

Business Records Checks

Tweaks and Turns

HM Revenue & Customs (HMRC) has already started to tweak its approach to Business Records Checks (BRC), as the visits gain in number and momentum.

Background

HMRC has committed to undertake 12,000 BRC visits by the end of this tax year and 20,000 annually from 6 April 2012. A BRC visit involves a pair of HMRC officers calling on a business to test the adequacy and accuracy of the business records maintained. The officers follow a generic interview brief, regardless of the type of trade or profession subjected to the BRC, with Tax, VAT and PAYE issues all covered.

Selection Process

If you are a business owner who has filed a late return in the past, whether a Self Assessment Tax Return, a Corporation Tax Return, a VAT Return or a PAYE Return, you are more likely to be chosen for a BRC visit. Likewise, if your Returns appear to include estimated figures, you are more likely to be chosen. HMRC believes that if late Returns are being filed the business must be disorganised and this calls into question the quality of the business records and how often they are being written up and reconciled. Internally, HMRC frequently refers to late filers as *non-compliant*. Similarly, if estimated or balancing figures are included on Returns or in accounts, HMRC doubts the business records are entirely accurate and complete.

'The Tweaks'

The generic brief is gradually evolving as more visits are undertaken and the 120 BRC officers become more experienced. The first noticeable tweak has been introduced at the start of the discussions. Seemingly innocuous questions are asked about whether the business owner has read the HMRC factsheets on record keeping, sought further guidance from the HMRC website and visited the Business Link website to try out the business records educational 'tool'. If the business owner has gone through the 'tool' and answered all the questions, the BRC officers ask for details of the outcome and a copy of the final report.

<http://www.businesslink.gov.uk/bdotg/action/layer?topicId=1085697567>

The second tweak is further into the generic brief, after the BRC officers have established what the business actually does and what records have been maintained. The BRC officers begin what they call the '**Walk Through Test**'.

The 'Walk Through Test' involves a sample check of 20 sales invoices and 20 expense receipts from the preceding 12 months immediately prior to the BRC visit date.

The BRC officers check to see whether the following information is clearly shown :

Sales Invoices

- ~ The name and address of the business.
- ~ The VAT registration number.
- ~ The date of the invoice.

- ~ A description of the work done.
- ~ The amount charged, gross and net of VAT.
- ~ The name and address of the customer.
- ~ The payment terms i.e. cash, cheque, credit card, BACS.
- ~ Whether the sales invoices are consecutively numbered.

Expense receipts

- ~ The type of expense incurred i.e. a stock purchase, a petrol receipt, a telephone bill etc.
- ~ The name of the expense supplier.
- ~ The date the expense was incurred.
- ~ The amount of the expense.

The BRC officers will record a detailed account of the information gleaned from the 40 checks within the generic interview brief.

Once these checks have been done, the discussions move on to the VAT and PAYE records maintained.

‘The Turns’

BRC officers freely admit that HMRC has still not decided the circumstances under which a record keeping fine of up to £3000 will be levied. However, it appears HMRC may currently be turning away from charging a fine as part of an initial BRC visit. The generic brief now includes a traffic light system for the BRC officers to record the standard of record keeping and what further action, if any, is required.

Green Light – If the business records are considered to be **adequate**, the BRC officer will write a short narrative in the green light box and no further action will be taken.

Amber Light – If the business records are considered to be **inadequate**, the BRC officer will make improvement recommendations and tell the business owner a revisit will be conducted. Usually the revisit will take place 3 months after the initial BRC visit, to allow time for the improvements to be implemented. An appropriate note will be recorded in the amber light box.

Red Light – If the business records are poor and incomplete i.e. **wholly inadequate**, with both sales invoices and expense receipts missing, the BRC officer will write a short narrative in the red light box recommending a full blown enquiry.

This traffic light system suggests HMRC may now be considering charging a record keeping fine as part of a wider enquiry settlement. Up until now, HMRC has talked about charging a fine once a significant failure in business record keeping has been identified during a BRC visit.

In summary, HMRC has already moved away from only reviewing a three month period during the BRC visit and also appears to be moving away from levying an immediate fine.

Potential dangers

Suddenly the seemingly innocuous questions at the start of the BRC visit start to take on a different complexion. If an enquiry is launched and errors are found on the Self Assessment/Company Return submitted, HMRC can charge a financial penalty on the business owner for filing an incorrect Return.

The new penalty rules are behaviour driven and HMRC analyses whether mistakes have been made, despite reasonable care, through carelessness or deliberate behaviour. So, say for example, you are a sole trader

running your own business. You tell the BRC officers that you have not read the factsheets or visited the HMRC or Business Link websites for further information. However, you are satisfied that your business records are good enough and your accountant prepares a balanced set of accounts each year without any problem. The BRC officers then begin to conduct their checks, but find the business records are wholly inadequate and incomplete. In their opinion, you do not have sufficient knowledge of what is required based on the lack of research from failing to read HMRC factsheets, so complete the red light box and recommend a full enquiry.

A full enquiry is subsequently launched by a Tax Inspector and errors are found. An incorrect Tax Return has been submitted. The Inspector looks back at the notes made during the BRC visit and sees that no effort was made to read the factsheets available and comes to the conclusion the errors have been made because of deliberate, rather than careless behaviour. The penalty loading is then calculated under the much harsher and more expensive deliberate behaviour category.

To make matters worse, after the enquiry has been concluded and you have paid the extra tax, national insurance, interest, penalty and (potential) record keeping fine, you find yourself entered into the Managing Deliberate Defaulters Scheme and are asked to supply extra paperwork with your Tax Returns each year.

Recommended action

- **Do not agree to a BRC visit at your home**

The BRC visits do not have to be conducted in your home, even if that is your place of business. BRC visits can be undertaken in a nearby tax office, which both you and the BRC officers can get to in reasonable time. BRC officers do not generally travel beyond 90 minutes from their tax office base.

- **Read the HMRC factsheet TH/FS1 *Keeping records for business – what you need to know at the very least*. The factsheet is sent out with the initial letter advising a BRC is to be conducted, but is worth reading now**

<http://www.hmrc.gov.uk/factsheet/record-keeping.pdf>

BRC officers do not expect business owners to be pseudo accountants. But, they do expect business owners to have done some research, to ensure adequate business records are being kept. Ignorance is not an option.

- **Be polite but firm with the BRC officers**

If you run a business where you are only issuing a sales invoice once a month, or at the end of a contract, the BRC officers will potentially be asking to review all of your sales invoices for the last year as part of the 'Walk Through Test'.

In these circumstances, you should resist the 'Walk Through Test' and point out that a review of all of the sales invoices would be tantamount to an enquiry. An alternative should be sought whereby the BRC officers agree to review a percentage of the sales invoices raised, rather than all of them.

Suggest a different proportion, say 25% to match a VAT quarter, or a representative sample of invoices spread throughout the year.

The Final Word

Not all of the BRC officers are Inspector trained, so do not automatically assume the visiting officers have a great deal of technical knowledge, or will apply a common sense approach.

On one recent visit, the BRC officer said she would like to match petrol receipts to work journeys, to ensure the mileage was business related as per the mileage log. The business owner lives outside London, but travels into the capital and stays overnight for work meetings on a regular basis. The BRC officer picked out a few of the London trips and asked why petrol receipts could not be matched up to the journeys. The business owner pointed out that a full tank of petrol would last a number of days and he did not always have to buy petrol on the same day he was travelling into London.

A trained Tax Inspector, used to dealing with enquiry work would know that and would not automatically expect to match a petrol receipt to every journey. However, the BRC officer had a background in the collection of tax and no previous enquiry experience.

There will undoubtedly be more 'tweaks and turns' to the Business Records Checks initiative over time as it evolves. Further guidance will be provided by the Abbey Tax ReSource Consultancy Team as developments unfold.

If you would like to discuss this article in more detail, please contact our Consultancy Team on 0870 166 6270 or email marketing@abbeytax.co.uk

I

