

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

Report on the year 1 April 2010 to 31 March 2011 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

The Forum has met less frequently this year. By and large issues that have arisen have been "one-offs". The annex to this report lists meeting agendas and content can be accessed from the HMRC website at

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

In the light of the relatively few issues that have emerged to date the Forum decided that henceforth it should schedule only two meetings a year. One would be around the mid-year point and, depending on the issues that had arisen, might be a "virtual" meeting using e-mail. The other meeting would always be a full meeting to commission a report for the Minister. Particular issues could be picked up and dealt with through e-mail exchanges.

Forum members agreed that this could be reconsidered if more issues started to arise.

Authorisations

Certain actions must be authorised by a trained and generally more senior officer. HMRC continues to see this as an important safeguard.

Commentary

- Total authorisations requested are almost identical for 2010 and 2011 but there is a rise in numbers granted in the second year. The most likely explanation is greater familiarity with the information that Authorising Offices need in order to authorise an action.
- Unsurprisingly, rejections resulting from insufficient evidence fell by two thirds in 2010/11 in line with the trend in the second half of 2009/10. Clearly officers are much more likely to recognise the need for proper evidence to support an authorisation. Total rejections are only 80 - a third of the previous year's number of rejections.
- The balance of requests in the second year has changed a little. Unannounced visits rose from 864 to 907. Proportionately larger rises occurred for daily penalties and notices for documents over six years old. Conversely, there has been an almost complete decline in notices for applications to the tribunal for tax related penalties and copies of third party information.

| Authorisations requested: 2009/10 and 2011 | | |
|--|----------------|----------------|
| | 2009/10 | 2010/11 |
| <i>Deferred</i> | 16 | 7 |
| <i>Granted</i> | 1414 | 1526 |
| <i>Pending</i> | 7 | 27 |
| <i>Rejected</i> | 202 | 85 |
| <i>Withdrawn</i> | 2 | 5 |
| Total | 1641 | 1640 |
| Figure for rejected authorisations varies slightly due to timing | | |
| Authorisations granted: 2009/10 and 2010/11 | | |
| | 2009/10 | 2010/11 |
| Apply to tribunal for approval to issue a notice | 158 | 228 |
| Apply to tribunal for inspection | 4 | 18 |
| Apply to tribunal for tax related penalty | 149 | 2 |
| Apply to tribunal not to copy 3 rd party information | 98 | 4 |
| Daily penalty | 15 | 272 |
| Identity unknown notice | 16 | 11 |
| Issue notice for documents over 6 years old | 1 | 81 |
| Obstruction of inspection penalty | 22 | 1 |
| Short notice visits (less than 7 days notice) | 2 | 2 |
| Unannounced visits | 864 | 907 |
| Total | 1329 | 1526 |
| Authorisations rejected: 2009/10 and 2010/11 | | |
| | 2009/10 | 2010/11 |
| Insufficient evidence | 105 | 33 |
| Non compliant with HRA | 1 | 1 |
| Not relevant or proportionate to benefit | 30 | 19 |
| Preferable alternative course of action | 64 | 27 |
| Reasonable excuse accepted | 1 | 0 |
| Unspecified | 1 | 0 |
| Total | 202 | 80 |

Statutory Records

There has still been some disquiet about what are and are not statutory records and the lack of appeal right in this respect. This has been in particular from the unrepresented taxpayers' perspective. Statutory records are required to be kept by law, to enable a person to make an accurate tax return, hence no appeal right. The requirement varies between different taxes and will depend on the size and nature of a business or person's tax affairs. Guidance is available, highlighting the general rules for record-keeping, including links to the legislation for each tax regime. Some non-statutory records (supplementary records) may also be required to check a person's tax position and the taxpayer has the options to appeal against the notice requiring them to provide this information.

New Penalties

Commentary

The attached tables analyse penalties arising from compliance checks in 2010/11 (with comparative tables for 2009/10). This year has seen the expected increase in IT cases. There continues to be a significant difference between the use of suspension in VAT cases and in other areas.

Forum members remain concerned that there has not been a significant increase in cases involving deliberate behaviour. Mistake despite Taking Reasonable Care and Failure to Take Reasonable Care ('FTRC') together continue to account for 90% of instances, though the balance within that has shifted slightly towards FTRC (where around a third of penalties are suspended). HMRC anticipate that deliberate cases will tend to be more complex and therefore may still be working through towards settlement.

Concerns were also raised that HMRC were not putting questions to agents to ascertain what behaviour gave rise to an under-declaration. HMRC officers needed to understand this before suggesting a penalty and they should explain why a decision was made.

In June 2010 HMRC launched an internal review of the operation of Sch 24 and Sch 41 penalties. The objective was to use feedback from frontline caseworkers and managers to simplify some of the administrative processes and to improve customer focus.

Making processes more proportionate and appropriate

It is now easier for colleagues to progress straightforward cases. Mistakes despite taking reasonable care or careless behaviour can now be agreed with the customer without prior approval from their manager (though this is still subject to final authorisation).

HMRC has also simplified the levels at which certain cases are authorised by more senior staff. The aim is to provide a better balance between keeping more decisions within teams while ensuring there are proper safeguards.

HMRC has also clarified the process for monitoring suspended penalties.

Guidance and training

All staff working on New Penalties now have access to their own set of help cards. These are a practical and popular aide memoire about the basics of the legislation and all relevant guidance has been brought together into the Compliance Handbook.

One day's face to face training is currently underway to provide refresher training for some 7,500 staff in Local Compliance alone. The training builds on existing Tax Professional Qualifications and focuses on being able to understand and apply the steps needed to establish and record evidence for issuing a penalty. Representatives from the CloT attended pilot sessions for the VAT and IT/CT case studies. Their feedback was very positive. Staff attending the pilot sessions have confirmed that this training will give them more confidence in addressing New Penalties with our customers. Part of the face to face training focuses on the suspension of penalties to demonstrate where it is appropriate to use and likely to be effective. Guidance has also been improved in this respect to ensure that staff has a clearer understanding of applying suspended penalties to reach the right end.

Underpinning the guidance and training is a new IT tool to help managers and caseworkers get the process right. This provides an audit trail to ensure that decisions and actions have been taken correctly and provides live links to the appropriate guidance.

HMRC will keep factsheets, and other products, under review, particularly to assist the unrepresented taxpayers. The Low Incomes Tax Reform Group highlighted the absence from factsheets about information HMRC cannot require under Finance Act 2008, Schedule 36: Part 4:Restriction on Powers. HMRC responded to this concern and are currently making changes to factsheet: CC/FS2 "Compliance checks – Requests for information and documents". HMRC will also continue to highlight the customer's rights and obligations as set out in Your Charter.

| Penalties recorded up to 28/5/2010 | | | | | |
|---|--------------|------------------------|-------------------|-------------------|--|
| By Regime | Cases | Inc suspensions | Suspended | Due now | |
| ITSA | 908 | 23 | £10,312 | £188,408 | |
| PAYE | 279 | 68 | £35,627 | £54,994 | |
| VAT | 5353 | 832 | £3,359,333 | £4,641,618 | |
| Other | 21 | 3 | £947 | £14,744 | |
| Total | 6561 | 926 | £3,406,219 | £4,899,764 | |
| Penalties recorded 2010/11 | | | | | |
| By Regime | Cases | Inc suspensions | Suspended | Due now | |
| 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 | |

| | | | | |
|--------------|---------------|--------------|--------------------|--------------------|
| Total | 54,931 | 6,260 | £16,672,472 | £32,574,400 |
|--------------|---------------|--------------|--------------------|--------------------|

| Penalties by behaviour up to 28/5/2010 | | | |
|---|---------------|-----------------|-------------------|
| Behaviour | Cases | Prompted | Unprompted |
| Deliberate + concealment | 39 | 32 | 7 |
| Deliberate | 117 | 113 | 4 |
| Failure to take care | 2,679 | 2,545 | 134 |
| Failure to notify under-assessment | 256 | 226 | 30 |
| Error | 3,782 | 3,337 | 445 |
| Total | 6,873 | 6,253 | 620 |
| Penalties by behaviour 2010/11 | | | |
| Behaviour | Cases | Prompted | Unprompted |
| Deliberate + concealment | 152 | 138 | 14 |
| Deliberate | 1,112 | 656 | 456 |
| Failure to take care | 19,836 | 19,344 | 492 |
| Failure to notify under-assessment | 2,384 | 2,189 | 195 |
| Error | 32,320 | 31,240 | 1,080 |
| Other | 2,246 | 1,604 | 642 |
| Total | 58,050 | 55,171 | 2,879 |

The total number of Cases is greater as a case can exhibit more than one behaviour

The Internal Review Process figures for 2010/11 can be found at the following link <http://www.hmrc.gov.uk/complaints-appeals/internal-review-process.pdf>

List of Meeting minutes, including sub-group

Meeting 27 September 2010

1. New Penalties Review
2. Self Assessment Enquiries
3. Round table views/feedback

Meeting 16 May 2011

1. Communication to general public of introduction of new SA penalties
2. Statutory procedures for direct and indirect tax
3. New Penalties – update
4. Authorisation figures

Unrepresented Taxpayers' Subgroup Meeting 24 November 2010

1. Information about unrepresented taxpayers
2. Authorising officers

Membership of the Oversight Forum

| | |
|----------------------------------|---|
| HMRC | |
| 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 | Head of the Review of HMRC's Powers, Deterrents and Safeguards |
| External Representatives | |
| Chas Roy-Chowdhury | Association of Chartered Certified Accountants (ACCA) |
| Ian Menzies-Connacher | Confederation of British Industry(CBI) |
| Andrew Hubbard | Chartered Institute of Taxation (CIOT) |
| Simon Sweetman | Federation of Small Business |
| 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 John Andrews | Low Income Taxpayers Reform Group |
| Robert Maas or Bob Davies | Institute of Indirect Taxation |