



HMRC powers

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New penalty regime

New legislation will be introduced in the Finance Bill 2008 to extend the provisions enacted in Finance Act 2007, to create a single penalty regime which is applicable to all incorrect returns whether in respect of income tax, corporation tax, inheritance tax, PAYE, National Insurance Contributions (NIC) or VAT.

As expected the new regime will mean that a penalty for an incorrect return will be determined by the amount of tax understated, the nature of the behaviour of the taxpayer which gave rise to the understatement, and the extent to which he makes a disclosure of the understatement to HM Revenue & Customs (HMRC). The use of suspended penalties is confirmed and extended.

In addition, provision will be introduced which extend and adapt the rules set out in FA2007 to cover penalties for failing to register or notify HMRC of any new taxable activity, including late VAT registration.

The changes are expected to come into force for return periods commencing after 31 March 2009 where the return is filed after 31 March 2010. New penalties for failure to notify are expected to have effect for failure to meet notification obligations that arise after 31 March 2009.

Where a return is incorrect because a third party deliberately provided false information or deliberately withheld information from the taxpayer, with the intention of causing an understatement of tax due there will also be a new provision allowing a penalty to be charged on the third party.

Our first reaction

Whilst we agree that it is a sensible aim to have aligned and streamlined penalties across all the taxes, the specific provisions appear to suggest that this will result in the imposition of penalties representing a higher percentage of the understated tax than would be the case under the current regime in the majority of cases.

Reform to Provisions Covering Tax Payments, Repayments and Debt

The Chancellor announced three changes to the current law:

- new legislation to enable HMRC to introduce a credit card payment service
- HMRC will be able to set the repayments it must make to individuals and businesses against the payments it is owed by them
- HMRC's debt enforcement powers to collect unpaid sums by taking action through the civil courts will be modernised and aligned.

The ability for HMRC to accept credit card payments is anticipated by Autumn 2008. The changes to HMRC's powers in relation to the setting off of repayments against debt and enforcing payments through the courts will have effect from the date that the Finance Bill 2008 receives Royal Assent. In England and Wales the power to take control of goods will come into effect in line with the appointed day for Schedule 12 of the Tribunals, Courts and Enforcement Act 2007.

Reforms to checks on individuals/business compliance

New legislation is to be introduced to reform the rules for checking that businesses and individuals have paid the correct amount of income tax, capital gains tax, corporation tax, VAT and PAYE. The new rules will also govern the way in which HMRC ensure that the correct reliefs and allowances have been claimed.

There will be three elements:

- aligned and modernised record keeping requirements
- new inspection and information powers
- aligned and modernised time limits for making tax assessments and claims.

Information powers and penalties for failure to comply with these obligations will have effect from 1 April 2009. Time limits for making assessments and claims will become fully operative on 1 April 2010 after a transitional period.

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Our first reaction

The proposed legislation ensures that time limits in respect of changing the tax charged by assessment as a result of deliberate understatement or failure to notify are aligned across the taxes, as is the time limit for taxpayers to make a claim. However it does not appear to achieve its objective of aligning time limits for changing the tax charged by assessments across the taxes where there has been a mistake, discovery or a failure to take reasonable care.

Power to give effect to existing concessions

In the recent Wilkinson case ('The Queen (on the application of John Wilkinson) v The Commissioners for HMRC'), it was held that HMRC's powers to introduce concessions from the strict application of tax law are not as wide as had previously been thought.

As a consequence of the hearing, HMRC has decided to undertake a review of all of its issued concessions to determine their on-going validity. Although this review is not expected to be completed until Autumn 2008, the Revenue has indicated that it expects the majority of current concessions to be issued within the scope of its legitimate powers.

For those concessions which it deems to have been made outside of its powers, Finance Bill 2008 will introduce legislation to enable these concessions to be given statutory status by Treasury order so that the tax position can continue.

Our first reaction

This measure should give taxpayers some comfort that concessions currently in issue will be available in some shape or form going forward.

However, the position for taxpayers who have historically taken advantage of concessions that are found to have been introduced outside of HMRC's powers remains uncertain. We await the outcome of HMRC's review to identify which concessions will be affected. We also await draft legislation to determine whether the Treasury orders will have retrospective effect.

Changes proposed to legislation in relation to the way in which appeals against HMRC decisions are handled

The Finance Bill 2008 will introduce legislation to provide a power to introduce secondary legislation to change the way appeals against HMRC decisions are handled with effect from the date that The Finance Bill 2008 receives Royal Assent. It is intended that the secondary legislation will come into effect in April 2009 alongside implementation of the tribunal reforms under the Tribunals, Courts and Enforcement Act 2007 (TCEA).

The TCEA creates a First-Tier Tribunal into which most existing tribunal appeal functions will be transferred, including tax appeals. An Upper Tribunal will hear appeals against the decisions of the First-Tier Tribunal. It may also hear some first instance appeals in certain circumstances.

Our first reaction

It remains to be seen whether the new proposals are an improvement on the current system. It is unlikely to be possible to make a judgement until the new system has been in operation for some time.

Simplifying anti-avoidance legislation

HMRC has issued a progress report on its Anti-avoidance Simplification Review that was originally announced in the 2007 Pre-Budget Report. The aim of the review is to consider how anti-avoidance legislation relating to direct taxes can best meet the twin aims of simplicity and revenue protection.

As part of this review, it has been announced that a number of old anti-avoidance measures which are no longer of any practical use will be repealed in Finance Bill 2008. The legislation in question relates to:

- dividend buying and bond-washing by, in particular, share dealers and exempt bodies (such as charities)
- certain transactions in securities by share dealers
- employment-related securities awarded before October 1987.

The remainder of the review concentrates on the different types of anti-avoidance measures and how these might be used to simplify existing areas of legislation. As a result of this, HMRC intends to conduct reviews on the scope for simplification in the following areas:

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- the 'Transactions in Securities' legislation
- certain rules relating to shares acquired by employees
- the rules to prevent losses (both capital and income) being transferred from one group of companies to another
- value shifting and depreciatory transactions
- property lease premiums
- the prevention of relief for transactions carried out for 'unallowable purposes'

An update on progress will be provided in the 2008 Pre-Budget Report.

The Simplification Review has also announced that the introduction of the proposed principles-based legislation on financial products avoidance will be deferred until Finance Bill 2009 to allow for further consultation. In the meantime, however, specific legislation will be introduced in Finance Bill 2008 to counter known avoidance schemes in this area.

Our first reaction

It remains to be seen whether the new proposals are an improvement on the current system. It is unlikely to be possible to make a judgement until the new system has been in operation for some time.

