

## **Compliance Reform Forum – Fraud sub-group Minutes of meeting held on 25 September 2013**

### **Non-HMRC attendees:**

Brian Palmer	Association of Accounting Technicians
Chas Roy-Chowdhury	Association of Chartered and Certified Accountants
Arnold Homer	Association of Taxation Technicians
Gary Ashford	Chartered Institute of Taxation
Steve Botham	Chartered Institute of Taxation
Robert Maas	Institute of Chartered Accountants in England & Wales
Harry Travers	Institute of Chartered Accountants in England & Wales
Ian Browne	TaxAid
Gary Rowson	Tax Investigation Practitioners Group
Andrew Watt	Tax Investigation Practitioners Group

### **HMRC attendees:**

Ralf Cook (Chair)	Local Compliance
Anne Aldridge	Local Compliance Fraud
Duncan Gleig	Specialist Investigations Evasion & Fraud
Paul Millard	Local Compliance Fraud
Graham Ranson	Criminal Investigation Planning & Change
Jim Stevenson	Taskforces
Jeremy Stretton	Local Compliance Hidden Economy
Hannah Wickstead	Compliance Operational Policy & Guidance
Jane Howard (Secretary)	Local Compliance

### **Apologies:**

Andy Cole	HMRC Specialist Investigations
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### **Welcome and introductions**

1. Ralf Cook introduced Brian Palmer as the new AAT representative and Charlotte May, an HMRC observer.

### **Previous minutes and action points**

2. HMRC confirmed the agreed minutes of the previous meeting held on 12 June 2013 were now available on the HMRC website.

Action point 1: An expanded organisation chart showing HMRC's main lines of business and compliance roles and responsibilities was shared with attendees. HMRC reminded external attendees that dedicated helplines and contacts for authorised agents are available on the HMRC website. In addition, CRF sub-group representatives can raise any particular areas of concern with the appropriate CRF HMRC contact.

Action point 2: The further information requested about HMRC's high volume agent activity was provided in a briefing paper to attendees.

Action point 3: A separate meeting is to be arranged with TaxAid to discuss their concerns about people affected by umbrella companies and service companies who do not meet their tax obligations.

Action point 4: HMRC confirmed that work was in progress to ensure that behavioural penalties were recognised and applied consistently across the department. HMRC will report back on the outcome in due course. **AP1**

### **High volume agent activity**

3. HMRC summarised the operational activity undertaken to date to improve the work done by agents who submit a large volume of repayment claims and to correct errors made on 2012 and 2013 tax returns within the statutory periods for self-amendment. In

the majority of cases so far HMRC's findings were that, where errors had been found, the agents' behaviour was unprofessional rather than fraudulent. Where fraudulent activity is suspected, cases will follow HMRC's normal processes for dealing with these. High volume agents who were given an opportunity to improve their work but subsequently failed to do so would not be immune from future proceedings if further errors came to light. Neither would customers. HMRC will also consider using the recently introduced Dishonest Tax Agent penalties in the future.

4. Non-HMRC attendees said it appeared that high volume agents and their customers were being treated more favourably and being given a better opportunity to put their tax affairs right than other customers who submitted incorrect tax returns. HMRC said each case was dealt with on its own facts.

5. Non-HMRC attendees would like more publicity about HMRC's approach to high volume agents and the consequences for customers. HMRC advised work was underway to develop a communications pack to raise awareness.

6. Non-HMRC attendees expressed concern that HMRC appeared to be having little/no contact with the customer as part of this approach. Customers might not, therefore, be aware that their tax affairs had been or were being reviewed by HMRC.

7. It was agreed that future sub-group interest in this area of work should be confined to any fraud issues arising. Any updates on the general approach and decisions about subsequent activity would be provided to the Compliance Reform Forum or discussed as part of HMRC's tax agent strategy.

#### **Taskforce update**

8. HMRC said there were indications that its taskforce approach was encouraging more compliant customer behaviour although it was difficult to provide exact data to demonstrate the deterrent effect. HMRC expects to continue to use its taskforce approach to tackle specific sectors and specific locations where it has evidence of a high risk of tax evasion.

9. Increasingly, HMRC is working with other government departments and agencies, such as Border Agency and the police, to deal with wider risks involved in some business sectors. Where appropriate, HMRC will continue to publicise taskforce activity to raise awareness and deter non-compliance.

#### **Hidden economy work**

10. About £5 billion of the UK's estimated £32 billion tax gap is thought to be due to the hidden economy, that is by people earning a taxable income but who have not declared this to HMRC. HMRC is looking at a number of ways to tackle this, including by providing more education and support to encourage people to come forward as well as the traditional compliance risk-based intervention activity using approximately 600 small and medium enterprise compliance officers.

11. HMRC Hidden Economy Compliance Teams are looking to expand the collaborative working model developed in London and Anglia with other agencies, authorities and regulatory bodies to identify businesses operating outside the tax system across the UK. This model is designed around the existing joint HMRC/Home Office Immigration Enforcement (previously UKBA) activity using legal gateways.

#### **Contractual Disclosure Facility**

12. HMRC has carried out a post implementation review. The review was qualitative rather than quantitative and it was too early to draw any useful conclusions about its deterrent effect or meaningful comparisons with the earlier Civil Investigation of Fraud (CIF) process. HMRC believes the centralisation of the process for voluntary requests is working well.

13. The purpose of the review was to:

- identify any flaws with the process that could threaten the integrity of the facility and thus compromise HMRC's approach to the civil investigation of fraud;
- determine whether the facility was working as anticipated when it was implemented;
- determine whether HMRC had met its policy aims and objectives;
- review the process for voluntary requests to ensure that it is working properly
- ascertain any amendments or adaptations that could be made to make the process more effective.

14. HMRC said the review indicated that its policy in this area is not flawed and that the facility is improving the way that HMRC can civilly investigate suspected fraud as well as reducing the time a case investigated under the Code of Practice 9 (COP9) procedure takes to conclude. There is however scope to improve the quality of the Outline Disclosure submissions and HMRC is working on an online form to make it more comprehensive. HMRC will pilot a paper version of the redesigned form.

15. HMRC repeated that the Contractual Disclosure Facility (CDF) is only relevant to customers suspected of fraud. Agents should not request, or accept, a CDF contract if their client is not willing to admit to a deliberate loss of tax through conduct that HMRC suspect to be fraudulent. HMRC will not guarantee that criminal proceedings will not be taken unless and until voluntary admission of fraud is formally accepted. Non-HMRC attendees said that the wording of the Outline Disclosure form seemed inconsistent with this statement - customers seemed to only be being asked to admit to a deliberate loss of tax through conduct which HMRC might suspect to be fraudulent not to specifically admit fraud. This in turn was consistent with paragraph 4.2 of the document *"Civil Investigation of Fraud – Contractual Disclosure Facility. Summary of Responses 8 December 2011"*, in which HMRC said that it had "redrafted the reference to fraud so that it refers to conduct which HMRC may suspect to be fraudulent" and "accepts the representations made on this point". If they did, then the assurances against criminal investigation seemed to apply. Non-HMRC attendees are generally content with how the process works for customers who want to admit fraud. However, they requested greater clarity in dealing with cases involving customers who do not believe they have committed fraud.

16. HMRC said all denials of fraud, with or without the offer of cooperation, are subject to the same conditions. If HMRC's offer to admit to fraud is turned down then customers are at risk of a criminal investigation. Non-HMRC attendees again pointed to the fact that customers, in line with the current wording of the Outline Disclosure form, might be prepared to admit to a deliberate loss of tax through conduct which HMRC might suspect to be fraudulent, but then still deny having committed fraud.

17. Non-HMRC attendees strongly contended that there needed to be scope within the 60 day process for dealing with customers who genuinely are not aware that they have committed fraud. For instance, where the loss of tax is thought to be linked to a tax avoidance scheme.

18. HMRC reiterated that the CDF process is aimed at customers who have either deliberately brought about a loss of tax which HMRC suspect is fraud or who voluntarily want to admit to fraud. Non-HMRC attendees said they would like to be able to provide clients who are genuinely unaware they have committed fraud with the same level of assurance about avoiding criminal investigation as they are able to give to clients who are willing to admit to fraud. HMRC said that someone who was genuinely unaware that they had committed fraud was unlikely to have the 'mens rea' for a criminal prosecution for fraud.

19. Non-HMRC attendees stressed that this was very much a 'live issue'. HMRC agreed to arrange a separate sub-group meeting to discuss CDF issues in more depth. **AP2**

**Statistical information**

20. The Tax Investigation Practitioners Group had requested information about the number of cases taken up, settled and the amount of tax, interest and penalties charged as a result of civil and criminal fraud investigations.

21. While it would not be possible to provide all the information requested, HMRC undertook to circulate some data to attendees either before or at the next meeting. It is also looking to publish such data more frequently.

**Review of meeting**

22. HMRC asked whether the sub-group was meeting attendees' needs. Attendees expressed a preference for future meetings to focus less on presentations and updates so as to allow more time for issues to be discussed. Non-HMRC attendees will seek to flag up items they would like to discuss.

**Next meeting**

23. 21 January 2014.