What gets measured gets done?

Introduction

The Global Financial Crisis in 2008 made tax avoidance and evasion of primary public concern. In the decade that followed, a series of high profile scandals, from Swiss leaks to revelations about the single digit effective tax rates achieved by many multinational companies have increased public awareness of the issue and kept it on the agenda.

On a political level, there has been a concerted effort to introduce new policies to combat artificial tax structures, and tax fraud, both on a domestic level and on an international level through the OECD.

Alongside this there has been an increased focus on the performance of HMRC in terms of tackling avoidance and evasion. HMRC have responded to this adopting "the need to bear down on avoidance" as a primary objective. The government has also sought to confront public concern about avoidance and evasion by seeking to promote the action it takes in this area.

This paper focuses on how HMRC's performance in this area is measured and accounted for, and asks whether the current metrics used by HMRC are sufficiently robust to allow Parliament and other interested parties to hold the government to account on this important issue.

HMRC's objectives

HMRC sets out its key objectives in its annual report each year. A look at these objectives demonstrates that "Maximise revenues due and bear down on avoidance and evasion" is now the top priority for the department.

This is a relatively recent development, with the need to "bear down on avoidance and evasion" only explicitly appearing in the list of objectives in 2017.

Year	Objective 1	Objective 2	Objective 3
09/10	Improve the extent to which individuals and businesses pay the tax due and receive the credits and payments to which they are entitled which contributes to PSA 9	Improve customers' experiences of HMRC and improve the UK business environment which contributes to PSA 6	Reduce the risk of the illicit import and export of material which might harm the UK's physical and social well-being. Seizures of Class A drugs and interventions in support of the Serious Organised Crime Agency, contributes to PSA 25; and the screening of traffic entering the United Kingdom contributes to PSA 26.
10/11	Improve the extent to which individuals and businesses pay the tax due and receive the credits and benefits to which they are entitled	Improve customers' experience of HMRC and contribute to improving the UK business Environment	Improve our professionalism in dealing with: the security of our customers' information; our stakeholders; and our external impact
11/12		No objectives given this year	
12/13		No objectives given this year	
13/14		No objectives given this year	
14/15	Maximise revenues	Improve the service that we give our customers	Make sustainable cost savings.
15/16	Maximise revenues	Make sustainable cost savings	Improve the service that we give our customers
16/17	Maximise revenues	Improve the service that we give our customers	Make sustainable cost savings
17/18	Maximise revenues due and bear down on avoidance and evasion	Transform tax and payments for our customers	Design and deliver a professional, efficient and engaged organisation
18/19	Maximise revenues due and bear down on avoidance and evasion	Transform tax and payments for our customers	Design and deliver a professional, efficient and engaged organisation
19/20	Collecting revenues due and bearing down on avoidance and evasion	Transforming tax and payments for our customers	Designing and delivering a professional, efficient and engaged organisation

Before 2017, efforts to tackle tax avoidance and evasion were cited in the Annual Reports of HMRC under the objective of “Maximising Revenues”, however it is significant that after 2017 HMRC put the fight against avoidance and evasion in the title of this objective.

The objective to “Collect revenues due and bearing down on avoidance and evasion” in the latest Annual Report (objective 1) includes a set of key performance indicators which are:

- The total increase in tax revenues
- The additional tax generated by tackling avoidance, evasion and non-compliance (a.k.a compliance yield)
- The level of fraud and error in the tax credit system
- The UK tax gap (as a percentage of total tax)
- The total revenue protected or generated by tackling organised crime
- The total number of criminals and fraudsters successfully convicted

Further to this HMRC sets out a number of public commitments it has made in this area against which it reports progress. With regards to avoidance and evasion, these commitments are:

- Maintaining the overall long term downward trend in the tax gap over the past decade.
- Deliver compliance revenues of £34.5 billion in 2019 to 2020 through our compliance activity.
- Continue to invest £800 million in additional work to tackle evasion and non-compliance in the tax system, with a further £155 million of investment announced at Autumn Budget 2017 for future years up to 2019 to 2020.
- Raise an additional £5 billion a year on 2015 to 2016 by 2019 to 2020 by tackling tax avoidance and aggressive tax planning,evasion and non-compliance, and by addressing imbalances in the tax system.
- We will tackle the hidden economy by:
    - developing options for legislation to make the renewal of some public sector licences conditional on applicants being appropriately registered for tax (conditionality)

    - implementing powers to tackle hidden UK businesses trading via online marketplaces (VAT Joint and Several Liability), and embedding new operational approaches to address the hidden economy.

- Continue to tackle tax avoidance, close schemes and collect yield of more than £170 million in 2019 to 2020 through the Accelerated Payments regime and collect yield of £1.3 billion in tax settlements.
- Ensure global companies pay their fair share in tax by supporting the government's leading role in the reform of international tax rules.

In the 2018-19 annual report there was an additional commitment noted, which was to achieve 100 prosecutions a year by the end of the Parliament. This does not appear in the latest annual report. This is perhaps due to the fact that Parliament ended early due to the 2019 General Election.

The big picture

It is clear from the key performance indicators (KPIs) set out in HMRC's annual report that the government regards the Tax Gap and the Compliance Yield as two of the primary measures against which progress in combatting tax avoidance and evasion should be measured.

However, it is extremely questionable as to how much use these statistics are in creating a meaningful benchmark against which performance can be measured.

The Tax Gap

The Tax Gap is an estimate of all tax losses arising from non-compliance, error and fraud. The estimate was originally designed as an internal performance measure, a check to understand how HMRC should allocate resources to various areas of non-compliance, but was made public following an Freedom of Information Request from journalist Richard Brooks. It is now published by government every year.

HMRC is one of the very few tax authorities in the world that seeks to measure the tax gap across the whole economy and all forms of taxation. Other countries that publish estimates usually focus on one area, such as VAT.

Tax avoidance and evasion are not figures that are easily objectively verifiable. As such the Tax Gap involves combining complex methodologies looking at various different areas of non-compliance.

Methodologies have been updated over time, causing significant changes to the estimated figures, and over 20% of the tax gap is comprised of estimates using experimental methodologies. Although confidence intervals are not available for all estimates that comprise the tax gap, the ones that are available suggest there is a wide margin of error in the figures. All of this led the Public Accounts Committee to describe the Tax Gap as "highly uncertain".[1]

International tax compliance

Ask the the average citizen about their view of tax avoidance and they no doubt immediately start talking about Amazon, Google, Starbucks and other large multinational companies which have been the focus of media attention for their tax affairs over the last decade.

However, that person may well be surprised to learn that a great deal of tax avoidance by large multinationals does not appear in HMRC's main measure of tax avoidance, the Tax Gap.

HMRC appear to take the view that because the current preferred way of dealing with the tax structures employed by large multinationals is to seek to reform the international tax system through agreement at the OECD, then losses should not form part of the tax-gap. Their latest "measuring tax gaps" publication states the following:

"The tax gap does not include BEPS [Base Erosion Profit Shifting] arrangements that cannot be addressed under UK law and that will be tackled multilaterally through the OECD."

The justification for this is that the BEPS project refers to profit shifting as "tax planning" rather than tax avoidance. The document goes onto state:

"Tax avoidance is not the same as tax planning. Tax planning involves using tax reliefs for the purpose for which they were intended. For example, claiming tax relief on capital investment, saving in a tax-exempt ISA or saving for retirement by making contributions to a pension scheme are all forms of tax planning."[2]

Likening the tax structures of companies like Google, which has historically poured billions of dollars each year into tax haven subsidiaries with no real economic activity, with someone depositing £20,000 in an government sponsored ISA account is a bizarre position to take. It is also not consistent with the position taken previously by HMRC on BEPS.

In 2014, George Osborne, in the foreword to the HMRC position paper on BEPS stated the following:

1 Public Accounts Committee, Tackling the Tax Gap, published 16 October 2020, https://publications.parliament.uk/pa/cm5801/cmselect/cmpubacc/650/65006.htm#_idTextAnchor010

2 HMRC, Measuring Tax Gaps, 2020 Edition, page 24, https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/907122/Measuring_tax_gaps_2020_edition.pdf

“International cooperation is the only way to tackle the challenge of tax avoidance in the global economy.”

The executive summary of the document drew little distinction between tax avoidance and “aggressive tax planning” stating:

“Tax avoidance and aggressive tax planning by MNEs [multinational enterprises] is an international issue that will require a comprehensive and coordinated approach to come up with effective international solutions. For this reason, the Government helped to initiate and continues to fully support the G20/ OECD BEPS project.[3]

The issue becomes even more confused when we look at the recent answers given by HMRC to the Public Accounts Committee on this issue, which describes BEPS effects as arising from “sophisticated tax planning” which may meet the letter of the law, but is not “desirable in tax policy terms”.[4]

Given that the HMRC definition of avoidance is “operating within the letter, but not the spirit, of the law”, it is difficult to understand what the difference is between a structure that is undesirable in policy terms and one which does not meet the spirit of the law!

In any event, much of this discussion becomes meaningless when we look at real case studies, which demonstrate that the structures employed by multinational companies to move profits out of the UK easily meet the definition of tax avoidance as described by HMRC.[5]

Estimates of the size of the tax gap due to this form of profit shifting vary widely. Whatever the figure, the fact remains that the UK government has no objective measure of how it performs in closing down the form of tax avoidance which is of most concern to the public.

This was an issue that was seized upon recently by members of the Public Accounts Committee, which recommended that HMRC specifically report on the tax impact of “sophisticated tax planning”:

“Parliament needs to know when taxpayers do not follow the spirit of the rules, and how much tax revenue is lost as a result. In addition to the tax gap, HMRC should look at ways to measure and report the estimated scale of

3 HMRC and HM Treasury, Tackling aggressive tax planning in the global economy: UK priorities for the G20-OECD project for countering Base Erosion and Profit Shifting: https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/293742/PU1651_BEPS_AA_-_FINAL_v2.pdf

4 Public Accounts Committee, Tackling the Tax Gap, published 16 October 2020, https://publications.parliament.uk/pa/cm5801/cmselect/cmpubacc/650/65006.htm#_idTextAnchor010

5 See for example, TaxWatch, Netflix, tax reform and the unreal nature of digital taxation, https://www.taxwatchuk.org/netflix_tax_reform/

sophisticated tax planning that is legal but undesirable from a policy perspective by tax type and taxpayer group each year."[6]

The Compliance Yield

Compliance Yield is not simply a measure of the cash collected by HMRC as a result of compliance activity. This is less than 1/3rd of the total Compliance Yield figure.

The yield figure contains items like "future revenue benefit" which is an estimate of the impacts on future tax behaviour of compliance interventions.

According to HMRC,

"compliance yield records many aspects of compliance work, including tax recovered directly from our work, future revenue benefit and losses prevented. It can also cover more than one tax year. Different factors, such as the number of new businesses, new customers, changes in levels of voluntary compliance, economic factors, tax policy and rate changes all affect the tax gap."[7]

The figures for Compliance Yield are therefore complex estimates and suffer many of the same problems associated with the Tax Gap.

Delving deeper

Given the problems inherent in using broad measures of Compliance Yield and the Tax Gap to measure the performance of HMRC, an alternative approach would be to look at the individual policies and their effectiveness in combatting avoidance and evasion.

In March 2019 HMRC published a document entitled: 'Tackling tax avoidance, evasion, and other forms of non-compliance', it states;

"This government has introduced over 100 measures to tackle tax avoidance, evasion and other forms of non-compliance since 2010 which, alongside HMRC's compliance work, have secured and protected an additional £200 billion in tax revenue which would otherwise have gone unpaid."[8]

Alongside the document a list of the 100 polices was produced in an Annex.

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6 Public Accounts Committee, Tackling the Tax Gap, published 16 October 2020, https://publications.parliament.uk/pa/cm5801/cmselect/cmpubacc/650/65006.htm#_idTextAnchor010

7 HMRC, The tax gap and compliance yield, what they are and how they relate, https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/627609/The_tax_gap_and_compliance_yield___what_they_are_and_how_they_relate.pdf

8 HMRC Policy Paper, Tackling tax avoidance, evasion and other forms of non-compliance, https://www.gov.uk/government/publications/tackling-tax-avoidance-evasion-and-other-forms-of-non-compliance

Both the £200 billion figure and the 100 policies have frequently been used by the government to defend its record on tax avoidance and evasion. In May 2019, the then Chancellor of the Exchequer, Philip Hammond MP, said the following in response to a question in the House of Commons.

> “We are chasing tax dodgers everywhere. [Interruption.] Yes, we are. We have raised £200 billion of additional revenue since 2010 by clamping down on tax avoidance and evasion.”[9]

The Conservative Party Manifesto in 2019 adopted this figure, stating:

> Since 2010, we have introduced more than 100 anti-avoidance measures and secured more than £200 billion which would otherwise have gone unpaid – £24 billion in the last year alone.

In February 2012, the Chief Secretary to the Treasury Steve Barclay wrote

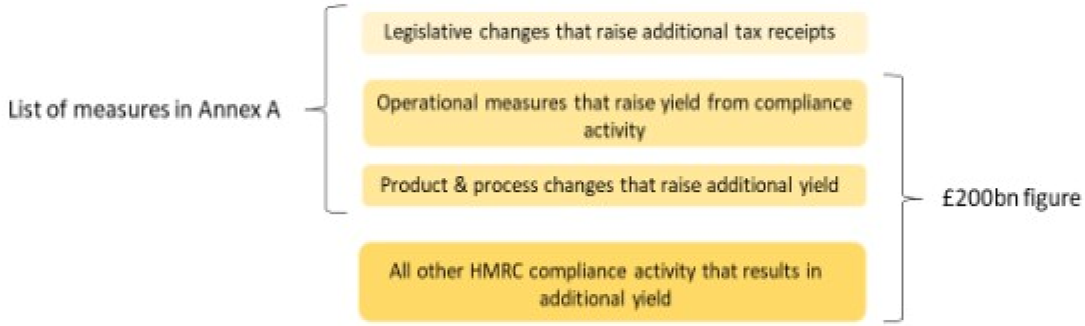
> “Since 2010, we have introduced over 100 new measures to tackle tax avoidance, evasion and other forms of non- compliance, which, alongside HMRC’s other compliance work, have secured and protected significant revenue that would otherwise have been lost.”[10]

TaxWatch was keen to learn more about the £200bn figure. We asked HMRC what was behind the figure and how much of it was contributed by the 100 tax avoidance policies. We received the following answer:

> “The £200bn in additional tax revenue mentioned in the publication ‘Tackling tax avoidance, evasion, and other forms of non-compliance’ reflects our overall compliance activity and not solely the result of the measures listed in its Annex A. There are also some measures included in Annex A which do not contribute towards the £200bn figure but do contribute to overall tax receipts. The following diagram explains the components of each:

9 Hansard, Volume 660, Tuesday 21 May 2019, Column 610 https://hansard.parliament.uk/Commons/2019-05-21/debates/F7F2DBCD-36AF-487E-B617-58726064843A/OralAnswersToQuestions#contribution-F6AC203D-8BBE-4BC3-9682-D506BC2D97E6

10 Hansard, Volume 672, Tuesday 25 February, Column 191 https://hansard.parliament.uk/Commons/2020-02-25/debates/7545B0D1-1D14-4296-843C-5CCB67A61A97/TaxAvoidanceAndEvasion?highlight=compliance%20yield#contribution-E1FE9204-E239-43A6-BBF5-3B4BB61C56A9



It is clear from this answer that the figure of £200bn raised since 2010 is simply an expression of the compliance yield added up over the past decade. In fact, later on in their response to us, HMRC refer to the £200bn figure as the “overall compliance yield figure”.

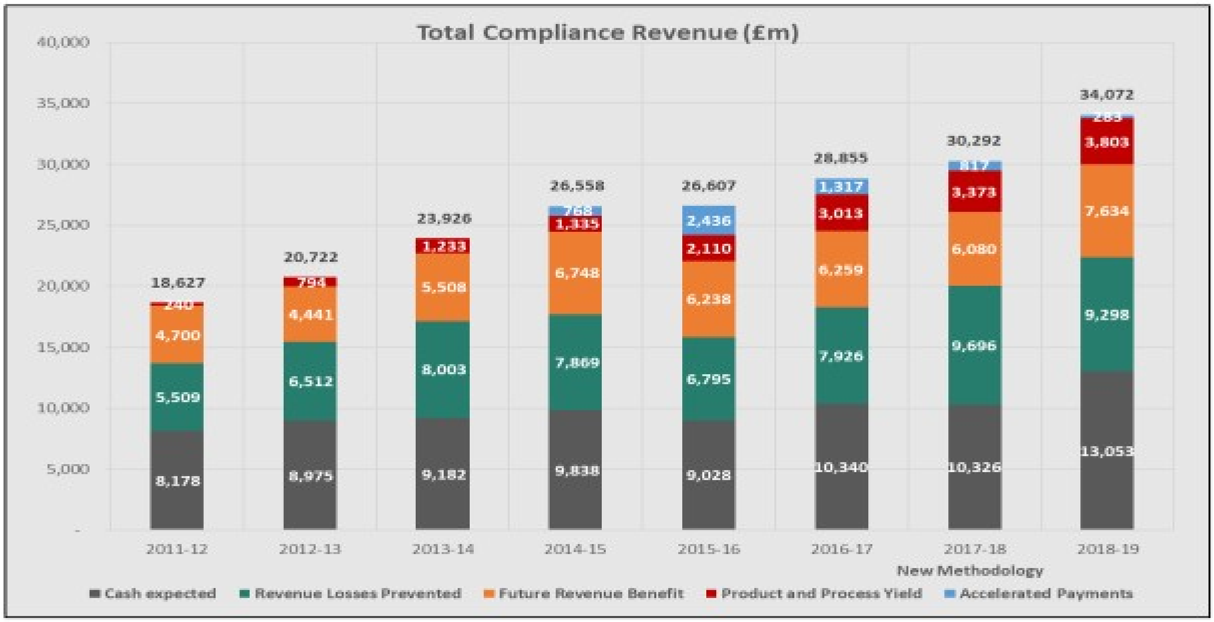
It is therefore misleading to describe the money raised as “additional” it is only additional in the sense that if HMRC did nothing, then every extra pound raised would be additional income. However, HMRC has of course always done compliance work.

With regards to the contribution made to the £200bn by the 100 new policies, it seems that this makes up only a small proportion of the “overall compliance yield figure”.

HMRC also told us:

> “While many of the measures in the list are known to contribute to the £200bn overall compliance yield figure, the precise amounts they contribute are not monitored. The chart below shows our total compliance yield outturn between 2011-12 and 2018-19. It provides the scale of the impact of compliance activity which supports the £200bn figure.
>
> The yield from most of the measures in Annex A are captured in the Product and Process element of the chart as they are principally legislative changes. Yield from any operational measures in the list are captured in the other yield categories, along with the rest of our business as usual activity.”

As can be seen from the chart provided, Product and Process makes up just a small fraction of total compliance revenues.



Looking beyond the headline figures

The low levels of monitoring of the impact of specific policy interventions on tax receipts is surprising when we consider that policy interventions and legislative changes are often accompanied by significant estimates of the impact they will have on future tax revenues.

For example, in 2016 as part of the Government's crackdown on avoidance, Parliament put in place a set of measures designed to improve the behaviour of large corporations.

The new rules would allow HMRC to put companies into "special measures" if they had been found to be persistently non-compliant with tax law. This was defined as persistently failing to disclose information requested by HMRC, or being a serial abuser of tax avoidance schemes.

By the time that the policy was announced in the 2016 budget, HMRC estimated that this policy, together with the requirement on large businesses to publish tax strategies, would bring in an additional £625m in tax in the 2020/2021 tax year.

We asked HMRC how many companies had been put into special measures since the legislation was enacted, and what assessment the department had made of the impact of the policies. The response was that no companies had been put into special measures, and no assessment had been made.[11]

11 TaxWatch, Threat to "name and shame" aggressive tax dodgers fails to bite, new stats show, https://www.taxwatchuk.org/hmrc_special_measures/

It is worth noting that the lack of evaluation given to individual policies administered by HMRC is not limited to the field of avoidance and evasion. HMRC administers large programmes of government subsidies via tax credits. These include the creative industry tax credits and R&D tax credits.

The National Audit Office report, "The Management of Tax Expenditures" identified a number of issues with the current administration of tax reliefs, including large increases in expenditure over and above the forecast spend and deficiencies in evaluating value for money.[12]

For example, the cost of R&D reliefs is over double the initial forecast from when it was launched. The report stated "R&D tax reliefs have been subject to increased levels of abuse. HMRC does not hold data on tax lost from abuse and error for all tax expenditures."

Gareth Davies, Comptroller and Auditor General at the NAO has also said HMRC lacks sufficient understanding of error and fraud and "why it has increased significantly in recent years, particularly in the small and medium-sized enterprise scheme."[13]

Looking at sectors or specific areas of non-compliance

Most anti-tax avoidance and evasion policies are directed at specific types of avoidance in specific sectors. Therefore, when looking at how effective specific anti-avoidance policies are, it may well be better to look at how much the policy had contributed to reducing avoidance in those sectors.

Here we look at two areas of compliance where we have done this exercise.

Landlords

Tax evasion by residential landlords not declaring rental income has been a long term problem in the UK. The problem has become more serious as the the private rented sector has grown.

In 2013 HMRC began their 'Let Property Campaign'. The campaign was initially set to run for 18 months although it has now been extended indefinitely. The idea was that it would allow landlords to "get up to date with their tax affairs in a simple way and take advantage of the best possible terms."

The campaign involves HMRC sending threatening letters to landlords encouraging them to voluntarily disclose that they had not paid the full amount of

12 NAO, Managing tax expenditures, https://www.nao.org.uk/report/the-management-of-tax-expenditures/

13 Bill Shaw, Tighter controls and further regulation needed to combat erroneous and fraudulent claims, BDAILY NEWS, 12 November 2020, https://bdaily.co.uk/articles/2020/11/12/tighter-controls-and-further-regulation-needed-to-combat-erroneous-and-fraudulent-claims

tax on their income. If there is no response within 30 days of receiving these letters, landlords are liable to face penalties for non-compliance.

The approach seems to be having little impact. The accountancy firm Saffery Champness obtained data on the scheme through a Freedom of Information (FOI) request in 2019, which showed that in the five years since the campaign started just 35,099 people had made voluntary disclosures to HMRC, only 2.3 per cent of the individuals originally identified. This number falls far short of the estimated 1.5 million landlords who were underpaying or failing to pay tax in 2009-2010.

At the same time, the tax losses in the private rented sector appear to have increased substantially.

The last time that the government made an estimate of how much tax revenue had been lost by landlords failing to declare income was in 2013. In that year the government estimated that up to 1.5 million landlords had underpaid or failed to pay up to half a billion pounds in tax for the 2009-2010 financial year.

TaxWatch, using partial data supplied by HMRC which looks at a sub-set of landlords, estimates that today, the tax losses in the private rented sector could be as much as £1.73bn a year.[14]

VAT compliance

The fight against VAT fraud via online retailers is specifically highlighted as an action point under Objective 1 in the HMRC 2020 Annual Report.

According to HMRC's own figures, online VAT fraud costs the UK between £1bn and £1.5bn in lost VAT a year. Often it involves third party sellers registering on platforms like Amazon and eBay and then failing to register for VAT.

To counter this the UK government introduced new legislation in 2016 which in theory allows HMRC to make the marketplace liable for any lost VAT.

Under the law, HMRC first has to identify non-compliant online sellers. Then the tax agency sends a notice to the online market place where they have an account. The marketplace then has 30 days to remove the seller, or face being landed with their VAT bill.

In 2019 TaxWatch undertook research to determine the effectiveness of this policy. We found that between 2018 and 2019 HMRC identified 4,650 sellers operating on online market places as being non-compliant with the VAT obligations.

Since the joint liability legislation was brought in in 2016, HMRC has issued 8,325 notices threatening the marketplaces with joint liability.

14 See TaxWatch, Rogue Landlords, https://www.taxwatchuk.org/landlord_tax_evasion/

In responding to these figures, HMRC told the Mail on Sunday that as a result of the legislation there has been a large increase in VAT registrations from non-EU sellers (up 78,000).[15] HMRC claim that this increase has resulted in £315m being raised in VAT.

HMRC also claim that the notices under the joint liability rules had resulted in £270m in compliance yield.

Clearly the policy is having some impact, but when considered against the £1 - £1.5bn a year lost to VAT fraud by online sellers, much work is still to be done.[16]

Conclusions

With increased pressure on HMRC to tackle the issue the department has put the objective of bearing down on tax avoidance and evasion at the top of its objectives in its Annual Report.

However, whilst the intent to do more is there, the question as to whether progress is measured using appropriate benchmarks is one worth exploring.

It is clear from the way in which HMRC presents its KPIs, along with public statements made about progress on fighting tax avoidance and evasion made by government ministers, that HMRC regards the Tax Gap and Compliance Yield as the two primary benchmarks against which to judge performance.

Both of these figures are problematic in defining a clear standard against which to measure progress. They both cover a wide range of policy and involve significant levels of estimation. When it comes to the Tax Gap, the one policy area which is of most concern to the public in terms of avoidance, tax avoidance by multinational companies via profit shifting, is largely uncounted.

HMRC already recognises in its public statements that there is a need to focus policy on particularly problematic areas, for example VAT evasion by online retailers operating outside the UK.

To some extent, HMRC already does this, tracking progress of the implementation of some specific measures within the public commitments section of their annual report.

However, these specific policies are then not benchmarked against any targets in terms of revenue raising, either against their predicted impact, or the impact they

15 Helen Cahill, Taxman's £585m crackdown on unpaid VAT from online sellers including Amazon and eBay, Thisismoney.co.uk, 19 October 2020, https://www.thisismoney.co.uk/money/markets/article-7591609/Taxmans-585m-crackdown-unpaid-VAT-online-sellers-including-Amazon-eBay.html

16 TaxWatch, HMRC's attack on digital Del Boys leaves much to be desired, https://www.taxwatchuk.org/landlord_tax_evasion/

have on specific areas of non-compliance. Instead all is subsumed into the very large Tax Gap and Compliance Yield figures.

These figures do not break down tax losses in terms of specific areas of non-compliance (e.g. online VAT evasion or landlord tax evasion), and as such, do not have the granularity necessary to test the effectiveness of policy interventions in any specific areas of taxation in a meaningful way.

As such, it would be a development for HMRC to look at levels of non-compliance in specific areas, and use these as benchmarks to assess policies designed to address these issues.

Identifying priority areas could be done collaboratively with Parliament and the wide public.