

RESPONSE TO HMRC CONSULTATION DOCUMENT: BUSINESS RECORDS CHECKS

INTRODUCTION

The AAT is pleased to comment on the issues raised in the HMRC consultation document on “Business Records Checks”.

We have over 49,000 full and fellow members and 68,500 student and affiliate members worldwide. Of the full and fellow members, there are approximately 3,300 Members in Practice who provide accountancy and taxation services to individuals, not-for-profit organisations and the full range of business types.

The AAT is a registered charity whose objects are to advance public education and promote the study of the practice, theory and techniques of accountancy and the prevention of crime and promotion of the sound administration of the law.

In pursuance of those objects the AAT provides a membership body. We are participating in this consultation as part of our contribution towards the public benefit of achieving sound and effective administration of taxes. We also feel that the issues raised in this consultation paper will affect our members in practice.

OBJECTIVES OF THE DRAFT LEGISLATION

We note that:

- The aim is that more tax returns and claims are correct when submitted.
- HMRC propose new powers of inspection to address loss of tax arising from poor record keeping.

DRAFT LEGISLATION

Q1 The guidance given in the factsheet is most helpful. We would recommend that HMRC amends its systems so that when a taxpayer requests a UTR online, the taxpayer is provided with the factsheet online and has to sign an acknowledgment that they have read the factsheet. This would clarify the respective positions of the parties. It would also be useful if a copy was sent to all existing holders of a UTR.

Q2 We agree that the categories of response are sensible and intuitive.

Q3 We believe that there is either failure or not , and that the categories in Q2 above measure the degree of failure.

Q4 The penalty tariff for direct taxes should begin with the same minimum amount. Any increase should reflect the actual tax lost to the Exchequer and measure the degree of failure.

Q5 The penalty tariff for all taxes should be identical. There should only be one penalty for all taxes as there is only one HMRC. There should be no mechanism that allows separate departmental penalties for each tax head when there is only one failure in record keeping. Again penalties should be linked to tax lost.

Q6 By extension a failure in recordkeeping will cause an incorrect Return where the Return is based on the business records. Using a “caution” for a first offence with potential for a follow-up check allows the taxpayer to be warned to comply in the future. However the “caution” might be avoided if HMRC enters into a signed agreement with tax payers (its customers) at the outset, clearly stating the mutual obligations of the parties. This behaviour happens in every other business transaction. The assumption that taxpayers go into business fully aware of HMRC’s complicated rules is a fallacy.

Q7 In general, the AAT supports objective tests rather than subjective tests as it makes for a fairer society. Leverage does appear to be a good way to increase the desired change in behaviour, however for these checks to be fair and proportionate then HMRC must randomly select from across the business spectrum. Failure to do this will give some taxpayers the perception that the Business Record Checks are a cash-gathering exercise against the least equipped.

Q8 We have no alternative suggestions.

Q9 The AAT would recommend that the “time to adjust” should allow HMRC to make public their intentions by:

- direct communications with taxpayers through information enclosed in HMRC correspondence to taxpayers
- press releases
- supported by a national advertising campaign
- dissemination from professional accountancy and taxation bodies to their members, and then to their clients or employers.

The “time to adjust” should be at least one year as some of our licensed members may only see some of their clients on an annual basis.

Q10 HMRC is suggesting that it conduct live experiments with no penalty to the taxpayer in return for their participation. Our view is that not imposing penalties for this trial period may not be a sufficient incentive in itself for taxpayers to engage with the trial. Therefore HMRC may like to consider making this trial to be wide reaching as some form of BRC amnesty.

Q 11 The cost to agents of notifying each of their clients about the commencement of BRCs may be significant without the compensating benefits, which may not be sufficient to justify a separate communication to their clients.

Q 12 We have already suggested that HMRC will need to notify every UTR about BRCs, and there is the role that tax agents can play in disseminating the implications to the wider SME community. When considering those SMEs that are unrepresented, a possible solution would be to include this new Notice within the 2011 Notice To File A Tax Return.

Q13 We have no other issues to raise.

Q14 SMEs all look for the simplest and cheapest system by which the tax due from them can be accurately calculated and correctly collected. Absolute clarity from HMRC, expressed in layman’s terms, will ensure the maximum compliance with the minimum inconvenience.

CONCLUSIONS

There should only be one penalty for all the taxes as there is only one HMRC. Having separate penalties for say direct and indirect tax may bring this proposal into disrepute, as it could be perceived that the aim is to increase tax revenue rather than to change behaviour. Potentially, this may push some taxpayers into employment, unemployment and onto benefits, or worse, into the 'black economy'.

The proposals in this consultation do not include the 'black economy' within its scope and it could be perceived incorrectly that HMRC is looking for 'soft targets', therefore HMRC needs to address this incorrect perception.

We cannot agree with the premise for this expenditure by HMRC. In an increasingly cash-less business climate, and with the impetus of the Money Laundering Regulations, far fewer income transactions can be "hidden" by not being recorded either by the taxpayer or his bankers.

Furthermore, inadequate recording of expenditure always leads to higher than necessary tax bills and the introduction of the debit card has improved the prime record-keeping of every business and assists the collection of the correct tax due.

The AAT would recommend a robust appeals process where taxpayers can appeal against an HMRC decision.

The AAT would recommend increasing the number of investigation cases brought against dishonest taxpayers and publicising the successful prosecutions as this will have a deterrent effect that will have a greater impact on the tax gap, than looking at how the business records are kept.