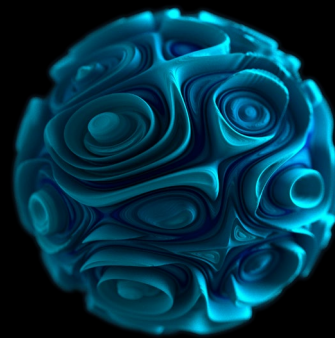


Deloitte Tax Controversy October 2023



Deloitte Tax Controversy (“DTC”) is a specialist network of 60 Deloitte tax professionals, advising clients on tax governance through to litigation. The network includes ex-HMRC/HMT personnel, tax litigators and mediators. This newsletter provides a 10-minute snapshot of the current biggest stories in this area.



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In the News

[HMRC launch Accelerated Routes Pilot](#)

HMRC have launched the Accelerated Routes pilot to help progress interventions for long running transfer pricing (‘TP’) and diverted profits tax (‘DPT’) enquiries that have gone on for more than 36 months since an opening notice.

Although this is a non-statutory process, it aims to make best use of HMRC specialised resource through targeted intervention



Controversy Trends

[COP9 – Civil Investigation of Fraud](#)

Bernie Ecclestone pleaded guilty to fraud by false representation with the judgment issued on 12 October 2023. Mr Ecclestone was subject to a civil fraud investigation issued by HMRC under Code of Practice 9 (COP 9). This process is a contractual disclosure facility where in return for admitting a deliberate loss of tax HMRC will not commence a criminal investigation provided full, honest, and open disclosure is made to HMRC. This case revolved

focused on the milestones demarcating enquiry phases.

HMRC have provided in depth submission guidance and key indicators to identify suitable cases to be submitted to the new Accelerated Routes pilot mailbox.

For further information, please contact [Jamie Bedford](#), [Edward Morris](#), or [Samir Yahiaoui](#).

[HMRC approach to the taxation of cryptoassets](#)

The UK does not have a specific cryptoassets taxation regime. Instead, the UK's usual tax laws are applied. In their [manual](#), HMRC explain that *"the tax treatment of all types of tokens [i.e. cryptoassets] is dependent on the nature and use of the token and not the definition of the token."*

Despite the name, HMRC do not consider cryptocurrency to be currency or money, nor does HMRC consider the buying and selling of cryptoassets to be the same as gambling. This means that the tax provisions relevant to currency, money and gambling do not apply to cryptoassets.

Given the complexity around the taxation of crypto-assets, clients with significant crypto holdings may wish to consider a pre-filing conversation with HMRC.

Please contact a member of the Deloitte Tax Controversy team if you would like to explore the possibility of a pre-filing conversation with HMRC.

around a false statement by Mr Ecclestone at a COP 9 meeting where he denied any interest in a trust outside the UK.

Although the judge considered a confiscation order under POCA for the loss sustained by the criminal conduct, all parties instead agreed to a civil tax settlement of £650 million, covering several years of liabilities and including a 200% civil penalty. Taking this, as well as his age and date of disclosure into account, Mr Ecclestone was issued with a suspended 17 month sentence.

HMRC's decision to charge Mr Ecclestone is in line with their recently refreshed guidance on COP 9 procedures. In the updated guidance, HMRC re-enforce the criminal underpinning of the civil process. HMRC expect taxpayers to fully cooperate with HMRC in the process to make good the loss of tax. Where the taxpayer does not make a full disclosure, HMRC reserve the right to start a criminal investigation with a view to a prosecution.

It is important to take any COP9 process seriously and understand the process fully from the outset.

Please contact [Karmjit Mader](#) if you receive a COP 9 letter or HMRC suggest that there could be a deliberate error.



HMRC News

[HoC PAC report: Managing tax compliance following the pandemic](#)

The House of Commons Public Accounts Committee has published its [managing tax compliance following the pandemic](#) report.

The report sets out six groups of conclusions and recommendations. The report's key findings include that:

- HMRC's compliance yield fell during the coronavirus pandemic;
- HMRC's tax compliance activity fell due to redeployment of staff on COVID schemes;
- HMRC is not doing enough to help those who want to pay their taxes correctly; and
- HMRC does not have the operational resilience to deal with expected growth in the tax gap.



A day in Court

[Domicile challenges](#)

The last year has seen a string of successful results for HMRC when litigating on domicile positions, and we understand further cases are due to reach Tribunal this autumn. The combined impact of these judgements has been to increase the level of testing required on long-term UK resident, non-domiciled taxpayers. As well as more and longer-running enquiries, taxpayers should expect HMRC to insist on an even greater level of documentary evidence for statements of intent.

In particular, the First-tier Tribunal dismissed the taxpayer's appeal in [Ameet Shah \(as executor of the estate of Anantrai Maneklal Shah Deceased\) v HMRC](#), an inheritance tax case concerning domicile. The Tribunal concluded that the deceased, who had lived in

A recent survey by CIOT in July & August 2023 supports this with 1 in 6 respondents saying that contact with HMRC's helplines resolved questions 25% or less of the time, and significant delays in contact from HMRC. Around two thirds of respondents said they have been waiting over a year for a reply from HMRC despite chasing, and the same percentage of respondents were not confident of seeing an improvement within the next year.

Please contact any of the Deloitte Tax Controversy team if you consider that the running of your enquiry has been impacted by HMRC service levels and would like to take a fresh look at the enquiry process.

the UK for 43 years, had acquired a UK domicile of choice.

The judgment states that HMRC did not need to identify a specific point in time when Mr Shah's domicile changed, stating simply that it had at 'some point after 1973'.

HMRC were also not required to do more in the way of discharging their burden of proof than to cast doubt on the taxpayer's statement – a much lower bar than might be expected.

Please contact [Annis Lampard](#) to discuss an open domicile enquiry, domicile statements of intent or the impact of recent caselaw on protected trusts.

Events and Publications

- On 19 April 2023, the DTC team hosted a Dbrief on Resolving Complex Tax Controversy. To watch this Dbrief on demand, click [here](#).
- The Deloitte Tax Controversy team attended HMRC's Wealthy conference on 20 October, and will be attending the Tax Controversy Leaders summit on 21 November.

Have a question?

If you have any questions about the content in the DTC Newsletter, please email [Zara Anwer](#) or [Andre Cardador](#).

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