

# Compliance Reform Forum

## 29 November 2010

### Agent representatives

Con Kelly	Association of Accounting Technicians
Glenn Collins	Association of Chartered and Certified Accountants
Paul Hill	Association of Taxation Technicians
John Kimmer	Association of Taxation Technicians
Tina Riches	Chartered Institute of Taxation
Simon Sweetman	Federation of Small Businesses
Derek Allen	Institute of Chartered Accountants of Scotland
Robert Maas	Institute of Indirect Taxation
Andy Tall	Institute of Chartered Accountants in England & Wales

### HM Revenue & Customs

Brian Redford (Chair)	Business Customer Unit
Geoff Allen	Business Customer Unit
Steve Dobbin (observer)	Business Customer Unit
Jayne Banner	Central Compliance
Leroy Wilson	Central Compliance
David Stephens	Central Compliance
Mark Leech	Central Compliance
Andrew Lawrence	Central Compliance
Simon Habesch	Central Policy Powers Review
Geoff Lloyd	Director Dispute Resolution Unit
Sara Harris (observer)	Local Compliance
May Anderson	Local Compliance
David Croad	Local Compliance
David Rowan	Local Compliance
David Aspinall	Local Compliance
Rob Allum	Risk & Intelligence Service
Jo Hegarty (secretariat)	Business Customer Unit

### Apologies

Francesca Lagerberg	Institute of Chartered Accountants in England & Wales
Jacqui Brennan	Association of Accounting Technicians
Gary Ashford	Chartered Institute of Taxation
Bob Davies	Institute of Indirect Taxation
Jane Moore	Institute of Chartered Accountants in England & Wales
Chas Roy-Chowdhury	Association of Chartered and Certified Accountants
Brian Palmer	Association of Accounting Technicians
Brian Keegan	Institute of Chartered Accountants in Ireland
Elaine Gibson	Institute of Payroll Professionals
Nicky Prys-Jones	Risk & intelligence Service
Ralf Cook	Local Compliance
Jim Ferguson	Central Policy Powers Review

## Welcome and introductions

- BR welcomed everybody to the meeting and asked them to introduce themselves.

## Last minutes and action points

- Minutes of the last meeting had been agreed and published. An update on action points was sent out at the end of October. The position was summarised as follows:

	July action points	Progress
<b>AP1:</b>	Agent authorisation letters.	On today's agenda. Closed.
<b>AP2:</b>	Pre-Return support (Toolkits) - information to be circulated.	On today's agenda. Closed.
<b>AP3:</b>	Summary of penalties for HMRC website.	HMRC has not yet been able to provide a summary of the new Self Assessment and CIS late payment and filing penalties on the HMRC website. If the summary is still required HMRC will carry this forward for action. CRF agreed a penalty summary would be very useful. (Carry forward as <b>Nov AP1</b> )
<b>AP4:</b>	HMRC Powers.	On today's agenda. Closed.
<b>AP5:</b>	Improvements to compliance factsheets.	Factsheets have now been issued. Closed.
<b>AP6:</b>	Agent volunteers sought for a joint article with HMRC on the work of compliance centres.	Three agent representatives at CRF volunteered to take this forward jointly with HMRC. Closed
<b>AP7:</b>	Agent volunteers sought to work on HMRC proposals regarding Managing Deliberate Defaulters (MDD).	CRF agent volunteers had attended a meeting on the MDD project in September. Update on position at agenda item 4. Closed
<b>AP8:</b>	HMRC Powers training summary and products to be circulated.	The October email update showed details of HMRC new powers training courses and the number of staff who had participated. One agent has come back with a number of queries. HMRC will circulate that paper to the CRF agents to see if they wish to add anything. ( <b>Nov AP2</b> )
<b>AP9:</b>	HMRC Powers.	On today's agenda. Closed.
<b>AP10:</b>	Penalties – agent volunteers sought.	On today's agenda. Closed.

<b>AP11:</b>	HMRC to circulate list of sub-groups.	List of formal CRF sub-groups sent out with the October email update together with details of CRF agents who were contributing towards other HMRC projects and initiatives. Closed. It was suggested that it would be good to have a summary of all CRF agent involvement and that this should be shared. <b>(Nov AP3)</b>
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### **Actions from this meeting**

**Action point 1:** HMRC to consider summary of late payment and filing penalties for PAYE and CIS for the HMRC website.

**Action point 2:** HMRC to circulate paper from agent who was unable to attend to the other agent representatives so they could see what the issues were and contribute questions too.

**Action point 3:** HMRC to compile list of all CRF agent involvement with CRF sub-groups or other projects and initiatives.

### **Updates**

#### **Campaigns sub-group**

3. The sub-group meeting was held prior to the main CRF meeting and covered the progress on current campaigns. Over 10,000 interventions have been completed following the original Offshore Disclosure Facility and £85 million of extra tax has been disclosed. There are roughly another 1,000 interventions left to complete which are expected to result in further tax disclosed of another £15 million. Prosecutions are still being considered in a few cases. The current Offshore Campaign, launched in 2009, had realised another £85 million from the voluntary disclosure. Since the end of the disclosure opportunity HMRC had begun some 2000 enquiries based on analysis of information provided by the banks and the information received from disclosures. Many more enquiries were due to open over the next few months. Agent representatives asked whether the 10,000 cases mentioned included those who had said they were non UK domiciled, and expressed concern that the disclosure period was three years ago and yet prosecutions had not yet happened. Details of the size of the penalties levied as a result of the disclosures and interventions were also requested by agent representatives.
  
4. The medical professionals' campaign, focussed on doctors and dentists has resulted in over 1,500 disclosures. Following the end of the disclosure period some 100 interventions have been started with more to come. Agent representatives had questions about when the disclosure period had actually finished. The British Medical Association had apparently said the disclosure period had been extended. HMRC said this was incorrect. It had not been extended but there were some disclosures that were late which were accepted because the disclosers were able to demonstrate there was a good reason for

the delay.

5. Planning continues on the next campaign which is aimed at the plumbing and heating industry. Advice from agent representatives and others was to not start this type of campaign either before Christmas or in January as these trades are at their busiest over the winter. The disclosure period would then run for six months into the summer when these trades should be less busy. The agent representatives have been helpful in offering to help ensure the message gets through to the intended audience. HMRC planned communications will be shared with agent representatives for feedback. The date of the campaign is to be agreed and will be after January as suggested.
6. Some of the bodies had expressed concerns about the fairness of incentives being offered by HMRC. The proposed campaign into the trades market breaks new ground and if successful will become a blueprint for future campaigns. Any lessons learnt will need to be taken forward from it too. Agent representatives expressed concern that those not in the target market may also want to make a disclosure but will they be offered the opportunity to make the disclosure with a relatively low penalty? Tax legislation already rewards voluntary disclosure, which can lead to a broadly similar outcome. The reason these trades and professions have been targeted is because of the risks identified and that there was third party information enabling identification of those involved. It was agreed there are difficult issues around this and should continue to be discussed at CRF and in its sub-group. It was agreed that the minutes of the CRF Campaigns Sub-Group should be circulated with the main CRF minutes.

### **Actions from this meeting**

**Action point 4:** HMRC to provide more detail to agent representatives about the numbers of non-UK domiciled disclosures, and the size of penalties etc from the offshore campaign.

**Action point 5:** HMRC to circulate campaigns sub-group minutes.

### **Managing Deliberate Defaulters (MDD)**

7. MDD should not be confused with Publishing Details of Deliberate Defaulters (PDDD). MDD is about close monitoring of deliberate defaulters for a period of up to five years, whereas PDDD is about naming those who have deliberately defaulted tax of £25,000 or more. No names have yet been published under PDDD.
8. The CRF MDD Working Group was successfully set up and a meeting was held in September. Agent representatives have worked well with HMRC in this particular forum to address a number of issues both in that meeting and subsequently, offline. The main action points arising to date are:
  - Additional Reporting Requirement wording where potential loss of revenue (PLR) exceeds £5,000
  - co-ordinating a joint approach HMRC/accountancy profession to an MDD Media launch

9. Additional Reporting Requirement wording has now been agreed on the advice of HMRC's internal accountants and it is now considered less ambiguous than before. Not all the agent representatives have seen the revised wording so this will be circulated to MDD working group members after the CRF meeting. Tax return guidance has now been changed to reflect agreed wording for Income Tax Self Assessment tax returns and this will apply to returns sent out on 6 April 2011. However, it will not be possible to amend the guidance for Corporation Tax returns until around September 2011. So while there is some scope to change wording for CT, IT wording is final and cannot be changed now for at least another year.
10. With regard to the joint MDD media launch, CIOT and ATT had offered to do MDD articles in their magazines and it was suggested that HMRC could perhaps try and work with MDD working group members to agree key messages for draft articles before Christmas. HMRC agreed to look into this but in the meantime, it was agreed that no external articles would be published before a coordinated launch date was agreed.

### **Actions from this meeting**

**Action point 6:** Agreed MDD Additional Reporting Requirement wording for returns to be circulated to MDD working group members after the CRF meeting.

**Action point 7:** HMRC to work with MDD working group members to agree key messages for draft articles before Christmas, if possible.

### **Pre-Return support (Toolkits)**

11. 12 toolkits have been published so far. Eight more are planned for publication by the end of April. To date there have been 40,000 downloads and HMRC are grateful for the helpful publicity generated by the CRF agent representatives. At the toolkit sub-group meeting there were concerns about the use of toolkits and the requirement for taking reasonable care. The wording about reasonable care on the toolkits has therefore been revised and the new wording will be shared with CRF members shortly. Agent representatives felt 40,000 downloads was lower than expected - they would have expected it to be nearer 100,000. HMRC explained that at this point not everyone will have completed returns yet and some of the toolkits were made available only in September. It was confirmed that although HMRC tracks the number downloaded it cannot track who downloads the toolkits.
12. The action point from the previous CRF was to share the findings of the evaluation pilot with CRF members. Formal publication of the evaluation is dependent on Ministers approval and that has not yet happened but is expected before Christmas. In the meantime, the project leader has offered to speak at any relevant events about the toolkits, their development and evaluation and many CRF representative bodies had already taken up that offer.
13. The indications are that the toolkits are being used and are useful. Agent representatives agreed they are a great educational tool.

14. HMRC reported that Joint Learning products are being developed around the toolkits and HMRC will come back to CRF with a written report about their detail. Once the success of the Joint Learning pilots has been established there will be more opportunities for learning targeted at different groups. HMRC will give CRF details in due course.

### **Actions from this meeting**

**Action point 8:** HMRC to share findings of the Pre-Return Assurance evaluation pilots with CRF members.

**Action point 9:** HMRC to circulate the report about joint learning products and to let CRF know about the targeted learning opportunities on the horizon.

### **Powers**

15. HMRC's Powers team had published consultation on working with tax agents some time ago and since the last CRF meeting had been working on definitions of tax agents, poor behaviour and loss of tax. These definitions have been tested at the powers consultative committee and at workshops and meetings. Feedback was that the work is moving in the right direction. There is nothing in the public domain currently and CRF agent representatives said they have not seen the draft wording even though this has been being discussed since November 2009. HMRC said the work has been shared with representatives of all of the main agent representative bodies.
16. The CIOT had prepared a report on powers, penalties, guidance, monitoring, and whether they were fit for purpose. HMRC is scoping work at the moment, taking the report into account to work larger numbers of shorter enquiries. CIOT will be in contact again with HMRC in the New Year.

### **Cross Tax Working**

#### **Agent authorisations and compliance checks**

17. Action Point 1 brought forward from the July CRF meeting related to new guidance around the possibilities of more than one agent being involved in a compliance check. The problem had originally come up because of authorisations in Cross Tax Compliance Checks but could be equally relevant in many other Compliance Check scenarios. A paper had been produced to cover all authorisation issues and had been circulated with the agenda. The proposed guidance was agreed but it was suggested that the one-off authorisation for any specialist agents brought in for the Compliance Check needed to be more inclusive as the current draft did not include NIC or Benefits & Credits. Agent representatives said they were grateful HMRC had addressed this issue and there was a request to see the letters that would be sent out at the start of the Cross Tax compliance checks.

### **Actions from this meeting**

**Action point 10:** HMRC to update and share specialist authority with CRF prior to new guidance to being published on HMRC's website.

**Action point 11:** HMRC to circulate copies of opening letters in Cross Tax Cases.

### **New process to open SME compliance checks**

18. A paper had been circulated with the agenda which proposed a new approach to opening a compliance check where the initial contact would be made directly with the business customer.
19. Agent representatives agreed that work needed to be done to shorten the length of time enquiries took and that they welcomed early dialogue with HMRC. However, agent representatives did not agree that the early dialogue should be by telephone with their clients. It could be used as a fishing expedition. Where a letter is sent to the client it should set out the points under enquiry and a copy should automatically be sent to any authorised agent.
20. Agent representatives felt this subject had been discussed many times in the past under several differently named projects and that HMRC had caused some of these problems by reorganising itself the way it has, namely by not having a locally based compliance presence. Fee Protection Insurance (FPI) and when it would be triggered is also a major issue for agents to consider. It is already a bone of contention that a discovery enquiry is not covered by FPI and this suggested approach will make it worse.
21. Agent representatives are wholeheartedly behind the idea of faster working but feel that unless it is handled properly there will be complaints. Many of the agent representatives said they would be happy to be involved in a subgroup about how to speed up the time taken to complete an enquiry. HMRC said they would be looking to pilot any new process for March. A sub-group will be setup to deal with the issues and take the matter forward.
22. One agent who was unable to attend had already made written representations that brought out many of the concerns being voiced and it was agreed they would be shared with other CRF members.

### **Actions from this meeting**

**Action point 12:** CRF agent representatives to volunteer for a CRF sub-group to review paper submitted and how SME compliance checks can be streamlined.

**Action point 13:** HMRC to circulate comments from agent who was unable to attend the meeting.

### **Penalties**

23. Most of the work associated with the new penalties regime is being transferred to the new Compliance Operational Policy and Guidance Unit (COPGU) which is focused on modernising the operational guidance. COPGU take over projects which are coming to an end and will also be taking forward the changes from

Finance Bill 2010, 2011 and 2012.

24. There was an internal review of the new penalties work and 36 recommendations were made and are being taken forward. The two main priorities are establishing the correct authorisation levels within HMRC for new penalties and dealing with staff questions about the way penalties should operate. A new learning product to address these priorities will be delivered in Spring 2011. Agent representatives felt that HMRC officers didn't always grasp that certain behaviour gives rise to a penalty and the new penalties were based on behaviours. HMRC says this new penalty regime is not about establishing maximum culpability - it should give the benefit of the doubt to customers.
25. HMRC confirmed that the COPGU team are responsible for the guidance around authorising officers for tribunals but this work has a different priority level.

### **Scanning of compliance documents**

26. This project aims to cut down on the amount of paper handled and stored by HMRC. Intervention letters to clients will include a unique index number and a specific postal address to which documents should be sent. When the response is scanned if it contains the correct index it will automatically be sent to the 'enquiry file' for the individual, cutting down on time taken to move paper about.
27. Scanning will start at the end of the tax year and will be rolled out in stages. The system will allow for the destruction of scanned documents after a set period. This should also assist HMRC to comply with its data protection obligations to retain information no longer than is absolutely necessary. HMRC will return valuable items and any items which have been requested specifically for return.
28. Agent representatives felt that HMRC would be better off by making email available to its staff. Agents tend to keep documents on computers so they would need to print off the document and then send it manually to HMRC for HMRC then to scan it on to computer. Email would be much simpler. HMRC said that the ability to correspond by email is a long term aim but there are many issues to be resolved first. Agent representatives expressed concern that papers may not get to the right record. HMRC explained that there will be robust processes in place to ensure that scanned documents are connected to the right record. Agent representatives raised practical concerns about the density of the ink the scanner was able to read and the issue of two-sided documents. HMRC explained that high quality industrial scanners will be used and that duplex scanning is supported. HMRC's scanned documents will be in pdf-a format and to BIP0008 standard so the scanned images cannot be amended.
29. Agent representatives agreed that it was a step in the right direction but should not be replacing a move to email. To elicit support from agents it was suggested a visit to the scanning facility might be a good idea.
30. There will be further publicity about this project in due course but early information will appear in the next Agents Update.

### **Actions from this meeting**

**Action point 14:** HMRC's scanning project team to come back to CRF with a more detailed paper and proposals in the New Year.

### **Business Record Checks (BRC)**

31. This work developed from the Business Assurance programme of work but there are differences between them. Both are about checking the records of businesses before a return is received but BRC will encompass all businesses not just new ones. BRC will be about accuracy and completeness of records and there are penalties for significant failures to keep records.
32. HMRC cannot verify the records of businesses from a third party the way it can with employees. Random enquiries have also shown that for a third of SMEs inadequate records are kept. OECD research has shown that there is a loss of tax associated with poor record keeping even if there is an intervention to put records in place. All cases for this type of intervention will be risk driven. Only after formal introduction can penalties apply and there will be no retrospection. Agents, therefore, have a period of time to work with their clients to get their records in order.
33. A working group was held back in September and a number of issues were worked through including what constitutes compliance with the legislation? The record keeping tool launched in October is very good and can be used for this purpose too.
34. Questions about what size of penalty will motivate behaviour change will be the subject of consultation. Agent representatives pointed out that there is a very high turnover of new businesses in the first few years so HMRC could become stuck in an endless cycle of record checks on business that don't continue to the following years. Experience has also shown that HMRC always expects more records than the agent thinks is enough, and cash businesses sometimes work on the basis of minimal or no records - to expect them to provide more takes them away from their core business. Agents said HMRC staff will need to understand small businesses much better. HMRC's aim is to have a common understanding of what are satisfactory business records.

### **Dispute resolution**

35. HMRC has been developing a series of initiatives aimed at more efficient resolution of disputes. It is a fact of life that there will be disputes but the aim is to settle them as soon as possible. Benefits of this work include a shorter period of time before final liabilities are determined, and less costs to both HMRC and the customer.
36. The new Dispute Resolution Unit (DRU) consists of six people. It is focusing on three areas - the process for decision making including the decision to pursue the dispute, the route to resolution, and skills, mindset and culture issues. The emphasis on collaborative working presupposes that both sides will take up this approach - it is not something that can be done unilaterally.

37. In terms of process the DRU supports large business, high net worth individuals and SME to reduce the elapsed time taken for enquiries. It encourages the use of the phone, and fax and looks at whether the risks perceived are explained and whether the fact finding is related to the risk. Sometimes it is possible to see from the first enquiry letter how long a case will last.
38. HMRC does have a litigation strategy so the route to resolution should be within that framework. The DRU will look at how that works in practise. Sometimes it has been applied too rigidly, or not in the way it is supposed to work so the team will work to promote collaborative resolution. It also looks at what lessons can be learned from the commercial world - the Courts are increasingly advocating the use of mediation.
39. The work the team does on skill sets looks at what is needed to support resolution, should there be better refreshment of technical support and should there be emphasis on non-tax skills like listening and mediation.
40. Alternative dispute resolution is a pilot to test the introduction of a third party into the dispute resolution process. HMRC wants to make it clear that there is a desire to cooperate and engage with the other party and to outline a schedule of facilitation early on. Agent representatives are invited to engagement events on 13 and 16 December in London and Manchester respectively. The team appreciate this is short notice but could schedule a further event if needed. The team are keen to engage with CRF agent representatives. HMRC will send invitations and agendas out shortly after this meeting.
41. It is important to note that cases selected for the pilot are ones that are going through the statutory review process. Agent representatives were pleased that mindset and culture was part of the new work as they felt although entrenchment could occur on both sides and people may be unwilling to 'surrender' as they saw it, HMRC did seem to have a 'defend at all costs' mindset. The perception from some agent representatives was that the independent reviewer in the legislative dispute procedure always comes down on the side of HMRC – would there be any difference with this? HMRC confirmed this approach is very much about collaborative resolution and if both parties were willing it would not be impossible to go for mediation at any time and if necessary on more than one occasion.

### **Actions from this meeting**

**Action point 15:** HMRC to send out invitations to the ADR events in London and Manchester shortly after the meeting.

### **Any other business**

42. There was no any other business so BR thanked everyone for attending.
43. The next CRF meeting is 24 February 2011.