

**Implementation of new HMRC Powers Oversight Forum****30 June 2009****Paper: 08 /2009****Purpose: To inform the Oversight Forum of the implementation plans for Publishing Details of Deliberate Tax Defaulters: Clause 93 Finance Bill 2009.****Introduction**

Members of the Forum will be aware that the Chancellor announced at Budget the inclusion of a provision in this year's Finance Bill to enable HMRC to publish the names and details of individuals and companies who are penalised for deliberate defaults leading to a loss of tax of more than £25,000. This is part of a wider package of compliance measures announced at Budget to secure tax revenues.

It is not strictly part of the Review of Powers, Deterrents and Safeguards, but this measure builds very closely on the new penalty regimes introduced as part of the Review of Powers. As a result members of the Powers' team were asked to lead the work. We do think it is appropriate that the Powers implementation Oversight Forum plays a role both in helping prepare for implementation on 1 April 2010 and in considering how to evaluate the publication scheme thereafter. By way of background we thought it would be helpful to provide the Committee with a short paper outlining the policy objectives, the details of the publication scheme and how HMRC plan to take this forward.

**Policy objectives**

The objectives are to:

- send a clear signal that evading tax is wrong;
- deter people from doing it;
- reassure those who do pay the right tax; and
- encourage those who do not, to come forward and make good.

The new penalty regimes enacted in 2007 and 2008 are important tools trying to achieve the same objectives. But for some, the possibility of penalties, even substantial ones, is a commercial risk they are prepared to take. The risk of publicity now makes this a reputational issue and we expect this measure will make more people think twice before committing tax fraud. We expect it to encourage more people to disclose past misdemeanours, including as part of the forthcoming disclosure opportunity relating to offshore bank accounts.

**Context**

Currently the names and details of those who are convicted for deliberate tax defaults are published. But those who are subject to a civil penalty for what can be very similar serious wrongdoings remain confidential, unless exceptionally their appeal against any penalty reaches the courts. In many other countries such cases are made public because civil penalties are charged by the courts rather than by the tax authority. The proposed publication scheme is largely based on the one that has been operating in Ireland since 1983. Interestingly the Committee's counterparts in Ireland, the Revenue Powers Group (chaired by a former Supreme Court Judge), considers it "a valuable weapon in the Revenue's armoury".

**Details of the publications scheme**

Legislation is included at clause 94 of Finance Bill 2009 enabling HMRC to publish the names of individuals and companies who are penalised for deliberate defaults leading to a loss of tax of more than £25,000. This is expected to apply for return periods or failures starting **on or after 1 April 2010**. No details of deliberate defaults committed prior to the legislation becoming effective will be published.

The **criteria for publication** will be tightly defined and are linked to the new penalties for incorrect returns and

penalties for failure to notify and certain VAT and excise wrongdoings which apply across the taxes and duties administered by HMRC. It will not apply to late filing or late payment penalties.

Only those who are penalised for deliberate or deliberate and concealed defaults may have their names and details published, not those who are penalised for having failed to take reasonable care. HMRC have already issued extensive guidance on the penalties, including making clear that deliberate inaccuracy is where a person knowingly and intentionally gives HMRC an inaccurate document so as to understate tax due. It does not include a reasonable arguable view of a tax situation which is subsequently not upheld.

The £25,000 limit relates to the tax on which the deliberate penalty is calculated and can cover more than one year, tax or default (but nothing before 1 April 2010).

Everyone will be able to **escape publication** if they make a full disclosure to HMRC, either unprompted or prompted within a time specified by HMRC. The definitions relating to disclosure will be the same as for the penalties. We need to extend the already substantial guidance on this area to ensure we achieve both clarity and some flexibility about when a prompted disclosure will give exemption.

The publication scheme has been carefully designed to ensure it is a necessary and proportionate interference with the right to privacy in order to protect the economic well being of the country and to prevent crime. That interference has been kept to the minimum to achieve the intended aim. There are strong **safeguards**.

- All the penalty decisions which underpin the scheme are appealable to an independent tribunal.
- No publication is possible until all appeal opportunities are concluded or expired.
- The taxpayer must be notified in advance and given reasonable opportunity to make representations.
- We expect to send the taxpayer a copy of the details we intend to publish in advance.
- There are strict time limits: HMRC must publish within 12 months of the penalty becoming final and remove material 12 months thereafter.

The **details to be published** will be the minimum necessary to correctly identify the person and the default: name, address, nature of business, period covered, amount of tax and penalty. If we can identify the person correctly and avoid any confusion without the address this will be omitted. We anticipate publishing a list quarterly on the HMRC website with an accompanying press notice.

The presumption will be to publish if the criteria are met but there will be **exceptional circumstances** where HMRC may not publish, and the representations made by the taxpayer will be taken into account in this decision. Examples might include prejudice to an ongoing criminal investigation or risk to a person's security. The decision will be made by a senior HMRC officer, independent of the investigation.

### **HMRC's plans for implementation**

We are still working on the detail of this and will be seeking input from representative bodies on the practical issues. This process began with a very helpful discussion at the Publishing Details of Deliberate Tax Defaulters forum held on 15<sup>th</sup> May. We expect to hold workshops in the autumn to explore matters in more detail.

The issues that we need to consider include:

- how to maximise both the deterrent effect and the encouragement to disclose;
- ensuring taxpayers have timely and clear warnings of the risk of non-disclosure;
- clear guidelines of when a prompted disclosure will secure exemption;

- arrangements for pre-publication scrutiny by a central team covering the accuracy of the details and the validity of the underlying decisions. An HMRC director will be accountable for the accuracy of the details published;
- ensuring the person gets a copy of the details and has a reasonable opportunity to make representations and how those will be considered;
- controls on when details are published and when they are removed.

**Evaluation**

One of the challenges will be to evaluate whether the publication scheme is being effective in meeting the policy objectives, bearing in mind the many different factors that influence whether people comply with their tax obligations. We have already been talking to the Irish tax authorities and representatives of the Irish accountancy and tax adviser community about this and will continue to do so. We are interested in Forum members' views on how best to measure the effectiveness of the publication scheme.

**Conclusion**

This is new territory for HMRC. It will be essential that we get this right and that we take steps to evaluate the impact on behaviour over the coming years. However as a recent commentator in a tax journal suggested, "this is likely to prove to be a highly effective way for HMRC to show it really does mean business."

We would be interested to hear whether members of the Forum think there are any further issues HMRC should be considering in preparation for implementation.