

From farm to tribunal

How food and drink businesses can stay ahead of HMRC

HMRC's approach to tax compliance has entered a more assertive phase. Driven by political pressure to close the tax gap, rising tax revenues and significant investment in data driven enforcement, HMRC is increasing both the volume and sophistication of enquiries across taxes. Thousands of newly recruited compliance officers, enhanced information gathering powers and reforms such as expanded digital reporting mean that businesses of all sizes should expect deeper and more frequent scrutiny.

CMS's tax litigation experts have conducted an analysis of HMRC investigation and litigation activity since 2018, and it shows clear trends for businesses.

A tougher compliance climate

Our data shows a sustained rise in HMRC activity backed by new resources, digital tools and upstream interventions. Measures include more compliance officers, stronger information gathering powers and mandatory e invoicing for VAT from 2029. HMRC is using data analytics and targeted "nudge" campaigns to prompt self correction of tax issues. This shifts risk management to earlier in the cycle and raises the bar on record keeping. It is advisable to expect more HMRC questions with greater reliance on data.

VAT risks for producers and exporters

VAT dominates tax litigation and tracks areas where HMRC sees the largest gaps. It is not uncommon for food and drink businesses to operate high volume low margin businesses. This means VAT is therefore a particular risk area because it is calculated on turnover rather than profit. Disputes over the VAT rating of a food / drink supply, particularly with regard to zero-rating, continue to be contentious and often the subject of tax tribunal litigation. Such disputes also frequently concern the complex area of single / multiple supplies. Having clean systems and being ready for e invoicing will soon be essential.

Labour supply, PAYE and the off payroll rules

Food processing and agriculture often rely on seasonal or third party labour. Alongside ongoing off-payroll working compliance activity, new legislation has been introduced to tackle tax non-compliance relating to the use of umbrella companies to engage workers. In some cases, end users of umbrella workers can be on the hook for PAYE and Class 1 NICs.

Employment tax is one of the fastest growing areas of tax under HMRC's consideration. We expect this to include scrutiny of PAYE, off payroll working (IR35) and umbrella labour chains. The data in our report shows us that income tax and NICs cases are prominent at all court levels. Businesses should tighten status assessments, supplier due diligence and payroll controls to avoid assessments and penalties.

Corporation tax and the international dimension

Corporation tax is now the biggest tax gap by value, nearly tripling to an estimated GBP18.6 billion over six years. Our data analysis shows that “international” issues are the leading category of tax under consideration, which we consider includes transfer pricing, permanent establishment, hybrid mismatches, controlled foreign companies and double tax relief.

HMRC has had recent success in “purpose test” cases, so documenting the commercial rationale for financing matters. Well evidenced policies and contemporaneous files can reduce challenge.

R&D and management expenses under the microscope

For mid sized businesses, HMRC’s scrutiny of R&D has climbed fast, and a tougher claims process since 2023 requires fuller documentation and a named responsible officer. Food and drink businesses should continue to claim what they are due, but ensure projects are well evidenced and aligned to HMRC guidance.

Winning disputes starts with evidence

The litigation picture is sobering. HMRC wins, on average, more than 70% of cases on average across all courts, and up to 93% in the First tier Tribunal. Following our data analysis, our practical advice is to be litigation ready from the first enquiry. Preserve documents, capture witness evidence early and keep clear decision logs and commercial papers. Many disputes turn not on weak law but weak files. Early alternative dispute resolution can save time and cost where a negotiated outcome is realistic.

Conclusion

Increased HMRC activity need not mean increased risk. Businesses with clean records, strong documentation and well-evidenced positions will navigate enquiries more efficiently and with better outcomes. For Scottish producers, the checklist is straightforward: tighten VAT controls, review employment arrangements, document international structures and support R&D claims properly. Getting this right protects margins, avoids costly disputes and frees management to focus on what matters most - growing the business.

Contact us



Nicola Hine

Partner

T +44 20 7367 2543

E nicola.hine@cms-cmno.com



Hannah Jones

Knowledge Counsel

T +44 20 7367 3641

E hannah.jones@cms-cmno.com

CMS has published its data-driven findings and analysis in a new report, Tax under scrutiny: HMRC disputes, litigation and pressure points.

Click [here](#) to request your full copy.