seeking to narrow down the points in dispute to be litigated;
- Jointly drafting an agreed statement of facts;
- Being open to discussing the potential relevance/ impact of any new facts which come to light or alternative technical arguments which are identified;
- Agreeing (without the need to go to a Tribunal procedural hearing) a timetable with key milestones and target dates for all preparatory steps to litigation;
- Arranging periodic meetings to discuss the case and update on progress.

What are the benefits of collaborative working?

Since collaborative working requires both parties to work together, it is unsurprising that there are likely to be potential benefits for both sides. These benefits can include some or all of the following:

- Earlier certainty;
- Cost savings;
- Other efficiencies (e.g. time savings, less internal and/ or external resourcing requirements);
- More focused discussions;
- Improved working relationships;
- Better understanding of other side's position.

Some further specific examples of how a CDR approach might help transform disputes handling are included at [Annex 3](#).

Is a collaborative approach to dispute resolution always possible/ appropriate?

By definition, it is not possible for HMRC (or a customer) to be unilaterally collaborative. Collaborative working requires both HMRC and the customer (and any agent, where relevant) to work together on a cooperative, non-adversarial basis in order to resolve a dispute.

It may not be possible for HMRC to adopt (or continue to adopt) a collaborative approach in all circumstances. For example where:

- A customer (or agent) is unwilling to cooperate (e.g. provide information relevant to the particular issue/ tax risk and which is in their possession or power) or discuss matters openly;
- There are persistent, unexplained delays or missed deadlines which could impact the likelihood of the dispute being resolved in an efficient/ cost effective manner;
- It appears that a customer (or agent) is seeking to deliberately mislead or otherwise act dishonestly towards HMRC (although an enquiry into past evasion should not automatically rule out a CDR approach where the customer/ agent is willing to co-operate and work collaboratively).

Even in such cases, HMRC should continue to be open to working collaboratively if, subsequently, there is a change in the customer's (or agent's) behaviour/ approach. However, HMRC should seek to progress the dispute by whatever means are most efficient and effective in the circumstances. This is likely to include making use of HMRC's statutory information powers (further technical and operational guidance in this area is set out in the Compliance Handbook – see [here](#)).

Fostering a non-confrontational approach

In cases where there is a Customer Relationship Manager ('CRM'), he or she will have an important role to play in fostering a collaborative approach – amongst the wider HMRC team, as well as the customer's team and representatives – to resolving any disputes. This includes setting the tone of the engagement with the customer. If there is no CRM, the relevant case worker is responsible for encouraging a non-confrontational/ collaborative approach.

Articulating the points in dispute

The case worker should ensure that the nature of the potential issue/ perceived tax risk is communicated clearly to the customer (or agent, where relevant). The terms of this explanation should be tailored to the customer's circumstances and, in particular, their likely knowledge/ expertise of specific taxation matters.

Where any clarification is sought by the customer, this should be promptly provided by the case worker wherever possible, although there may be instances where HMRC is unable to provide certain information in relation to the perceived tax risk (e.g. for confidentiality reasons, HMRC may not be able to disclose the source of certain information which may have been provided by a third party).

However, in all cases HMRC will seek to share sufficient detail of the perceived risk so that the customer can understand the risk and to enable further discussion of the risk, so that the parties can work together in order to resolve the issue.

Clearly setting out the point(s) in dispute in this way should help to focus subsequent discussions between the parties and help both sides to establish what facts are likely to be relevant in order to resolve the dispute (as well what information/ documentation is likely to exist to help evidence those facts).

Agreeing timescales

Once explanations of the point(s) in dispute (together with any clarifications required) have been provided, it may be helpful for the parties to jointly agree preferred timescales or deadlines for next steps. The case worker will be responsible for discussing and agreeing these with the customer.

In larger cases, a more detailed timetable might be helpful, although the detail of any timetable will obviously depend on the nature of the particular point(s) in dispute and what both parties consider would be helpful to document.

It may not be appropriate, or even possible, to fix a firm timetable in advance for all stages of a dispute as later stages may depend on the outcome of earlier stages or even on the outcome of work being undertaken in relation to other cases (such as in certain avoidance arrangements where a particular technical issue present in a number of cases is being centrally project managed). But even here, it can be helpful to both parties to outline expected timescales. A template for timetable which might be used in larger cases is set out at [Annex 4](#).

Before agreeing a firm timetable with a customer, the case worker should confirm that all other HMRC stakeholders who may be involved in the case or the decision making process (e.g. technical specialists, Solicitor's Office etc) have sufficient capacity, resource and availability to be able to meet the proposed deadlines.

Impact of statutory time limits

During some disputes, HMRC may be required to take action as a result of particular statutory time limits. Where there is a likelihood of underassessment this could include, for example, needing to:

- Issue a 'protective' enquiry notice for a subsequent year, where a specific issue/ tax risk in a prior year has not been resolved and could have an impact in the later year;
- Issue an assessment for a prior year

Wherever possible, any such action should be taken in a collaborative and non-confrontational manner (e.g. reasons for action discussed with/ explained to customer prior to being taken; such actions – or potential actions – being included in any timetable agreed between HMRC and the customer).

If HMRC issues an appealable decision (e.g. a closure notice or assessment), which is subsequently appealed by the customer, this should not in itself affect the collaborative working relationship between HMRC and the customer. In particular, it should not prevent the parties from continuing to discuss and explore (or discussing and exploring for the first time) any potential basis for resolving the dispute by agreement, without the need for litigation.

Should reasons be given with closure notices?

In the Supreme Court judgment in *HMRC v Tower MCashback LLP 1*, Lord Walker confirmed, quoting Henderson J, that:

"There is no express requirement that the officer must set out or state the reasons which have led him to his conclusions, and in the absence of an express requirement I can see no basis for implying any obligation to give reasons in the closure notice. What matters at this stage is the conclusion which the officer has reached upon completion of his investigation of the matters in dispute, not the process of reasoning by which he has reached those conclusions."

However, in the same judgment, Lord Hope stated that it is "*desirable*" for HMRC's conclusion in a closure notice to be "*as informative as possible*". In particular:

"The aim should be to be helpful, both to the taxpayer and to the Tax Tribunal which will have to case manage any appeal. The officer should wherever possible set out the conclusions that he has reached on each point that was the subject of enquiry which has resulted in his making an amendment to the return."

As a matter of best practice, HMRC should always aim to be as informative and clear about their actions where that is possible. Good, clear communication is a key facet of dispute resolution.

Continuing collaboration in a litigation

Even where one – or both – party/ parties has decided to litigate a particular issue, HMRC will, as set out in paragraph 19 of the LSS, continue to be open to considering the impact of any new information and/ or analysis since, in certain circumstances,

this may provide a basis for resolving a dispute by agreement without the need for litigation.

Paragraph 10

Possibility of criminal investigations

Customer behaviour is an important factor in determining the most appropriate way to resolve a dispute. In cases where HMRC has good grounds for believing that evasion is involved, it will consider whether a criminal investigation is more appropriate than pursuing a resolution through civil procedures.

The LSS does not apply to criminal prosecution cases and guidance on HMRC's handling of criminal prosecutions cases is set out in the Enforcement Handbook (available for HMRC staff http://bus2.hmce.gov.uk/strategy/Enfh/enfh_index.shtml).

Paragraph 11

Establishing and understanding the relevant facts

Tax law does not apply in a vacuum: it applies to specific sets of facts and circumstances. Therefore before a firm decision can be made on the tax consequences of a given transaction or issue, the relevant facts must first be established.

'Relevant facts' are those which have, or could have, an impact in determining the appropriate tax treatment. HMRC should seek to establish only the facts required to address the specific tax risk identified. In practice, this means that HMRC will often need to consider the possible tax law consequences in tandem with establishing the facts, to make sure that requests for factual information are indeed 'relevant'.

No two customers or their circumstances are identical and there are often features which distinguish cases that at first appear to be similar.

HMRC should consider (and, where relevant, critically examine) all the facts which are relevant to the tax risk in question, rather than looking for particular evidence that supports an initial assumption about a risk.

It is important to distinguish a fact, which is generally capable of being supported by evidence, from a belief or assumption. Most facts should be capable of being supported by evidence. Historically, a significant proportion of cases in dispute that were not suitable to be taken to Tribunal were those with insufficient evidence documented on the file (see also guidance on LSS [paragraph 15](#) about working cases to a professional standard).

There may be instances of facts which turn on the customer's view of why something was done. Oral evidence may be presented at a Tribunal as well as documentary evidence (where such evidence exists). An example of this may be oral evidence presented by a customer showing a commercial purpose for a series of transactions to which the tax consequences were incidental. Establishing and understanding the relevant facts includes understanding what evidence may be presented orally, if the case were to get to Tribunal, and understanding how the Tribunal might balance

potentially competing evidence in order to make findings of fact on the basis of the 'balance of probability'.

In avoidance cases, it is often important to establish that transactions have in fact been implemented in the way needed to give the tax advantage claimed (see guidance on verifying/ implementation below).

Establishing facts as quickly and efficiently as possible.

A common challenge in disputes is for HMRC to determine the most efficient and effective way of establishing the relevant facts and identifying the relevant information required to reach a decision on what is the right tax.

Even after having identified a potential tax risk, HMRC may not know which facts are going to turn out to be relevant in resolving that risk. Where the risk is a generic one (for example, whether a customer's accounting records or systems are not sufficiently robust), opening questions may need to be widely drawn. But where the risk relates to the tax treatment of a particular transaction, a widely drawn request for information can lead to a significant amount of non-relevant information being provided. This can be time-consuming and costly, not only for the customer (in searching for/ providing the information/ documentation) but also for HMRC (in having to review everything provided, much of which might have limited or no relevance to helping to resolve the dispute).

Wherever possible, HMRC should therefore aim to discuss and agree with the customer what are the relevant facts and how these should be established – for example though obtaining original documentation, site visits, discussions with relevant individuals, etc – to develop a robust tax analysis. This discussion should be founded on a high degree of disclosure and co-operation from the customer and an acceptance by HMRC of the practical constraints – including cost, time and accessibility – that may limit what can reasonably be provided.

Similarly, HMRC should also seek to identify and (where possible) agree with the customer what are the amounts of tax in dispute.

Overall, HMRC's approach to establishing facts will depend on the nature and extent of the potential tax risk posed by the customer/ transaction in the particular case. A best practice approach to establishing facts is described below. However, it is recognised that there can be a reluctance from some taxpayers to provide information and they can take an approach of providing the minimal possible at each request. This may be exacerbated by any lack of understanding as to why HMRC require the information and this makes it all the more important that HMRC should explain why information is needed wherever possible.

In some cases there may also be a dispute over whether or not particular information or documents are relevant to an enquiry. HMRC will seek to reach agreement with the customer on what is relevant, wherever possible. In the absence of agreement, the key test for any request is whether, in HMRC's view, the information or documents are reasonably required for the purpose of checking the tax position.

Where needed, HMRC will consider using statutory powers to obtain information, and in cases where there is agreement on documents (or categories of documents) to be produced, that agreement will be reflected in the content of the information notice. In certain cases the person receiving an information notice may appeal against it. (See

guidance on information powers set out in the Compliance Handbook [here](#) for further information).

A best practice approach to establishing facts

The approach outlined below seeks to balance the following three factors:

- a) the need for HMRC to have a good understanding of the facts before it reaches firm conclusions on what it believes to be the right tax;
- b) the need for requests for information to be well targeted, confined to the relevant facts, and framed with a view to making the fact-finding process as cost effective as possible for both HMRC and the customer; and
- c) the need to ensure that tax avoidance is not accepted as successful unless HMRC is satisfied that the relevant tax planning has indeed been implemented as described or is not open to other approaches (e.g. abuse of law principle).

Whilst widely drawn information requests are appropriate in certain cases, in the majority of cases it will be more efficient and effective for HMRC to try to work collaboratively with the customer and set out neutrally (and where possible agree):

- what facts need to be established in order to address the tax risk and resolve the dispute. In complex cases, this could take the form of agreeing a decision tree which sets out the relevant factual questions.
- where certain facts are not clear or known, the best way of establishing those facts, and what information/ documentation is likely to be available (and necessary) to help evidence the facts. In some cases, particular documents or other evidence might be essential in order to establish particular facts, whereas in others there may be various different routes to establishing the relevant facts. For example, where adequate business records have not been retained, the caseworker may be able to review the customer's private financial affairs to ascertain the correct level of profit.

The best approach for doing this will vary from case to case, but could include:

- initial meeting to discuss the potential tax risk/issue
- presentation by the customer (e.g. summary of issue, timeline, background, etc)
- meeting with particular individuals (e.g. owner of the business, those involved in implementing a transaction, etc)
- on site meeting (e.g. where the issue concerns a particular business asset, such as a piece of plant and machinery)
- providing an initial tranche of documentation where this is readily available (e.g. copy of sale and purchase agreement, legal documents for a transaction, etc)

In large and/ or complex cases, the benefits of a well-targeted fact-finding process are particularly significant. In such cases, it is often helpful to have an initial high level discussion of the issue, and the likely technical arguments, in order to ensure that requests for information are suitably framed and limited to facts likely to be relevant to the resolution of the dispute. An outline best practice process for large and/or complex cases where both HMRC and the customer are working collaboratively is set out in [Annex 5](#).

Verifying that transactions have been implemented as suggested

HMRC will often wish to verify that a tax planning/ avoidance transaction has in fact been implemented as suggested. How this is done will depend on the risk involved.

Areas HMRC may wish to explore will include:

- what information has already been provided or is offered by the customer
- whether the customer is able to set out details of any review undertaken to establish the facts. For example, the taxpayer could outline the following in terms of the process followed:
 - Who carried out the review;
 - Individuals spoken to within the company - their roles in the company and role in respect of the particular transaction;
 - Individuals spoken to from advisers involved with the transaction and their role with the transaction;
 - Questions asked of those individuals;
 - Systems interrogated and the search parameters (e.g. whose emails were reviewed/ for what);
 - Files reviewed;
 - The period covered by the review.
- whether a reputable agent or SAO has carried out an appropriate implementation review and can report to HMRC on the outcome of this due diligence activity which may include a copy of the report and any corrective action taken.

Paragraph 12

Specialist advice

'Specialist advice' covers a broad range of tax technical, policy, process, operational and/ or legal advice that might be sought in relation to a particular issue.

The HMRC manuals provide a significant amount of guidance on technical and operational matters. However, in complex cases, tailored specialist advice may be required and, wherever possible, that advice should be obtained as early as possible for the following reasons:

- Where HMRC's arguments are not strong and its chances of success are poor, HMRC can withdraw from the dispute early;
- If there are any specific issues of policy, questions where specific information is needed to determine facts, or issues that could impact other cases, these can be identified early so that appropriate further advice may be obtained/action taken (and relevant stakeholders informed);
- Where HMRC has a strong case, early advice ensures that HMRC directs its enquiries towards those areas of most value.

In practice, getting effective specialist advice means getting (and clarifying with the customer) the relevant facts quickly, so as to get an early opinion. However, it may not always be obvious what the relevant facts are, so it may be beneficial to consider whether obtaining some initial specialist advice could help to direct the fact finding process.

If the obtaining of specialist advice could affect a timetable which has been agreed with the customer (e.g. due to availability of specialists), this should be communicated to the customer as soon as is practicable and an amended timetable agreed as appropriate.

It is important that advice being relied upon is current, up to date and based on all potentially relevant facts. Further specialist advice may be needed where, for example:

- The dispute has been ongoing for a number of years and specialist advice was obtained relatively early in the dispute;
- Further potentially relevant facts have come to light;
- New technical arguments are put forward by a customer;
- It appears that (a) specific new fact(s), which was not considered by the specialist, is critical to the analysis; or
- There are further relevant developments in the law relating to the particular issue which is in dispute (e.g. new decision or dicta in a case subsequent to the previous advice provided).

No single piece of specialist advice is necessarily decisive in determining HMRC's position. However, where advice sets out HMRC's view of the tax treatment which may be applicable in other cases too – as it often will – it should normally be followed in order to ensure even-handedness of treatment. Where there is any doubt about how to proceed in the light of advice obtained and the relevant facts and circumstances this should be discussed amongst HMRC stakeholders as identified in guidance on LSS [paragraph 6](#) above, and where necessary escalated for a considered decision/ view on the appropriate way forward.

In some cases the case worker may need further information (e.g. background or rationale for the specialist advice recommending a particular course of action) in order to explain HMRC's decision to the customer. In such cases, it might be helpful for specialists to attend a meeting or call with the customer in order to answer specific questions or address particular points raised.

Paragraph 13

Sharing and testing views/ arguments

HMRC does not have a monopoly on understanding how tax law applies to a particular set of facts. Therefore, where HMRC has worked collaboratively with a customer to establish the relevant facts in relation to a particular issue/ potential risk, HMRC will want to similarly work collaboratively to understand fully the tax law which might potentially apply in order to determine the appropriate treatment.

Where a tax return has been filed, a discussion is likely to start with the tax treatment adopted by the customer and will explore the analysis / relevant law which the customer considers supports the treatment adopted. Where a tax return has not been submitted (e.g. discussion of an issue in real time), an appropriate starting point might be an open discussion between HMRC and the customer regarding the various technical provisions which could apply.

In either case, HMRC should be open about sharing with a customer its preliminary views as to the potential analysis/ law which it considers might apply to a particular issue/ transaction.

In cases where specialist advice is required, it will be helpful for HMRC to have obtained an understanding of the customer's technical analysis in advance of requesting the specialist advice, so that this can be considered in detail and any clarifications sought/ detailed response provided. However it is generally not appropriate to consider jointly instructing Counsel for advice, as Counsel's role is to advise each party on the particular merits of their arguments, not to act as arbiter.

Before reaching a considered decision, HMRC should seek to ensure it has:

- A full understanding (and, where necessary, has clarified) the customer's view as to the relevant facts and appropriate technical analysis
- Clearly articulated (whether in writing or at a meeting) its preliminary view to the customer as to potential alternative technical analyses which might apply
- Actively sought to test the relative strengths/ weaknesses of the respective technical analyses which might apply (both with the customer and also internally with other HMRC team members)
- Obtained any specialist advice required
- Made an informed assessment as to the strengths/ weaknesses of the potential technical analyses which might apply

In many cases, it can be helpful to have a meeting with the customer in order to discuss respective views and arguments. A meeting can help to avoid protracted exchanges of correspondence and can also help both parties get a better understanding of the other's position. In order to ensure any meeting is as productive as possible a detailed agenda should be agreed between the parties well in advance so that both are clear on the specific areas/ issues to be discussed, can prepare adequately and ensure that appropriate individuals attend the meeting.

All HMRC team members / stakeholders have a role to play in assessing the relative strengths of any technical arguments. Further details of the relevant HMRC partnership interests are in the guidance on LSS [paragraph 6](#) above.

The aim of ensuring that HMRC fully understands the customer's view and has fully tested its own arguments is to ensure that HMRC does not pursue disputes where it lacks strong arguments. Equally, where HMRC decides to pursue a dispute, it helps to focus on the strongest arguments; on occasions good technical arguments can be undermined by being mixed with poor/ weaker ones and such an approach can help to avoid this.

Having reached an initial conclusion, tested it and reached a considered decision, HMRC should either:

- Advise the taxpayer that it accepts the analysis (i.e. issue is resolved or dispute is dropped), or
- Set out the basis of its technical arguments/ analysis which it intends to pursue further (together with any explanations/ clarifications required)

However, even after HMRC has reached a considered decision (e.g. that a particular technical analysis applies; decided to litigate etc) it will continue to be open to considering the impact of any new information and/ or analysis since, in certain circumstances, this may provide the basis for resolving a dispute.

Where HMRC's position on a tax dispute depends on the outcome of other disputes turning on the same issue, HMRC should bring that to the customer's attention

Legal Professional Privilege

In summary, Legal Professional Privilege (LPP) protects communications between a legal advisor and their client from disclosure, where they were conducted for the purpose of receiving legal advice (both oral and in writing) and documents that are created for the dominant purpose of gathering evidence for use in legal proceedings. In order for LPP to be maintained, the information must remain confidential and not have been disclosed to third parties.

LPP is a complex area and detailed technical and operational guidance is set out at in the Compliance Handbook (see [here](#)).

In order for both sides to be able to test fully the strength and weaknesses of their respective arguments, it will be necessary to share relevant technical analyses, some (or all) of which might be based on legal advice.

It is unlikely to be necessary for HMRC to share a copy of any of its legal advice which may have been obtained (e.g. advice from Solicitor's Office or Counsel) directly with a customer. Similarly, it is unlikely that HMRC should need to see a copy of any legal advice obtained by a customer, although some customers may decide to waive LPP and provide HMRC with copies of legal advice which they have obtained. However, HMRC should not interpret a decision by a customer not to waive LPP over a legal document(s) as a sign of non-collaboration.

Regardless of whether or not a customer has provided HMRC with any such documents, HMRC would not normally waive LPP in respect of confidential legal advice which has been obtained.

Rather than providing copies of any documents which might be subject to LPP, HMRC's approach will typically be to prepare and provide customers with a separate summary of its key arguments and technical analysis. If any such summary includes any reference to legal advice having been obtained, the following paragraph should always be included:

"This analysis has been confirmed by legal advice and is being provided on a "without prejudice" basis. For the avoidance of doubt, in providing this to you, HMRC is not waiving Legal Professional Privilege in relation to any specific legal advice or documents which may have been used or referred to in preparing this summary."

Before any such summary is provided to a customer, it should be reviewed/ approved by the relevant technical specialist(s) and Solicitor's Office.

It is possible that the legal advice which HMRC has obtained might be:

- Specific advice based on the facts of a particular case
- Generic advice regarding HMRC's view on the interpretation of particular areas of the law

In either circumstance, it is possible that the legal advice obtained could help to inform HMRC's general approach to these matters or its interpretation of specific statutory provisions/ case law. However, particular care should be taken before relying on any legal advice which is not based on the customer's specific facts and circumstances.

Paragraph 14

'All or nothing' issues

An 'all or nothing' issue (sometimes also called a 'binary' or 'black and white' issue) is one which has only two possible outcomes (e.g. a given amount of tax is either due, or it is not).

As set out at in [paragraph 18](#), where a dispute relates to an all or nothing point where HMRC believes that there are only two possible outcomes consistent with the law, HMRC will not accept any out of court resolution which splits the difference.

However, sometimes a dispute which initially appears to be an all or nothing issue might, after further review/ discussion/ testing, turn out not to be genuinely all or nothing but in fact be a case where there is a range of possible figures of what might be the right tax.

Wherever an issue initially appears to be all or nothing, HMRC should test that initial conclusion (preferably with the customer) to explore whether or not:

- There is a range of right answers for how the law should be applied to the facts; or
- The issue is capable of being broken down into two or more sub-issues, each of which is capable of being separately resolved.

In this way the chances may be increased of reaching an efficient, cost effective and legally correct resolution to the whole dispute.

Where an issue is centrally project-managed, such as in cases of certain avoidance arrangements, it is likely that any proposed basis for settlement will be subject to specific governance arrangements (e.g. approval by the Anti-Avoidance Board – see further in guidance on LSS [paragraph 6](#) above). In such cases, where an alternative basis for settlement in what initially appeared to be an all or nothing issue is identified and approved in accordance with the relevant HMRC governance arrangements, it is expected that HMRC will communicate and accept this basis for settlement in equivalent cases with other customers (assuming they have the same fact pattern).

Example - HMRC's enquiries into widely marketed tax avoidance arrangements involving losses generated by geared investments in Limited Liability Partnerships (LLPs).

- The tax avoidance arrangements involved investors in LLPs claiming tax relief on a loss, where only a proportion of that loss had been funded by an actual cash contribution from the investor, with the majority having been funded by a "gearing loan" from a bank.
- For example, initial investment into LLP of £100,000, comprising a £20,000 cash contribution from the investor used for the purposes of the LLP (not to 'purchase' the scheme), with the balance of £80,000 being funded by a gearing loan. Subsequently tax relief would be claimed by the investor on a loss equivalent to the total initial investment of £100,000 (i.e. £40,000 tax relief), despite the fact that in economic terms the investor has contributed only £20,000.
- HMRC had a number of strong technical arguments to support an analysis that no amount of the loss was allowable; equally the investors had technical arguments which they considered supported a view that the full amount of the loss should be allowable. Therefore, as a result of the parties' respective technical positions, it initially appeared that the issue was an all or nothing issue.
- However, following detailed discussions between the parties regarding the potentially relevant technical provisions (including an assessment of the relative strengths and weaknesses of either sides' arguments) the parties identified an alternative technical analysis based on the relevant legislative provisions which supported allowing a proportion of the total loss, equivalent to the actual cash contribution made by the investor (i.e. £20,000 loss / £8,000 tax relief).
- Following approval by the Counter Avoidance Group, this alternative technical analysis has been used as a basis for resolving a number of long-standing disputes between HMRC and customers involving such arrangements.

Paragraph 15

Working disputes to the same professional standard, however resolved.

The vast majority of civil tax disputes are resolved by agreement between HMRC and the customer, rather than by litigation.

However, even where it is anticipated that a case is likely to be ultimately resolved by agreement, handling a case in a way that prepares for possible litigation is beneficial.

See also guidance set out in relation to LSS [paragraph 11](#) above.

Conceding non-worthwhile cases

Paragraph 8 of the LSS sets out that in general HMRC should not take forward a tax dispute unless the overall revenue flows potentially involved justify doing so.

However, at the outset of an enquiry / potential dispute, it may not be possible to assess the overall quantum of potential tax at stake. Consequently, at that time (and in the absence of further facts or information) HMRC may be unable to make a meaningful assessment of the relative merits of taking forward the dispute.

Equally, HMRC's initial view as to the overall quantum of potential tax at stake in a dispute may change during the course of an enquiry (e.g. as further facts are established, more information is provided or as more detailed analysis is undertaken) which in turn could have an impact on HMRC's assessment of the relative merits of persisting with the dispute further.

For these reasons, throughout the lifecycle of any dispute, HMRC should regularly reappraise/ reassess the relative merits, or otherwise, of persisting with the dispute in light of any further facts established. The principal factors to be considered by HMRC as part of this ongoing/ periodic assessment are likely to be the same as those at the outset of a dispute (see guidance on LSS [paragraph 8](#) above) and, in general, HMRC should only continue with a dispute where it considers that both:

- (i) the overall revenue flows justify doing so; and
- (ii) it has, or potentially has, a case which it believes would be successful in litigation

In particular, HMRC should not pursue minor or questionable points in order to avoid a nil settlement.

Proceeding with a dispute only where the overall revenue flows justify doing so is the approach that will be adopted by HMRC in the majority of cases. There will however be certain exceptions (which is why paragraph 15 specifically includes the words "*Not usually*") and this might include cases where, for example:

- Whilst the amounts involved may individually (or collectively) be relatively small, there is a need to positively influence customer behaviour (e.g. dispute concerning a fixed penalty);
- A particularly important point of principle is involved where it is necessary to defend the integrity of the legislation, or where not defending the point could potentially lead to a distortion of competition between businesses.

Decisions regarding which disputes to concede should be taken in accordance with the guidance on LSS [paragraph 6](#) above.

6. Resolving disputes (paras 16 – 19)

Paragraph 16

Disputes must be resolved in accordance with the law

As set out above (see guidance on LSS [paragraph 1](#)) the law provides for HMRC to be able to reach agreement with a customer in some circumstances on how a tax dispute should be resolved, leading to a resolution of the dispute without the need for it to go to the Tribunal.

These provisions allow HMRC to reach an out of court settlement on a basis which it believes to be a likely outcome of any eventual litigation, without going through the expense and uncertainty of taking the case to court.

What is a 'likely outcome' (of litigation) is of course itself open to disagreement, and the following paragraphs are intended to help explain in more detail how this should be interpreted.

Broadly, where HMRC has reached a considered and definitive view of what is the right tax treatment of a particular transaction, on a full understanding of the facts and after having considered the full range of possible arguments, it will not settle out of court for any other tax treatment.

Where, having considered the facts and the range of arguments, HMRC is satisfied that there are alternative approaches which are each reasonably likely alternative outcomes to court proceedings, it may choose to settle out of court for one of the alternatives (though not necessarily for the lowest of the possible range of alternatives).

HMRC cannot however settle, out of court, for a result which it does not believe to be one of a range of likely alternative outcomes. In addition, HMRC will not agree less tax, interest or penalties than it believes is within the range of outcomes in the interest of achieving a quick settlement, even if doing so would provide a good return on time spent on the case.

In certain circumstances, Commissioners for HMRC, or HMRC officers on their behalf, may exercise their legal discretion under the collection and management powers in the Commissioners for Revenue and Customs Act 2005. This legal discretion allows HMRC not to pursue an amount of disputed tax in the interests of securing the best net return for the Exchequer. Where this legally sanctioned discretion is properly exercised, the outcome is equally 'in accordance with the law'. The scope of this discretion is described in the Admin law manual at ADML 3000 - [here](#)).

For guidance on who is responsible for decisions regarding the resolution of disputes please see the guidance on LSS [paragraph 6](#) above.

The way in which dispute resolution is put into effect must also be in accordance with the law

The requirement that dispute resolution must be in accordance with the law applies as much to the way that resolution is put into effect as it does to its substance.

For example, since VAT or VAT penalties cannot be included in a contract settlement – see [here](#) – if HMRC and the customer agree that an amount representing a VAT penalty should be included as part of the resolution of a dispute, that penalty must be charged in an appropriate assessment and cannot be included instead as part of a contract settlement.

No package deals

An even-handed approach across taxpayers is vital to securing good compliance on a sustainable basis. That rules out any sort of ‘package deal’ under which HMRC might be asked to concede one issue in return for the customer conceding another, irrespective of the merits, or where a range of issues are settled for a single payment that is not subdivided amongst individual disputes. Each separate dispute should be dealt with on its merits, but this should include any genuine interaction between one issue or another.

The following example illustrates this principle.

Package deal or no package deal?

There are two ongoing disputes between HMRC and a customer regarding :

- the deductibility of a particular expense which the customer considers is deductible as marketing, whereas HMRC considers it is non-deductible as client entertaining (tax effect of £90,000)
- the deductibility of another expense which the customer considers is revenue expenditure, whereas HMRC considers it is capital expenditure (tax effect of £100,000). Furthermore, if the item of expenditure is held to be capital in nature, it must then be determined whether or not it qualifies for capital allowances (tax effect in relevant year of (£85,000)

In this example, assuming that both HMRC and the customer had fully satisfied themselves that both disputes were genuinely ‘all or nothing’ in nature (see guidance on LSS paragraph 14 above), in accordance with the LSS, there are six possible outcomes which could be agreed by HMRC to resolve this dispute by agreement with the customer:

- £0 (i.e. no adjustments required and HMRC accepts the customer’s analysis in relation to both items)
- £15,000 (i.e. HMRC accepts the customer’s analysis in relation to the marketing expenditure, but an adjustment is made for the capital expenditure which HMRC then agrees qualifies for capital allowances)
- £90,000 (i.e. HMRC accepts the customer’s analysis in relation to the capital / revenue expenditure, but an adjustment is made for the marketing / client entertaining expenditure)
- £100,000 (i.e. HMRC accepts the customer’s analysis in relation to the marketing expenditure, but an adjustment is made for the capital expenditure and it does not qualify for capital allowances)
- £105,000 (i.e. adjustments are required in relation to both items and HMRC accepts that the capital expenditure qualifies for capital allowances)
- £190,000 (i.e. adjustments are required in relation to both items and the capital expenditure does not qualify for capital allowances)

On the assumption that both issues were genuinely ‘all or nothing’ in nature, it would not be open to HMRC to agree to a settlement with the customer on any other basis, such as:

- £5,000 (i.e. taking account of the £90,000 tax effect of an adjustment in relation to the marketing expenditure and adjusting this by £85,000 to reflect the effect of the amount qualifying for capital allowances, but ignoring the adjustment required to disallow the expenditure as capital rather than revenue - £100,000; however, in this example you could not give effect to the adjustment for capital allowances, without first adjusting to disallow the expenditure as capital)
- £52,500 (being a 50/50 split across all the various issues)

If, however, following further analysis it appeared that one - or even both - of the items was not in fact an ‘all or nothing’ issue (e.g. the potentially deductible expense was in fact capable of being broken down into a number of discreet sub-categories of expenditure some of which HMRC might be able to agree was, or was likely to be, allowable) then alternative outcomes for resolving the dispute in accordance with the LSS, in addition to the six outlined above, would become available and could potentially be agreed.

Alternative Dispute Resolution

Alternative Dispute Resolution (ADR), and more specifically mediation, is a flexible dispute resolution tool available to HMRC which – in appropriate cases – can help HMRC and its customers resolve disputes (or reach key decision points) in a cost effective and efficient manner.

The LSS applies to the resolution of all disputes through civil procedures; therefore any agreement to resolve a dispute between HMRC and a customer – whether it is facilitated by the use of ADR or not – must accord with the terms of the LSS.

Further practical guidance regarding ADR (including the potential benefits of using mediation, the types of cases mediation is likely to be most appropriate in and an overview of the typical process) is set out [here](#).

Paragraph 17

Disputes where there may be a range of possible figures for tax due

Some tax disputes are genuinely ‘all or nothing’ in nature, and guidance on how these can be resolved is given in relation to [paragraph 18](#) of the LSS. Paragraph 17 of the LSS deals with disputes where there may be a range of possible figures for tax due.

Examples of cases where there may be a range of possible figures for tax due include:

- Compliance check cases where the true figure of turnover/ recoverable inputs/ taxable profit etc is genuinely uncertain (e.g. due to incomplete or missing records);
- Issues which turn on a legal interpretation where there is a range of respectable possible interpretations that a court or tribunal might take (including potential avoidance issues);
- Cases involving legislative provisions which specifically require or permit a just and reasonable apportionment to be made (e.g. FA 1996 Sch 9 para 13 in relation to the unallowable purpose element of a loan for loan relationship purposes);
- Cases involving avoidance where a realistic view has to be taken of what would have happened without avoidance being present (e.g. *Halifax* doctrine establishes that where the abuse principle applies, the transactions have to be redefined so as to remove the tax advantage);
- Valuation or transfer pricing cases where there is a range of respectable comparables or possible valuation/pricing methods which might be endorsed by a Court or Tribunal;
- Partial exemption methodology cases where there are several acceptable possible methodologies which could be used for determining a customer’s VAT recovery position.

In such cases, the LSS says that HMRC will want to resolve the dispute, whether by litigation or settlement, in the way which is likely to secure the right tax most efficiently.

Securing the right tax most efficiently

Where the tax dispute relates solely to the facts and circumstances of the customer concerned, and there is a range of possible tax outcomes, HMRC would not generally take the case on to the Tribunal unless a potential settlement offered by the customer fell outside HMRC's reasonable expectation of the range of possible findings that the Tribunal might come to.

HMRC may however choose to litigate with a view to securing tax at the higher end of the range of possible tax outcomes in circumstances where it believes that is a cost effective way of securing better compliance.

Where a settlement decision is likely to affect a number of customers, HMRC will take into account the wider potential impact of a favourable tribunal decision before settling with any particular customer for a lesser amount. This means that any benefit of establishing a precedent through litigation or of protecting the relevant regime should be taken into account in assessing the cost effectiveness of litigation.

HMRC will also however take into account the effect that continuing to apply resource to one dispute might have on its ability to pursue other issues. As set out in the guidance on LSS [paragraph 15](#) above, generally HMRC should not take forward a tax dispute unless the overall revenue flows potentially involved justify doing so.

The concept of 'right tax' should be applied across the customer base, and not solely in relation to the customer whose dispute is being dealt with at present.

Potential for litigation

Resolution of disputes by agreement is likely to be the most cost effective outcome in the majority of cases.

But where it is cost effective to litigate, that route should be actively pursued with the aims of resolving the dispute as quickly and as cost effectively as possible.

Potential litigation cases will need to be prioritised and factors that should be taken into account in determining priorities are:

- Amount of tax at stake (in the individual case, as well as any other 'follower' cases);
- HMRC's chances of success;
- Likely cost of litigation;
- If the case involved deliberate attempts to undermine legislation;
- If strategic points of policy or principle are involved.

Paragraph 18

Genuinely all or nothing disputes

Some tax disputes are genuinely 'all or nothing', but by no means all. In cases which proceed through successive layers of appeal in the Tribunal and Courts, it is not unusual for different legal interpretations to emerge. Discussions with customers and advisers, as well as discussions among tax experts and their advisers within HMRC, also frequently elicit alternative ways of approaching a particular tax dispute. This reinforces the need to spend time working together with the customer and their advisers, as well as with HMRC colleagues, to identify the range of reasonable approaches to any particular tax dispute, to make sure it is not prematurely categorised as an 'all or nothing' issue.

Having said that, if HMRC believes an issue to be genuinely all or nothing, then the LSS requires it either to press for full settlement, or concede in full. This reflects the fact that HMRC can only resolve disputes out of court on terms which HMRC believes are likely outcomes from litigation.

As set out in the guidance on LSS [paragraph 15](#) above, HMRC should not generally take forward or persist with a tax dispute unless the overall revenue flows potentially involved justify doing so.

What if HMRC believes it is likely to succeed?

Where HMRC believes it is likely to succeed in litigation, on an 'all or nothing' point and the customer does not concede in full, it will generally take the case to Court, as long as it is cost effective to do that.

'Likely to succeed' here means HMRC's own view of its prospects of success at Tribunal or the Higher Courts, informed by any external legal or other advice obtained (where necessary), but not necessarily bound by that. An assessment of HMRC's prospects of success in litigation should in all cases be taken in consultation with Solicitor's Office or (for cases not handled by Solicitor's Office) by the relevant A&R unit. This assessment will take account not only the respective strengths of each party's position, but also the risks inherent in taking a case to court (litigation risk).

Full settlement

Full settlement means all liabilities, including interest and penalties.

Expeditious resolution

If there is no room for settlement manoeuvre under the LSS, HMRC should make sure it does not unnecessarily delay proceedings.

What if HMRC believes it is unlikely to succeed?

In a genuinely all or nothing dispute where HMRC believes it is unlikely to succeed, it will usually concede. HMRC cannot however guarantee that this will always be the case.

Examples of cases in which HMRC may decide to proceed to litigation despite believing it is unlikely to succeed include those where it believes that clarification of

the law is necessary in order to set a precedent; cases where there is such a large amount of revenue at stake that it cannot simply concede the issue without an express adverse judgement; and cases where the principle involved could affect not only other customers on the same point but other areas of the tax system, where HMRC could not give wider effect to its conceding of the case in point without creating greater uncertainty for other customers.

Splitting the difference

Splitting the difference does not give a result consistent with the law, so is not something HMRC can entertain.

In connection with the reference in guidance on LSS [paragraph 16](#) above to ADR, it should be noted that mediation is not about 'splitting the difference'/ compromising, but about supporting the parties in reaching agreement, where they are able to do so. It follows that HMRC will not be able to compromise on a genuinely 'all or nothing' issue simply because that was being addressed as part of a mediation.

Paragraph 19

Handling of cases in litigation

Decisions to litigate include both deciding to defend a case in the Tribunal and deciding to pursue an appeal through the Higher Courts.

HMRC will continue to handle cases efficiently and collaboratively (where possible) after litigation has started.

Where it is possible for litigation to proceed collaboratively, HMRC will seek to support expeditious resolution of the dispute, for example through agreement of joint statements of facts and/or areas of agreement.

It is possible that even after the start of the formal litigation process there is scope for an out of court resolution of the dispute, including through ADR, and HMRC will be open to considering that.

ANNEX 1

Resolving Tax Disputes: HMRC's Litigation and Settlement Strategy

Scope and purpose

1. HMRC's Litigation and Settlement Strategy ('LSS') is the framework within which HMRC seeks to resolve tax disputes through civil procedures:
 - a. consistently with the law, whether by agreement with the customer or through litigation; and
 - b. consistently with HMRC's customer-centric business strategy objectives of maximising revenue flows, whilst at the same time reducing costs and improving customer experience.
2. This document refreshes the previous LSS guidance published in 2007.
3. The LSS is designed to facilitate resolution of disputes in relation to a wide range of taxes, duties and associated payments and the term 'tax' should therefore be interpreted accordingly.
4. 'Dispute' is interpreted as covering 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', whether in the context of an enquiry into a return, an audit, pre-return work (whether undertaken on a pre- or post- transaction basis), or challenges to HMRC's legal interpretation brought by the customer. The definition of 'dispute' includes a disagreement with a customer on tax liabilities with respect to a particular issue in a return, transaction or arrangement, but not a disagreement with a customer over several, unrelated issues.
5. 'Litigation' refers to the resolution of a dispute through a statutory appeal to an independent body, including the Tribunals and the Courts, a common law claim to the Courts or an application for Judicial Review. It does not cover statutory internal reviews, litigation to recover debts, HMRC employment or commercial litigation.
6. The LSS applies to all tax disputes resolved through civil procedures and to all decisions taken by HMRC in relation to such disputes, at whatever level.
 - Specific disputes governance arrangements within HMRC are there to give effect to the principles of the LSS in particular cases or for particular issues.

Minimising the scope for disputes

7. A key part of HMRC's overall customer strategy is to help reduce the likelihood of situations arising which may give rise to a dispute.

- Disputes are costly for both HMRC and its customers and therefore HMRC is committed to supporting its customers to get their tax right without the need for a dispute.
- There are many strands of existing HMRC activity which play a significant part in helping to minimise disputes (e.g. well-framed legislation; guidance; rulings and clearances processes; HMRC's risk based approach to compliance work; relationship management for large and complex customers; etc).

Engaging in disputes

8. HMRC seeks to secure the best practicable return for the Exchequer, and to do that it must apply the law fairly and even-handedly. Entering into, or taking forward, disputes can contribute to maximising overall revenue flows in a fair and even-handed way.
 - The objective of maximising revenue flows involves considering not only the tax at stake in the dispute itself but also – in circumstances where a precedent may be set, or where HMRC is seeking to influence customer behaviour – potential tax liabilities of the same or other customers.
 - In general, HMRC will not take up a tax dispute unless the overall revenue flows potentially involved justify doing so.

Handling disputes

9. HMRC will seek to handle disputes non-confrontationally and by working collaboratively with the customer wherever possible. In the majority of cases, this is likely to be the most effective and efficient approach.
 - A collaborative approach requires all parties to be open, transparent, and focused on resolving the dispute.
 - Working non-confrontationally can offer benefits in terms of effective and efficient dispute resolution in all civil cases, including where disputes are ultimately resolved through litigation.
 - HMRC will foster a non-confrontational approach with the customer, but will not be deterred from efficient and effective dispute resolution by other means if collaboration is not forthcoming.
 - HMRC will seek to articulate clearly the point(s) in dispute and timescales for reaching key decision points will be set and adhered to wherever possible.
10. Where there are good grounds to believe that evasion is involved, HMRC will consider whether a criminal investigation is appropriate.

11. In any dispute, HMRC will seek to establish and understand the relevant facts as quickly and efficiently as possible.
 - A non-confrontational approach is likely to help identify and establish relevant facts. For example, HMRC will aim early on to articulate the basis of its enquiries – in terms of tax risks perceived. Wherever possible, HMRC will also seek to clarify and confirm its understanding of the relevant facts with the customer.
 - Where needed, however, HMRC will make use of its statutory information powers in order to obtain the relevant facts and documents quickly and efficiently.
12. In complex cases, once sufficient facts have been established, taking early specialist advice, refreshed as appropriate to make sure it is current, can bring important efficiency savings. However no single piece of advice is necessarily decisive in determining HMRC's position.
13. HMRC will seek to work with the customer to understand fully the relevant facts and law, sharing and testing the strengths and weaknesses of HMRC's own arguments, and fully understanding and testing the strengths and weaknesses of the customer's arguments, before reaching a considered view on the strength of its case.
 - HMRC will always seek to ensure that respective arguments are fully shared. This will however not normally require the exchange of copies of Counsel's or other legal opinions, as opposed to the substance of the arguments supported by such opinions, and HMRC would not normally expect legal professional privilege to be waived in respect of confidential legal advice.
14. HMRC will always consider whether something which initially appears to be an 'all or nothing' issue is genuinely all or nothing or is in fact a case where there is a range of possible figures for tax due.
15. HMRC will aim to work disputes to the same professional standard whether or not the disputes are ultimately resolved by agreement or through litigation. Furthermore, HMRC will not usually persist with a tax dispute unless the revenue flows potentially involved justify doing so and HMRC has a case which it believes would be successful in litigation.

Resolving disputes

16. Tax disputes must, in all cases, be resolved in accordance with the law.
 - HMRC must be satisfied that both the substance of any decision leading to dispute resolution and the way that resolution is put into effect are fully in accordance with the law.
 - Where 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'. As a matter of

process, however, it may be that a number of disputes will be resolved at the same time (each on their own merits), for example as part of a process of bringing a customer's tax affairs up to date.

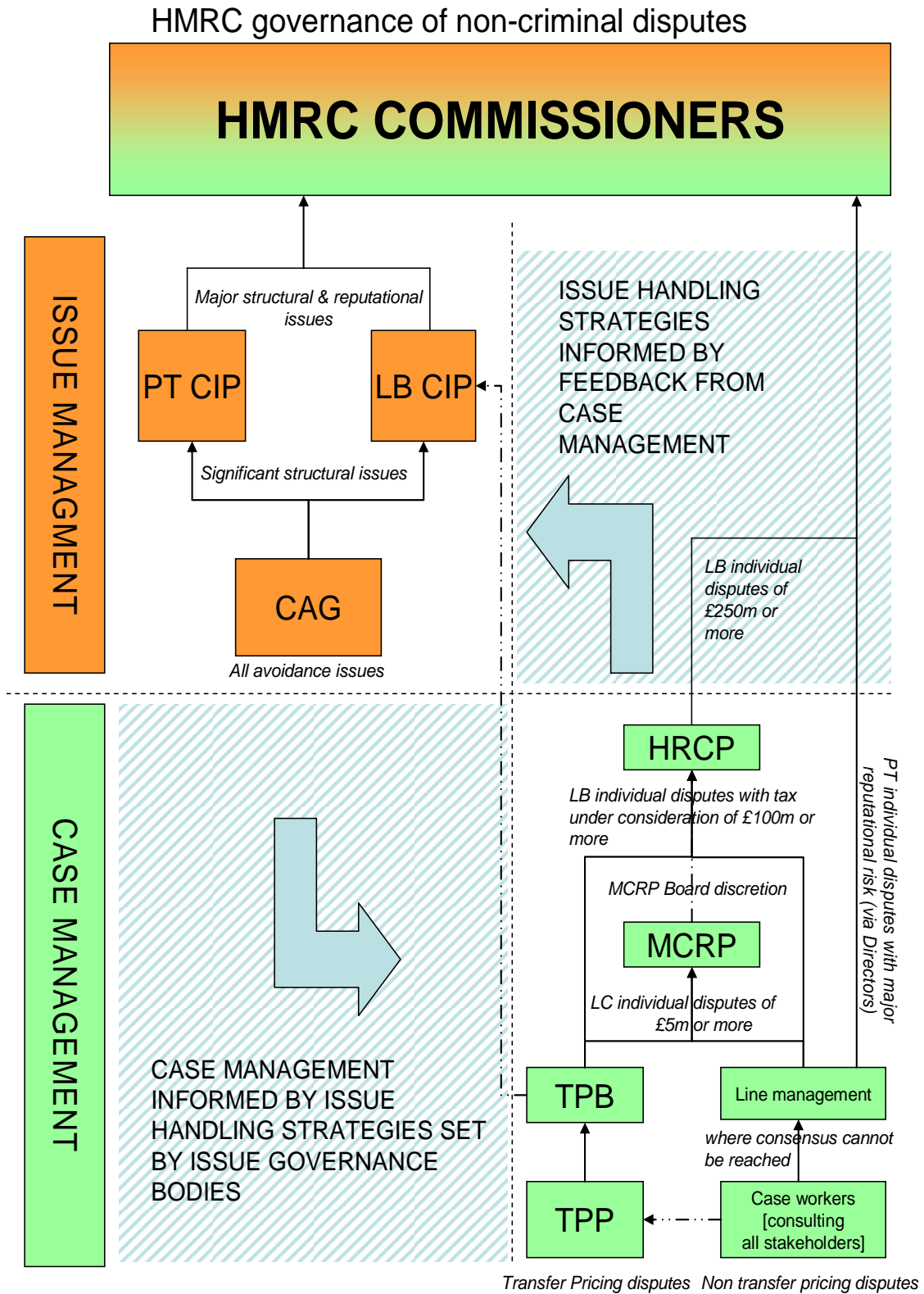
- In certain cases Alternative Dispute Resolution can help support the resolution of disputes either by facilitating agreement between the parties or by helping the parties to prepare for litigation.
17. Tax disputes may be resolved either by agreement or through litigation, depending on which is likely to secure the right tax most efficiently. Where there is a range of possible figures for tax due, the terms on which HMRC will settle by agreement will also take into account which outcome secures the right tax most efficiently.
- In considering how to secure the right tax most efficiently, HMRC's objectives of maximising revenue flows and reducing costs will have regard to future as well as immediate revenue flows, costs and the deterrent effect on customer compliance.
 - In considering settlement terms for one dispute, HMRC will take account of the potential read across to other open or prospective disputes as well as the impact which settling the dispute could have in releasing HMRC resources to work on other disputes.
 - In order to ensure that overall current and future revenue flows and HMRC costs are not prejudiced, the terms on which disputes are resolved will take into account their likely impact on customer behaviour both generally and in relation to the customer concerned, including any question of avoidance, evasion, or a failure to take reasonable care.
 - In most cases, resolution by agreement is likely to offer the most effective and efficient outcome. However, HMRC will not compromise on its view of the law to secure agreement, and in that context there will be cases where litigation offers the most effective and efficient means of resolving disputes. In such circumstances, HMRC will seek to reach resolution of the dispute by litigation as quickly as possible.
 - Where there is a range of possible figures for tax due, HMRC will not settle by an agreement for an amount which is less than it would reasonably expect to obtain from litigation.
18. In 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 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. Taking a case to litigation where HMRC believes it is unlikely to succeed would need to be justified by the particular circumstances, such as a very large amount of tax at stake (in the case itself or from

immediate precedent value where a large number of customers is affected), or a fundamental point of principle or behaviour at issue.

19. A decision to litigate (whether it relates to an all or nothing issue or not) does not mean that HMRC will stop taking steps to ensure an efficient and effective resolution to the dispute.
 - A decision to litigate should be implemented expeditiously and opportunities for collaboration should continue where it could help reduce the costs or uncertainty of litigation for both parties.
 - HMRC will continue to be open to considering the impact of any new information and / or analysis which may be put forward by the customer.

ANNEX 2

Paragraph 6: Summary of HMRC disputes governance processes



ANNEX 3

[Paragraph 9](#): Examples of the potential benefits of adopting a CDR approach

- Helps to avoid protracted ‘ships passing in the night’ discussions, where neither party fully understands the other party’s concerns or contentions; discussions can instead be focused on the essential points in dispute with a common / shared understanding of the:
 - Perceived tax risks
 - Areas of agreement on the facts and law, together with key areas of disagreement
 - Question(s) which need to be answered in order to resolve the dispute
- Helps to avoid blanket, ‘kitchen sink’ approaches to fact finding, characterised by widely drawn, non-specific information requests; a much more tailored approach can instead be adopted, where both parties agree what are the key facts of the particular perceived issue / tax risk and what is likely to be the information / documentation relevant to address that potential issue / risk.
- Helps to avoid long, protracted enquiries, with no indication of how long it will last or what resources it will require; a more tightly project-managed process can instead be adopted with both parties focused on resolving the particular dispute.
- Helps to avoid positional negotiations, involving entrenched positions on both sides on an apparently ‘black and white’ / ‘all or nothing’ issue; principled negotiation can instead be held where both parties are focused on resolving the dispute and are open to working constructively and exploring / discussing alternative ways in which factual or legal issues can be broken down or re-examined in order to help identify whether or not there might be a range of possible figures for tax due in relation to the particular issue / tax risk.
- Helps to build a relationship based on mutual trust and respect, characterised on both sides by transparency, a refusal to stereotype or antagonise and responsiveness (as opposed to an unequal relationship characterised by demands on one side and compliance on the other). This is likely to lead not only to an efficient resolution of current and legacy disputes, but also to a reduction in perceived tax risks in future and thereby a reduction in overall compliance costs.
- Where litigation is likely, a CDR approach can improve the quality of evidence to be put forward to the Tribunal and can help to narrow down the points in dispute to be litigated, both of which are likely to lead to important efficiency savings on both sides.
- Adopting a CDR approach can on occasion provide other, ancillary / non-tax benefits for customers too. By way of example, in a long running transfer pricing enquiry, a renewed focus on how the parties could work together more collaboratively in reviewing the company’s transfer pricing model (together with the parties agreeing a new timetable which provided a fresh impetus to the enquiry) helped a customer to identify that its current incentive structure for managers in its overall business model was potentially sub-optimal (as it was linked only to turnover and not also to profitability) and led to changes to that being introduced which should improve profitability in future.

ANNEX 4

[Paragraph 11](#): Template for a timetable in large and / or complex cases

A typical timetable might include details of the following in relation to the point(s) in dispute:

- Establishing facts
 - How? (e.g. through initial discussion at a meeting, subsequent review of documentation, provision of information through correspondence etc)
 - By when? (i.e. target date(s))
 - Responsibility / involving who? (i.e. who should be involved from HMRC, the customer, any agent, any third parties such as legal representatives etc?)
- Clarifying facts and obtaining any information / documentation to help evidence any particular facts
 - How? (e.g. through on site visits / review, presentation / discussion at a meeting, provision through correspondence etc)
 - By when?
 - Responsibility / involving who?
- Reviewing any documentation
 - How?
 - By When?
 - Responsibility / involving who?
- Understanding technical analyses and testing initial conclusions
 - How?
 - By when?
 - Responsibility / involving who?
- (Subject to the above) Reaching decisions
 - How?
 - By When?
 - Responsibility / involving who?

ANNEX 5

[Paragraph 11](#): Outline of a best practice approach to fact finding in large and / or complex cases where both HMRC and the customer are working collaboratively

1. High level opening discussion of the issues

- a) As the customer should be familiar with the facts and documentation, this will usually start with the customer's analysis of the issue, and the filing position taken, to establish a fuller understanding of the nature and amount of tax risk involved. Both parties could then, on a without prejudice basis, and based on the customer's outline of the relevant facts, discuss what the key technical areas of debate are likely to be.
- b) From this agree a comprehensive list of the relevant areas of agreement and issues in dispute.
- c) Agree an initial prioritisation of the issues and timetable for progressing towards decision point.

2) Identify the relevant factual information needed (where not already provided)

- a) Discussion of the relevant areas of factual uncertainty, what facts need to be established to address that uncertainty, and how those facts may be established most cost effectively for both HMRC and the customer.
- b) From this agree what documents and information should be made available and timetable for documents and information to be provided and reviewed. This should take into account the reasons why information is needed, the availability of information, and any anticipated difficulties in obtaining the information, and (where information is not readily available) any alternative ways of establishing the relevant facts. It should also take into account the lead time needed for information to be gathered and collated.
- c) If there are legal, confidentiality or other constraints which make providing information difficult then explanations should be provided to assist HMRC understand the difficulties and to explore alternative ways of addressing the tax risk. Examples include:
 - Documents that are covered by legal professional privilege
 - Information that is not in the possession of the taxpayer and that they do not have the power to obtain

3) Provision and review of relevant information

- a) The customer and HMRC should make best endeavours to adhere to an agreed timetable for the provision and review of information. Disagreement over the status or availability of some documents should not be allowed to hold up the timetable for the provision of others.
- b) Once HMRC has reviewed the information and there have been detailed discussions of the technical analysis, if HMRC believes it requires supplementary information it will explain its reasons.