



HM REVENUE & CUSTOMS

BUSINESS RECORDS CHECKS

Response by

THE SOCIETY OF PROFESSIONAL ACCOUNTANTS

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BUSINESS RECORDS CHECKS

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BUSINESS RECORDS CHECKS

1. Executive Summary

The Society of Professional Accountants (SPA) welcomes the opportunity of commenting on HMRC's Consultation 'Business Records Checks'.

1.1 Our concerns and conclusions

1.1.1 SPA has fundamental concerns with the premises stated by HMRC for BRCs namely:

- The high level of those keeping poor records of 40% is not recognised
- The anticipated recovery available from BRCs is seemingly overstated at £5,000 per business
- The time taken by HMRC operatives to complete BRCs seems unrealistically low at half a day per BRC

1.1.2 We conclude that sufficient pilot BRCs should be carried out to demonstrate that HMRC's stated premises are realistic and attainable before committing the complete programme.

1.1.3 Our specific concerns with the Impact Assessment are detailed in our response to Question 14.

1.2 Whose records are poor?

1.2.1 In early 2010 HMRC told a meeting of SME agents and representatives that they were happy with the work done by over 99% of Agents. It is also the case that those businesses registered for VAT are already subject to examination of their records by HMRC.

1.2.2 That HMRC's research suggests 40% of all SME businesses maintain poor records appears totally contradictory to the earlier HMRC statement, so we can only assume the figure must refer to unrepresented businesses and where a figure nearer 10% might have been anticipated.

1.2.3 As no analysis is provided by HMRC to help identify groups of those found wanting, we are left to surmise that HMRC should initially concentrate its efforts on unrepresented businesses reporting turnover below the VAT threshold.

1.3 The Way Forward

1.3.1 Education and guidance would appear to be the key ingredients in improving business records, and our view is that HMRC should first write to all current and new businesses informing them of HMRC's intention to carry out visits, and inviting them to review their records against suitable guidelines provided by HMRC.

1.3.2 Businesses visited for BRC, unless it can be shown that either income is materially understated or expenditure intentionally overstated, should first be given an opportunity to improve their records rather than be penalised. Such an incentive, against the prospect of a further visit within a year's time, is felt more likely to encourage compliance.

1.3.3 Following the period allowed for records to be improved, any penalties levied should be proportionate to the size of business, say % of turnover where no significant tax loss is established, rising by the same % for each 10% of under recording of income or over recording of expenses.

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2. Background to SPA

- 2.1 SPA is a wholly independent society of small practitioners holding a qualification issued by a recognised professional accountancy Institute. It was formed in early 1996 and currently there are some 1800 principals in 1400 member practices. Our members provide accountancy and taxation services to an estimated 175,000 private businesses and approaching 500,000 individuals.
- 2.2 The Society's stated policy is to promote and improve the relationship between members and their Institutes by providing constructive criticism together with practical proposals for improvements. Further to provide commentary and proposals to other authorities influencing our practising environment.
- 2.3 SPA has previously made submissions on small businesses limited company activities to the DTI on Audit Exemption levels, to the Accountancy Standards Board on Financial Reporting Standards for Small Entities (FRSSE), to the DTI on Modern Company Law 'Developing the Framework'. Also to the Chancellor of the Exchequer concerning individual tax payers on 'Advancing Self Assessment Tax Return Filing Dates', and to HM Revenue and Customs on 'Payments, Repayments and Debt', 'Income Shifting' and 'Security for PAYE and NIC's'.

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3. Detailed Response to Questions posed

Q.1 The record keeping requirements – Do we need to go further than what is available from the fact sheet and the evaluation tool; and if so, what else is needed?

A.1 No, we consider that the fact sheet and the evaluation tool are sufficient.

Q.2 Categories of failure and responses – Are the categories and responses at 4.11 above the right categories and the right responses? If not, what should the categories and/or responses be?

A.2. Yes, we agree that the suggested categories and responses are appropriate.

Q.3 Significant failures – is the outline proposition at 4.13 above a reasonable basis for drawing up guidelines as to what should constitute significant record keeping failure? And if not:

Why not? And

What alternative basis would be reasonable or drawing up guidelines as to what should constitute significant record keeping failure?

A.3 No, as it deals with income only and fails to identify the size of business. We consider the guidelines should reflect a percentage rather than absolute value of unrecorded income or unsubstantiated expenditure. In this way any penalties levied may be proportionate both to established levels of inaccuracy and size of business.

Q.4 Penalty tariff – what amount of penalty is needed at a minimum to encourage those with significantly poor records to bring their record keeping up to standard, and to deter a potential ‘for £X its worth it’ mentality?

A.4 Unless there is evidence of deliberate understatement of income or overstatement of expense in excess of 10% of recorded values, we agree that a ‘Warning Notice’ be issued as the first step in achieving better records being kept. Our view is that no fixed minimum penalty should be imposed, rather that proportionality should be applied according to size of business of say __% of levels of activity found.

Q.5 Penalty tariff – Should the penalty tariff for significant record keeping failures be the same for all? If not, on what criteria might a workable penalty differential (within the statutory minimum of £3,000) be based?

A.5 Our view is that proportionality should be applied in terms of any penalty tariff related to the levels of activities, and on a scale that reflects the significance of errors found in increments of 10% of proven error.

Q.6 How can the interaction between the penalties for the very separate offences of failure to maintain statutory records, and making an inaccurate return best be managed and articulated?

A.6 Our view is that these two error attributes are completely separate, and our suggested remedies at A4 and A5 would provide for the required distinction between the offences.

Q.7 Leverage – does this seem a good way to encourage the desired change in behaviour, and if not why not?

A.7 We accept that if HMRC is able to target specific groups of perceived offending businesses this should encourage a change in behaviour, but we are unable to suggest what groups these might be.

Q.8 Leverage – Are there any other or better ways to encourage the desired change in behaviour?

A.8. None that we can suggest beyond that proposed programme of education, targeting perceived offending groups, and encouraging those unrepresented to engage a professionally qualified accountant as their Agent.

Q.9 Time to adjust – What will constitute a reasonable period of time to allow those whose record keeping is sub-standard to make the necessary changes to their record keeping?

A.9 We believe that between 6 months and a year would be a sufficient period of time to enable most businesses to make necessary improvements to their record keeping.

Q.10 Time to adjust – Would it be useful to begin BRCs on this ‘test and learn’ basis?

A.10 We strongly recommend pilot trials of the proposed BRCs to obtain a better understanding of what is involved in such examinations, and with a view to fine-tuning the targets and methodology of examinations before the full programme is committed.

Q.11 Publicity and awareness – How might HMRC best work with agents in bringing details of these changes to their clients?

A.11 We suggest HMRC write to all current and new businesses whether represented by agents or not, to inform them of the BRC programme. SPA would be interested in feedback from pilot BRCs so that any specific or general issues found could be brought to the attention of clients at an early stage.

Q.12 Publicity and awareness – How might HMRC best bring details of these changes to the wider audience, especially unrepresented SMEs?

A.12 Our response to A11 answers this point. HMRC might also seek to obtain editorial or place notices in trade journals read by relevant offending groups.

Q.13 Other issues – Are there issues other than those referred to above that ought to be taken into account, and if so, what are they?

A.13 None that we can suggest beyond our response to A8.

Q.14 Impact assessment – Do you have any comments on the assessment of compliance costs?

A.14 The annual 50,000 BRCs at an average time of 4 hours, (which time we believe too low) equates to approximately 140 man years which, at an all in cost of even £50K per HMRC employee, indicates a salary cost of £7M p.a. It is not clear how this cost can be 'absorbed' by HMRC, also there must be a related, if somewhat lower, cost to the business owners participating in BRCs of, say, £5M p.a.

These costs do not appear to have been factored fully into the impact assessment, especially as we surmise that there will be considerable activity after the BRC to follow up with the 60% of business whose records are found wanting.

The impact assessment states that an increased tax return of £600M will be obtained over 4 years. These figures suggest that on average there will be an understatement of income or overstatement of expenses of £25,000 per business:

(£150m recovery p.a. divided by 50,000 BRCs, divided by 60% poor records, divided by 20% basic Income Tax)

In our view this appears a simplistic and unrealistic target that our members would not expect to be achievable within the represented population of businesses. If our surmise is correct that the large majority of perceived offenders are unrepresented with turnover below the VAT threshold we conclude that HMRC is unlikely to obtain anything like the increased tax revenue projected.

Further, from our experience of checking small client records the target times allowed of _ day per BRC seems far too short and, before committing the whole programme, sufficient pilot BRCs should be carried out to establish a better feel for what such an examination might entail and achieve from start to finish, i.e., including all necessary subsequent communication and collection processes.

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