

# **The Forum to Oversee the Implementation of new HMRC Powers, Deterrents and Safeguards**

## **Final Report on the year 1 April 2011 to 31 December 2012 to the Exchequer Secretary to the Treasury**

There are three annual reports all of which are historic documents and the data has been compiled in a format specifically for the Forum at the time. HMRC will not update these reports. The final Forum meeting was on 21 February 2013.

# Review of HMRC's Powers, Deterrents and Safeguards: Implementation Oversight Forum

## Introduction

This is the third report of the Forum who met once this year which is an indication that no major issues have arisen this year. The annex to this report lists the meeting agenda and content can be accessed from the HMRC website at <http://www.hmrc.gov.uk/about/implementation-oversight/impl-oversight-forum.htm>

Similar to the previous year, only two meetings were scheduled this year with one being a "virtual" meeting using email depending on issues that had arisen. No issues arose.

## Schedule 36 Finance Act 2008 Information and Inspection Powers

### Authorisations

Certain actions must be authorised by a trained and generally more senior officer. HMRC continues to see this as an important safeguard. The overall levels of authorisations have been broadly static.

### Commentary

- Total authorisations requested have reduced by approximately 15% for 2011/12 compared with 2010/11 and there is also a decrease in the proportion granted.
- The balance of requests has changed. Unannounced visits rose from 907 to 1031 for 2011/12. The almost complete decline in notices for applications to the tribunal for tax related penalties and copies of third party information noted in 2010/11 remain unchanged. There have been significant reductions in the requests for daily penalties and applications for approval to issue a notice.
- For the period covering April – December 2012 there has been a steady decrease from previous years comparing figures at the same point:
  - total authorisations: 900 (December 2012); 1049 (December 2011) and 1245 (December 2010);
  - authorisations granted: 865 (December 2012); 1004 (December 2011) and 1140 (December 2010);
  - unannounced visits: 617 (December 2012); 747 (December 2011) and 687 (December 2010).

HMRC will be looking at the value of continuing to record these details going forward and they will consult the Compliance Reform Forum before any final decisions are made.

<b>Authorisations requested: 2011 and 2012</b>			
	<b>2010/11</b>	<b>2011/12</b>	<b>April – Dec 2012</b>
<i>Deferred</i>	7	3	2
<i>Granted</i>	1526	1362	865
<i>Pending</i>	27	12	1
<i>Rejected</i>	85	37	30
<i>Withdrawn</i>	5	1	2
<b>Total</b>	<b>1650</b>	<b>1415</b>	<b>900</b>

<b>Authorisations granted: 2011 and 2012</b>			
	<b>2010/11</b>	<b>2011/12</b>	<b>April – Dec 2012</b>
Apply to tribunal for approval to issue a notice	228	64	52
Apply to tribunal for inspection	18	1	14
Apply to tribunal for tax related penalty	2	1	0
Apply to tribunal not to copy 3 <sup>rd</sup> party information	4	3	12
Daily penalty	272	186	113
Identity unknown notice	11	1	0
Issue notice for documents over 6 years old	81	70	50
Obstruction of inspection penalty	1	1	0
Short notice visits (less than 7 days notice)	2	3	0
Unannounced visits	907	1031	617
<b>Total</b>	<b>1526</b>	<b>1261</b>	<b>861</b>

<b>Authorisations rejected: 2011 and 2012</b>			
	<b>2010/11</b>	<b>2011/12</b>	<b>April – Dec 2012</b>
Insufficient evidence	33	4	1
Non compliant with HRA	1	0	0
Not relevant or proportionate to benefit	19	11	5
Preferable alternative course of action	27	6	3
Reasonable excuse accepted	0	0	0
Unspecified	0	0	0
<b>Total</b>	<b>80</b>	<b>21</b>	<b>9</b>

## Schedule 24 Finance Act 2007 Penalties for Errors

During the period HMRC's Local Compliance business completed its programme to implement the recommendations of the major internal review of the operation of New Penalties which took place in 2010.

### *Process improvements*

In November 2011 we made significant changes to the way in which inaccuracy penalties are authorised, to further streamline the process. The effect of this was to put decision-making into the hands of front-line managers, giving them the primary role that they wanted in ensuring consistency, setting standards and driving up quality. This means that both ownership and also accountabilities are much more clearly defined, with managers taking direct responsibility for the work of their teams as opposed to pushing issues up the management chain.

We have also continued to improve and extend our new interactive IT tool, which ensures that the right actions on penalties are taken at the right times, and which enables decisions to be monitored and validated, to benefit both customers and staff. This has been welcomed by caseworkers and managers,

### *Guidance and training*

In March 2012 we completed the delivery of refresher training to over 7,000 front-line staff. This has been very successful, with nearly 95% of attendees reporting that the event had met their learning needs very or quite well, and nearly 90% feeling that their confidence in using inaccuracy penalties was greatly or somewhat increased.

Building on this training and our existing Tax Professional Qualifications, in 2012/13 we began using some of our most senior and experienced tax professionals to run tailored professional development events on inaccuracy penalties in local offices and business units. These provide a flexible, interactive, practically-focused means of delivering support and up to date information to managers and teams.

In addition we have thoroughly reviewed and updated our guidance and factsheets.

<b>Penalties recorded 2010/11</b>					
<b>By Regime</b>	<b>Cases</b>	<b>Inc suspensions</b>	<b>Suspended</b>	<b>Due now</b>	
CT	149	29	£82,700	£352,095	
Employer compliance	1,637	485	£1,465,768	£1,408,175	
ITSA	30,803	1,732	£2,520,703	£5,957,064	
NIC	452	1	£73	£31,714	

VAT	21,555	4,011	£12,603,067	£24,233,118
Other	335	2	£162	£592,232
<b>Total</b>	<b>54,931</b>	<b>6,260</b>	<b>£16,672,472</b>	<b>£32,574,400</b>
<b>Penalties recorded 2011/12</b>				
<b>By Regime</b>	<b>Cases</b>	<b>Inc suspensions</b>	<b>Suspended</b>	<b>Due now</b>
CT	282	21	£29,019	£596,950
Employer compliance	1,662	433	£2,101,332	£1,244,584
ITSA	54,106	1,072	£524,831	£9,791,651
NIC	3971	1	£73	£10,360
VAT	16,453	3,775	£15,248,169	£23,230,666
Other	680	3	£656	£680,079
<b>Total</b>	<b>77,154</b>	<b>5,305</b>	<b>*£17,904,081</b>	<b>£35,554,290</b>

<b>Penalties recorded 2012/13 – April until December 2012</b>				
<b>By Regime</b>	<b>Cases</b>	<b>Inc suspensions</b>	<b>Suspended</b>	<b>Due now</b>
CT	259	31	£80,267	£1,130,087
Employer compliance	1,097	432	£2,409,698	£3,735,173
ITSA	19,363	1,893	£1,123,013	£13,832,590
NIC	85	1	£243	£19,083
VAT	6,241	1,955	£9,280,860	£36,968,831
Other	406	8	£21,508	£45,528,258
<b>Total</b>	<b>27,451</b>	<b>4,320</b>	<b>*£12,915,589</b>	<b>£101,214,022</b>

\* The disparity between these figures is accounted for by the shorter recording period for 2012/13 which does not take into account any peak activity approaching the end of the year.

<b>Penalties by behaviour 2010/11</b>			
<b>Behaviour</b>	<b>Cases</b>	<b>Prompted</b>	<b>Unprompted</b>
Deliberate + concealment	152	138	14
Deliberate	1,112	656	456
Failure to take care	19,836	19,344	492
Failure to notify under-assessment <sup>1</sup>	2,384	2,189	195
Error	32,320	31,240	1,080
Other	2,246	1,604	642
<b>Total</b>	<b>58,050</b>	<b>55,171</b>	<b>2,879</b>
The total number of Cases is greater as a case can exhibit more than one behaviour			

<b>Penalties by behaviour 2011/12</b>			
<b>Behaviour</b>	<b>Cases</b>	<b>Prompted</b>	<b>Unprompted</b>
Deliberate + concealment	164	157	7

<sup>1</sup> "Failure to notify under-assessment" is no longer a behaviour category on NPPS.

Deliberate	1,180	1,031	149
Failure to take care	22,916	22,532	384
Error	47,480	47,370	110
Other	8,055	2,522	3,851
<b>Total+</b>	<b>79,795</b>	<b>73,612</b>	<b>4,501</b>

<b>Penalties by behaviour 2012/13 – April until December 2012</b>			
<b>Behaviour</b>	<b>Cases</b>	<b>Prompted</b>	<b>Unprompted</b>
Deliberate + concealment	241	233	8
Deliberate	1,890	1,724	166
Failure to take care	22,513	22,378	135
Error	1,828	1,813	15
Other	2,089	1,355	133
<b>Total+</b>	<b>28,561</b>	<b>27,503</b>	<b>457</b>

+The disparity between these figures is accounted for by the shorter recording period for 2012/13 and taking out the recording of nil penalty cases.

### Commentary

Following the introduction of Schedule 24 FA 2007 penalties for inaccuracies, we put in place a system (NPPS) to 'process' behaviour-based penalties and bring them into charge.

A design feature of NPPS was that it can process penalties only for cases with a live HMRC reference. As a result, there have always been minor exceptions (Certain VAT work involving overseas entities) that could not be processed via NPPS.

NPPS was designed essentially as a processing system, (rather than a management information system), and has been used as a central source of data relating to behaviour-based penalties.

A recent HMRC sample comparison of cases referred to the Managing Deliberate Defaulters regime with entries on NPPS has brought to light a previously unknown problem. Because NPPS is essentially a system for processing penalties and bringing them into charge, some direct tax cases concluded by 'contract settlement' in which 'FTRC' and/or 'deliberate' penalties were incurred, have not been recorded on NPPS, because it was incorrectly supposed that this was unnecessary as the penalty had effectively already been brought into charge.

Whilst correcting the misunderstanding in relation to contract settlements and NPPS, going forward (and the minor exceptions aside) NPPS will record all behaviour-based penalties; we are also undertaking a more fundamental review of our management information requirements in relation to penalties.

The Internal Review Process figures for 2011/12 can be found at the following link: <http://www.hmrc.gov.uk/complaints-appeals/news.htm>

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**Annex A: 2011/12 Meetings:**

<http://www.hmrc.gov.uk/about/implementation-oversight/impl-oversight-forum.htm>

**Meeting 29 May 2012**

1. Reasonable Excuse update
2. PAYE Late Payment Penalties update
3. Schedule 55 late filing penalties update: presentation
4. Inaccuracy Penalties update

**Meeting 21 February 2013**

1. Inaccuracy Penalties update
2. Third Report: Implementation Oversight Forum
3. Future of the Implementation Oversight Forum

**Annex B: Future of the Implementation Oversight Forum**

At the Implementation Oversight Forum meeting on 21 February 2013, it was agreed to close this Forum. This follows Dave Hartnett's retirement, the Chair of this Forum, and the development of the Central Tax and Strategy remit in place of the Permanent Secretary for Tax.

However, it was recognised that it was important that there be an avenue by which significant issues in the use of the powers, deterrents and safeguards could be raised at a senior level inside HMRC. It was, therefore, agreed to create a specific sub-group as part of the Compliance Reform Forum, chaired by the Director of Enforcement & Compliance Change.

A document about the History of Powers will be placed on the HMRC website under the Review of Powers part.

## Membership of the Oversight Forum

<b>HMRC</b>	
Chair – Dave Hartnett	Permanent Secretary for Tax
Mike Eland	Director General of Enforcement and Compliance
Anthony Inglese	General Counsel and Solicitor
Richard Summersgill	Director of Local Compliance
Simon Norris/Jim Ferguson	Head of the Review of HMRC's Powers, Deterrents and Safeguards
<b>External Representatives</b>	
Chas Roy-Chowdhury	Association of Chartered Certified Accountants (ACCA)
Ian Menzies-Connacher	Confederation of British Industry(CBI)
Andrew Hubbard	Chartered Institute of Taxation (CIOT)
Paul Aplin (OBE) or Frank Haskew	Institute of Chartered Accountants in England & Wales(ICAEW ) Tax Faculty
David Cruickshank or Derek Allen	Institute of Chartered Accountants of Scotland (ICAS)
Nigel Popplewell	The Law Society
Robin Williamson or Anthony Thomas	Low Income Taxpayers Reform Group
Robert Maas or Bob Davies	Institute of Indirect Taxation