

Implementation of new HMRC Powers Oversight Forum**30 March 2009****Paper: 2/2009****Purpose:**

To inform the Oversight Forum of:

- The work undertaken to underpin effective implementation of new penalties, and
- Procedures to monitor the application of penalties from 1st April 2009

Timetable:

New Penalties will be implemented from 1 April 2009. There is a requirement to measure and monitor the application of new penalties after this date.

This information will be shared with key stakeholders.

Background:

The new penalty regime aligning and simplifying penalties for inaccuracies across the main taxes comes into effect on 1 April 2009. From that date, the revised penalties for inaccuracies in Returns and other documents apply to PAYE & NIC, VAT, IT, CGT, CT and CIS where:

- the inaccuracy is contained in (or the under-assessment relates to) a return or other document which is due to be filed on or after **1 April 2009, and**
- the return or other document (or under-assessment) relates to a tax period beginning on or after **1 April 2008**

Key Features

- Behaviour based approach
- No penalties if reasonable care taken
- Applies to incorrect repayment claims
- Penalties for accepting an inadequate assessment
- Penalties for overstated losses
- Reductions for assisting HMRC
- Suspended penalties

Key Implementation Deliverables

A project team was set up to oversee and manage the implementation of the legislation within HMRC. The key products designed, to prepare HMRC staff and external stakeholders for the changes in legislation are as follows:

Technical Guidance

The Technical Guidance provides HMRC's interpretation of the meaning of the legislation. This was exposed for comment both internally and externally in December 2007. Feedback and comments

were taken into account, following which the Technical Guidance was published on the Internet on 1 April 2008.

Operational Process Guidance

Operational and Process Guidance (OPG) provides advice on the operational methodology and examples of how and when the legislation should be implemented, supported by details of the processes to be followed. The OPG includes details of key safeguards for taxpayers, these include the need to obtain internal agreement (off-line in the most serious cases) to actions at key stages (establishing the type of the inaccuracy, the penalty level and suspension), and to seek agreement wherever possible from the taxpayer. The OPG contains detailed consideration of the requirement to consider instances of mistakes despite taking reasonable care.

The OPG was exposed for both internal and external comment. The exposure to external comment was left in abeyance until after the Compliance Checks OPG had been exposed and comments received. It was recognised that there were greater sensitivities surrounding, and interest in, the Compliance Checks OPG; the Project did not wish to overburden the readership panel. The external feedback and comment is currently being received; this will be reviewed and incorporated as appropriate. The method of responding to the external feedback and comment will be decided once the level of response is known; the details of the Project's response methodology will be included in later or supplementary reports to the PEOF. The methodology chosen will be with the aim of ensuring professionals continued involvement in the process and provide the main general themes from the feedback received after external exposure.

Initial feedback indicates that the main issues which external stakeholders raise will be in the areas of:

- Emphasising the need to advise to taxpayers to seek professional advice early
- Obtaining representations from the taxpayer and his adviser concerning the level of penalties considered to be due
- Clarity around 'systems' failures when considering suspension, whether this includes not only Information Technology and process / control failures but also 'human' failures
- The minimum suspension period
- Greater clarity on Special Reductions

The delay in exposing the OPG externally will mean that not all the feedback and comments can be incorporated prior to the initial publication on the Intranet; the publication date was brought forward from 1st April as there was seen to be a need for early access by our wider customer groups and interested parties. However, the Project has made it clear, and assurances given, that all feedback and comments will be taken into consideration, leading to early amendments to the guidance; additional assurances have been given to externals that the OPG is a live product and ongoing comments will be received to inform consideration of its effectiveness after 1 April.

Factsheets

It is intended that Factsheets, mainly providing advice directly to the taxpayer but also a source of information to advisers, will be available from 1st April. These compliment the OPG and will be aimed

predominantly at the unrepresented taxpayer, with the main purpose of outlining taxpayer rights if they become the subject of a penalty consideration. A series of Compliance Checks factsheets were exposed for comment in mid January. The feedback received generally suggested that far more emphasis needed to be given to taxpayer rights and the tone and content needed to be addressed in order that a far more “customer focussed” leaflet was produced. The number, content and style of the Penalty Factsheets will follow those of Compliance Checks based on that feedback, and are currently being developed.

The feedback concerns are now being addressed. The professional facilities of external consultants, who were responsible for designing HMRC’s departmental guidance on language and tone, have been acquired to rewrite the factsheets. Their remit is to consider the products objectively from a customer viewpoint. The consultants have recently been involved in the rewrite of the department’s standard letters. Feedback to date on these has been excellent. The factsheets will be exposed to a small number of key stakeholders in mid March.

Learning

The Project fully accepts that all front line compliance staff must be trained effectively before they are allowed to consider obtaining the penalties contained in Finance Act 2007. To provide the requisite level of learning to staff, a number of products have been designed and are currently being rolled out. These are:

- High Level Awareness training (HLA)
- Online–Learning / Self Learning module
- Face to Face training
- Help Cards

We are monitoring both take up rates and have also introduced a guide for managers to assess how well their staff understand the new penalties and their application. The learning is accompanied by a detailed manager’s guide, and provides a support network to help both individuals and their managers through the process.

High Level Awareness (HLA)

The HLA is a mandatory package designed to raise staff awareness of the new legislation. This learning package was available from 1st April 2008 and should have been completed by 31 August 2008. Take up to date was excellent with 97% of the targeted individuals across HMRC having accessed this learning package.

The e-learning package was also made available externally via the Internet on 1 May 2008 and at the request of some external customers was updated to include the learning test that features at the end of the internal product.

Online-Learning / Self Learning Module

The learning objectives for the SLM are to enable staff to

- Understand how the new penalty regime can be used to influence customer behaviour and improve compliance
- Identify when an inaccuracy potentially attracts a penalty
- Establish and evidence the behaviour that led to the inaccuracy
- Calculate a penalty accurately and consistently
- Recognise when suspension is/isn't appropriate and consider suspension conditions
- Identify the appropriate levels of authority for new penalties and the importance of providing an audit trail of the decision making process
- Understand how and when to record a case on the new penalty system (NPS)
- Understand specialist material relevant to the specific business area (e.g. delayed tax, group relief / losses)
- Describe the role of the specialist penalty team
- Deal with an appeal against a penalty assessment

The SLM is broken into 6 separate chapters which cover

1. An overview of the legislation and how it applies
2. Establishing behaviours
3. Applying the Penalty Legislation
4. The processes and mechanics of assessing and collecting penalties
5. Decision making / Authorisation
6. Post Settlement issues including Appeals

The estimated time for the SLM is 7.5 hours; its aim is :

- To ensure all staff have the knowledge to use the new powers appropriately and consistently
- To ensure that staff recognise when certain courses of action will require authorisation
- To ensure staff are aware of how the new legislation will impact on their day to day work

Each section has a "self test" section at the end. The modules must be successfully completed by 31 May 2009 for all staff involved in compliance work.

Staff are unable to apply the new penalties unless they have completed the relevant modules. If a member of staff does not reach the required standard then the responsibility for development and improvement rests with the individual's manager. Managers are accountable and responsible for ensuring that their staff are adequately trained. Sign off at director level will be sought for this.

Learning history for all members of staff is recorded on line and learning checks are being conducted on a weekly basis to ensure that the relevant staff have completed the training.

The learning package was piloted by two key external stakeholders – Rebecca Benneyworth and Tina Riches. Their comments were incorporated and the product was amended accordingly.

The Online-learning package will be published on the internet mid March.

Face to Face event

A series of face to fact training events are taking place which are aimed at staff who are

- Managers at Senior Officer level and above
- Change Champions
- Super Users

Managers have responsibilities moderating, advising and checking the seeking of penalties by HMRC officers; this moderating role is seen as an important taxpayer safeguard. Managers also have the accountability for agreeing the amount of penalties finally sought in individual instances, and again this is seen as an important taxpayer safeguard.

This role acts additionally as a safeguard for HMRC and staff.

Change Champions are individual officers, based in locations spread geographically who will work across all legislation to give assistance generally to staff. They act as “mentors”.

Super Users are based in Local Compliance and will specialise in one specific area of the legislation to give assistance to staff.

Tina Riches from CIOT attended the face to face pilot and gave extremely positive feedback.

1. Help Cards

Help Cards have been produced and will be issued to staff prior to 1 April 2009, to be used ‘on the ground’. They will contain legal references and refer specifically to relevant sections of the OPG.

Business Implementation Approach

The Project’s objectives included the effective and consistent application of the new penalties across HMRC’s Business Units:

- Local Compliance (LC)
- Large Business Service (LBS)
- Special Investigations (SI, previously NTSCI)
- Charities, Assets and Residence (CAR)
- Debt Management and Banking (DMB)

To achieve the consistency required, the Project developed a generic ‘core’ methodology. The Project recognised that to ensure effective application of the legislation there was a need to understand how the Business Units would be affected, what the impact would be, how ready they were and to then assist with identifying the changes needed and allocating responsibility for effecting

those changes.

The Project accepted that individual Business Units would require 'variations' to the core methodology to meet their specific needs; the Project saw its role to check and challenge the need for such variations to ensure consistency across HMRC. The Project adopted a standard approach to each of the Business Units, starting with a Change Impact Assessment and ending with a Business Change Implementation Agreement, which includes a Readiness Checklist, with each of the Business Units. This approach led to an early identification of specific learning needs within Local Compliance which was not recognised in the draft Learning Plan; this led to a revision of the Learning Plan to accommodate these needs (Face to Face and Helpcards), with a consequential change in the learning product and its delivery.

The methodology and details of the approach is shown graphically in the attached Appendix.

Communications

The Project developed and followed a Communications Plan. Communications and stakeholder engagement were seen as a key area for the effective implementation of the new penalties legislation.

Extensive external communications have been undertaken, to include:

- ICAEW Tax Faculty Roadshows
 - 23 Events - Summer & Autumn '08
- ICAEW Conferences
- VAT Practitioners Conference & Groups
- 'Big 4' Tax Consultants – PwC, Deloitte, KPMG
- Working Together Regional Events and Podcast
- Joint VAT Consultative Committee
- VAT in Industry Group
- PAYE in Industry Group
- Individual Stakeholder Forum, e.g. CAB, Low Incomes Tax Reform Group
- Compliance Reform Forum
- Top 30 Stakeholder Group
- Association of British Insurers
- External e-Mail Box (from 1st April 2008)
- Partnership Marketing with Accountancy Bodies & SME, e.g. BCC, Enterprise Agencies
- Tax for Business Campaign
- Self Assessment Campaign
- General Leaflets – 500,000 Printed
- Internet Web Site – www.hmrc.gov.uk/newpenalties
- Frequently Asked Questions (FAQ)

Internal communications have included:

- Tax Professional Conferences – Direct & Indirect

- Intranet Web Site
- Frequently Asked Questions
- E-Learning Awareness Training Course
- Internal Mailbox
- Large Business Service Customer Relationship Manager Workshops – 10 events
- SO Manager Conferences
- Newsletter
- Posters
- Managers Briefing
- News Articles, e.g. Intranet, Homepage
- Departmental Trade Unions
- Senior Business Stakeholders engagement
- Engaging with Business Change Managers to develop Operational Communications

Procedures to monitor powers post 1 April 2009

The details of all 'new penalties' applied post 1st April will be recorded to include:

- Operating Unit ID
- Officer ID
- Tax Type
- Tax Period
- Inaccuracy identification (to be coded)
- Inaccuracy Type (Mistake despite taking reasonable care, Careless, Deliberate, or Deliberate with Concealment)
- Potential Lost Revenue amount
- Unprompted or Prompted Disclosure
- Reduction Percentage Details (Telling, Helping, Giving Access)
- Suspended or not
- Suspension Conditions
- Special reduction Amount
- Penalty Amount

These details will be entered via a New Penalties System (NPS), as part of CaseFlow, which is currently being developed. The details will then flow into the Data Warehouse for reporting purposes.

Standard and Ad Hoc reporting ability is being developed and will be available. The Operational MIS will be available on the delivery of the NPS; Strategic MIS across the Data Warehouse will not be developed and ready for service until December 2009.

A delay in the provision of the NPS by the supplier requires a Contingency Solution.

Once the NPS is delivered and forms part of CaseFlow, this to be rolled out in a phased manner to the business; where this means that HMRC officers will not have immediate access to CaseFlow

when they seek penalties an Interim Solution is required.

The Contingency Solution involves recording the data above manually, via a specific Central Penalty Team, from which the relevant MIS can be extracted via Ad Hoc reports. It is not expected that the Contingency Solution will need to prevail beyond July 2009.

The Interim Solution involves data being entered via strategically placed (over 500) licensed CaseFlow officers, to whom CaseFlow is being rolled out immediately. The information will then be passed into the Data Warehouse for MIS purposes and reporting.

The detailed data capturing will allow for analysis to identify trends, hotspots, and confirmation of consistent application of the penalties legislation. Initially the data will be monitored by the Project to detect any areas of inconsistent application; these details will be used to identify the remedial action needed, to include managerial input or further guidance and learning needs

APPENDIX: Business Implementation and Readiness Approach



