

ICAEW TAX REPRESENTATION

TAXREP 19/11

BUSINESS RECORDS CHECKS

Comments submitted on 11 March 2011 by the Tax Faculty of the Institute of Chartered Accountants in England & Wales to HM Revenue & Customs in response to the consultation document *Business Records Checks* issued on 17 December 2010.

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BUSINESS RECORDS CHECKS

INTRODUCTION

1. In this document we present the comments of the Tax Faculty of the Institute of Chartered Accountants in England and Wales (ICAEW) on the consultation document *Business Records Checks* (the Condoc) issued by HM Revenue & Customs (HMRC) on 17 December 2010.
2. We are pleased to have the opportunity to respond to this consultation. We would be happy to discuss any aspect of our comments and to take part in all further consultations on this area.
3. Information about the Tax Faculty and the ICAEW is given below. We have also set out, in Appendix 1, the Tax Faculty's ten tenets for a better tax system, by which we benchmark proposals to change the tax system.

WHO WE ARE

4. The Institute operates under a Royal Charter, working in the public interest. Its regulation of its members, in particular its responsibilities in respect of auditors, is overseen by the Financial Reporting Council. As a world leading professional accountancy body, the Institute provides leadership and practical support to over 132,000 members in more than 160 countries, working with governments, regulators and industry in order to ensure the highest standards are maintained. The Institute is a founding member of the Global Accounting Alliance with over 775,000 members worldwide.
5. Our members provide financial knowledge and guidance based on the highest technical and ethical standards. They are trained to challenge people and organisations to think and act differently, to provide clarity and rigour, and so help create and sustain prosperity. The Institute ensures these skills are constantly developed, recognised and valued.
6. The Tax Faculty is the focus for tax within the Institute. It is responsible for technical tax submissions on behalf of the Institute as a whole and it also provides various tax services including the monthly newsletter *TAXline* to more than 11,000 members of the Institute who pay an additional subscription, and a free weekly newswire.

KEY POINTS SUMMARY

7. Our key points
 - We support HMRC in finding effective ways to reduce loss of tax.
 - However, we have grave concerns about this proposal to carry out Business Record Checks (BRCs), both its conception and in the way it is to be carried out.
 - The flavour of the proposals is 'all stick and no carrot'. We think the emphasis should be on support and education rather than penalties and potentially costly and stressful record-checking visits, with penalties kept in reserve for those who are not prepared to comply.
 - HMRC needs to give more consideration to why some businesses might have poor records. In many cases the failure will not be wilful but because the taxpayer cannot cope or does not understand.
 - There is also little recognition of the burden that record-keeping can be for SMEs, or of the Government's stated aim of reducing the compliance burden on business. We are concerned that the proposals may deter people from starting or developing businesses.

- We question the assertion that poor record-keeping is a problem in 40% of SMEs and thus is responsible for loss of tax in up to 2m SME cases annually. We should like to see the detailed evidence on which it is based.
- While HMRC is entitled to enforce the law it is not entitled to impose requirements on taxpayers which go beyond those required by law.
- We would agree that there is a significant failure to keep adequate records if the records are so poor that it is not possible to construct a set of accounts from them. However, we are concerned about what HMRC will view as adequate records and that HMRC staff may have unrealistic expectations of what records should be kept.
- We are not clear about the legal grounds on which HMRC considers it has the right to visit taxpayers' premises and inspect records on what will be a random or speculative basis, and should like HMRC to provide an analysis of this.
- We think this HMRC has underestimated the task of finding 'holes' in the records. This is not a quick process, and made more difficult when there is no return against which to check the documents. Also, looking just at the records takes no account of the role of the agent in adjusting the figures in order to produce accounts and a complete and correct return.
- HMRC's aim should be to help businesses pay the right amount of tax. HMRC's assumption is that poor records lead to underdeclared tax but it could alternatively lead to tax being overpaid due to items not being claimed. In such cases HMRC should encourage the trader to make a repayment claim.
- We do not accept that under the old regime the penalties for inaccuracies and poor records were effectively rolled into one. It seems to us that the charging penalties for poor record-keeping as well as for inaccuracies will lead to a higher penalty burden than under the previous regime, and we are concerned about the impact of this on businesses.
- In our view a person should not be charged a penalty twice for the same failure. HMRC should use its discretion and not levy penalties where there has been a record-keeping error or failure but the amount of tax lost is trivial, or no tax has been lost at all.
- We strongly recommend that HMRC should include a mechanism to suspend penalties for poor record-keeping, on condition that improvements are made. This would be achieved if HMRC does not charge penalties for a first offence but instead gives a warning, and subsequently checks whether matters have improved. This is likely to be more of an incentive for businesses than the certainty of receiving a penalty if HMRC considers the record-keeping failure to be significant.
- HMRC should take into account the reasons for record-keeping failures and make allowance for innocent errors.
- Any penalty 'tariff' needs to be compliant with human rights legislation.
- We have concerns about how BRCs might adversely affect the agent/client relationship, if an HMRC officer's view of what records a taxpayer should keep is at variance with what the agent has recommended.
- We are also concerned that while there is a right of appeal against a penalty, there is no corresponding right of appeal where a taxpayer disagrees with an HMRC officer as to what records are appropriate.

- We think that the estimate of the cost of BRCs for businesses in the Impact Assessment is inadequate and completely unrealistic. It underestimates the time costs of both the business and the agent.
- We would also question the assertion in the Impact Assessment that the BRC programme will bring no extra costs for HMRC. We would be very concerned if diverting staff to conduct BRCs had an adverse impact on other areas of HMRC's services.
- We should be interested to know how much of the anticipated extra revenue is expected to come from penalties and how much from preventing tax loss. The power to charge penalties should not be seen as a revenue-raising exercise.

GENERAL COMMENTS

Aim of the Business Record Checks

8. We support HMRC in finding effective ways to reduce loss of tax.
9. We would also support an initiative to encourage and help smaller businesses in keeping adequate records so that they pay the right amount of tax.
10. However, we have grave concerns about this proposal to carry out Business Record Checks (BRCs). We think there are flaws both in its conception and in the way it is to be carried out.

HMRC's approach

11. The flavour of the proposals is 'all stick and no carrot'. The underlying assumptions are that poor records lead to loss of tax, and that businesses keep poor records through lack of care and attention. And that therefore an actual or threatened penalty will bring about improvement.
12. However, this fails to consider why some businesses might have poor records. In many cases the failure will not be wilful but because the taxpayer cannot cope or does not understand, and cannot afford good professional advice. HMRC's stated aim in modernising powers has been to support those who want to comply but to come down hard on those who are deliberately non-compliant – we do not see this approach reflected in the BRC proposals.
13. A better way to improve record-keeping – which we would support – would be a programme of support and education, with penalties kept in reserve for those who are not prepared to comply.
14. There is also no recognition of the burden that record-keeping can be for SMEs, or of the Government's stated aim of reducing the compliance burden on business. We think the emphasis should be on support and education rather than penalties and potentially costly and stressful record-checking visits.
15. We are concerned that the proposals may deter people from starting or developing businesses. By way of comparison, we know that there are businesses which do not take on the employees necessary for expansion as they feel unable to cope with PAYE. There is also a concern that BRCs may deter people wishing to leave the black economy from doing so, or even encourage people to join the black economy, as there is a danger that they may gain the impression that it is very hard to keep adequate records in a small business.

The consultation process

16. We have some concern that HMRC has already taken the decision to go ahead with BRCs.
17. The 21 February 2011 press release about tools to help businesses keep records (which was issued before the published closing date for this consultation) said the tools were being made available 'in advance of the launch of HMRC's new BRC programme later this year, which will impose penalties for significant record-keeping failures'. This suggests that the BRCs and accompanying penalties are a foregone conclusion. We have also heard anecdotally that HMRC is already making some pre-return checks on records.
18. If this is true, we will be extremely disappointed if representative bodies' concerns are not taken account of before HMRC goes ahead with BRCs.

The extent of the problem

19. The consultation document states (para 2.2) that poor record-keeping is a problem in 40% of SMEs and thus is responsible for loss of tax in up to 2m SME cases annually. This is repeated in the Impact Assessment.
20. No detailed evidence is provided to back up these figures. They appear to be based on evidence from HMRC's random enquiry programme (para 2.2). We do not know how many random enquiries are conducted annually, but anecdotal evidence suggests there are relatively few – indeed, that the total number of enquiries into SMEs has been much reduced. Therefore, we question whether it is statistically valid to extrapolate any evidence from what we presume is a small sample to the whole SME population of 5m.
21. Further, HMRC's assumption is that poor records lead to underdeclared tax. We disagree with this. Certainly in some cases those with inadequate records will pay too little, but it does not automatically follow – in other cases the business may have overpaid by failing to claim all available expenses and reliefs.
22. Since the whole premise of the BRC proposals is built on the notion that 2m SMEs have poor records which result in underpaid tax, we would like to see much better evidence before we are convinced that HMRC has correctly identified the problem.

Adequate records and record-keeping failures

23. The statutory obligation is to keep such records as the taxpayer considers necessary for the purpose of enabling him or her to make and deliver a correct and complete return. There is also a statutory requirement for accounts to comply with UK GAAP. The records that are required need to be approached in the light of this. While HMRC is entitled to enforce the law it is not entitled to impose requirements on taxpayers which go beyond those required by law.
24. We are concerned about what HMRC will view as adequate records. The consultation document makes some very sensible points at paras 4.4–4.6, which we endorse, to the effect that simple and unsophisticated records may still be sufficient for preparing a correct return. However, we are concerned that HMRC staff may have unrealistic expectations of what records should be kept.
25. We would agree that there is a significant failure to keep adequate records if the records are so poor that it is not possible to construct a set of accounts from them. However, we would be concerned if HMRC officers regard the traditional 'brown paper parcel job' where a trader places all his business records in a box and tasks the accountant with turning this into a set of accounts as a significant failure just because a trader does not maintain a daily cash book. It is possible to deal with gaps in records by (for example) obtaining missing bank statements from

the bank; suppliers can reissue copy invoices, and customers may agree to confirm sales or even supply copies of documents received.

26. The consultation does not consider why some businesses might have inadequate records. The implication is that this is done deliberately, eg para 4.15 refers to those for whom record-keeping will be 'an unwelcome chore'. Our view is that most taxpayers aim to be compliant, but that keeping records may be a difficult task for some businesses – they may be good at their business but not at books and records, and they may have many pressures on their time of which trying to understand the tax system is only one.

Legal basis for making BRC visits

27. We are not clear about the legal grounds on which HMRC considers it has the right to visit taxpayers' premises and inspect records on what will be a random or speculative basis – the HMRC officer has no idea if there is anything wrong with the records until he or she has looked at them.
28. The law (Sch 36, Finance Act 2008) allows an officer of HMRC to enter a person's business premises and inspect statutory business records, where that is reasonably required for the purposes of checking **that person's** tax position.
29. As far as we are aware, there has been no case law on what is meant by 'reasonably required for the purposes of checking that person's tax position'. If the person's previous returns have disclosed no errors, how is the check 'reasonably required'?
30. In particular, how is a random enquiry process to be justified? The law allows HMRC only to check where it has reasonable cause to review 'that person's' tax position, not to review the entire population.
31. Furthermore, Sch 36 only gives power to inspect (and this does not mean search), and it is also limited to 'business documents that are on the premises' (para 10, Sch 36). It is unclear to us how this power can then be used to assume, because a document is not 'on the premises' that the records are inadequate for the purposes of compiling the individual's tax return.
32. We should like HMRC to provide an analysis of the legislative basis on which BRCs will be undertaken.

How visits will be conducted

33. HMRC appears to assume that the HMRC officer will be able, by looking at the business records, to identify whether there has been a failure to record something – and will be able to do this in a short space of time (the Impact Assessment indicates that BRCs will take half a day to complete).
34. We think this underestimates what is involved. In our experience finding 'holes' in the records is not a quick process – one is by definition looking for something which is not there but should be. This is even more difficult when there is no return against which to check the documents.
35. The BRCs will be looking just at the records and not the process by which the information is used to prepare accounts and a tax return. In our view it overlooks the role of the agent in adjusting the figures, analytically reviewing the results and dealing with any apparent inconsistencies or deficiencies, as noted at para 25 above. Part of this work will be to check that the accounts and return are complete and correct, and if necessary advise the client on record-keeping. Unless the records are extremely sketchy or non-existent (which is unlikely to be the case where there is an appointed agent) we do not see how the HMRC officer, looking just at the available records part-way through a year, can conclude whether the accounts and tax return will be incorrect.

36. HMRC's aim should be to help businesses pay the right amount of tax. As noted, the proposals assume that poor record-keeping will inevitably lead to loss of tax, but in fact it could alternatively lead to tax being overpaid due to items not being claimed for. Can HMRC confirm that where this is discovered to be the case, the trader will be encouraged and supported to make a repayment claim?

Penalties

37. We are concerned about some of the statements about penalties in the consultation document, and about the proposals for charging penalties for record-keeping failures.

Old and new penalty regimes compared

38. We would take issue with the comments at paras 3.5 and 4.23 of the condoc, that under the pre-FA 2007 penalty regime the standard of record-keeping was taken into account in the penalty abatement. Having canvassed opinion among members (including investigation specialists), we find that no one can recall a case where the negotiation of the seriousness abatement under the old penalty rules included reference to the standard of records.
39. Therefore, we do not accept that under the old regime the penalties for inaccuracies and poor records were effectively rolled into one, or the assertion (that follows from it) that things will be no different if HMRC now charges penalties for poor records in addition to penalties under Sch 24, FA 2007.
40. Further, if (as HMRC states) the penalties under the old rules included a built-in abatement where records were not poor, the penalties for inaccuracies under the new FA 2007 rules (in an equivalent situation) will presumably be higher because these rules do not allow for such an abatement. What is now proposed that there will be an additional penalty for poor records, which was already taken account of in the penalty under the old regime.
41. When introducing or commenting on the new penalty regime HMRC has always been at pains to emphasise that it was not trying to increase penalties. For the reasons explained above, it seems to us that the charging penalties for poor record-keeping as well as for inaccuracies will lead to a higher penalty burden than under the previous regime, and we are concerned about the impact of this on businesses.

Interaction with Sch 24, FA 2007

42. In our view a person should not be charged a penalty twice for the same failure. This will happen if a taxpayer is charged a penalty for failure to maintain records and is also charged a penalty for delivering an incorrect tax return where the incorrectness of that return stems from inadequate records.
43. We appreciate that the legislation provides for HMRC to charge penalties under these two different heads. However we think that HMRC should use its discretion and not levy penalties where there has been a record-keeping error or failure but the amount of tax lost is trivial, or no tax has been lost at all.

Suspended penalties and HMRC discretion

44. We strongly recommend that HMRC should include a mechanism to suspend penalties for poor record-keeping, on condition that the record-keeping function is improved. We consider that a suspended penalty offers the greatest opportunity to provide an incentive to improve record-keeping.
45. We are aware that there is no power to suspend a penalty for record-keeping failures in the way that penalties for inaccuracies can be suspended. However, the same effect could be achieved if HMRC does not charge penalties for a first offence but instead gives a warning, and subsequently checks whether matters have improved.

46. As noted above, in setting penalties we strongly recommend that HMRC should exercise discretion. We note that for instance at para 4.25, the wording is 'HMRC **must** impose a penalty if ...'. This leaves no room for discretion.
47. HMRC should take into account the reasons for record-keeping failures. It is important that businesses take reasonable care rather than concentrate on getting things absolutely right, and in charging penalties, HMRC should make allowance for innocent errors. A warning and guidance on how to keep adequate records is likely to be more of an incentive for businesses than the certainty of receiving a penalty if HMRC considers the record-keeping failure to be significant.
48. In the experience of our members a record-keeping failure is as likely to lead to expenses being under claimed. Where the record keeping failure leads to tax being overstated and overpaid we believe that there should be no penalty.

Human rights issues

49. Regard should be had to the need for any penalty 'tariff' to be compliant with the obligations laid down by the EU Convention on Human Rights, whether directly (as with VAT and customs duties) or indirectly (via the Human Rights Act 1998) for direct taxes. In particular, any tariff must be proportionate.
50. We have serious concerns as to how HMRC will achieve this when, as the consultation says (para 4.18): 'There is no obvious link to a 'value' reference point such as the potential amount of tax at risk or the potential turnover for the period covered by the records because pre-return these will be an unknown.'
51. We would ask HMRC to set out the basis on which it considers the BRC penalty proposals to be compliant with human rights legislation.

The role of agents

52. We have concerns about how BRCs might adversely affect the agent/client relationship. We consider that our members are in a far better position than HMRC to determine what sort of records the particular client should keep which will allow the agent to prepare a correct and complete return. If an HMRC officer is likely to tell a taxpayer what records he or she must keep, and this is at variance with what the agent has recommended, there will potentially be a confrontation between HMRC and agent, and serious damage to the agent/client relationship. In view of HMRC's stated recognition of the importance of agents in the tax system, and of the fact that by far the majority of agents do a good job, we wonder if HMRC has considered the risk of eroding trust between agent, client and HMRC in this way.
53. We are also concerned that while there is a right of appeal against a penalty, there is no corresponding right of appeal where a taxpayer disagrees with an HMRC officer as to what records are appropriate. The only remedy is to lodge a complaint that the officer is being unreasonable. Again, we are concerned that a conflict has the potential to adversely affect the relations between agent, client and HMRC.
54. We note that HMRC may be seeking assistance from agents in publicising the BRCs (para 4.38). We have no problem in publicising the importance of keeping adequate records and the ways in which that might be done. However, in view of our reservations about the BRC proposals, we would have difficulty in spreading an HMRC 'message' if we disagree with the manner in which BRCs will be done or HMRC's strictures about what records should be kept.
55. Where there is an agent, we trust that HMRC will include the agent in any communication about a BRC. This will enable the agent to manage his or her relationship with the client, and provide assistance with the visit.

Costs for business

56. We think that the estimate of the cost of BRCs for businesses in the Impact Assessment is inadequate and completely unrealistic.
57. HMRC estimates an annual cost to business of £2.7m, which for 50,000 BRCs works out at just over £50 per BRC. No explanation is given of how this cost is estimated, and we recommend that HMRC should provide it.
58. This appears to assume that HMRC will be dealing with sole traders or (in larger businesses) accounts staff, with an hourly cost of £11.70. However, it is likely that for a sole trader, the cost of half a day spent with HMRC (rather than generating profits) will represent considerably more than £50. And for larger businesses, it is naïve to assume that junior-grade staff will deal with HMRC – very likely the proprietor will be needed to discuss how the business is operated.
59. There is also no account taken of the agent's costs, where there is one. The business will very probably want the agent present to help with the HMRC visit, to give the proprietor confidence or save his or her time, and to deal with any questions. And the agent will need to be there if there is a risk of HMRC finding fault with the records and potentially damaging his or her relationship with the client. In addition, the taxpayer may require the agent to assist with reviewing the records in preparation for the visit.
60. Assuming a four-hour BRC, with hourly time costs of £50 for the business and £75 for the agent (which are modest sums), would give £500 rather than £50 per BRC. In other words, the cost would be 10 times what HMRC has estimated.

Costs for HMRC

61. We are surprised by the assertion in the Impact Assessment that the BRC programme will bring no extra costs for HMRC. If HMRC is to carry out 50,000 checks a year, each taking half a day, this will be 175,000 man-hours. And this excludes travelling and preparation time, and any return visits to see how the business has improved.
62. The Impact Assessment says the cost to HMRC will be absorbed by ongoing resource costs – but this seems a very significant amount of time to absorb. Further, as we have noted, BRCs will not necessarily identify tax losses and might uncover tax overpayments, so we query whether this investment of time and resource will be cost-effective.
63. If HMRC can indeed absorb the appreciable cost of BRCs, we have to ask – will this be done at the expense of other services? The Tax Faculty has repeatedly made representations about how HMRC's current level of service falls short of what is acceptable, and we appreciate that pressure on resources is part of the reason. We would be very concerned if diverting staff to conduct BRCs resulted in resources for other services being even more stretched than they are at present.
64. The consultation asks how HMRC could publicise the BRC programme (Question 12). An effective campaign to raise awareness and educate businesses about record-keeping would come at a cost. There is apparently no allowance for this in the Impact Assessment.

Yield from BRCs

65. The Impact Assessment states that BRCs will provide £600m of extra revenue collected over four years. We should be interested to know how much of this is expected to come from penalties and how much from preventing tax loss. The power to charge penalties should not be seen as a revenue-raising exercise.

66. Also, has HMRC taken account of the fact that improved records may in some cases lead to lower tax liabilities?

QUESTIONS FOR CONSULTATION

Question 1: The record keeping requirements – Do we need to go further than what is available from the factsheet and the evaluation tool; and if so, what else is needed?

We think that all HMRC guidance needs to be very clear about the difference between specific records/documents which must be kept by statute, and those which HMRC recommends should be kept.

The statement at the top of page 3 of the Factsheet states, 'The records you need to keep will depend on the size and complexity of your business', and 'These tables show the most commonly required records and documents'. Though we acknowledge that the following sentence says 'If the law requires you to keep specific records, this is highlighted in the table below', the use of 'most commonly required records and documents' implies that there is a specific statutory requirement for these particular documents and records to be maintained. We consider the approach in HMRC's publication SA/BK3, 'Self Assessment: A Guide to Keeping Records for the Self-Employed', which was issued at the start of income tax self assessment, clearly articulates the distinction between what is statutorily required and what is simply suggestions. We suggest that this distinction should be more clearly articulated in the fact sheet.

With this caveat, we think the existing guidance contains useful information, and nothing more is needed.

HMRC also needs to make sure that businesses (especially unrepresented ones) are aware that the record-keeping guidance exists.

Question 2: Categories of failure and responses – Are the categories and responses at 4.11 the right categories and the right responses? If not, what should the categories and/or responses be?

The categories are reasonable though it is hard to comment on the responses without knowing exactly how HMRC will assess records and allocate them to categories.

We agree that there should be no penalties for minor discrepancies. We also think HMRC should not charge penalties where there has been an innocent error, or the tax loss is trivial or nil. HMRC should take into account why someone has failed to keep adequate records.

We recommend that there should be no penalty for a first offence, but instead a warning and a requirement to improve things in future.

Question 3: Significant failures – Is the outline proposition at 4.13 a reasonable basis for drawing up guidelines as to what should constitute significant record keeping failure? And if not: Why not? And what alternative basis would be reasonable for drawing up guidelines as to what should constitute significant record keeping failure?

We have commented above (paras 23–26) on what might constitute a significant record-keeping failure. We are not convinced that a formulaic approach as suggested at para 4.13 is an appropriate way to measure what is 'significant'.

It is difficult to comment further until we see the guidelines referred to at para 4.13.

Question 4: Penalty tariff – What amount of penalty is needed at a minimum to encourage those with significantly poor records to bring their record keeping up to standard, and to deter a potential ‘for £X it’s worth it’ mentality?

Question 5: Penalty tariff – Should the penalty tariff for significant record keeping failures be the same for all? If not, on what criteria might a workable penalty differential [within the statutory maximum of £3,000] be based?

Question 6: Interaction with Sch 24, FA 2007 – How can the interaction between the penalties for the very separate offences of failure to maintain statutory records and making an inaccurate return best be managed and articulated?

As we have noted, we are concerned about the burden on business of charging a penalty for record-keeping failure and a penalty for an incorrect return where the error results from the record-keeping failure.

We are not convinced that the threat of a penalty will actually achieve the desired result of improving record-keeping, and an approach of encouragement and education would be more effective.

Record-keeping penalties should not be levied in cases of trivial tax loss or where no tax is lost because of the record-keeping failure. We recommend that there should be no penalty for a first offence, but instead a warning and a requirement to improve things in future.

Regard should be had for the need for any penalty ‘tariff’ to be compliant with the obligations laid down by the EU Convention on Human Rights, as discussed at paras 49–51 above.

The size of business should be taken into account rather than charging a flat rate on all businesses.

Question 7: Leverage – Does this seem a good way to encourage the desired change in behaviour, and if not why not?

Leverage is a useful way of alerting particular sectors of the business community to technical issues which affect them.

HMRC needs to ensure that targeting particular sectors is done in a constructive way and that businesses in the targeted sector do not feel they are being ‘picked on’.

Question 8: Leverage – Are there any other or better ways to encourage the desired change in behaviour?

As noted, we would support an initiative to encourage and help smaller businesses in keeping adequate records so that they pay the right amount of tax.

In communicating this, HMRC needs to place more emphasis on encouragement and less on threats of penalties. For example, businesses should be told that keeping good records may have benefits other than in terms of tax return preparation, and could result in the business paying less tax and/or having reduced compliance contact with HMRC.

Question 9: Time to adjust – What will constitute a reasonable period of time to allow those whose record keeping is sub-standard to make the necessary changes to their record keeping?

This will depend on the nature of the business and whether it has an accountant or adviser (or can afford one).

We would suggest that a year would be a suitable time to allow for many businesses to implement improvements.

Question 10: Time to adjust – Would it be useful to begin BRCs on this ‘test and learn’ basis?

We are in no doubt that BRCs, if introduced at all, should initially be conducted on a trial basis.

No penalties should be charged in the trial period (as the condoc states).

Question 11: Publicity and awareness – How might HMRC best work with agents in bringing details of these changes to their clients?

As noted above, we have no problem in publicising the importance of keeping adequate records and the ways in which that might be done, making clear what is statutorily required. However, in view of our reservations about the BRC proposals, we would have difficulty in spreading an HMRC ‘message’ if we disagree with the manner in which BRCs will be done or HMRC’s strictures about what records should be kept.

Question 12: Publicity and awareness – How might HMRC best bring details of these changes to the wider audience, especially unrepresented SMEs?

We consider that we are not best placed to advise HMRC on how best to bring these matters to the attention of SMEs which are unrepresented.

Question 13: Other issues – Are there issues other than those referred to above that ought to be taken into account, and if so, what are they?

Question 14: Impact assessment – Do you have any comments on the assessment of compliance costs?

We have commented on this above. We reiterate that we think the estimated costs for both business and HMRC are unrealistically low.

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APPENDIX 1

THE TAX FACULTY'S TEN TENETS FOR A BETTER TAX SYSTEM

The tax system should be:

1. Statutory: tax legislation should be enacted by statute and subject to proper democratic scrutiny by Parliament.
2. Certain: in virtually all circumstances the application of the tax rules should be certain. It should not normally be necessary for anyone to resort to the courts in order to resolve how the rules operate in relation to his or her tax affairs.
3. Simple: the tax rules should aim to be simple, understandable and clear in their objectives.
4. Easy to collect and to calculate: a person's tax liability should be easy to calculate and straightforward and cheap to collect.
5. Properly targeted: when anti-avoidance legislation is passed, due regard should be had to maintaining the simplicity and certainty of the tax system by targeting it to close specific loopholes.
6. Constant: Changes to the underlying rules should be kept to a minimum. There should be a justifiable economic and/or social basis for any change to the tax rules and this justification should be made public and the underlying policy made clear.
7. Subject to proper consultation: other than in exceptional circumstances, the Government should allow adequate time for both the drafting of tax legislation and full consultation on it.
8. Regularly reviewed: the tax rules should be subject to a regular public review to determine their continuing relevance and whether their original justification has been realised. If a tax rule is no longer relevant, then it should be repealed.
9. Fair and reasonable: the revenue authorities have a duty to exercise their powers reasonably. There should be a right of appeal to an independent tribunal against all their decisions.
10. Competitive: tax rules and rates should be framed so as to encourage investment, capital and trade in and with the UK.

These are explained in more detail in our discussion document published in October 1999 as TAXGUIDE 4/99.