

**Remaking the Large Corporate Taxpayer into a Visible Customer Partner: the
changing role of tax governance.**

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Abstract

The emergence of the neo-liberalism agenda has encouraged the rule of private interests co-ordinated by markets. A reactive measure to this has been the growth of regulation both by central government and regulatory bodies and the explosion of audit and scrutiny. This paper examines the change in a regulatory authority, HM Revenue & Customs (HMRC) as it responds to this agenda and leading to a search for a new identity as a customer-service provider. It focuses on the large corporate taxpayer. Changing HMRC collection, assessment and administrative practices have made the corporate taxpayer more visible and accountable. HMRC, by adopting a less confrontational approach than the previously traditional approach, is transforming itself to work in a neo-liberal inspired ‘quasi’ partnership with large corporates. From an empirical research base of semi- structured interviews, this paper examines if and how relations between HMRC and large corporates have been altered. The increased visibility, joint working and partnership practices alter the nature of the corporate tax compliance process to a more inclusive dialogue. This leads to altered power relations between the regulator and the regulatee whereby the regulatee gains a different type of power in the form of visibility in the regulatory relationship. This paper contributes to the broader aspects of the development of public administration in the UK.

Introduction

The neo liberalism agenda has encouraged public administrations to focus on the users of their services rather than the act of providing the service themselves. Part of this change in focusing has been the reconceptualisation of users of these services as customers whether it is initially seem as appropriate or not. The focus on the users of services is not limited to so-called traditional services such as those providing social care, health services and others where in principle the users have a choice when to procure their services from or the service provider has a choice from where to obtain those services. It has also extended to those public sector provisions which at first sight is not necessarily a quasi supplier relationship such as those between a regulator and a regulatee. This paper focuses on one such relationship –the relationship between a taxpayer and the UK tax administration, HM Revenue & Customs (HMRC). As part of its duties although not limited to, HMRC administers the tax system and collects taxes from its taxpayers. In principle taxpayers do not have a choice to whom to deal with. If a taxpayer satisfies certain conditions and falls within the laws and rules then they have to pay tax on their income and capital to HMRC. Although large corporations have to comply with similar rules and legislation, however they are in a different position from the majority of individual taxpayers. Large corporates have always been in a position of power when dealing with the IR. They have a range of practices available to them with which to exert power in the relationship. They are able to negotiate tax settlements where the law is unclear or omits to foresee the tax implications of specific and particular circumstances. They are significant contributors to UK plc not just by the payment of taxes but also by providing employment in the UK which contributes to the Gross Domestic Product and provides a larger pool of taxpaying individuals.

The customer relationship building trend is visible across the public sector and is a key feature of New Public Management in practice (Clarke et al. 2007; Needham, 2006; Brunsson & Sahlin-Andersson, 2000). In common with other jurisdictions successive UK governments from Thatcher's in 1980s have used the consumer/choice link to assist in reforming public services and the welfare state irrespective of whether this initially is seen as an appropriate term (Ogden, 1997). The 'consumer' was defined as "the non-exploitative, non-fraudulent user of public services who had an interest in service quality, responsiveness and 'value for money'" (Clarke et al. 2007:30). Other authors have referred to the co-production of services between the service provider and the user of the services (Alford, 2002).

However although attention has been paid to the impact of these policies on the receipt of the services, little attention has been focussed on the change in identity that the provider or regulator has to undergo to respond to the changes in this reshaping of the active consumer. This paper seeks to address this gap by examining the HM Revenue & Customs and its relationship with large corporation taxpayers.

In particular this paper looks at the ways in which the large corporate's relationship with HMRC is being altered strategically and the need for HMRC to engage differently with the large taxpayer by doing different things. Part of engaging differently is the reconceptualisation of the corporate taxpayer as a customer and quasi partnership working. Thus the contribution of the paper is to examine the impact on customer centric practices on a regulator.

This paper draws in part upon Foucault's discussion of Governmentality in particular his later work on neo-liberalism governance (Foucault, 1979/ 2008). Although this research is carried out in a regulatory environment similar to prisons and mental hospitals, large corporates, in particular FTSE 100 companies, have a choice as to where there are regulated or are resident for tax purposes. They have the ability to move parts of their operations (such as head office and administrative functions, manufacturing operations and research and development) to other countries, within reason, who may offer favourable conditions such as business environment, tax concessions, availability of specialised labour etc. Therefore they effectively can choose at least partially whether to be regulated by the UK tax authorities or some other jurisdiction.

The paper commences with a brief history of HMRC and the customer construct before a discussion of the theoretical framework used in this paper. It then outlines the new practices introduced which have made the corporate taxpayer more visible. The following section considers this new visible customer. The paper concludes with a discussion of the potential impact of the new found power for the corporate taxpayer and the consequential impact on HMRC.

History of HMRC and the customer construct

HMRC has been a distinct department of the UK Government since the Board of the Inland Revenue (IR) was set up in 1849. Since the 19th century the IR has had operational responsibility in practice to collect tax in accordance with Parliamentary legislation (Lamb, 2001). However the scope of the HMRC's activities and

responsibilities has changed, as well as collecting tax, HMRC is also responsible for administering tax credits, child benefits, National Minimum Wage enforcement and the recovery of student loans (Cm 7509). HMRC in common with other tax administrations now has a social policy role (Russell, 2008).

Until April 2004 there were two National tax gathering bodies in the UK; the IR dealing with direct tax including income taxes and corporate taxes; and HM Customs and Excise (C&E) dealing with indirect taxes such as VAT. This was an uncommon arrangement as the majority of tax jurisdictions have one entity dealing with both direct and indirect taxes (Cm 6163), for example, the Canada Revenue Agency and the Internal Revenue Service (IRS) in the US. The IR and HMCE merged in April 2004 to form HMRC. For the purposes of this paper the IR and HMRC will be denoted by HMRC.

There are a number of ways which tax administrations can be structured organisationally: by type of tax; by function or by type of taxpayer (OECD, 2006)ⁱ. These are not discrete as some tax administrations may choose to use a combination of the options. The type of taxpayer option is to segment the taxpayer base into 'customer segments'. The staff of the tax administration will be organised by these particular segments. The customer segments may be based on size of the taxpayer's operations, form of ownership (such as individuals), or economic sector such as retail businesses. Different tax administrations also have different ways of organising and controlling large taxpayers (OECD, 2006). Specialist large taxpayer compliance units (SLTCU) are based on this option. The principal reasons for establishing SLTCUs have been to reduce the number of taxpayers which are non-filing or do not pay; to

maintain tax revenues at a certain level and to introduce systems such as risk management to curb non compliant taxpayers (International Monetary Fund, 2002: 5).

In the UK, the then IR set up the Large Business Office (LBO) on 1 August 1997, which dealt with 900 of the largest UK groups of companies, including banks, building societies and insurance companies (Cm 4079:23). Following the merger, HMRC renamed the LBO, the Large Business Service (LBS) which now covers both direct and indirect taxes of large companies.

In common with other public sector entities where the citizen has been reconstructed as a consumer/ customer (Clarke et al. 2007), the then HMRC introduced the customer concept internally to refer to taxpayers in the early 1990s (interview, Inland Revenue official, 2003). This was developed into a customer service approach. Following the White Paper 'Competing for quality' (Cm 1730) and policies introduced by the Citizens Charter (Cm 1599), and Next Steps, the Board of the HMRC decided that significant change to the structure and processes of the HMRC was needed (NAO, 1996). This resulted in a ten year change programme starting in 1992. The change programme focused on four important areas known as the "Four Cs" which emphasised 'Customer service', 'Compliance', 'Cost efficiency' and 'Caring for staff' (NAO, 1996: 1). These "Four Cs" were translated into a programme which reorganised the office structure; simplified and streamlined processes; improved the use of IT and changed the culture of the Department (NAO, 1996: 1).

Management change programmes were introduced, such as Total Quality Management models, in particular the European Foundation for Quality Management "Excellence Model" (PricewaterhouseCoopers, 2000) which focused on customer

service. The customer service and enabling concepts were further emphasised with the issue of the 'Modernising Government' White Paper in March 1999 (Cm 4310). Marketing techniques were utilized when Income Tax Self Assessment was introduced (Farron et al, 1999) and a marketing director of the HMRC was appointed in November 2000 (Cm 5118: 1). In 2005 HMRC produced in 2005 a document entitled 'The Whole Customer Vision, Practice and Design Principles' which set out HMRC's customer strategy, stating that the 'customer is at the centre of the HMRC Strategy' (HMRC 2005: 4).

Governing the taxpayer

The Foucauldian notion of technology of government is especially powerful at investigating linkages between those who govern (or help to govern) and those who are governed. Governmentality has been used in a number of studies within the academic accounting literature (Miller and Rose, 1990; Bush and Maltby, 2004; Preston et al, 1997; Neu, 2006). Some are historical in nature and there are few studies that specifically relate to taxation (Preston, 1989; Lamb, 2001; Bush & Maltby, 2004). Governmentality as defined by Foucault is a particular type of power which relies both on the one hand "in the formation of a whole series of specific governmental apparatuses, and on the other [hand], in the development of a whole complex of *saviors*" (Foucault, 1979a in Burchell et al., 1991: 102-103) and in the process which results in government i.e. an attempt to shape behaviour, the disciplinary aspect. For Foucault governmentality had two aspects. Firstly, representation in that "government defines a discursive field in which exercising power is rationalised" (Lenke, 2001). This means that government delineates the problem so the issue can be problematised. Secondly Foucault refers to "conduct of

conduct” (Foucault, 1979a). In this sense government is not just restricted to its political meaning i.e. governing citizens through management and political administration but governing through self regulation, “governing the self” and to “governing others”.

Some authors within the accounting literature have drawn heavily upon the disciplinary aspect of power. (Boden, 1999; Boden and Froud, 1996; Burchell et al., 1985; Bush and Maltby, 2004; Hoskin and Macve 1986, 1988; Miller and O’Leary 1987, 1994; Miller and Rose, 1990; Neu, 2006; Preston, 1989). Much of this work looks at power relations or “power-knowledge” as knowledge in relation to power (e.g. corporate interests, the extension of managerialism and the implausibility of new, supposedly more effective, accounting techniques).

In Foucault’s later work, he focuses on the relationship between governmentality and neo-liberalism government (Foucault 1979b). In essence Foucault examines the moving of the boundary between the state and the economy. To Foucault, “the problem of neo-liberalism is ... how the overall exercise of political power can be modeled on the principles of a market economy (Foucault, 1979b). Neo liberal government does not “define and monitor market freedom, for the market is itself the organizing and regulative principle underlying the state” (Lemke, 2001:10). The state does not control the market, but the market exerts influence on the state.

Rose’s 1999 critique of neo-liberal or advanced liberal governmentality shows that governing is not reduced by less direct government. Although the state might have reduced its direct influence, the rise of regulatory bodies represents a form of accountability where new calculable spaces are made visible so that activities within these spaces can be quantified and so accounted for (Rose, 1999; Miller, 1992).

Neo-liberalism does not give freedom to any subject/ individual but only those subject/ individuals whose behaviour are shaped and defined by the state. A citizen is redefined as an “active citizen”, an entrepreneur whose business is his/ her own life and that of their family (Rose, 1999: 164), such that “the citizen as consumer is to become an active agent in the in the regulation of professional expertise: the citizen as prudent is to become an active agent in the provision of security; the citizen as employee is to become an active agent in the regeneration of industry” (Rose, 1999: 166). In the example of social housing, those individuals who are not owner occupiers are tenants who are shaped as autonomous agents and given more responsibility to exercise choice in their housing needs (Flint, 2003). So patients are customers of the health market if patients behave according to the definition of the patient/ customer that the state has decided upon (Clarke et al. 2007). Much of this research has looked from the perspective of the consumer, for instance, at what has been the impact on the user of the service now defined as a consumer. McKee, 2009, has examined the impact on professionals and their resistance in this case housing such that tenants become ungovernable subjects as they do not wish to actively participate in formal schemes which aim to give them more empowerment. There a number of criticisms of the governmentality approach. One of these criticisms has been that research has been informed by discursive practices, for example government documents, rather than the actual practices that represent the ‘art of governing’ (McKee, 2009; Mckinlay & Pezet, 2009). Other criticisms have concerned resistance, power and rejection of state theory (Jessop, 1990).

The empirical material in this paper includes 32 semi structured interviews with HMRC officials, UK tax directors and tax managers of multinational companies and

tax advisors from one of the Big 4 firms of accountants carried out in 2002-04. Where possible all the interviews were tape recorded and transcribed. For those interviews which were not recorded, as the interviewee refused permission, detailed notes were taken and were transcribed immediately after the interview. Evidence was also obtained from publically available documents. In addition a further five interviews were carried out with HMRC officials in 2010.

Large businesses and the customer construct

The introduction of the customer concept may be appropriate for individual taxpayers but in the case of large corporate taxpayer it is more problematic. The corporate tax compliance process for large corporates is carried out by experts who are an elite group of professionals on both sides of the tax compliance fence. From HMRC perspective tax officials who deal with the large corporates are senior tax inspectors who are the elite of their field. They have undergone specialist examined training to become tax inspectors and have a number of years seniority. Likewise from the corporate or advisors' perspectives the individuals concerned will be professionally qualified, the majority of whom are accountants, with a substantial number of years of post qualification experience. These elite groups of professionals have a dual role. They both are involved in policy but also they sit across the table to negotiate with each other over the amount of tax payable. The analogy of a 'game' is frequently used to describe the relationship between tax administrations and large corporates (for example; Freedman, 2008; OECD, 2008; Piciotto, 2007; Braithwaite, 2005).

The introduction of the customer concept met widespread resistance (Montagu, 2002), including among Large Corporates as the following quotes illustrate.

“We had a meeting with the Revenue recently and they talked about their customers and I said “Sorry ‘Customers?’ What are you selling here?””

(Mr. C, UK tax director of multinational company, 2003).

This is consistent with other public sector services that people, such as patients, users do not see themselves as customers (Clarke et al. 2007: 139). The resistance is also expressed in terms of not understanding why HMRC has introduced the customer discourse for Large Corporates.

“I just struggle to understand the product they are giving to me as a taxpayer. I understand the product they are giving to me as a citizen: they are collecting the tax so that the government can spend it on whatever they want to spend it on. So I can see how they can regard themselves as providing a service to the individual. But when they review the ABC group plc as a customer, I don’t understand that. I’m quite happy for them to be [HMRC] and collect the tax and I respect that and understand that and that’s their job and I want them to do it properly. They don’t have to pretend I’m a customer.”

(Mr. A, Tax Director FTSE 100 company, 2003)

In some cases there is some appreciation of what HMRC is trying to achieve but the resistance is demonstrated by the view that the customer discourse is an inappropriate term to describe the change.

“I think they’re trying to show that the Inland Revenue has had this ogre reputation as some sort of miserable organisation that just drags money out of people and I think they’re trying to demonstrate that their role is essential to

society, important to society and they're doing it the best way that they can do and I understand that and that's right. But to say I'm their customer? I think that's the wrong way to go about it. The analogy is when British Rail stopped talking about "passengers" and started using the term "customers" and you're thinking: "What was wrong with passengers?" There's nothing wrong with the word, but what they're trying to do, I suppose, is to get a new image of what they're doing. And I think the Revenue are trying to do that, to create this image that these are important things that they're doing, vital things that they're doing, but going the customer route I think is the wrong route".

(Mr. B, Tax Director FTSE 100 company, 2003)

This acknowledgement of HMRC's desire to pursue a different method of regulation is a reflection of pursuing responsive regulation strategies (Ayers & Braithwaite, 1992).

Changing regulation approach

Foucault regards techniques of governmentality as supplanting techniques of force (1991: 102). However Neu and Heincke (2004) disagree. They argue that in certain situations such as a colonial setting, the techniques of accounting and the enforcement such as gunboats are more difficult to distinguish. In a regulatory body such as HMRC, it is difficult to separate the enforcement powers of tax collection and techniques of government. Ayers and Braithwaite (1992) take the view that power should be exercised by various organisations – markets, the community, the state and associations such as trade unions, civil liberties groups, women's organisations and the consumer and environmental movements in equal measures so that one

organisation does not dominate the others (1992: 17). They argue that the state should redistribute power by giving power to previously powerless organisations such as consumer groups i.e. empowering citizens. Instead of removing regulations (deregulation), regulation should be transcending in that different degrees of regulation should apply to different strata of the regulated population. In addition the regulators should take a softly, softly approach which has additional benefits in that the costs of complying with the regulations are reduced and increased compliance results.

This approach is utilised by the Australian Tax Office (ATO) tax compliance model (Braithwaite, 2007). Securing tax compliance is depicted as a regulatory pyramid. The vast majority of taxpayers are at the base, the non-compliant at the apex. Enforcement procedures increase as one goes up the pyramid. In common with other countries such as New Zealand, HMRC has adopted this model to improve compliance (Cm 5428: 11), which stratifies customers into those which comply, and those which do not. To the latter category, more resources are directed and a stricter approach to compliance is undertaken (Cm 5428: 14). This model has been adapted further by HMRC such that HMRC focuses their activities on particular customer groupings (Cm 7774: 12). In this way HMRC services can be tailored to particular customer groups, not just distinguishing between individuals and large corporates but between those who are perceived by HMRC to be low risk and those who are not. However once this customer service approach is pursued then specific performance targets are introduced.

Performance targets re customer satisfaction

Ogden (1997) notes that customer and customer service concepts get operationalised via quantified measures as the means to ascertaining the effectiveness of providing a service to customers. This trend is visible across the public sector and is a key feature of NPM in practice (Brunsson & Sahlin-Andersson, 2000). Public sector agreements with measurable targets were introduced within the HMRC following on from the 1998 White Paper, 'Public Services for the Future: Modernisation Reform Accountability' (Cm 4181, Cm 4315) and included targets directly linked to increases in customer service (Cm 5706: 14). This quantifiable measure has introduced a new visibility to customer service (c.f. Miller, 1990).

The inclusion of the PSA customer service target has focused the HMRC to measure "customer service". However customer service is not a fixed concept and there is no precise definition of what is meant by this term. It is interpreted by different organisations and different individuals in different ways (Needham, 2006). There is clearly confusion over what is meant by 'customer service' amongst large corporates themselves. It can be interpreted as the HMRC being facilitators to help the corporates to pay the correct amount of tax:

"I told [a previous director of LBO] quite vociferously we aren't customers. In my view the customer of the Inland Revenue is the Treasury and we are not customers we are taxpayers. But I think what they are trying to say is, "Yes, you are taxpayers, but in terms of the service we provide you we are acting not just as regulators but also as facilitators, so to that extent you are customers". Clearly to the extent they are regulators we are tax payers then we have to pay up and face the consequences, but I think, to be fair to them, they are trying

hard in some areas to improve the service they provide to taxpayers and make it easier for taxpayers to comply with their legal obligations.”

(Mr. T, UK Tax Director of multinational company, 2003)

The different interpretations of what is meant by “customer service” obviously have significance to the measurement of customer service such as when the monitoring of the PSA target is undertaken and this focus on measurement of customer service has continued to gain greater importance. However perhaps more significantly, the “customer service” term gets deeper entrenched within the HMRC discourse, in part because of the quantified measurement. The practice of measuring customer service has the effect that customer service takes on a more prominent role in the activities of the HMRC. This is evidenced by one of the recommendations included in the Review of Links with Business report: that regular independent customer satisfaction surveys should be carried out “to monitor progress in this area” (IR, 2001:9). The first customer survey was a quantitative survey, the objectives of which were to ascertain whether “the LBO was providing a satisfactory service, acting in a professional manner and identifying risks effectively” (LBO Forum minutes, 20 Nov 2002). The LBO acknowledged that the survey was ‘useful’ and would continue to survey in 2003 from a qualitative perspective. The proposed survey would concentrate on five areas: Understanding the business; Contact with the LBO throughout the year; General weaknesses in commercial understanding; “Ringmastering” and Sectorisation (LBO Forum minutes 22 July 2003). The scope of the definition of customer service has been enlarged to encompass more of the LBO’s work. This has given customer service a greater visibility by the introduction of measurable outputs.

One aspect is that the greater visibility of customer service has increased expectations from the HMRC perspective. One of the primary activities of the HMRC is a duty to collect tax in accordance with legislation (regulating). However HMRC has a dual role towards taxpayers: “an enabling as well as a regulating Department” (Montagu, Cm 5118:1). HMRC has a duty to regulate taxpayers to ensure the correct tax legislation is applied and they pay the correct amount of tax. Customer service is part of the enabling message. This increased focus on customer service is not without difficulties as there may be a limit to the ‘enabling and regulating’ message. HMRC may be over-promoting customer service at the expense of collecting taxes.

“It’s not recognised that calling taxpayers “customers” over emphasises the enabling side of things to the cost of the regulating. Quite clearly we are here to regulate: we are not paid to enable. I think the enabling is significant but it’s very much a minority of what we ought to be doing” (IR official, 2003).

At the same time as the introduction of the customer discourse, the practices of tax collection has changed such that those engaged in the tax affairs of large corporates are more visible to HMRC through meetings and oral exchanges.

Changing working practices

Corporate Tax Self Assessment (“CTSA”) in common with other jurisdictions was introduced in 1999. Under this arrangement Companies (on an individual basis) complete a prescribed format return known as a ‘Company Tax Return’ and which details their taxable income and their own calculation of the tax due. There is a fixed time limit for the return to be submitted and for the tax due to be paid. Prior to the

introduction of CTSA enquiries into the tax return commenced by written correspondence with recourse to meetings if an impasse in the negotiations occurred. The returns of large companies and groups of companies were submitted to the relevant office of the Large Business Office (LBO). With the introduction of CTSA areas of concern had to be disclosed to the HMRC rather than waiting for the HMRC to raise questions (e.g. transfer pricing issues). In addition since 2006 direct tax avoidance schemes have to be disclosed by the promoters of those schemes within a specified time limit. A tax arrangement is one which has been entered in which the main benefit is to obtain a tax advantage. Subsequent Finance Acts have further amended this legislation and further proposed legislation was announced in the Budget 2010 which was more wide ranging in its scope.

The HMRC assume that the information shown on the return is correct unless it is found to be otherwise. In addition under the Operating Model issued in April 2006, meetings were set up between LBS and the large Corporates to discuss areas of tax risk. This has changed the accountability relations between the taxing entity and the corporate taxpayer. This is the 'thin end' of a wedge that begins to make the taxpayer into an entity that will begin to learn to act or enact a new active and visible customer role. This kind of accountability requires making yourself visible in a customer/service provider interaction, which involves a much more active and interactive negotiation process phase in the tax determination 'game' (Piciotto, 2007).

For large corporates there always has been an important negotiation phase with HMRC but typically only after a lengthy enquiry and response process when settling

the tax liabilities for a particular period. This is well summed up in the following quote:

“Well, I think it’s fair to say that well in excess of 90% of what they present to us as their liabilities is not in dispute but when the law is well settled the figures are there in their accounts.... But where large amounts are involved at the very least our companies will seek interpretations of the law that will favour them; naturally, we will respond the opposite way. So to some extent what they will do is challenge our interpretation. So that’s one issue, but the primary issue, and it goes right across large business is that tax is cost and they will adopt all sorts of strategies to minimise that cost, in a way that we see as unintended by our legislation. When that happens, well when it is visible, you can a large profit but no tax payable and it’s not too difficult to see why the difference has arisen and that is where our resources go. Other things are more subtle and more difficult to spot, particularly in the international arena. We are presented with material related to their UK tax accounts but there are many ways of avoiding tax internationally.”

(Mr O, IR Official, 2003).

Previously this negotiation process would commence with written enquiries and only when the written correspondence had reached an impasse would a meeting be arranged to negotiate the tax liability. The written correspondence could span a number of years and it was not unusual for the tax computations to be in dispute for a large number of years. This had a number of implications for large corporates. In view of the time elapsed between the year being questioned by HMRC and the date when

the enquiries were taking place, staff who were involved may be no longer employed by the company or the historic information would be difficult to obtain. It also introduced more uncertainty when preparing the tax provision in the annual accounts and forecasting future cash flows of the company.

This signal of change in tax determination approach is in line with a 'customer' focus. Some HMRC officials were already pursuing this approach but two documents which mark this change are firstly the July 2001 Consultative Document and secondly the Review of Links with Business report. The consultative document was issued by HM Treasury and HMRC in July 2001; it announced a review would be carried out that would consider the extent and effectiveness of the Inland Revenue's links with business on administrative matters and policy issues (HM Treasury & IR, 2002: 7). The report on the outcome of the review, 'Review of Links with Business' (2001), highlighted that there had been an improvement in the relationship between the LBO and large companies, but also acknowledged that there is scope for further improvement. The report contained recommendations which sought to address these deficiencies, among which were new faster processes for HMRC's enquiries, including meetings set up between the Company and the LBO, where company officials discuss the company's tax risks with the LBO and presentations are made by the company on the accounts, and the introduction of the 'New Compliance Process' ('NCP'). The report also recommended changes to communication processes between the LBO and large businesses and representative bodies: the Large Corporate Forum, which was set up in order to establish 'links' between the Large Business Office ("LBO") (the forerunner of the LBS) and its customers and to provide a forum in which to debate current taxation and operational issues; and the Corporate Tax

Operational Consultative Committee set up with representative bodies. There seemed to be mixed messages coming from HMRC regarding the purpose of the review. HMRC acknowledged that the review was a part of the ‘enabling culture’. However the IR 2002 Annual Report reinforced the regulating culture but with ‘customer discourse’ now centrally embedded (Cm 5706). The 2006 Review of Links with Business Report known as the “Varney Report”¹ highlighted the importance of HMRC relationships with large corporates. In particular the Varney Report proposed a framework for HMRC to introduce advance rulings procedures, disclosure of risk assessment processes and a greater awareness of business’ viewpoint. The disclosure of risk assessment necessitated a different type of interaction with corporate taxpayers (Freedman et al, 2009).

Partnership working

These changing practices were evidenced by certain multinational companies making presentations to the HMRC on aspects of their business. There were meetings between the LBO and multinational companies to share the LBO’s risk assessment with the taxpayer. The LBO made its procedures for identifying areas of tax risk in tax returns more sophisticated in recent years. The NCP pilot scheme, which consisted of 17 multinational groups encompassing a wide range of industries, formalised this emerging approach to ‘real time working’.

The HMRC Operating Model issued in April 2006 formalised this sharing of the risk assessment practice further. Another is the reversal of negotiating practice from the old-style practice of a first meeting that involved constrained negotiation on a point

¹ <http://www.hmrc.gov.uk/large-business/review-outcomes.htm> seen 18/12/06.

emerging from the written interchange to a new practice of first discussing and “clarifying” issues. This leads to a different interaction between HMRC and large corporate and different “key issues” are more likely to emerge from interactive sharing between HMRC as “service provider” and the “active visible customer”. Although these discussions contain technical textual dimensions, the participants are engaging interactively in inclusive discourse. One might argue that there is still ‘power’ in having the relevant expertise, so you have to know how to exercise expert power. This power is differently distributed between the HMRC and client experts in new kinds of game where integrative understanding is at a premium. New style meetings with the HMRC can cover more than one year although within the constraints of tax legislation which is concerned with each year of assessment. The impact of this new visibility is discussed in the next section.

“In some groups the tax function is quite marginal to the main business. They can be difficult to deal with, not so much because they’re into aggressive tax planning, or whatever, it’s just that they can never get the relevant information, and so they can be hard groups to deal with and so we try to give them as much support as possible to break down the culture in their organisation”

(Mr L, IR LBO Official, 2003).

In fact HMRC acknowledge that it may have to work in partnership with large corporates as the following quote from the Risk Management report illustrates :

Where we believe that a customer is not managing tax risks adequately, or is repeatedly pushing at the boundary of the law, we will intervene quickly and intensively. We will aim to work in partnership with our customers to help them manage and reduce their [from HMRC's perspective] tax risks (HMRC 2007, para 1.4).

More recently Dave Hartnett, Permanent secretary at HMRC commented in an interview with the Financial Times that HMRC will pursue a less aggressive approach to settling tax issues so that more cases can be resolved (Financial Times, 19 Aug 2010). It was felt that the litigation strategy introduced in 2007 had not been understood by corporate taxpayers. The objective will be to reach agreement where there are a number of different interpretations of the law and in some cases third party mediation will be used. As the circumstances for negotiation have altered this has an impact on the power relationships between HMRC and large corporates.

Changing Power relationships

For Foucault, power relations were within a complex interrelationship between power and knowledge and the subject and the object. It is by calculation and through the 'apparatus of writing' that the individual is constituted as a 'describable, analysable object' (Foucault, 1977: 190). We could refer to this as an apparatus of objectivism.

Foucault's view was that power is not just negative (Foucault, 1977: 194) as many critics, especially those from a Marxist persuasion, have argued the opposite e.g. Neimark (1990).

“We must cease once and for all to describe the effects of power in negative terms: it ‘excludes’, it ‘represses’, it ‘censors’, it ‘abstracts’, it ‘masks’, it ‘conceals’. In fact, power produces; it produces reality; it produces domains of objects and rituals of truth” (Foucault, 1977:194).

It is further articulated in the late Foucault/ Florence work.

“It is obviously not a matter of interrogating “power” as to its origin, its principles, or its legitimate limits, but of studying the devices and techniques that are used in different institutional contexts to act on the behavior of individuals taken separately or in groups; to shape, direct, and modify their behavior, to impose limits on their inaction, or to inscribe it within overall strategies that are thus multiple in their forms and zones of enactment. Such strategies are diverse as well in the procedures and techniques they deploy: these power relations characterize the way human beings “govern” one another, and their analysis shows how, through the use of certain patterns of “governance” with madmen, sick people, criminals, and so on, the mad, ill, or delinquent subject is objectivized” (Foucault/Florence, 1994: 318).

This is about a positive power which involves and implicates the governor as much as the governed, the manager as much as the managed. Foucault gives this idea a particular embodiment in *Discipline and Punish* in the idea of “calculable man” who he sees as displacing memorable man at the heart of the exercise of power (Foucault, 1977: 193). When we extend this to the insight that human beings govern one another we can see those who do via management practices do so through being calculable

and calculating selves. This is illustrated by the potential for changing power relations between HMRC and the large corporate taxpayer.

“We have a new director who raised the question with us a few weeks ago about whether our appraisals ought to have an element for customer appraisal and in principle I don’t see anything objectionable about it. I don’t really suppose we would get objective professional reaction. For example one colleague has a serious difficulty with a major customer. The customer has been a major defaulter and my colleague is looking to impose a penalty which the customer doesn’t like. We are talking about millions of pounds. It’s become very personal so I wouldn’t want his appraisal depending upon the customer being able to take it up” (Mr O, IR Official, 2003).

What is interesting here is not because the idea would not seem to be feasible but why the idea was raised in the first place. The taxpayer as a customer seems to be become more important than a mere taxpayer. The collection of tax although a core activity, is seen as subservient to customer service.

“I think that the thing that influences the Revenue behaviour more and more is the management focus on the customer. At the regional office level there are people who are customer service managers. Now if you know that and if you know there is more likelihood of your work being reviewed if there is a complaint then it is more likely that you will behave in a way that doesn’t cause your work to be reviewed. There is nothing worse than a complaint because you have to do a lot of work to prepare a report on a complaint and

then you don't know what's going to happen. We go back to the way the Civil Service works again, I think: 'If you can avoid something happening, you will'" (Ex IR official).

Thus the corporate customer as a visible customer gains greater prominence within HMRC. HMRC has responded by introducing its strategy which is focussed on the customer experience (HMRC, 2010).

Impact on HMRC as a regulator

With this greater prominence the customer is no longer a passive subject which can be regulated independently of its wishes.

"[HMRC] staff have now accepted the term customer but accountants complain about the term. Customer is a useful phrase; it encourages a state of mind in [HMRC] staff; 'We [HMRC] rely on customers. We cannot do anything we like'".

(Mr. I, IR Official, 2003).

It is this acknowledgment that customers are a key part of operating a tax administration function and they have to be considered whether as a co-producer of services (c.f. Alford, 2002) or as a quasi-partner. More recently by working with customers on specific issues, the tax yield can increase.

"We have to call them customers even though they might not want to be. And so it's about providing that visibility of what's actually going on which means saying 'we've [HMRC] got problems in some of our VAT registration areas

that we can quickly show them [the customer] and support them in what's going wrong. We've got this target of what's happening here, help with the analysis, bring together some of the issues that are coming up here around the way that the yield profile's going and challenging that" (HMRC official, 2010).

The term "customer" has organisational and structural effects within the HMRC. The HMRC's 2010 Business Plan describes its vision and how this vision is shaping HMRC's organisation.

"We are using our customer centric strategy to deliver this transformation. Using our understanding of customers to focus our efforts where they will have the biggest effect, tailoring our services to the needs, abilities and motivations of our customers" (HMRC, 2010).

This is confirmed by an interviewee in late 2010 who commented

"Our strategy is based around customer interventions. So it doesn't matter what sort of customer you are to us; we're looking at you in a particular way. It would always be fair to say that high value customers are a particular type of customer to us as opposed to just everybody, but we're starting to look at that and that may well, enabled with the costing thing, give us to be in a better place to say to Treasury not just a pound of this equals, but also "this type of customer can be managed in this way" (HMRC official, 2010).

The restraint on public sector finances and the need to cut administrative costs by 25% in the Spending Review period, has directed HMRC spending patterns so that

HMRC delivers a lower cost base whilst building on its customer – centric strategy (Gauke, 2010). One HMRC financial official commented in late 2010 that:

“Customer satisfaction has been identified as our priority so that’s what we make sure is protected and it means hard messages for people who’ve got their pet projects, but sorry, it’s not on the table anymore” (HMRC finance official, 2010).

This is further evidence of the importance of the customer to HMRC.

Discussion and Conclusion

By examining the remaking of the corporate taxpayer as a visible customer this paper has explored and extended how we should understand the notion of neo-liberalism governmentality which is now not purely about ruler/subject relations but it is implicated in aspects of service provider/customer relations as well. Neo-liberalism government is the activation of the powers of the citizen by the responsible conduct of individuals (Rose, 1999). Individual conduct is regulated by mechanisms, technologies and practices. He further suggests that this new approach involves not just a reconfiguration of those who are governed but a re-examination of the inter-relationships between the governed and the governors. It is this regulation of political power from the ruler to the rational calculation of those who are governed (Foucault, 1979b). Foucault (1979b) acknowledges that this process of ‘regulated freedom’ has a limit. The practices of neo-liberalism governance will not ensure all taxpayers are compliant. It only ensures that there is a balance between tax collection and noncompliant taxpayers. However a missing component of this analysis is the effect on the regulator in pursuing this approach.

The customer discourse may have been introduced to effect a cosmetic change in the approach of dealing with taxpayers on a superficial level. However the customer discourse approach has become embedded in HMRC organisation (Lamb, Tuck and Hoskin, 2003) and strategy. The phenomenon of NPM have led the HMRC to adopt the strategy of also being an “enabling” department, which is judged on the quality of service it provides to its customers; the taxpayers. This is manifested in customer satisfaction targets.

The joint working approach of the HMRC’s Operating Model means that the power relations are being played out in different ways. The traditional view of governmentality being a top down approach is evolving into a new two-way approach. The remaking of the Large Corporates taxpayer as a visible customer creates power in a different way for the corporate. Notwithstanding Large Corporates already had some power but these relations are being re-engineered as a result of the change in HMRC practices. Customer service is so embedded within HMRC so that HMRC’s vision is to be a customer centric organization where customer satisfaction targets are a priority for resources at the expense of other projects. Thus HMRC, the regulator, becomes a customer service provider

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ⁱ Type of tax was the traditional method of organisational structure (International Monetary Fund, 2002). Under this option the tax administration is separated into different departments, each dealing with a particular type of tax. Each department is in effect a stand alone entity as it has separate functions to help it administer the particular tax by itself. An alternative method is to organize the tax administration such that each department is responsible for an essential function such as tax collection, for example processing all tax returns resulting from different types of taxes.