HM Revenue & Customs

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Dame Meg Hillier
Chair, Public Accounts Committee

By email only

3 May 2022

Dear Dame Meg Hillier,

Committee of Public Accounts Forty Eighth report of Session 2021-22: Recommendation 3

In the Treasury Minute containing the response from HMRC to the PAC's report on HMRC's Management of Tax Debt the department has agreed to write to the Committee regarding recommendation 3 below:

PAC recommendation: Alongside the Treasury Minute response to this report, HMRC should provide the Committee with a summary of substantive work it has undertaken to:

- *Estimate the number of rogue companies at risk of defaulting and the value of the tax at risk.*
- *Ensure commensurate resources are in place to prevent such fraudulent activity.*

HMRC should be prepared to bring the full force of the law to bear on those who defraud the Exchequer, and report publicly and regularly to Parliament on the numbers prosecuted.

HMRC recognises phoenixism as a compliance risk and that the risk might have increased as a direct result of the economic disruption caused by the Covid-19 pandemic. HMRC is committed to robustly tackling this risk.

HMRC is undertaking an analysis of the risk phoenixism posed both before and during the Covid pandemic period and continues to pose. This is a complex piece of work aiming to deliver initial estimates of both the number of phoenix events as well as the associated tax loss. These estimates are intended for HMRC's internal use, supporting planning to treat and manage the risk.

The estimates are due to be delivered by the end of May 2022 and owing to the nature of the fraud and the inherent uncertainty, it is likely that the estimates will be expressed as a range of values rather than a single point estimate.

To minimise the risk of tax losses, HMRC uses a wide range of tools to tackle the controlling minds of companies and the corporates through which they operate where there are indications of phoenixism. These include powers in tax legislation, insolvency legislation, and the Company Director Disqualification Act (CDDA) 1986.

For example, in Finance Act 2020 HMRC's powers were significantly strengthened to help address these risks. This legislation provided enhanced powers to hold company directors liable for some debts owed to HMRC by their companies.

- Schedule 13 FA20 enables HMRC to make company officers liable for tax debts of the company in certain instances, usually where there is deliberate behaviour after July 2020, and there has been avoidance / evasion or repeated insolvency.

- Schedule 16 FA20 relates specifically to HMRC-administered Covid-19 support schemes, where we are recovering sums owed to HMRC in respect of incorrect claims and the company is likely to go, or has gone, insolvent and we attribute the liability to the company officer.

We are confident that this new legislation will become an effective tool in tackling phoenixism, where there has been deliberate or repeated behaviour using insolvency in an attempt to escape paying debts to HMRC.

HMRC can also require security payments from new companies where we think they pose a serious future tax risk. This reduces the risk of future losses as the money held on security can be set against any unpaid taxes of the new company. It may be a criminal offence if the securities requirement is not complied with. HMRC imposes securities reasonably and proportionately based on previous behaviour (usually by their director).

In addition, HMRC makes use of insolvency legislation which allows creditors to independently pursue a person for liabilities of a new company, e.g., in phoenixism where there is reuse of the company name without consent and where an earlier company carrying on the same trade has gone insolvent.

HMRC engages with The Insolvency Service and refers non-compliant directors to them for consideration of disqualification from acting as director. This protects both the Exchequer and the public from further harm.

HMRC also makes use of other legislation (including Company Directors Disqualification Act 1986) that enables creditors to pursue disqualified directors personally for relevant company debts if they have acted whilst disqualified. This is another example of where the person behind the corporate who is responsible for harm can be held accountable.

As part of its commitment to increase transparency, HMRC will explore options to publish information about its performance on responding to those involved in phoenixism.

Yours sincerely

JHarra

JIM HARRA
CHIEF EXECUTIVE AND FIRST PERMANENT SECRETARY