

Compliance Reform Forum

Notes of meeting held on 26 February 2014

Agent members

Chas Roy-Chowdhury	Association of Chartered and Certified Accountants
Glenn Collins	Association of Chartered and Certified Accountants
Brian Palmer	Association of Accounting Technicians
Paul Hill	Association of Taxation Technicians
Heather Brehcist	Chartered Institute of Taxation
Andrew McKenna	Chartered Institute of Taxation
Robert Maas	Institute of Chartered Accountants in England & Wales
Jane Moore	Institute of Chartered Accountants in England & Wales
Andy Tall	Institute of Chartered Accountants in England & Wales
Elsbeth Orcharton	Institute of Chartered Accountants Scotland
Samantha Mann	Chartered Institute of Payroll Professionals
Sue Cave	Federation of Small Businesses
Gary Rowson	Tax Investigation Practitioners Group
Robin Williamson	Low Incomes Tax Reform Group
Ian Browne	TaxAid

HMRC members

Louise Boyle (Chair)	Enforcement & Compliance Change
Dave Stephens	Compliance Operational Policy & Guidance Unit
Graham Ranson	Criminal Investigation
Duncan Gleig	Specialist Investigations
Laura Pollard	Risk & Intelligence Service
Michael O'Callaghan	Large Business Service
Jeremy Stalley	Local Compliance Change
Hugh Hedges	Tax Administration Policy
Ralf Cook	Local Compliance
Jane Howard (Secretariat)	Local Compliance

Guests

Simon York	HMRC, Director Risk & Intelligence Service
David Richardson	HMRC, Director Counter Avoidance
David Edney	HMRC Counter Avoidance
Ed Hagger	HMRC Central Customer & Strategy
Jim Ferguson	HMRC, Centre for Tackling Offshore Evasion
Saminah Shaikh	HMRC Business Customer & Strategy
Jes Rahman	HMRC Alternative Dispute Resolution Unit
Ben Moore	HMRC Local Compliance

Apologies

Agent members: Brian Keegan (ICAI), John Kimmer (ATT), Bob Davies (CIOT)
HMRC: Jennie Granger, Director General Enforcement & Compliance, Jayne Banner Local Compliance Change, Luke Liddiard Tax Administration Policy

Welcome and introductions

1. Louise Boyle welcomed everyone to the meeting. On behalf of the Compliance Reform Forum (CRF), she expressed her grateful thanks to John Kimmer for all his good work and input into HMRC issues. John who is retiring from his role in ATT and CRF will be replaced by Will Silsby.

Last minutes and action points

2. The minutes of the previous meeting 22 October 2013 had been agreed and a copy was available on the consultative forums pages of the HMRC Internet. These pages will

transfer to the www.GOV.UK site in due course as part of the move to a single government website.

3. The action points from the previous meeting were agreed as cleared with the exception of:

4. AP1: HMRC proposed that, following the cessation of the Powers Oversight Implementation Forum, any post-implementation issues regarding the use of powers be dealt with by CRF. Agent representatives queried whether this was proper to CRF under the current terms of reference. It was agreed to take this forward as part of a review of the CRF terms of reference. **(AP1)**

5. AP4: Membership of the IR35 forum is still under consideration. **(AP2)**

Role of Risk & Intelligence Service in HMRC

6. Simon York, Director Risk & Intelligence Service (RIS) spoke about the role of RIS which is to design, develop and direct HMRC's compliance strategy using data, information and intelligence gathered from a wide range of UK and overseas sources to predict and identify risks and threats to the tax system.

7. Agent representatives asked questions about how RIS manages the amount of third party information they receive and the accuracy of this. Simon explained that information received is screened and matched with HMRC's own data to identify what may need further investigation. He confirmed processes exist for removing any incorrect or faulty data from HMRC's systems.

8. Agent representatives felt there was scope for HMRC to be more proactive about publicising what action they have taken as a result of hotline and suspicious activity referrals to encourage more people to use these.

Tax gap and the compliance strategy

9. Following publication of the latest tax gap analysis in October 2013 agent representatives were interested to know more about how the analysis informs HMRC's compliance strategy and how accurate the estimates are. They felt that if they had a better understanding of how HMRC uses the information then they would be in a better position to suggest how the gap can be reduced.

10. Ed Hagger from HMRC's Central Tax & Strategy group said that the tax gap is made up of a complex series of measurements which HMRC is continually seeking to improve by working with other organisations such as the International Monetary Fund (IMF). Whilst it can never be precise, HMRC estimates the tax gap for a number of reasons:

- to help understand all the causes of tax loss and find ways of reducing them
- to help design compliance strategy
- to identify and monitor compliance trends

11. As the tax gap is only a small proportion of the total tax collected, agent representatives queried the effectiveness of publishing the data. Ed said it was important to show that most tax is collected and to identify the customers and behaviours responsible for the gap. He welcomed any thoughts on how HMRC could improve the information it publishes.

12. Agent representatives suggested a more cohesive and easier to find picture of the gap and what action HMRC is taking to close it would be helpful. They were particularly interested in what behaviours drove particular customers to bend or break the rules.

13. Ed thanked agent representatives for their interest and support. He would think about what more information HMRC could provide in line with the Code of Practice for Official Statistics for discussion at a later meeting. **(AP3)**

Counter avoidance

14. HMRC has formed a new group to tackle marketed tax avoidance. The Counter-Avoidance directorate brings together operational activity from across HMRC and policy work. David Richardson, head of the new directorate, said it will be looking at how best to implement the proposed new measures set out in the consultation document issued in January.

15. There was support amongst agent representatives for tackling tax avoidance. But concerns were expressed about some aspects of the proposals. In particular:

- There was a worry that HMRC may have no incentive to bring cases to a close once tax has been paid upfront.
- There was concern that the accelerated payment proposals apply to people who entered into schemes in the past, as well as to new users. They felt this was retrospective.
- They suggested there should be appeal rights against the issue of follower notices and accelerated payment notices, in order to provide taxpayer protection. In particular they advocated independent oversight of what constitutes a "similar scheme" for the follower measure.
- They were worried that the new measures may encourage some people not to declare schemes under the Disclosure of Tax Avoidance Schemes (DOTAS) rules and so undermine those rules which they felt were working well.

16. Agent representatives suggested that HMRC could do more to close down any current schemes and tackle promoters by using existing legislation and powers. They suggested that much of the reason for the number of outstanding cases was delay in bringing in specific anti-avoidance legislation to counter schemes, such as the disguised remuneration provisions to deal with employee benefit trust cases. They felt that a different approach by HMRC would have avoided the need for the measures now being proposed.

17. David Richardson said that the vast majority of avoidance schemes do not work (HMRC has been winning around 80% of cases in the courts). In the interests of fairness to the generality of taxpayers there is therefore a strong case in principle for saying that tax that people are seeking to avoid should sit with the Exchequer rather than the avoidance user during a dispute. He said that was equally true for past users going forward as it was for new users. He did not agree that the proposals were retrospective as they did not change the underlying tax liability. And he noted that the proposals do not remove any rights to challenge the underlying tax liability. Building in additional appeal rights would undermine the purpose of the proposals as it would provide renewed opportunity for delay by those seeking to defer paying tax. Anyone who felt that HMRC was applying the measures inappropriately would of course be able to challenge that in the Courts through Judicial Review, so there would be taxpayer protection. Noting that some people who used schemes in the past may not have funds readily available to pay the tax, he confirmed that HMRC would consider time to pay requests where appropriate. David assured agent representatives that HMRC would be seeking to settle cases as quickly as possible regardless of whether tax had been paid upfront, and would be enhancing its work in this area not scaling back. He thanked agent representatives for their views which would be taken into account in the consultation process.

Agent protocol

18. HMRC referred to the sub-group of the Agent Engagement Group (AEG) which is working to develop a new protocol for agent engagement where a customer has chosen to be represented. Two workshops have taken place in relation to routine processing,

service delivery and debt issues. A third workshop focusing on agent engagement in compliance work will take place in March.

19. HMRC was aware that agents not being copied into letters being issued to clients involved in some compliance initiatives was a key concern for agent representatives. The compliance workshop would be an opportunity to thoroughly debate the issues.

CRF sub-group updates

20. Written updates for the CRF sub-groups on Alternative Dispute Resolution, Business records checks, Campaigns, Fraud, and Record-keeping penalties had been provided in advance of the meeting. The following issues arose:

21. Fraud forum. At the sub-group meeting on 21 January, HMRC had undertaken to provide further information about the key elements which needed to be in the admission statement for someone to be considered for the Contractual Disclosure Facility. Agent representatives asked for this to be provided as soon as possible. **(AP4)**

22. Alternative Dispute Resolution (ADR). Where HMRC and customers used ADR to solve a tax dispute, agent representatives asked if any work was undertaken to establish why HMRC and customers had been unable to reach an agreement. HMRC confirmed that was the case and that lessons learnt are fed back into the Litigation & Settlement Strategy. Agent representatives also felt it would be useful to have a clearer idea about the expected outcome of the process, for example whether it was intended to clear all or just some outstanding aspects of the case. A report on the implementation of ADR was scheduled for the next meeting and it was proposed this issue be carried forward to the next meeting for discussion.

23. Record keeping penalties. HMRC confirmed that it was still considering its approach to business records checks to help inform the implementation policy for record keeping penalties.

Schedule 36 authorisations

24. HMRC had produced statistics for the Powers Implementation Oversight Forum which was set up to monitor the introduction of HMRC's new powers and penalties. This data included the number of authorisation requests made under Schedule 36 Finance Act 2008. As the forum had been wound down, HMRC proposed not to continue to gather this information centrally. This was because the monitoring to date suggested that there had been no significant problems and there was no automatic method of keeping a central record.

25. Agent representatives were unhappy about the proposal. They felt that keeping a central record was an important safeguard, helping to reassure customers that HMRC were applying the new powers correctly. The figures for the latest period showed a reduction in the number of requests made and agent representatives thought it would be useful to continue to monitor the trend.

26. HMRC said there could be various reasons why the number of requests could go down, or up, and just monitoring the numbers offered no insight into the reasons. There was no statutory requirement for a central record to be kept but, in light of the views expressed, they would look at the matter again and consider options. **(AP5)**

27. HMRC confirmed there had been no change to the guidance for Schedule 36 authorisations.

Offshore evasion strategy

28. Jim Ferguson, Deputy Director of HMRC's Centre for Offshore Evasion strategy, outlined how HMRC's latest campaign to tackle wealthy tax evaders was developed using

data obtained from information sharing agreements. The campaign was launched on 24 February and will be evaluated to help inform how future campaigns are developed.

29. Agent representatives felt HMRC should be as open as possible about how it is using what information they have to deter potential evaders and encourage others to come forward.

30. Jim said that HMRC was planning to carry out research with a sample of tax agents to help develop a better understanding of the behaviour of customers with undeclared offshore assets. Comments from agent representatives about the research were welcome and final details about the project would be circulated. **(AP6)**

CRF evaluation survey

31. HMRC had surveyed CRF members to evaluate how well they felt CRF was operating and meeting its aims and objectives. A written summary of the findings was shared in advance of the meeting. The main findings were that:

- specific issues were best dealt with by CRF sub-groups
- agent representatives would find it helpful to see papers earlier
- more input from agent representatives should be sought into the agenda
- there was a need to clarify the roles and responsibilities of CRF and its sub-groups.

32. HMRC will draw up an action plan to take things forward. **(AP7)**

Any other business

33. Agent representatives asked if any work is underway to predict the effect of teething issues with the introduction of Real Time Information (RTI) on compliance. HMRC agreed to look into this. **(AP8)**

34. Agent representatives wondered what impact the Litigation & Settlement Strategy (LSS) had had, in particular on large business settlements. HMRC suggested this might be a topic for a future meeting. **(AP9)**

Next meeting

35. The next meeting will be on 26 June 2014. The following items were proposed:

- a review of HMRC's compliance change roadmap, looking at the progress made since the 2010 spending review and future plans
- a more detailed evaluation of HMRC's campaign results
- a report on the implementation of Alternative Dispute Resolution

Action points	What
AP1	CRF to consider process for dealing with any post-implementation issues regarding the use of powers as part of a review of the CRF terms of reference.
AP2	Membership of IR35 forum to be reviewed as part of IR35 review.
AP3	HMRC to consider what further tax gap data can be provided to inform a future discussion.
AP4	HMRC to provide members of Fraud Forum with further information requested to enable a review of the Contractual Disclosure Facility admission statement.
AP5	HMRC to review options for monitoring number of Schedule 36 authorisation requests.
AP6	HMRC to provide final details of evasion research project.
AP7	HMRC to draw up an action plan to take forward findings of CRF evaluation

	survey.
AP8	HMRC to look at any possible compliance effects following the introduction of RTI.
AP9	HMRC to consider if there are any issues emerging from the Litigation & Settlement Strategy for CRF.