

Business Records Checks: A Novel Experience

The Business Records Checks (BRC) initiative is rapidly absorbing the features of a John Le Carre novel; with secrecy, darkness, confusion and complexity all at the heart of the story.

Secrecy

Despite its rhetoric about improving transparency, HMRC secretly began a 'Test and Learn' BRC pilot exercise back in March this year. Letters were issued from four different tax offices – Blackburn, Oxford, Plymouth and Swindon - and asked the 1,500 business owners selected to make contact within 10 days of the date of issue of the letter, in order to agree a BRC visit date.

The visits were then carried out by 30 staff from 8 tax offices, namely Edinburgh, Irvine, Liverpool, Manchester, Portsmouth, Sheffield, Stockport and Sunderland.

Once the visits had been made, common recommended improvements began to emerge, with HMRC asking business owners to number sales invoices consecutively, maintain cash books and to keep mileage and drawings records. HMRC also asked for the business records themselves to be completed on a monthly basis at the very least.

The Abbey Tax ReSource Consultancy Team has now started to see HMRC beginning its follow up visits to the businesses deemed to have had inadequate records during the 'Test and Learn' phase.

The follow up letters refer to the recommendations made previously and state the intention of the revisit is *'to check that the appropriate improvements have been made.'* The letters go on to ask for the business records kept since the initial visit to be made available, for checking during the revisit, but do not mention if a fine will be levied if the recommendations have not been implemented.

Darkness

When the BRC consultation began in December 2010, HMRC expressed its desire to check business records in up to 50,000 cases annually *'to achieve a major improvement in the standard of record keeping.'* The tone was educational, stating penalties would only be imposed for significant record keeping failure.

By the time the much delayed BRC Summary of Responses (SoR) report was issued in July 2011, the change in tone was noticeable as HMRC made clear the BRC visits would primarily be a *'compliance check'* rather than an *'educational exercise.'*

The darkness descended, when further into the SoR report, HMRC made clear its intention to charge a fine for a first failure, dismissing suggestions put forward for a first offence warning letter or suspended fine; thereby denying business owners the time and opportunity to deliver improvements.



Confusion

The minutes of the June Compliance Reform Forum (CRF) meeting between HMRC and Agent Representatives were published earlier this month.

BRC visits were one of the issues discussed and Agent Representatives were told that *'there are no sanctions for not following the advice but if the return is wrong or records remain deficient there may be penalties.'* (Page 9 Point 49 refers)

So, confusion reigns.

Do business owners have to follow the recommendations or not? What is the point of doing the business records checks and committing so many staff to the initiative, if the advice does not have to be followed? The impression given is that the visits will be an 'educational exercise', rather than the 'compliance check' envisaged by the SoR report.

Complexity

HMRC has already confirmed it will not charge a record keeping fine during the 'Test and Learn' phase.

However the BRC initiative now seems to have begun a new chapter, with letters issued to more business owners, outside of the 'Test and Learn' phase. The second round of BRC letters are virtually identical to the pilot exercise letters, except business owners are only given 7 days from the date of issue of the letter to get in contact to arrange a BRC visit date, rather than the 10 days given previously. If contact is not made within the 7 day deadline, the HMRC officer will pick a date and visit at their convenience instead.

The number of staff undertaking the visits is increasing from 30 to 120 between September and November 2011, with more tax offices becoming involved.

The HMRC Business Plan did not contain a numerical objective for BRC visits at the beginning of the tax year, despite the 50,000 annual target mentioned in the BRC consultation paper in December 2010. The Business Plan now includes a target of 20,000 BRC visits to be completed by March 2012. However, following a reply to a Freedom of Information request made by the Abbey Tax ReSource Consultancy Team, HMRC has confirmed that the target has been reduced on a pro rata basis to 12,000 for this tax year, with 20,000 the new annual target, down from 50,000 a year.

Based on these latest figures, allowing for the 1,500 'Test and Learn' visits, some 10,500 still need to be done before March 2012 which equates to around 375 a week.

No further comment has been made by HMRC about Business Records Checks since the SoR report was published. Disappointingly HMRC is still going ahead with the second round of BRC visits, with so many issues left to be clarified.

Crucially, no further information has been provided by HMRC to explain what a significant failure is and when that significant failure will be treated as having been committed. For example, will a significant failure be identified during the first visit, or the follow up visit if recommendations have not been implemented, or even at the point an incorrect tax return is filed because of poor records?



What will be the grade of the HMRC officer visiting? Will it be a trained Inspector, who has an appreciation of how business records interact and the ability to identify a significant failure? Or will it be a lower grade officer, following a trade/profession specific checklist? How would that officer identify a significant failure? Is the visiting officer going to be guided as to what is a significant failure by a one size fits all generic checklist, or are businesses going to be judged on a case by case basis?

Whilst the Freedom of Information reply also states a penalty yield target has not been set for Business Record Checks, strictly that is incorrect. HMRC has been given over £900 million to devote to new compliance work, to bring in an additional £7 billion a year by 2014/2015. Business Records Checks clearly fall within the target criteria, as they are being funded by part of the £900 million. At some point, the success of the BRC initiative will be measured and the fines levied are likely to be counted towards the compliance result.

Furthermore, there also seems to be a heavy concentration of BRC visits on businesses in the north of the UK, with Portsmouth the only tax office currently conducting visits in the south. How is that fair and equitable?

Readers of a novel can usually expect a carefully crafted plot. Seemingly, there has been no such detailed thought expended on the contradictive BRC initiative yet, although as with any John Le Carre novel, the loose ends may eventually unravel and become clear.

The Abbey Tax ReSource Consultancy Team will continue to monitor developments and provide further updates. Please contact our marketing team on **0870 166 6270 or email marketing@abbeytax.co.uk for more information.**



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