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CO-OPERATIVE COMPLIANCE: Views of large business in the Netherlands and UK.

Dennis de Widt, Cardiff University
E-Mail: DeWidtD@cardiff.ac.uk

Lynne Oats, University of Exeter
E-Mail: L.M.Oats@exeter.ac.uk



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1. List of abbreviations

HM	Horizontal Monitoring
HMRC	Her Majesty's Revenue and Customs (UK tax authority)
IRS	Internal Revenue Service
MNE	Multinational enterprise
NOB	The Dutch Association of Tax Advisers (<i>Nederlandse Orde van Belastingadviseurs</i>)
NPM	New Public Management
NTCA	Netherlands Tax and Customs Administration
OECD	Organisation for Economic Co-operation and Development
Sox	Sarbanes-Oxley Act
TCF	Tax Control Framework
VNO-NCW	Dutch Employers Organization
WRR	Dutch Scientific Council for Government Policy (<i>Wetenschappelijke Raad voor het Regeringsbeleid</i>)

2. Executive Summary

This working paper presents the findings of a study of Co-operative Compliance in the Netherlands and the UK. These two countries were early adopters of Co-operative Compliance as a mechanism for managing the relationships between large business taxpayers and the tax authorities, mediated to various degrees by tax advisers. The juxtaposition of these two cases provides interesting insights into how policy initiatives come into being and evolve, as well as how regulators learn from each other in subtle, and not so subtle ways. Policy learning in this context is promoted by the intervention of the OECD as promulgator of best practices in tax administration.

Our focus is on Co-Operative Compliance in these two jurisdictions in *practice*. We examine how highly skilled actors perceive the programme in retrospect and prospect, by reference to their lived experiences derived from interviews. We also chart the emergence and subsequent adaptations of the programmes through the lens of official pronouncements and policy documents. The project started in 2013 and is generously funded by Horizon 2020. Over the course of the project, the objects of study were constantly moving within and between the countries we study, as was the backdrop of global events and developments in other jurisdictions. Capturing the essence of such a dynamic environment has been challenging but rewarding.

Sections 2 and 3 of this report provides a brief background to the project and an explanation of our methodology respectively. This is followed by descriptions of the working practices in both jurisdictions in Sections 4 and 5. Section 6 is the heart of the report that builds on the background provided in earlier Sections and presents the views of large businesses of various dimensions of Co-operative Compliance in both countries. In Section 7 we offer a discussion of our findings together with our conclusions. .

Keywords: Co-operative compliance, regulation, tax administration, large corporate taxpayers, Dutch horizontal monitoring.

3. Background to the Study

Co-operative compliance has been the subject of considerable research activity in recent years, reflecting broader interest in regulatory mechanisms that seek to control the activities of large corporate entities in modern capitalist societies.

The need for new approaches to encourage a move away from traditional adversarial interaction towards a more collaborative approach heightened in the wake of the large corporate scandals of the later 1990s and early 2000s. In 2005, three jurisdictions, the Netherlands, the United States and Ireland, initiated specific programmes designed to secure higher levels of cooperation from large corporate taxpayers. The UK also embarked on a series of initiatives that collectively could be described as co-operative compliance, but were not overtly labelled as such at the time, indeed the UK took the lead in the OECD 2008 Intermediaries study in which the term ‘enhanced relationship’ was first used as a precursor of the label co-operative compliance. (De Widt & Oats 2018: 261).

As we note elsewhere, “Co-operative compliance, as a regulatory mechanism, covers a range of arrangements centred on a core notion of collaboration for mutual benefit. Its emergence and adoption has been patchy across countries, with considerable variation in the operational detail. ...[C]o-operative compliance mechanisms are most commonly focused on large business taxpayers who have long been recognised as posing significant risk to tax authorities in terms of potential revenue loss. There is no universal co-operative compliance model, but features most commonly seen include:

- Risk assessment procedures that identify those taxpayers in need of closer monitoring, as distinct from those who for various reasons can be ‘trusted’ to be compliant;
- Real time working under which discussions between taxpayers and tax authorities are ongoing and proactive, rather than ad hoc and reactive, as is the case with more traditional command and control models of tax regulation; and
- Mutual understanding, whereby both parties to the arrangement invest in developing a more nuanced appreciation of the context and constraints under which the other is working.” De Widt & Oats (2018: 260-61).

This report presents findings from a study of the Netherlands and the UK which forms the core of the research conducted by Work Package 7 of the FairTax project. It complements the work done in Work Package 6, which concerned the emergence and practices of comparable systems in Nordic countries. The results of Work Package 6 have been published as individual country reports Sweden (Björklund Larsen 2016), Denmark (Boll 2018; Boll and Brehm Johansen 2018), Norway (Brøgger and Aziz 2018). A further working paper draws

together the findings from these individual country studies together with a similar study in Finland (Boll et al 2018).

This report is structured as follows. In section three the methods and material that have been used to conduct the research are described and the approach to the research explained. The fourth section discusses the factors leading to the implementation of co-operative compliance in both the Netherlands and the UK. Aspects of the practical operation of co-operative compliance are discussed in section five, and in section six more abstract considerations are presented by reference to the observations of our interviewees. The report ends with discussion and conclusions.

4. Method and material

There is growing recognition of the value of qualitative studies of tax practices, including tax administrative practices and calls for more such studies (Oats, 2012) to supplement knowledge acquired through more traditional modes of inquiry, primarily black letter law or quantitative analyses.

The methodology used for this study includes qualitative interviews, primarily face to face. Interviews were conducted with senior tax specialists working for large corporates, specialist tax advisers who provide advice to large corporate taxpayers and both current and former tax officials including those with direct responsibility for interacting with large corporates. We describe these actors as belonging to the tax triangle. Unlike many regulatory encounters which are bilateral engagements between regulator and regulatee, in the tax field advisors play an important role, acting as intermediaries between the two thereby forming the third side of the triangle. All interviewees have had experience with working directly with cooperative compliance regimes or acting in an advisory capacity in relation to these regimes. Some had worked on more than one side of the triangle, with the tax authority and with an advisory firm, with a large corporate taxpayer and with an advisory firm and so on. This multiplicity of experience gave added value to our interviews through the generous reflections of our interviewees on experiences in each side. Additionally, several academics with knowledge of cooperative compliance regimes were interviewed to elicit their perspectives on developments.

The interviews were semi structured with a broad set of questions so as to allow for a degree of improvisation and to provide the interviewees with freedom to reflect on their experiences in providing responses to probes. The interviews lasted on average one hour and were mainly conducted in the premises of the interviewee. All interviews were digitally recorded and then transcribed and analysed using computer aided analysis software, which also served to manage the data. The interviews were primarily conducted by one of the researchers, and the subsequent analysis by both researchers following extensive discussion of the various findings.

The Dutch interviews totaled 33, 10 from large businesses, 9 from the NTCA and 11 from the tax advisory profession. In addition, three Dutch tax academics were interviewed, who hold long practitioner careers in the area of corporate tax. The UK interviews totaled 29, 8 from large business, 2 from HMRC and 19 from the advisory profession. Identifying potential interviewees commenced with existing networks of connections and the snowballing was used to find additional participants.

In addition to the face to face interviews, the researchers drew on various archival sources including policy documents from the tax authorities and tax advisers, as well as public statements by actors with relevant experience of or exposure to cooperative compliance regimes. The combination of these three sources of data provides a rich data set and allowed for triangulation of the study phenomena.

5. Implementation of Co-operative Compliance

Taxation as a regulatory environment presents particular challenges. Not only is the regulator, the tax authority, responsible for monitoring and disciplining the behaviour of its regulatees, taxpayers, but it is also responsible for extracting money from them, which creates additional tensions compared with, say health and safety regulation. An additional challenge is provided by the pervasive presence of advisors, the third side of the tax triangle, who act as intermediaries between the tax authority and the taxpayer. Co-operative compliance is concerned mainly with large taxpayers; certainly that is the focus of this research. On one level, the co-operation in co-operative compliance is between sophisticated actors with high levels of specialist expertise in the tax law and practice. This must surely facilitate mature conversations in regulatory encounters within the tax field. We find, however, that this is not always the case. Notwithstanding the technical sophistication of the actors involved in co-operative compliance, frictions emerge as a result of the different objectives of each of the parties, as well as the bald fact that ultimately, as in all regulatory engagements, the engagement is between individuals, who come with a variety of soft skills and levels of expertise in negotiating the ultimate financial contribution of the taxpayer.

Traditionally, the relationship between tax authorities and taxpayers, leaving aside for the moment the intermediaries, has been one of power asymmetry. All taxpayers, including large corporate taxpayers, have detailed and intimate knowledge of their affairs and make decisions about how much to disclose to the tax authorities, who therefore assume a subordinate position (Gracia & Oats, 2012).

In this section we describe the implementation of co-operative compliance initiatives in the Netherlands and the UK.

5.1. Implementation in the Netherlands

The background to the adoption of co-operative compliance in the Netherlands has been described in some detail in De Widt (2017). For completeness the description of the Dutch system is presented again below.

“Four factors are relevant as to why the need was felt in the Dutch tax system to make relationships more cooperative. First, in the early 2000s, influential voices criticized the increasing regulatory pressures felt across Dutch society, and the increasing supervision burden this put on regulators. An influential report from the Dutch Scientific Council for Government Policy (WRR 2002), published in 2002 emphasised the greater need for self-regulation to reduce pressures on both regulators and those being regulated. To realize this, implementing organizations would need the necessary additional scope, which, according to

the report, could be realized by ‘a less rigid application of the principle of equality that focuses on a differentiated approach as determined by the degree to which the citizen assumes his or her responsibility’ (WRR 2002, 111). Changes in the Government’s general approach to supervision were set out in documents published in 2001 and 2005, in which the Dutch Government articulated a preference to adjust the relationship between government and society. More than in the past, so one of the document states, the government is ‘neither willing nor able to bear all risks’ and, continues by stating that ‘[T]he control of risks and prevention of errors is a joint duty of both government and society.’¹

A second reason for the introduction of HM relates to incidents in the Dutch and international business community that happened in the early 2000s. Major international stock market scandals with companies including Enron, WorldCom, but also the Dutch retailer Ahold, increased attention for corporate governance and tightened regulations on the internal control systems of businesses. In the US, this led to the introduction of the Sarbanes-Oxley Act (SOx) in 2002, while the Netherlands introduced the Corporate Governance Code in 2004. Both the SOx and the Corporate Governance Code requires company’s management to issue a statement in their annual report about the effectiveness of their internal control systems. The regulatory changes introduced in Dutch corporate governance offered the NTCA an opportunity: a specific category of (large) businesses were compelled to improve their internal control systems, systems that the NTCA could take advantage of in its modification of its supervisory methods (Stevens et al. 2012, 1).

A third incentive for the introduction of HM was criticism from the Dutch business community of the NTCA’s supervisory process. In discussions held by the Dutch Ministry of Finance and the NTCA in 2004 with representatives from large businesses, the Dutch Employers Organization (VNO-NCW), and the Dutch Association of Tax Advisers (NOB), participants stated that the NTCA was ‘guilty’ of adopting a ‘them and us’ mentality (Stevens et al. 2012, 28). An illustration of the difficult interactions is that the period of the 1990s saw an increasing number of tax disputes between the tax administration and corporates. The rather antagonistic relationships were absorbing a growing amount of resources from both the side of the Dutch tax administration and the side of corporate taxpayers. Demonstrating sensitivity for the criticisms from the business community, the Secretary of State for Finance stated during the introduction of HM in Parliament in April 2005 that he wanted to end the ‘them and us’ attitude governing the relationship between taxpayers and the NTCA (Stevens et al. 2012, 28).

¹ *Minder last, meer effect zes principes van goed toezicht*, annex to Parliamentary Documents II 2005/06, 27 831, no. 15, p. 9.

A fourth factor relevant to explain the introduction of HM relates to negative media publicity for the NTCA in the aftermath of the ‘De Vinkenslag’ incident. The ‘De Vinkenslag’ was a mobile home park in the city of Maastricht, and significant consternation occurred when it became public that the NTCA had reached agreement with the park’s residents on the manner in which their profits were to be assessed. The agreements were considered to be contrary to the law, and, encouraged by the media attention to the incident, more stringent regulations were implemented in the NTCA that reduced discretion of tax administrators. The so-called ‘Vinkenslagproof’ regulations were first announced in a letter of the Secretary of State for Finance to the Dutch House of Representatives in June 2004. In this letter, the Secretary of State for Finance announced several measures to review the approach to domestic tax shelters, amongst which an exploration into a differentiated approach to supervision according to the risk profile of taxpayers. The letter, which introduced the term ‘horizontal monitoring’, stated:

(...) The Tax and Customs Administration shall explore several forms of horizontal monitoring in the coming years. The introduction of these less stringent forms of compliance risk management for taxpayers who fulfil all their obligations will create a balance between these forms and the implementation of more stringent forms of compliance risk management for persons perpetrating fraud.²

Hence, in addition to a planned reduction in the supervision burden for compliant taxpayers, the NTCA foresaw the introduction of HM to be juxtaposed by an intensification of monitoring on taxpayers showing a high risk of noncompliance.

The above-mentioned factors incentivised the Dutch tax administration to experiment with a different type of monitoring. HM started in 2005 with a pilot including twenty large, mostly listed companies. Most of the companies were Dutch, and, despite initial reservations, the NTCA had to make relatively little effort to convince the companies to participate in the pilot.³ Corporate interest in the pilot largely resulted from: (1) the benefits of HM as perceived by the companies, (2) commitment by high-level officials in the NTCA and the Dutch Ministry of Finance to make the pilot a success – e.g. reflected by visits of high-level officials to companies potentially interested in the pilot –, (3) already existing close relationships between the NTCA and large Dutch companies.

It was agreed that the NTCA and companies participating in the pilot would work on the basis of ‘mutual understanding, trust and transparency’, with the objective to conclude a covenant between the NTCA and every participating company. In a letter sent to Parliament

² Parliamentary Documents II 2003/04, 29 643, No. 2, p. 3 and p. 6-7. 3 June 2004.

³ E.g. interviews NLO1 (The Hague, 2 March 2016), and NLO7 (Amsterdam, 25 May 2016).

in April 2005, the Secretary of State for Finance described HM as aimed at ‘adjusting the NTCA’s supervision to a company’s level of fiscal control’.⁴ The first pilot was extended in 2006 to another twenty companies, and, following a positive evaluation in 2007, the program was rolled out to the rest of the NTCA’s Very Large Businesses segment. The pilots were evaluated through a survey amongst corporates and members of the NTCA’s processing teams assigned to these businesses, and focused on whether they experienced HM as an improvement compared to traditional monitoring. No attempt was made for a more comprehensive and objective evaluation, such as specification of the expected benefits and measurement in practice (Stevens et al. 2012).

In 2008, HM was further extended to the Medium-Sized Businesses Division, and, through the use of intermediary organizations such as tax advisory firms, to small enterprises. Given the significantly different shape of HM for the smallest business segment, and many medium-sized businesses, the investigations in this report focus on the experiences of large businesses in the Netherlands. These businesses are part of the NTCA’s Large Businesses Division, which was founded in 2013, following the merger of the NTCA’s Very Large Businesses Division with the largest businesses from the Medium-Sized Businesses Division. Currently, around 9,600 companies are part of the NTCA’s Large Businesses Division (De Widt and Oats 2017).

“In a report, published in June 2017 by the Knowledge Center of the Dutch Tax Administration (‘Rapport Onderzoek Grote Ondernemingen’), a comparison is made between 95 Dutch large companies under a horizontal supervision relationship and 255 large companies under a vertical supervision relationship. According to this report, until now, many expectations mentioned above with respect to horizontal supervision are not met. The investigation shows that the number of adjustments by the tax administration of the tax returns of large companies and also the total absolute and relative amount of adjustments are not bigger or smaller for companies with or without an enforcement covenant. Also in other aspects, large companies under horizontal supervision do not perform better than those under vertical supervision. There is, e.g., no significant difference in respect of timely filing the tax returns and timely payment. Also, the mitigation of tax risks does not seem to be bigger for companies under horizontal supervision. Companies who consider the working relationship with the tax administrations as more positive than others, are confronted with significantly higher corporate income tax adjustments. Only for the wage levies there seems to be a negative correlation between horizontal supervision and the number of tax adjustments.” (Essers, 2017)

⁴ Parliamentary Documents II 2004/05, 29 800, No. 2.

Following several failed internal reorganisations, the NTCA has been in a tumultuous phase since 2016, and is widely criticised in Dutch politics. In addition, international tax avoidance and tax evasion investigations, such as those related to the Panama Papers, or the European Commission's tax order on the NTCA's Starbucks tax ruling have increased political and media scrutiny of the NTCA's performance in the corporate tax domain.

5.2. Implementation in the UK

The story of co-operative compliance implementation in the UK is one of gradual evolution rather than a more abrupt introduction as experienced in other jurisdictions that designed and implemented a specific model as in the Netherlands. An analysis of the history of the emergence of co-operative compliance in the UK reveals what appears to be piecemeal operational policy implementation, but collectively can be seen to be a strategic path to a more robust approach to securing compliance from large business taxpayers.

The UK has a long history of decentralised tax collection that continued up until 1994, when a large groups office was set up within Inland Revenue (as it then was) in London to centralise interactions with large business taxpayers. This office was subsequently renamed as the Large Business Office in 1997, managing the affairs of some 900 corporate groups (Tuck 2013). In 2003 a New Compliance Process was introduced with a group of 17 multinational groups in a range of industries. This can be viewed as a precursor to co-operative compliance in the UK. At that time, the LBO was concerned only with taxes falling within the remit of Inland Revenue, ie primarily direct taxes, as indirect taxes were dealt with by another department, Her Majesty's Customs and Excise, which had its own Large Business Group (Randall and Procter, 2008, cited in Tuck 2013). The development of the New Compliance Process was superseded in 2005 by the merger between the two tax departments, Inland Revenue and Her Majesty's Customs and Excise into a combined department, Her Majesty's Revenue and Customs (HMRC). This new department, now handling both direct and indirect taxes, created a Large Business Service in 2006, divided into 17 sector groups.

The New Compliance Process had included a process whereby risk assessment was openly discussed between the large business and relevant case director, which was actually a formalisation of prior working practices. On the creation of the Large Business Service in 2006, an operating model was published (HMRC 2006) in which the role of client relationship manager (CRM) was established with responsibility for being the primary point of contact with large business, covering all taxes. Later that year, Sir David Varney presented a 'Review of Links with Large Business' (HMRC 2006c) as a response to concerns about the relationship between business and HMRC. Indeed, 2006 saw the introduction of several

initiatives and inquiries, not under the rubric of a specific label such as co-operative compliance, but rather as a refinement adaptation of prior practices.

In particular, the introduction of a 'Resourcing to Risk' approach in April 2006 allowed HMRC to allocate its 'resources according to the level of risk displayed by a business' (OECD 2009:25). Compliance risk was assessed by the CRM and recorded in an internal management system, with a view to encouraging companies to reduce their risk rating. Also in 2006, a High Risk Corporates Programme was launched to deal with the most recalcitrant large businesses that posed the highest risk who would be project managed to resolve outstanding issues more speedily, litigating where necessary. In November 2006, HMRC published a 'Review of Links with Large Business' which recommended an improved risk based approach that provided benefits for low risk behaviour, effective consultation and dialogue and speedier resolution of disputes.

In 2007, HMRC published a document entitled "approach to Compliance Risk Management for Large Business' and introduced a process for resolution of old disputes. Also in 2007, the National Audit Office reviewed HMRC's management of large business taxpayers, gathering evidence from large businesses and their advisors. The report (NAO 2007) notes that large businesses 'had high expectations from the Department's new approach of focusing resources on higher values of corporation tax under consideration' [16], although some observed ongoing low value enquiries, reflecting the difficulties experienced by some HMRC personnel in adapting to the new risk based approach. The House of Commons Public Accounts Committee (PAC) examined the management of large business corporation tax in 2008 (PAC 2008). HMRC's performance was defended by Dave Hartnett, who also conceded that there was room for improvement. In this year also the OECD Intermediaries Study, led by HMRC, was published in which the term 'enhanced relationship' was coined.

By 2010, the Large Business Service was managing approximately 800 of the largest businesses and HMRC had moved from lengthy, paper based, inquiries to face to face discussions (Tuck 2013). Subsequently, however, the attitude towards co-operative compliance shifted significantly. There is speculation about the origins of this shift, but most agree it was an amalgam of events including the global financial crisis and subsequent austerity which led to 'a massive spotlight that suddenly shone on large business tax' [UK29]. The PAC in 2011 reviewed HMRC's performance in respect of dispute resolution and raised concern about the efficacy of governance arrangements, thereby contributing to increased public scrutiny of HMRC's management of large businesses.

There followed a period of unrest, during which substantial, often ill informed, media coverage kept the question of multinationals' tax affairs in the public view while at the same

time the government introduced a series of new measures to attempt to exert control over tax avoidance practices (Oats and Morris 2018). In 2014, HMRC's management of large businesses changed once again, with the creation of a Large Business Directorate (LBD). The constituency of the LBD is wider than its predecessor and now includes in excess of 2,000 corporate groups, leading to staffing concerns, ie lack of resources as well as a mismatch of work in terms of allocation of large business customers to specific tax officials. In 2017, a consultation was launched by HMRC into the Business Risk Rating process with a view to exploring the possibility for modifications to make the process more robust and useful to both HMRC and large businesses. At the time of writing the outcome of this review has not been made public.

The landscape in which co-operative compliance has developed in the UK has changed considerably over the years. The following quote from one of our interviewees illustrates how things have changed in relation to the role of tax in large corporate decision making:

I do think basically the engagement that now happens around tax is all driven about what's the commercial environment that's going on, the commercial decision being done. And where a company has the opportunity to undertake a commercial decision one way or the other with different tax treatments, they'll clearly want to choose one that has the lower tax treatment. But that's much more about what they're doing already, rather than what used to be the case, where there were active, bolt-on tax things you could do to reduce your tax. Those are the things of yesterday. [UK 16]

5.3. Summary

Although both the Netherlands and the UK started from similar positions - a desire to create a more open dialogue between large businesses and the tax authorities, their respective motivations and subsequent trajectories have differed.

In both countries there was high level support within government for the implementation of co-operative compliance, notwithstanding the different motivations for the respective programmes. In the Netherlands, "the Director General of Taxation in the Ministry of Finance and other high-level civil servants in the tax section of the Ministry of Finance were strongly committed to the successful launch" of the model.

"High-level civil servants visited corporate boards not only to get to know 'the tone at the top', as part of a company's application process to HM, but also to actively promote the model and mitigate concerns." In the UK, this took the form of the Tax in the Boardroom agenda initially actively promoted by Dave Hartnett and continued into the formalisation of the co-operative compliance model. HMRC's position in relation to Tax in the Boardroom

was outlined publicly in a (now archived) webpage⁵ and introduces the term ‘tax governance’, setting out a series of indicia of good practice.

Subsequent events have led to a current state in which all parties to co-operative compliance are more muted in their support. In the UK this appears to be more overtly political, as illustrated by the following quote from one of our UK interviewees:

Q: And do you think that nervousness is bigger in the UK than other countries?

I: Yes. Yes, I think it is. I think it’s something that you don’t pick up as much with American businesses. And I don’t see it quite so much with European businesses. I think it is at its most extreme, I would say, in the UK [UK27]

The politicisation of co-operative compliance in the UK is also visible in the 2017 re-branding of Customer Relations Managers as Customer Compliance Managers. HMRC considers itself to be world leading (‘best in class’ according to the current head of Large Business Directorate, Jo Wakeman) in its development of co-operative compliance and remains overtly committed to the approach with current discussions revolving around modifications to the model to make it fit for purpose. In the Netherlands on the other hand, questions are now being asked about the efficacy of HM, with a 2017 study revealing negligible benefits for those businesses within the model compared to those outside. The cost to the NTCA of maintaining the Dutch HM system is also a concern.

⁵ <https://webarchive.nationalarchives.gov.uk/20080306023053/http://www.hmrc.gov.uk/lbo/tax-in-the-boardroom.htm>

6. Co-Operative ways of working: A Comparative Overview

The UK and the Dutch cooperative compliance programmes have several similarities but also important differences that makes comparisons between them challenging, as was found in the Nordic study published as a FairTax Working Paper (Boll et al 2018).

In both the Netherlands and the UK, the tax administration and businesses articulate the wish to build an effective and efficient working relationship, based upon ‘mutual trust, understanding and transparency’, not limited to corporation tax, but including all taxes for which a business might be liable. Both administrations have dedicated large business units.

A main feature of Dutch HM is that it is a voluntary program to which corporates can apply, with admission being the discretion of the NTCA. The process is described in detail in De Widt (2017). HM has not replaced traditional monitoring, which continues for companies unwilling, or deemed unqualified to join HM. In the UK, on the other hand, cooperative compliance applies to all businesses that fall within the remit of the Large Business Directorate. Parity of treatment between those large businesses within and those not within HM is therefore important in the Netherlands but it is not an issue in the UK. In both countries, of course, parity of treatment between large business subject to co-operative compliance and other categories of taxpayers is a concern.

Both systems adopt a customer relationship model. The NTCA applies an ‘individual customized treatment’ to all businesses part of its Large Businesses Division (not just HM businesses), which in practice means that every large business has its own dedicated tax administrator as first point of contact. In the UK, large businesses are allocated a Customer Compliance Manager, previously known as Customer Relations Manager (and before that Client Relations Manager).

In the Dutch system, participating companies enter into a covenant which are standard texts outlining the future working relationship and which apply to the whole group. The covenant is not time limited, but can be terminated by mutual agreement. No such formal written agreement is entered into in the UK. This difference reflects longstanding practices in both countries. Covenants are common in the Dutch regulatory environment more broadly and the UK has a long tradition of unwritten agreements.

The two countries also differ in the focus of the cooperative compliance models. The focus of the Dutch model is the system of internal controls – the Tax Control Framework (TCF), which supports the preparation of tax return filings. The participating company agrees to maintain, and improve where necessary, the TCF, and the NTCA is then able to customize

its supervision based upon its quality. In the UK, while monitoring internal controls of large businesses is important, the focus is more on the open dialogue that the relationship engenders. One corporate tax specialist observed:

HMRC has always been quite business-friendly, business-focused. I don't mean business-friendly in a bad way; but I mean an organisation that understands business and can understand what business is saying and can have a sensible dialogue with people in the business world. [UK04]

In both systems there is a commitment to real-time working. The company actively provides the relevant authority with an insight into all facts and circumstances relevant for its fiscal position and is prepared to discuss the company's view of the resultant legal consequences. The tax authorities, HMRC and NTCA, in turn, undertake to provide a level of certainty. Theoretically, real-time working should enable fast determination of tax liabilities, which, in turn, will increase legal certainty for taxpayers, and optimise use of administrative capacity in both the tax administration and corporate tax divisions.

In both countries, co-operative compliance has developed incrementally, both during and after the pilot phase. In the Dutch case, instead of using a blueprint, interviewees indicate that the NTCA gave shape and content to HM 'on the job'. We next examine more closely aspects of the respective programmes, specifically evaluation, trust, transparency and risk.

6.1. Programme Evaluation

Evaluation of the effectiveness of co-operative compliance models is problematic in most jurisdictions in which they operate. Their implementation and operation is most usually founded on assumptions about the benefits to be derived but without any clear mechanism in place for determining whether the objectives are being met.

In the Dutch case, most interviewees highlighted the absence of any clear indicators to evaluate the performance of HM; objectives remaining largely undefined in case of HM. the Stevens Committee confirmed the conceptual appropriateness of HM (NTCA 2013, 5) but identified a lack of empirical information to enable robust evaluation. The NCTA had not devised explicit performance indicators against which the programme could be evaluated. A survey of 350 randomly selected Dutch corporates was conducted by the NTCA and results published in 2017 indicating increased transparency and improved fiscal management by companies (Belastingdienst 2017). However the investigation also shows that many expectations with respect to the compliance impact of horizontal supervision are not met (see above).

The need for evaluation is arguably more acute in a system that is voluntary, and there has been less ongoing pressure in the UK for a formal evaluation, although scrutiny of the working relationships between HMRC and large companies has taken place through oversight committees such as the NAO and PAC. Some monitoring has been undertaken through surveys to attempt to pick up on problematic aspects of the relationship. Indeed HMRC places considerable reliance on information gleaned by market research by quantitative telephone surveys of large business tax directors or equivalent. In 2007, HMRC commissioned a methodological review of research with large business so as to evaluate best practice in relation to surveys (HMRC 2008). HMRC subsequently conducted an annual survey with large businesses and between 2010 and 2015 changed the methodology to a Panel Survey such that the same population, or as near as possible, would be surveyed each year with a view to observing changes over time. In some years, a selection of respondents participated in in-depth interviews to add further insight. The Large Business Panel Survey continued until 2015 and was supplemented by a Tax Opinions Panel Survey in 2011, 2012 and 2013. The latest of these reports, published in 2016 (HMRC 2016) found 82% of the 932 Heads of Tax rated their overall experience of HMRC as 'good', however some (an undisclosed number) felt their relationship had deteriorated over the previous 12 months. The value of these reports for informing operational policy is questionable (see Freedman and Vella 2016), however HMRC also maintains close connections with large businesses and their representatives through various discussion fora.

6.2. Trust

In both countries, 'trust' is one of the core building blocks underlying the co-operative compliance relationships.

NTCA officials interviewed emphasise that the tax authority does 'not trust blindly'. The NTCA defines trust as the 'positive expectation of the behaviour of the other' (Belastingdienst 2008, 8). As lack of trust by the NTCA in a company's willingness and ability to be compliant may lead to the company being excluded from HM, it is of critical importance that the NTCA is able to list objective reasons for its decision, as to avoid acting against the equality of taxpayers, an important principle in Dutch constitutional law (Happé 2000).

The role of trust in the UK model is more diffuse, because the potential consequence of a lack of trust is not exclusion from the programme, but rather will be reflected in the nature of the relationship through risk profiling, which is discussed further below in section 6.4.

6.3. Transparency

In all cooperative compliance arrangements, transparency is expected from corporates; there is an expectation of openness in discussions about transactions and arrangements as well as behaviour and attitudes, for example towards tax risk.

In the Dutch system the company shares its tax strategy with the NTCA. Although the covenant does not directly prohibit the use of aggressive tax planning, the NTCA wants to avoid concluding a covenant with a company that engages in aggressive tax planning. The NTCA may equally decide to terminate a covenant with a company that starts to display a more aggressive tax planning approach after it has joined HM. While a single aggressive tax structure would not directly lead to cancellation of the covenant, multiple and continuous use of those structures would most likely lead to the covenant's termination (Huiskers-Stoop 2016; Meussen 2015).

In the UK, demands for greater transparency have been fuelled by public debates due to the strident interventions of civil society organisations (see Oats and Morris, 2018). This is most recently and clearly seen in the introduction of the requirement in the UK for large corporates to make public their 'tax strategy'.

6.4. Risk profiling

In both countries there is recognition by the tax authorities that every company has its own dynamics and profile, for example structure and activities: a listed company with global activities can be assumed to be in need of a different tax function compared to a company that only operates domestically (De Widt and Oats 2017, 490).

The way in which risk profiling is undertaken in the Netherlands and the UK is compared in De Widt and Oats (2017), from which the table below is taken by way of summary:

Table 1: risk assessment in a cooperative compliance context

	UK	THE NETHERLANDS
<i>APPLIES TO</i>	All large companies – around 2,100	All companies applying to horizontal monitoring (compliance scan) and those part of horizontal monitoring – around 40% of 9,600 companies
<i>MAIN RISK ASSESSMENT CRITERIA</i>	Inherent and behavioural risk factors, tax contribution	Level of transparency and willingness to gain tax control
<i>MAIN ACTOR RESPONSIBLE FOR RISK ASSESSMENT</i>	HMRC – Customer Relationship Manager (CRM)	Company
<i>POSSIBLE OUTCOMES</i>	Low or non-low risk	Covenant company or non-covenant company

In both jurisdictions there are, at the time of writing (December 2018), moves afoot to alter the risk rating schemes. Both countries recognise the merits of a more nuanced risk rating approach as an improvement on the current binary approach. HMRC initiated a business risk rating review in 2017 accompanied by a consultation. The outcome of that consultation is not yet known, but responses received have been published by HMRC and suggest there is support for gradations of risk rating with differential benefits accruing according to the category of risk rating.

6.5. Summary

The claimed benefits of co-operative compliance from the perspective of the tax administrations have gradually changed over time. In the introductory period, the Dutch model was strongly perceived to be a way to increase efficiency both for the tax administration and corporate taxpayers. Over time, however, increasing the number of companies participating in HM became an objective in itself. The UK model was initially an attempt to improve the tax competitiveness of the UK, but evolved into a method of manipulating companies away from aggressive avoidance, both real and perceived.

7. The Views of Businesses

In this section we explore the views of interviewees and reproduce a number of illustrative quotes from a range of interviewees. In both the Netherlands and the UK we find evidence of a waning of enthusiasm for co-operative compliance for a variety of reasons.

7.1. The Netherlands

The TCF is central to the Dutch HM programme. It was not part of the initial pilots, but was introduced subsequently as a means for allowing businesses to demonstrate through fiscal transparency a high level of compliance by reference to the internal controls in place to gather the information needed to complete accurate tax returns.

Participation in HM requires an open and trusting relationship that has not been universally popular. While many large Dutch companies already had a relatively open relationship, this was not the case for some foreign owned multinationals who were less keen to embrace a closer working relationship with the NTCA, particularly US companies who experience more adversarial relationships in their home jurisdiction (De Widt 2017: 22).

Compliance agreements

As the authors of this report have previously noted: “Interviewees showed mixed views about the legal position of the compliance agreements, with some arguing that the status of a covenant is equal to a private contractual agreement, and hence additional obligations are put on both the tax administration and corporate taxpayers in case of a HM relationship. The majority of interviewees, however, emphasise that the introduction of HM has not brought any formal change in how compliance is assessed for corporates who participate in HM and those who do not.” (De Widt 2017:27)

Our interviews demonstrate that stakeholders hold different views regarding their preferred degree of formalization of HM.

One interviewee notes:

What they [the NTCA] are very afraid of is the attitude when working together. That is when corporates would say: “Well, tell me what to do.” Tick the box. So OK, well then I have complied with all requirements. Instead, it’s about an attitude, that you are willing to [-] keep asking yourself “how is my relationship with the tax authority, do I invest enough in it? Do I provide the NTCA with all information that could be of interest?” This tick the box mentality is typically something that plays in the corporate tax world [-] and yes, that is not really a way of working together.[NL3]

Interviewees however differ regarding the extent to which HM arrangements should be further formalized. An interviewed NTCA official said:

The compliance scan has been devised afterwards and not at the time when HM was introduced. At that time, HM was more of a gentleman's agreement: we are dealing with each other in a certain way. We are doing well and we want to record that we will continue to work and try to make it even better. If things were not going well in a company, that was the time to think about it and ask how are we going to deal with each other in the future, because we are clearly not getting on. That's how it started. You would almost wish it would have stayed like that. Because now, under the leadership of the professional group of accountants [-], a huge amount of implementation and guidelines have been developed, including the compliance scan. [NL17]

Some interviewed tax advisers criticized what, in their view, is a still highly informal setup of HM. One adviser observed:

It very much has to do with the Dutch fiscal culture. You can now see this derailing very quickly. In the Netherlands, the tax inspector determines how he deals with a taxpayer after which he will complete an inspection file. That is official policy. Then you also have an understanding of 'good merchant use/good business sense' ['goed koopmanschap']. We think that a certain way of fiscal working is acceptable if a good merchant would do the same. That is also a vague standard. Then we introduced horizontal supervision and then we started doing that again but different. What you see in the Dutch system with its vague norms is that tax consultants and companies have become lazy, because everything is intuitive. The current teaching of the tax authorities, article fifty-two of the general law on state tax [algemene wet inzake Rijksbelasting], is the concept of 'administration based on subjectively dynamic open standards'. This is the official terminology of the tax authorities [-]. Imagine: I am the inspector and based on my dynamic, subjective thinking I think your administration is in order, so I trust you. There is no accountability in this. There is no measurement moment. As an accountant you know that auditing is testing against a standard. How can I check when I have to test against a subjective, dynamic open standard? [NL22]

Real time working

Real time working entails more frequent interactions and leads to speedier determination of tax liabilities. In the words of one corporate tax director of a large listed Dutch company, this resulted in a reduction of around half of the staff of the company's tax department (NL7).

More recently, however, large businesses have taken a more critical stance in relation to the speed with which the NTCA responds to enquiries. Client managers in the NTCA, but also the tax officials on which the client managers rely, have become more careful in formulating answers to enquiries put forward by corporate tax officials and their advisers (De Widt 2017:25)

What I have been seeing lately [-] is a retreating availability and accessibility of the tax administration to quickly get to business and to get a quick reply to questions. And this is particularly due to Brussels, which means that they [the NTCA] put increasing emphasis on policy unity, as it is aptly called, but of course this has a negative impact on what happens in our company, because we always assumed that we were able to make those quick decisions. [NL10]

Other corporate interviewees emphasised that they were still satisfied with their relationship with the NTCA but were cautious of possible changes:

What would not work, and this is not currently the case with us, is when you have a client coordinator who does not dare to take any decision himself, or by his team, and who refers everything to the knowledge group [nationally operating NTCA group for coordination of tax policy]. Obviously, this is an extreme example but then the covenant becomes a dead letter. That does not help. If it would go that direction, you have to do something about it. Regardless of how the tax authority organises this internally, they must deliver on their part [of the agreement], which is providing clarity fairly quickly. [NL8]

Corporate interviewees also referred to attitudes amongst NTCA officials which, in their view, at times impair real-time working:

You also notice a kind of development at the tax authorities where I occasionally read between the lines something like "yes, the compliance covenant is great, but do we not concede too much to companies in a HM arrangement?" [NL10]

As one of the authors of this report has noted previously, '[r]esults of a survey conducted by the NTCA also indicate differences in perception between NTCA officials and corporates

regarding the effects of HM on the tax strategy of businesses. While the NTCA client managers indicated a positive impact between HM and companies' fiscal strategy, survey results amongst corporate participants did not provide support for any impact of HM on companies' fiscal strategy (Belastingdienst 2017).' (De Widt 2017:26)

NTCA officials refer to the time-consuming nature of real-time working in practice:

What we certainly encounter with large companies, which we find difficult, is that in a way we have become victims of our own success. A number of companies engage very frequently in preliminary consultations. And actually this is shifting more risk to us [the NTCA]. These companies ask for the sake of asking. NTCA colleagues should then be asking these companies "why do we have to put a signature on this, because you know the answer already?" These questions absorb too much of our time. And it [HM] was not intended for that. So we want to do something about that. [NL24]

The same tax official observes also that the time-consuming nature of the implementation of HM is partly due to the model's design:

In some cases, our own approach might allure companies to interact with us in a manner that is very time-consuming for us. That is another thing. Our implementation of the concept: because there are still open standards present, the implementation differs a bit. And in part that is precisely our intention because no company is the same. However there are also implementation differences that cannot be explained for these reasons. This is related to the tax control framework. Actually, our opinion is that the TCF has become too important. We never intended this, but this is what has happened. [NL24]

And the tax official continues:

The problem is that it [HM] saves less time than we thought. But then the question is: how do you best solve that? And then tax advisers such as X will say: by making rules. And then we say: that does not solve anything, because then we also have to check compliance with those rules. So this is really a fundamental difference in view. Instead, we are currently more looking into the group of companies with whom we are doing this [HM] and whether we could adjust the process. [NL24]

Transparency

Some corporate interviewees highlight that due to the nature of their pre-existing relationship with the tax authority the transparency requirements as part of HM did not require major adjustments:

Before the formal initiative of horizontal supervision was introduced, our company already had a fairly open, direct relationship with the tax authorities. That is also one of the reasons why we were not afraid of it, instead we were positive about it because, to a large extent, we already worked together with the tax authorities in this manner. [NL8]

As the authors of this report have noted previously, “[c]orporate tax officials also indicate that the emphasis put on openness in a [co-operative compliance] relationship cannot always easily be translated in practice. The guideline that every issue on which doubt may exist needs to be submitted to the tax authority can cause confusion and tensions between companies and the tax administrations. Or, as put by one interviewed tax adviser: ‘What may be seen as a question of black and white in the eyes of a corporate tax official, and hence is not disclosed, may be grey in the eyes of the tax authority, and hence had to be disclosed’ (NL20). Although we did not find evidence of large conflicts, differences in opinion as to when an issue needs to be submitted to the tax authority in a [co-operative compliance] relationship do cause frictions between tax authorities and corporate taxpayers.” (De Widt and Oats (2016)

Some companies also struggle to put the structures in place that would enable them to realise the transparency level required as part of HM. One tax official comments on this as follows:

The word guarantee is a big word, but you need to be able to show with high certainty that you submit a correct and complete declaration. And companies cannot always demonstrate that. Sometimes companies think they do but if you then ask them “why do you think that?” their reply is “because I have such a good colleague”, or “because my colleague has been there for twenty years”. Of course, that does not provide reason why everything should be all right. So that is why companies sometimes need to invest time and energy in demonstrating that their tax control is at an adequate level, and that that is the reason why they are able to file a correct and complete tax return. [NL5]

One interviewed tax adviser highlights the improvements that have been made in companies’ internal control structures due to HM:

We have worked hard on internal control. Because you can agree with each other to report the risks to the tax authority, but if you do not have a system in place where those risks will come to the surface, so yes then you can agree on everything, but then that will be a somewhat empty shell. So horizontal supervision has ensured that success has been made in that area. [NL20]

Another interviewee however observes that due to HM's setup there is limited transparency for companies regarding the level of control they should be aiming for, and how is this being monitored by the NTCA. The tax authorities refer back to the taxpayer himself:

“You must be in control. You must want that yourself. You have to adapt that to the company itself. And then we will look...” et cetera. But it is also about the part “and then we will look at it”. I think the company wants to know: is this good enough? Do I have to do more? [NL13]

One interviewed tax adviser strongly criticizes HM's non-formalised nature stating:

I do not understand that people in the Netherlands do not realize that the Dutch way of working is no longer possible in a world that is governed by transparency by default. The time we were able to make deals within our triangles is over. [NL22]

The final quote above reflects the awareness that the landscape has shifted significantly in the intervening years, in no small part due to international developments arguably triggered by events in the UK.

7.2. The UK

The passage of time has led to important changes in the dynamics of the UK co-operative compliance system. Several of our UK interviewees confirmed the change over time in the attitude of large businesses away from putting in place convoluted arrangements to reduce the worldwide tax charge, for example:

There's not really a moment, but there's been a shift. But I think it would be reasonable to say that the financial crisis was probably the most decisive shift away from planning structures and complexity towards a more defensive, control-orientated approach to tax, yes. [UK20]

And looing further back to a time before the financial crisis, the following interviewee makes a similar observation, also noting a parallel shift in that corporate income tax is relatively less important now compared to other taxes borne by large companies:

But the general environment, I mean, compared to what I would have seen 20 years ago where heads of tax would be sacked if they weren't doing some form of tax

planning, that is just completely – it has become a very, very different game for a head of tax. A head of tax these days is, or should be, really focused on their general compliance, and making sure that they are delivering across all of the heads of taxation. Because their biggest bill will not be their corporate tax; it will be their payroll taxes and their national insurance and customs duties and things. And that's been the big change, really, is that increasingly the focus is going away from corporate tax, and corporate tax is becoming less of a money-raiser for governments, and it's about getting the rest of your taxes right and not neglecting them. [UK27]

A few of our interviewees commented on how most recently there has been a 'cooling down' of the relationship, with various opinions about how detrimental that is on an ongoing basis. The level of professionalism among large businesses and their advisors mitigates against the recent deterioration of relationships with HMRC as observed by the following interviewee.

Q. So people are professional enough, then, not to let it affect the relationship, because you might imagine when you're going round the circle for a couple of years at a time, that...

I: Yes, I think advisors and companies understand and are patient with the problems. So I think you've put it well, that there's a sort of professionalism to the relationship. So the relationship is sort of not quite as warm as it was, but sort of intact; but nonetheless, as I say, the fruits or the product of that is diminished.[UK20]

Many of our interviewees expressed the view that on the whole the UK co-operative compliance model works, but needs to be developed in line with external trends, for example technological advances:

But I think it's a fundamentally good model, and I think we've seen advantages to it, so I don't think it needs to change a great deal. I think it'll just develop as technologies develop as well, with digital tax, etcetera. But I think we're not in a bad place. I don't think there's anything broken. I think it just needs to be tweaked a little bit as trends develop. [UK 24]

The current importance of securing a level of certainty over the tax liability and the change in approach is further highlighted here:

But most people are saying, "Look, all I want to do is just run my business from here and have some certainty about the level of tax I'm going to pay. And I don't mind if I pay 15 per cent or 14 or 17 per cent, as long as I know that's what I'm going to pay." And that has become very, from the tax company point of view, that's become really what they want. The games of doing "let's do 20 different tax planning ideas this year,

because we won't succeed in all 20 but we may succeed in half of them, and that will reduce our effective tax rate down", that's gone. [UK27]

In our interviews we probed three particular aspects of the UK co-operative compliance model, the customer relationship (now compliance) manager role, how real time working operates in practice and the relationship with HMRC, in particular how that is changing. We deal with each of these issues in turn in the following sub-sections.

Customer Relationship (Compliance) Managers

At the time of our interviews (2015 and 2016), HMRC were still using the label Customer Relationship Managers (CRMs); the shift in job title to Customer Compliance Manager (CCM) was announced in late 2017. For convenience we use the term CRM in this report which was the relevant title when the views of our interviewees were sought. Large business' interactions with HMRC are mediated by the CRM and the success or otherwise of the relationship will in part depend on the quality of the CRM. The role of the CRM is to develop a sound understanding of the business and its tax risk profile and facilitate speedy resolution of issues and timely tax clearances. A description of the responsibilities of CRMs is contained in HMRC (2017).

One of our interviewees reflected on the role of the CRM in speeding up processes including dispute resolution, also highlighting the importance of the 'personal' relationship:

And I think they understood that actually what they needed was someone who is very much aware of the business environment that the corporate works in, and can be a sort of point of contact for the corporate itself to go to. Building that personal relationship, I think, they understood that was critical for them making inroads and speeding up the whole collection of tax and settlement of enquiries, which had got ridiculous ten years ago. [UK24]

Trust is a common thread throughout the UK interviews. Another interviewee notes that after an initial increase in levels of trust on the introduction of the CRM model, there has been some subsequent diminution, albeit not to the low levels that existed prior to the introduction of CRMs:

I think the CRM approach so far has really built up a level of trust, and much better than it was then; it's just now it's basically jumped and then it's depleted over time. But it's still far higher than it was before we ever got a CRM. So it is a big move, and I think that's benefited both businesses in terms of providing certainty and HMRC in terms of being able to target their resources appropriately [UK16]

Real time working

One of the much praised aspects of co-operative compliance models wherever they are implemented is the advent of real time working. Writing on behalf of HMRC and describing the role and responsibilities of CRMs, Riley (2012) states:

Those businesses that are open and transparency with us will tend to spend much less time with us than those who are not. So we ask that tax directors and their teams keep in regular touch and work with us in real time. It's usually easier and more cost-effective to work through any tax issues as they arise, rather than reviewing returns some time after the event – this is our preferred way of working with all large businesses. In an open and transparent relationship we would expect a business to discuss in real time any significant issues where there is a material doubt, or likely to be a difference of opinion, about the tax treatment.

All of our interviewees observed that speeding up the process of understanding specific issues is of benefit to both large business and HMRC, for example:

So it becomes a self-perpetuating problem, because the longer time goes on, the less chance you have of getting to the bottom of it. And I think, to be fair to HMRC, they recognised that that was a problem. That probably came to them because they'd got feedback from large corporates... saying "look, we need to be more up-to-date on both sides to make this a more beneficial relationship". So I do get the sense it was a truly mutual interest in getting to that point that we're now at. I don't think this is a one-sided thing. There's an advantage on both taxpayer and tax authority side as a result of it. [UK24]

Arguably this benefit is particularly noticeable in the UK where all large businesses are subject to the same processes and expectations. The benefits of building a relationship with face to face interaction, compared to the old way of working by exchange of documents, was described by another interviewee as follows:

when I was in-house, I was working for a company that built [x]. Now, [x] has some complex issues as to what qualifies for [tax depreciation]. I took my HMRC Large Business team around [x] so they could see it for themselves, they could understand where the money was being spent, they could understand what sort of equipment it was, and it was then relatively easy to agree the correct treatment for tax purposes. Under the old system, I would have submitted a long list, they'd have asked a lot of questions, I'd have answered all the questions. So when it works well, it's a more

efficient way of getting to the right answer and of focusing resource on the difficult issues. [UK15]

Another interviewee described real-time working developing a mutual understanding and as a lead into the mutual calibration of tax compliance risks:

The concept of real-time working means discussing things with the tax officer as they're happening, or during the year. So that everyone is aware that an acquisition is being made in this particular year, for example; and because it's an acquisition, there's complexity, there's additional debt, there may be sort of hedging contracts, it may be international, and people can start to think about the tax risks inherent in that sort of thing and work out if there are material issues or not. [UK22]

The importance of real time working and the ensuing certainty is highlighted by the following interviewee, who expresses the advantage in terms of competitiveness of the UK tax system:

So it's quite an important point in this debate about co-operative compliance, that competitiveness is not operating at the level of the individual company. So it's not that the tax administrator gives somebody a special deal in order to be competitive – that's absolutely not what it's about. What it's about is having the systems so that you can talk about things in real time and get certainty in order to do transactions, and that all contributes to a competitive tax system. [UK29]

Nonetheless, several interviewees observe a slowing down in HMRC due to the current need to consult before reaching a decision; a process that does not always happen with the same speed as it did previously:

You know, it's almost like HMRC have aligned themselves to the old working system of [named Big 4 firm], where they have the person who deals with VAT, they have the person who deals with employee share schemes. And so, although you have one CRM who might represent HMRC, you still have a lot of people behind them, and they can't sign off on anything anymore because they've got to discuss it with their colleagues. It just takes forever. [UK09]

And further:

they're reverting to that old way of doing things because, when faced with making a decision, the way they bat away making a decision is to ask for more information. And that's what's happening with this potential litigation ...:“If we keep on asking for stuff, maybe something will happen that makes the answer easy.” Well, it won't. [UK17]

Relationship with tax authority

One feature of the UK co-operative compliance model is that it has suffered from particularly bad press, in terms of the publicity generated by the media and civil society organisations as well as the PAC. There is no question this has coloured the development of the model and the way it is currently operated. As one interviewee notes:

At the moment I think there's a couple of risks out there. First of all, co-operative compliance gets misrepresented as a kind of cosy relationship, and that's clearly not what it's about. Co-operative compliance should allow HMRC to be able to kick the tyres and have lots of robust discussions, but those robust discussions are focused on the areas which are of most relevance to HMRC, rather than being a scatter-gun approach where they don't have the information. Likewise, the company needs to know that they're going to be focusing on the areas where actually they need to have a conversation with the tax authority, rather than wasting their time, and therefore they've effectively got less resource constraints. So those, I think, are critical. [UK16]

Another UK interviewee expressed this more pessimistically as follows:

Well, on my more pessimistic days, I think that too much scrutiny from politicians will squeeze it out, will make it harder for tax authorities to do the job in a sensible, pragmatic way, and I think that will be bad. [UK21]

There was some concern about the relationship becoming more one-sided, particularly in the context of to increasing demands for transparency, as one in-house tax director noted:

the danger is, that then becomes a very one-sided relationship: they make the determinations and we just have to abide by them. We'd like to see something coming back from that as well. You know, what's in it for us? It's a bit extreme, but clearly, what is the benefit to us of doing this? Clearly, if there's a legal obligation, that's fine; but do we then have a guarantee that actually enquiries will be only based on really unusual transactions, and routine stuff will not be subject to ongoing questions, which would completely bottleneck the whole process, to be honest? So we just need to be careful that they use the information appropriately and proportionately once they've got it. [UK24]

Several interviewees confirmed that the relationships are no longer as co-operative as they were previously:

I think [co-operative compliance] the right thing to do. It absolutely is the right thing to do. It should give much more clarity to both parties about what's going on and what the issues are, because it's real time. It's clearly far more grown-up, it's less adversarial so, in a way, what's not to like about it? I think, however, it's started to break down, and I think the trouble is it's ceased to be two-way and it's become more one-sided [UK17]

And, observing a backward shift:

So we are at a moment where I see things starting to move back towards where we were a decade ago with business. Now, whether it will ever go all the way back, I very much doubt, because I think everybody has seen the damage that the sweetheart deals did. So I think, quite rightly, the ideal place would be that, if we had some real discussion about what is the right level of governance within the department, who can have authority to make decisions, to help business move on and get some certainty – because that's what businesses want, by and large. [UK27]

Another interviewee reflected on HMRC being more difficult to deal with, while at the same time acknowledging that HMRC have an entitlement to test statements made by corporates:

So HMRC's entitled to test the things you say, and I think that bit's fair enough. But I think, overall, dealing with HMRC has got more difficult over the last few years, in dispute resolution and in relation to other things as well, and it continues to get more difficult. [UK23]

The following interviewee noted in particular that HMRC have tightened up on informal assurances and the 'blessing' of low risk issues:

if you go to HMRC now and say "can we have an informal chat and can you confirm that if I do this, you will regard that as low risk?", five years ago they'd have been happy to do that. Today, they'll say "oh no, I can't do that". Well, that's just making life more difficult pointlessly. So I think the relationship has got – some people would say less cosy. I think that's the wrong word to use, but it's certainly got harder to have a fruitful relationship with HMRC if you're a large business. [UK23]

Echoing the comment above, another interviewee confirms that HMRC are now less willing to concede issues, even where they are matters of technical application of the tax code, which creates cost burdens for both large corporates and HMRC itself:

The opportunity is a tax environment which does not hinder genuine business transactions and which allows HMRC to focus its resources on the biggest risk. So if it's working well, then routine matters ought not to take up a lot of taxpayer resource

or HMRC resource. The risk I see is that – and I would say over the last three years or so – HMRC are less willing to concede issues, even where the issue is purely technical, and therefore that’s creating more of a compliance burden on businesses, and arguably is not a good use of HMRC resources either. [UK15]

The benefits of maintaining a genuinely co-operative approach to provide countries with a competitive advantage, was commented on by one of the UK interviewees:

If you’re going to struggle to have the right level of substance in another country but you can have it in the UK and you pay one/two per cent more tax here, then at the end of the day, a lot of companies will opt for that. But they’ll opt for it on the basis that they’re going to get reasonable treatment from the tax authority, so it’s all part of the contract, if you like. [UK27]

7.3. Summary

“In both the Netherlands and the UK, interviewees indicate that being part of a [co-operative compliance] relationship might lead to a selective use of openness by corporate taxpayers towards the tax authority. Due to the continuous monitoring of a company’s risk profile, and the importance put on the relationship between the tax administration and the corporate taxpayer, companies may not want to negatively affect their [co-operative compliance] relationship by sharing information that is likely to be perceived critically by the tax administration. However, several interviewed corporate tax officials mentioned another effect of the risk-based [co-operative compliance] models; namely, companies becoming too cautious in their fiscal position as they do not want to run the risk of harming their valued relationship with the tax authority. “ (De Widt and Oats 2016)

What is clear from the interviews in both countries is that the past few years have witnessed some deterioration in the effectiveness of co-operative compliance model due to external factors, in particular the level of scrutiny, as one interviewee, whose view, it should be noted, was not universally held among interviewees, noted:

I think there was a period when we were very keen on this and we talked about it a lot at OECD and places, but I think the Dutch have managed to keep hold of their lead on this. I see the Dutch as being much more open and sensible in that sense. The Dutch have got their own problems, of course. They have quite a number of problems.

Q: Even there, the tax administration is in the direct control now of the Ministry of Finance. Partly also their cooperative compliance programme is also heavily scrutinised.

I: Yes. Yes. I think people latched onto cooperative compliance as being a wonderful thing, and it is very difficult actually in practice for it to work. [UK27]

8. Discussion and Conclusion

Both the Netherlands and the UK share a historical similarity in their approach to tax administration in that traditionally there has been cooperation and collaboration between large business taxpayers and the tax authority, in contrast to other jurisdictions, most notably the US where the tradition is a more adversarial relationship.

In both countries, the external environment has been extremely influential in influencing the trajectory of co-operative compliance. The tax authorities are under increasing pressure to be seen to be collecting the appropriate amount of tax from large businesses in the face of considerable public discussion, particularly since 2012. In this environment, what large business is primarily concerned with is achieving certainty as quickly as possible.

The highly politicised debates in recent years has changed the approach in both countries and it is clear that both the NTCA and HMRC have responded to external criticisms, for example allegations of ‘sweetheart deals’ by tightening up in terms of providing assurance and certainty as part of their respective co-operative compliance regimes.

In both countries there is a danger of co-operative compliance becoming overly bureaucratic. In the UK this can be seen in the move towards a more ‘tick box’ assessment of compliance risk.

There is no question that whether the co-operative compliance system is voluntary as in the Netherlands or compulsory as in the UK makes a significant difference to how the two countries approach the model. Arguably the UK model can’t be held out as best practice because HMRC does have to grapple with the complexities brought about by voluntary participation which requires additional assessment procedures and another layer of monitoring.

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10. Project information

FairTax is a cross-disciplinary four year H2020 EU project aiming to produce recommendations on how fair and sustainable taxation and social policy reforms can increase the economic stability of EU member states, promoting economic equality and security, enhancing coordination and harmonisation of tax, social inclusion, environmental, legitimacy, and compliance measures, support deepening of the European Monetary Union, and expanding the EU's own resource revenue bases. Under the coordination of Umeå University (Sweden), comparative and international policy fiscal experts from eleven universities in six EU countries and three non-EU countries (Brazil, Canada and Norway) contribute to FairTax research.

Contact for information

Åsa Gunnarsson
Dr. Professor Tax Law, Coordinator
Forum for Studies on Law and Society
S-901 87 Umeå University
Sweden
+46 70 595 3019

FOR DETAILS ON FAIRTAX SEE: [HTTP://WWW.FAIR-TAX.EU](http://www.fair-tax.eu)

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11. Partners



Karen Boll, kbo.ioa@cbs.dk
Department of Organization,
Copenhagen Business School



Lynne Oats, L.M.Oats@exeter.ac.uk
The Business School, University of
Exeter



Leonel Cesarino Pessôa,
leonel.pessoa@fgv.br
São Paulo Law School, Getulio Vargas
Foundation (FGV)



Ann Mumford,
ann.mumford@kcl.ac.uk
The Dickson Poon School of Law, King's
College London



Lotta Björklund Larsen,
lotta.bjorklund.larsen@liu.se
Department of Thematic Studies -
Technology and Social Change
Linköping university



Danuše Nerudová,
danuse.nerudova@mendelu.cz
Department of Accounting and Taxes
(FBE), Mendel University in Brno



Benedicte Brøgger,
benedicte.brogger@bi.no
Department of Innovation and Economic
Organisation, Norwegian Business School



Emer Mulligan,
emer.mulligan@nuigalway.ie
J.E. Cairnes School of Business and
Economics, National University of
Ireland Galway



**Åsa Gunnarsson (FairTax
Coordinator)**,
asa.gunnarsson@umu.se
Forum for Studies on Law and Society,
Umeå University



Margit Schratzenstaller
Margit.Schratzenstaller@wifo.ac.at
The Austrian Institute of Economic
Research WIFO

