

Business Record Checks – Change in tone from HMRC

HM Revenue & Customs (HMRC) has finally released its delayed Summary of Responses (SoR) report following the Business Record Checks (BRC) consultation process that began in December 2010.

The SoR report contains a subtle, but worrying, change in tone and emphasis towards the BRC process from HMRC. In the opening narrative, HMRC states the BRC are a *'compliance check'*, not an *'educational exercise'*.

Background

The scope of the consultation was originally described as looking at *'how best to implement a programme of Business Record Checks to achieve a major improvement in the standard of record keeping across the SME population.'*

HMRC subsequently launched into a clandestine 'Test and Learn' phase. Letters were issued to selected small and medium sized enterprises (SME) telling them a Tax Officer wished to make a visit to the business premises. In the letters HMRC said it was committed to giving businesses the help they needed to get their record keeping right.

The letters went on to state the aim of the BRC visit was to establish whether the records being maintained were adequate for the nature and size of the business and sufficient enough to help complete tax returns accurately.

After the visits had been completed, HMRC then wrote out again to the SME's involved to recommend record keeping areas that should be improved upon and intimated that further visits could follow within three months, to make sure the recommendations had been implemented.

Up until now, the underlying theme has been one of informed education. However, that now seems to have changed with the publication of the SoR report.

The SoR report

The change in tone and emphasis within the report compared to the BRC process to date is marked.

The comments made by HMRC include:

'Business Record Checks are intended to address the problem of those who, despite the help available, continue to fall significantly short of compliance with their record keeping obligations.'

'There is already help and guidance available for businesses to enable them to fulfil their record keeping obligations.'

Why the change in tone ?

Money.

HMRC appears to want to be able to charge record keeping penalties of up to £3,000 sooner rather than later. It does not want to suspend BRC fines or issue 'first offence' warning letters, as suggested by some respondents to the consultation.

HMRC states its view that *'A policy of not charging a penalty for an initial finding of significant record keeping failure would risk creating the perception that there is no need to change behaviour in relation to poor record keeping unless and until one has been caught out at least once.'*

The majority of respondents favoured giving SME's a period of around a year to make any necessary improvements to their record keeping, whilst HMRC continued promotion of its free educational factsheets and online tools.

HMRC has a different preliminary view and is minded to apply the record keeping penalty within 12 months of the consultation period.



Summary

As with all current HMRC compliance activity at the moment, the name of the game is money, whether raised via an HMRC Campaign, an Offshore Disclosure Amnesty or a formal tax enquiry.

HMRC is under pressure to raise an additional £7 billion in revenue each year by 2014/2015 and there is little doubt that HMRC regards the BRC process as another form of cash generation for the Treasury's coffers.

The 'Test and Learn' phase of the BRC is gradually winding down and HMRC is expected to publish its full BRC implementation plans before the end of the year, in advance of commencing the planned 50,000 BRC annual visits.

The two critical factors yet to be decided seem to be the determination of what constitutes record keeping failure and its significance, as well as the time SME's are allowed to put their house in order.

Presumably HMRC will use the same sort of methodology as applied under the new penalty arrangements. In other words, record keeping failures will be viewed either as being careless or deliberate, with a careless offence attracting a smaller fine compared to a deliberate failure.

Unfortunately, as many seasoned advisers working with HMRC know, the outcome of these initiatives is invariably a complete lack of consistency. Ask a collection of Inspectors to identify when a 'discovery' has been made and a whole series of different interpretations will be expressed. The same problem lies in wait with BRC officers potentially failing to understand and interpret what constitutes 'significant' failure in SME's of varying sizes and complexity.

Further information on Business Record Checks is available on our website, along with related articles on this subject. Constant updates are also provided via our Twitter page.

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



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