AN OVERVIEW OF THE NEW POWERS AND PENALTIES REGIME
By Paula Clemett
Much has been written about the new powers regime and that is quite apart from the volume of the law itself. As ever, the problem in tax, is trying to keep on top of the changes while at the same time carrying on with business as usual.

The Finance Acts 2007, 2008 and 2009 all contained legislation implementing new HMRC powers, including the new penalties, time limits and record keeping requirements, not to mention new compliance checks. Most of this has since been implemented by secondary legislation and takes affect from various dates, some starting in 2008, some just now in 2010. To help members keep track of what happened when, we published a timetable for the changes to HMRC powers in the June edition of Taxline.

We have now reached a point where most of the legislation is in place and so it seemed the right time for some more detailed guidance. This Taxline Tax Practice has been written to give readers an overview of the rules and to provide signposts to the legislation and where relevant, the HMRC manuals.

We hope to follow this in due course with more detailed publications on specific areas.
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1. INTRODUCTION

In 2005 HM Revenue & Customs (HMRC) started a wide ranging review of its powers. The overview of the programme was set out in HMRC and the Taxpayer: Modernising Powers, Deterrents and Safeguards which was published in March 2005. This document and the subsequent consultation documents issued can be found at www.hmrc.gov.uk/about/review-powers-con-docs.htm. The Tax Faculty has responded at each stage of the consultation process and our responses can be found at icaew.com/taxfac

The aim of the review is to align the powers, deterrents and safeguards across the duties and taxes administered by HMRC. The underlying theme is ‘to support those who try to get their tax right, but to come down hard on those who seek an unfair advantage through failing to calculate, return or pay the right amount of tax’.

The legislation that has so far emanated from this review has been enacted over the last three years in the 2007, 2008 and 2009 Finance Acts (FA). Further legislation has been proposed in the Budget of 22 June 2010 and the work is ongoing.

What this TAXline Tax Practice covers

This TAXline Tax Practice provides an overview of the changes as they affect the new compliance checks, penalties, interest and payment and debt – what they are and when they apply. The new regimes come into force at different times for different taxes, which can make it very confusing for the unwary practitioner.

This supplement is intended to serve as a reference for tax practitioners and a signpost to the legislation and to HMRC guidance. It is an overview and space constraints make it impossible to include every detailed provision of the new regime. In some areas the detail of the legislation is such that we have only been able to provide reference to the relevant sections.

During the coming year we will be producing more detailed TAXline Tax Practices on aspects of these new powers.

What this TAXline Tax Practice does not cover

There are some changes which are not covered. These relate to the review of criminal investigation powers, the ‘naming and shaming rules’ in FA 2009, working with agents and tackling offshore evasion.

HMRC guidance

This includes both technical guidance and operational guidance. The technical guidance indicates how HMRC interprets the law and the operational guidance directs officers of HMRC in its application. There is a specific section in the Handbook on the Human Rights Act 1998 (HRA 1998) as it applies to penalties at CH300000. The manual is still being written and does not yet cover all compliance matters. The references to the Compliance Handbook (CH) are correct as at 30 June 2010.

The Compliance Handbook is lengthy, the technical guidance on information and inspection powers, for example, is over 170 pages and the operational guidance not much shorter. While there is considerable overlap between the two types of guidance, it is advisable to read both parts. Unfortunately for those who are reading the Compliance Handbook on the internet HMRC is currently unable to provide guidance maps so the whole structure of the guidance can be seen. This is a point that the Tax Faculty will be taking up with HMRC, but for the present, navigation around the site can be confusing and it is easy to miss whole sections.

2. INFORMATION AND INSPECTION POWERS

Introduction

Section 113 and Sch 36, FA 2008 introduces the new inspection and information powers which form part of the new compliance framework. The aim of the provisions is to introduce a common compliance checking structure across taxes. Note that, while a number of information and inspection powers are being replaced by the new powers in Sch 36, s 9A Taxes Management Act 1970 (TMA 1970) is retained. A list of the powers replaced can be found at CH21060. From 1 April 2009, you must use the information and inspection powers in Schedule 36 instead of the old powers, even if the compliance check started before that date.

The new provisions align the information and inspection powers needed to carry out compliance checks across the taxes and give HMRC the powers to:

- inspect other premises used in the supply of taxable goods;
- inspect business premises of ‘involved third parties’ (Sch 48, FA 2009);
- enter and inspect any premises for valuation purposes (Sch 48, FA 2009);
- impose a penalty for providing inaccurate information and documents (Sch 47, FA 2009); and
- impose a standard penalty, daily default penalties and a tax-geared penalty for failure to comply with an information notice or obstructing an officer in an inspection.

All references are to Sch 36, FA 2008 unless otherwise indicated.

The legislation stipulates the information or documents HMRC asks for, or the inspection it carries out, must be ‘reasonably required’ for the purpose of checking a person’s tax position. These powers can be used before a return is made and without opening a formal enquiry. The types of compliance check together with guidance on when a pre-return check might be appropriate can be found at CH205000 et seq.

The HMRC manual at CH205320 explains the circumstances in which an inspector might need to do a pre-return compliance check. For example:

- To assist with clearances, pre and post transaction ruling requests.
- Where a person regularly discloses an error (makes a voluntary disclosure) after submitting a VAT return.
- Checking the hidden economy where waiting for the submission of an SA return may mean unacceptable delay.
- Following up a previous check where poor record-keeping has previously been identified, perhaps where an inaccuracy penalty has been suspended.
- To check the computer systems operated by the person to ensure that the way in which information is kept will lead to accurate returns being made.
- To find out about tax planning and avoidance schemes.
- Where fraud is suspected.
HMRC must identify a risk before carrying out a pre-return check, unless the person has requested one. HMRC also advises its staff to balance inconvenience caused to the taxpayer against potential future loss of revenue and advantages gained in terms of education and improvements in record-keeping.

What is ‘reasonably required’ by HMRC can be a matter of contention. HMRC guidance is that information or an inspection can only be reasonably required where it could affect a person’s tax position. Although as it points out it may only be possible to know this after the information is obtained or the inspection carried out (CH21620).

There are restrictions on the powers, which we cover later in this guide, see Part 4 of Sch 36 and there is protection under HRA 1998. A right of appeal is available against information notices and against any penalties assessed.

The Compliance Handbook has technical guidance at CH20000 and operational guidance at CH200000. In addition the HMRC website has a dedicated page on the new compliance checks which directs you to the factsheets and the online learning products see [www.hmrc.gov.uk/about/new-compliance-checks.htm](http://www.hmrc.gov.uk/about/new-compliance-checks.htm)

Implementation

The taxes affected by these changes from 1 April 2009 are:

- income tax, including PAYE, NIC and the construction industry scheme (CIS);
- capital gains tax;
- corporation tax; and
- VAT.

Section 96, FA 2009 extended the powers from 1 April 2010 to:

- insurance premium tax;
- inheritance tax;
- stamp duty land tax and stamp duty reserve tax;
- petroleum revenue tax (PRT);
- aggregates levy, climate change levy and landfill tax; and
- relevant foreign tax.

These powers were extended to include excise duties in the Budget of 22 June 2010.

The new Sch 36 powers apply even if the compliance check started before the dates noted above. There are transitional provisions where notices were issued before the Sch 36 powers apply but which the person fails to comply with after that date. Guidance can be found at CH21080 and CH201400.

Powers to obtain information and documents

Part 1 of Sch 36 (as amended by Sch 48, FA 2009) sets out the powers. HMRC has indicated that in most circumstances it will only use these powers when a person does not co-operate with its informal requests for information or documents (CH21150).

If HMRC does decide to use the powers it will issue an ‘information notice’ to the taxpayer requiring them to provide information or produce a document that is reasonably required to check the taxpayer’s tax position (para 1). The definition of information includes both explanations and the creation of documents that do not already exist and copies are generally accepted unless the notice specifies otherwise.

A similar power exists to issue a notice to obtain information or documents from a third party (para 2) even where the identity of the taxpayer is unknown (para 5) and from an involved third party (para 34A). An ‘involved third party’ is defined in para 61A (inserted by FA 2009) and the table in that paragraph sets out the ‘relevant information and relevant documents’ that can be requested or inspected in that regard.

Restrictions on the types of document and information that HMRC can request in respect of all notices other than one to an ‘involved third party’, are dealt with below.

The notice will specify a reasonable period within which the person must provide the information or produce the documents (para 7). HMRC indicates that this will generally be 30 days, although they will consider a longer period on request (CH23420).

Part 5 of Sch 36 sets out the taxpayer or third party’s right to appeal against the notice or any requirement in it and the procedure which must be followed. There is, however, no right of appeal against the requirement to produce ‘statutory records’ as defined by para 62.

The technical guidance on ‘information notices’ is at CH23000 and the operational guidance at CH222000.
Inspection powers

Part 2 of Sch 36 (as amended by Sch 48, FA 2009) specifies four different powers of inspection.

The first is where the inspection is reasonably required to check that person’s tax position. It enables the officer to enter the ‘business premises’ of that person and inspect them and any ‘business assets’ and ‘business documents’ on the premises (para 10). Business premises, assets and documents are defined in para 10. There is no power to enter or inspect any part of the premises that is used solely as a dwelling. The terms ‘enter’ and ‘inspect’ are not defined in the legislation and guidance is given on these terms at CH25120 and CH25140. In essence ‘enter’ means ‘to go into a place’, so a forced or clandestine entry is prohibited. ‘Inspect’ means to examine but not to search for things. Inspect is by eye, search is by hand.

A similar power exists to inspect the business premises of ‘involved third parties’ (para 10A), as defined in para 61A.

‘There is no power to enter or inspect any part of the premises that is used solely as a dwelling.’

The third power of inspection allows visits to other business premises where HMRC has reason to believe they are used in connection with the supply of goods (para 11). Again any part of the premises that is used solely as a dwelling is excluded.

The last power allows entry and inspection of premises, and property on those premises, for the purposes of valuation provided it is reasonably required for checking any person’s position as regards the taxes specified in para 12A (inserted by FA 2009). An officer may be accompanied by any other person required to assist with the valuation. Note that premises in this case do include dwellings.

The procedural rules relating to inspections are set out in paras 12 and 12B. Inspections are generally agreed in advance with a seven-day notice period, although there is provision for unannounced visits. There is no right of appeal.

Technical guidance can be found at CH25000 and operational guidance at CH250000.

Restrictions on powers

Part 4 of Sch 36 contains a number of restrictions on the types of document and information that HMRC can require or inspect. The overriding restriction is that it can only request a document if it is in a person’s possession or power (para 18) other restrictions apply to:

- old documents – generally any document created more than six years ago does not need to be produced although this can be set aside (para 20);
- material relating to a tax appeal (para 19(1) (a));
- personal records (para 19(2) and (3));
- journalistic material (para 19(1)(b));
- legal professional privilege (para 23);
- auditors’ papers (para 24), although see the exceptions at para 26; and
- tax advisers’ papers (para 25), see the exception at para 26.

Technical guidance on these restrictions can be found at CH22000.

HMRC must also ensure that any action it takes does not infringe a person’s rights under HRA 1998. Guidance on how HMRC interprets the act in relation to information and inspection powers can be found at CH21300.

Penalties

Part 7 of Sch 36 sets out the circumstances in which a penalty may be chargeable. These are where:

- there is a failure by a person to comply with an information notice; or
- an inspection that has been approved by the First-tier Tribunal is deliberately obstructed; or
- a person deliberately conceals or destroys documents which are required, or may be required, by an information notice; or
- inaccurate information or an inaccurate document is carelessly or deliberately provided in response to an information notice.

In respect of the first three of these (failure, obstruction and concealment/destruction) there are three types of penalty:
• a standard penalty of £300 (para 39); and
• daily penalties of up to £60 where the default continues after the imposition of the standard penalty (para 40); and
• a tax-related penalty where the tax at risk is deemed substantial. The amount of this penalty is decided by the Upper Tribunal and is in addition to the standard and daily penalties (para 50).

There is a more serious penalty that can be applied where a person conceals or destroys a document and criminal proceedings may be initiated. The punishment is a fine or imprisonment depending on the nature of the conviction (paras 53 to 55).

Where information or a document is provided in which there is a deliberate or careless inaccuracy, a penalty of up to £3,000 can also be imposed (para 40A).

A penalty will not arise where the person satisfies HMRC that there is a reasonable excuse and, if applicable, that the failure, etc is remedied without delay (para 45). There are the normal caveats regarding insufficiency of funds and reliance on a third person. See CH26300 for technical guidance.

The assessing procedures are set out in para 46 and penalties are generally payable within 30 days of the assessment.

Technical guidance on the penalties is at CH26000 and operational at CH270000 and CH271000.

**Appeals**

An appeal is available against either the imposition of or the amount of the penalty assessed (para 47).

### 3. RECORD-KEEPING

**Introduction**

Section 115 and Sch 37, FA 2008 introduce new record-keeping provisions which aim to align the record-keeping requirements across different taxes. This is the second part of the new compliance checking framework. The new provisions give HMRC the power to:

• specify by regulation the records and supporting documents that either must, or need not be, kept;

• reduce the period for which records must be retained; and

• specify exceptions to the new general rule that information instead of records may be preserved.

The penalty regime for failing to maintain adequate records remains unchanged at the present time, although it will be reviewed at a later date as part of the ongoing review of powers.

**Implementation date**

The taxes affected by these changes from 1 April 2009 are:

• income tax;
• capital gains tax;
• corporation tax;
• direct taxes not included in a return; and
• VAT.

Section 98 and Sch 50, FA 2009 extended the record-keeping rules with effect from 1 April 2010 to:

• insurance premium tax;
• stamp duty land tax;
• aggregates levy;
• climate change levy; and
• landfill tax.

The **Compliance Handbook** has technical guidance at CH10000 and operational guidance at CH210000.

**What are the changes?**

At the date of writing very little has actually changed.

The **Compliance Handbook** within CH11000 summarises the current record-keeping requirements and as yet no new regulations have been made for income tax, capital gains tax or corporation tax (CH11200) nor for the environmental taxes (CH12500–12700). The VAT record-keeping requirements are laid down in regulations which are noted at CH12000 et seq.
HMRC has recently published a factsheet in its Tax Help series (TH FS1) entitled *Keeping records for business – what you need to know*, see <www.hmrc.gov.uk/factsheet/record-keeping.pdf>, which gives useful information on what records businesses should keep and for how long. It also details those records required to be kept by law and where further information can be found on its website.

Schedule 37, FA 2008 does not set new time limits for record retention; it just amends the existing legislation to allow HMRC to reduce them, although they have not specified any shorter periods so far (CH14000 and CH15000). The operational guidance at CH216000 instructs HMRC officers to treat any request for a reduced retention period sympathetically and to take into account the administrative burden on the business if the request were to be refused, together with the taxpayer’s compliance history. The rules on shorter retention periods do not apply to PAYE or CIS records.

As regards the preservation of records the new subsection, s 12B(4), TMA 1970 (inserted by para 2(5), Sch 36) allows for records to be preserved in any form and by any means or by preserving the information contained in them in any form or by any means, subject to any conditions or further exceptions specified by HMRC. This change is intended to reduce the administrative burden on taxpayers, enabling them to store records in the most suitable form for their business, for example, electronically.

Section 114, FA 2008 requires the taxpayer to provide HMRC with reasonable assistance for the purposes of examining computer records (CH 13000 et seq). HMRC has not yet specified any further conditions or exceptions.

4. TIME LIMITS FOR ASSESSMENTS, CLAIMS, ETC

Introduction
The third element of the HMRC review of compliance checks is to align the time limits for making tax assessments and claims.

Section 118 and Sch 39, FA 2008 introduce amending legislation in respect of the following taxes:

- income tax;
- capital gains tax;
- corporation tax; and
- VAT.

The ordinary time limit for assessments for these taxes is now four years as are taxpayer claims and elections.

Where there has been loss of tax through careless behaviour the new time limits for assessment are six years for income tax, capital gains tax and corporation tax. For VAT the time limits for assessment for careless behaviour are four years.
Where the loss of tax has been brought about deliberately the new time limits for assessment are 20 years.

Generally time limits are aligned to run from the end of the ‘relevant tax period’, which is discussed further in the following paragraphs, rather than the fixed filing date as now. There has been no change, however, to the self-assessment enquiry window nor to the two year rule for assessments under Value Added Tax Act 1994, s 73(6) – failure to make returns etc.

Section 99 and Sch 51, FA 2009 extended the FA 2008 rules to:

- insurance premium tax;
- inheritance tax;
- stamp duty land tax;
- PRT; and
- aggregates levy, climate change levy and landfill tax.

It is important to note that these are the general rules. There are still specific rules for certain assessments and claims and reference should always be made to the legislation for confirmation.

The Compliance Handbook contains technical guidance on assessing time limits at CH50000 et seq, it does not cover the time limits for claims. A comprehensive list of the time limits for assessments can be found at CH56000.

**Implementation**
The new time limits come into effect as follows:

- 1 April 2009 for VAT, subject to transitional provisions;
- 1 April 2010 for income tax, capital gains tax, corporation tax, insurance premium tax and the environmental taxes noted above, also subject to transitional provisions; and
- 1 April 2011 for inheritance tax, stamp duty land tax and PRT.

Details of the transitional provisions can be found at CH51500 et seq.

**Relevant tax period**
The relevant tax period for the purposes of the new provisions is:

- a year of assessment; or
- an accounting period for corporation tax, aggregates levy and climate change levy; or
- a prescribed accounting period; or
- the date of importation or acquisition of goods (VAT); or
- the date of an event giving rise to a VAT penalty; or
- the relevant event for insurance premium tax and landfill tax.

**Extended time limits**
The extended time limits apply whether the loss of tax was brought about carelessly or deliberately by the person to be assessed or by another person acting on his or her behalf. This would include an agent but may also include:

- an employee;
- an officer of the company;
- a fellow group company;
- a member of a VAT group; and
- a settlor or beneficiary.

Where the extended time limits for assessing apply it is likely that penalties for example for failure to notify or for errors in returns, will also be under consideration. The schedule thus borrows the definitions of ‘careless’ and ‘deliberate’ behaviour used in Sch 24, FA 2007 and CH53000. This is discussed in the next section.

**5. PENALTIES FOR ERRORS**

**Introduction**
Section 97 and Sch 24, FA 2007 introduced a new penalty regime for errors. Penalties will be assessed on taxpayers who make errors in certain documents sent to HMRC (broadly returns and associated documents) or who unreasonably fail to report errors in assessments made by HMRC. This was the first piece of legislation arising from the powers review and introduces a number of key concepts that are used in assessing penalties.
The new provisions introduce:

- a single penalty regime for submitting an incorrect document, which includes false or inflated claims to a loss or a repayment of tax, or failure to notify HMRC of an under-assessment;
- a tax-related penalty where the level of the penalty will depend on the underlying behaviour. The penalties range from nil to 100% and there are statutory maximum and minimum penalties for each behaviour;
- a reduction of the penalty for disclosure within a specified range;
- suspension, and possible cancellation, of the penalty to promote behavioural change; and
- a right of appeal against the imposition or the quantum of the penalty or if HMRC refuses to suspend a penalty or the conditions of suspension imposed.

Further legislation in FA 2008 (s 122 and Sch 40) introduced a penalty on a third-party who deliberately supplies false information to, or withholds information from, a person with the intention that a document supplied to HMRC should be incorrect (new para 1A, Sch 24, FA 2007).

The penalty regime does not extend to tax credits.

All references are to Sch 24, FA 2007 unless otherwise noted.

The Compliance Handbook has technical guidance at CH80000 and operational guidance at CH400000.

Implementation

Schedule 24 introduced the regime for the following taxes:

- income tax;
- corporation tax;
- value added tax; and
- PAYE, NICs and the CIS,

for return periods starting on or after 1 April 2008, for which returns are due to be filed on or after 1 April 2009. There will inevitably be some overlap in the penalty regimes as the old rules still apply to returns filed prior to 1 April 2009. Guidance can be found at CH81011.

Section 122 and Sch 40, FA 2008 extended the application of Sch 24, FA 2007 to the following taxes:

- insurance premium tax;
- inheritance tax;
- stamp duty land tax;
- stamp duty reserve tax;
- PRT;
- environmental taxes (aggregates levy, climate change levy, landfill levy);
- excise duties (alcohol, tobacco, oil, gambling and air passenger duties); and
- pension schemes,

for return periods starting on or after 1 April 2009 where the return for that period is due on or after 1 April 2010.

Liability for penalty

A penalty will arise when a person gives a specified document (see the table in para 1 as amended by FA 2008) to HMRC and the document contains an inaccuracy which is careless or deliberate and leads to any of the following:

- an understatement of that person’s liability to tax;
- a false or inflated statement of a loss by that person; or
- a false or inflated claim to repayment of tax (para 1).

There is also a penalty where HMRC issues an assessment which understates the liability to tax and the recipient fails to take reasonable steps to notify HMRC of the understatement within 30 days (para 2).

There are no penalties for mistakes made in good faith where the taxpayer took ‘reasonable care’.

The amount of penalty

The penalty rates increase according to the degree of culpability of the person. The rates of penalty are applied to the ‘potential lost revenue’.
These rates are as follows:

<table>
<thead>
<tr>
<th>Culpability</th>
<th>Penalty rate</th>
</tr>
</thead>
<tbody>
<tr>
<td>Careless</td>
<td>30%</td>
</tr>
<tr>
<td>Deliberate but not concealed</td>
<td>70%</td>
</tr>
<tr>
<td>Deliberate and concealed</td>
<td>100%</td>
</tr>
</tbody>
</table>

The penalty rate for failing to notify an under-assessment is 30% (para 4).

**Potential lost revenue**

The normal rule is that ‘potential lost revenue’ (PLR) is the additional amount due and payable in respect of tax and NIC as a result of correcting the inaccuracy or assessment as well as any amounts which were, or would have been repaid by HMRC in error (para 5). Note that group relief and repayments of tax under s 455, Corporation Tax Act 2010 are ignored when calculating PLR.

Where there are multiple errors arising from different behaviours affecting the same tax liability para 6 provides an order for calculating the PLR. The *Compliance Handbook* gives detailed examples at CH82150.

Where losses have been overstated and used the PLR can be calculated as normal. Where part of the loss has not been used the PLR is calculated as 10% of the unused part of the loss. If there is no realistic prospect of the loss being used the PLR is nil. In the case of groups the 10% calculation will apply after group relief has been taken into account (para 7). Detailed examples can be found at CH82300.

If tax has been delayed as a result of the inaccuracy the PLR is 5% of the tax for each year of delay, with a pro rata adjustment for part years (para 8). Detailed examples can be found at CH82380.

## Table A

<table>
<thead>
<tr>
<th>Type of behaviour</th>
<th>Maximum penalty (no discount)</th>
<th>Unprompted minimum penalty</th>
<th>Prompted minimum penalty</th>
</tr>
</thead>
<tbody>
<tr>
<td>Careless</td>
<td>30%</td>
<td>0%</td>
<td>15%</td>
</tr>
<tr>
<td>Deliberate</td>
<td>70%</td>
<td>20%</td>
<td>35%</td>
</tr>
<tr>
<td>Deliberate and concealed</td>
<td>100%</td>
<td>30%</td>
<td>50%</td>
</tr>
</tbody>
</table>

Reductions for disclosure

The maximum penalty can be reduced when the inaccuracy is disclosed to HMRC. Paragraph 9 defines a disclosure as:

- telling HMRC about it;
- giving HMRC reasonable help in quantifying the inaccuracy or under-assessment; and
- allowing HMRC access to records.

Although the legislation does not indicate the relative weight of each of the elements of disclosure the *Compliance Handbook* at CH82430 indicates that these should be:

- telling – 30% of the discount;
- helping – 40% of the discount; and
- allowing – 30% of the discount.

A greater reduction is available for an ‘unprompted’ disclosure and the quality of the disclosure is defined in terms of timing, nature and extent (para 9).

Paragraph 10 sets out the maximum reductions that can apply to each level of penalty for a prompted or unprompted disclosure, although the reductions can never reduce the penalty below the statutory minimum as shown in Table A below.

The final amount of the penalty will be the subject of negotiation with HMRC.

It is open to HMRC to reduce the penalty calculated because of special circumstances, but these do not include the inability to pay or the existence of an overpayment (para 11). The handbook indicates, however, that such circumstances are likely to be rare (CH82490).
Suspension of a penalty
HMRC is able to suspend all or part of a penalty for a careless inaccuracy for up to two years and specify conditions of suspension. If these conditions are complied with then HMRC can cancel the penalty, or part of it, at the end of the specified period (para 14).

Underlying this provision is the idea that the penalty system can be used to encourage future compliance and not just penalise past errors. For this reason suspension is unlikely to be granted for one-off inaccuracies.

See CH83100 for guidance on the suspension of a penalty.

Computing the penalty
The penalty is computed in three stages:

Stage 1 – establishes the maximum and minimum range as shown in Table A on page 12.

Stage 2 – assesses the discounts for disclosure, that is telling, helping and allowing.

Stage 3 – is the computation which combines stages 1 and 2.

<table>
<thead>
<tr>
<th>EXAMPLE</th>
</tr>
</thead>
</table>
| A deliberate inaccuracy on a return has been notified through a prompted disclosure. The maximum penalty is thus 70% and the minimum is 35%.

There was maximum cooperation and the full discounts were received for helping and allowing, 70% is agreed.

The discount is applied to the margin: (70 – 35) x 70% = 24.5%.

This is deducted from the maximum penalty: 70% – 24.5% = 45.5% which is the penalty rate which will apply to the PLR.

Further examples can be found at CH82500.

The assessing procedure is set out in para 13 and the Handbook gives guidance at CH83000.

Reasonable care
The penalty provisions do not apply to errors which have arisen despite the taxpayer taking reasonable care. There is no legal definition of what constitutes ‘reasonable care’ but HMRC has given technical guidance at CH81120 and examples at CH81130 and CH81131. These should be read in conjunction with CH81140 and CH81145 which give guidance and examples of what HMRC regards as careless inaccuracies, defined as failure to take reasonable care (para 3(1)).

The guidance does make it clear that any consideration of ‘reasonable care’ should take into account the particular person’s abilities and circumstances and the type of business or transaction.

Errors when an agent is acting
While the taxpayer generally remains responsible for any action taken, or not taken, on his behalf and so liable to a penalty, if they can show that they took all reasonable steps to avoid the inaccuracy, no penalty will be due (para 18).

Appeals against penalties
A taxpayer may appeal against a decision by HMRC to impose a penalty or the amount of the penalty. An appeal is also permitted against a decision by HMRC not to suspend a penalty or against the conditions of suspension that have been set by HMRC (para 15). An appeal would be to the First-tier Tribunal, although as a first step an internal HMRC review would be offered.

6. PENALTIES: FAILURE TO NOTIFY AND CERTAIN VAT AND EXCISE WRONGDOING

Introduction
Section 123 and Sch 41, FA 2008 introduced a new penalty regime for failure to notify chargeability to tax or for failing to register across all the taxes, levies and duties administered by HMRC, including late VAT registration, and for certain VAT and excise wrongdoing (see below). Paragraph 1 specifies the obligations to which the new regime will apply.

The penalty provisions are based on the same principles as those for penalising errors contained in Sch 24, FA 2007 although there are no provisions to enable penalties to be suspended.

The provisions introduce:

- a single penalty regime for failing to notify chargeability or register where there has been a loss of tax and certain VAT and excise wrongdoing;
• tax-related penalties where the level of the penalty will depend on the underlying behaviour. The penalties range from nil to 100% and there are statutory maximum and minimum penalties for each behaviour;

• reduction of the penalty for disclosure within a specified range; and

• a right of appeal against the imposition or the quantum of the penalty.

Schedule 41 introduces the regime for the following taxes:

• income tax, including Class 2 and Class 4 NICs;

• capital gains tax;

• corporation tax;

• VAT;

• insurance premium tax;

• environmental taxes (aggregates levy, climate change levy, landfill levy); and

• excise duties (alcohol, tobacco, oil, gambling and air passenger duties).

The VAT and excise wrongdoings noted above, which are also subject to penalties under Sch 41, are where:

• an unauthorised person issues a VAT invoice (para 2); or

• a product is put to use that attracts a higher rate of excise duty than has been paid (para 3); or

• a person handles goods that are subject to unpaid excise duty (para 4).

All references are to Sch 41, FA 2008 unless otherwise noted.

The Compliance Handbook has technical guidance in respect of failure to notify at CH70000 and for VAT and excise wrongdoing at CH90000. Operational guidance can be found at CH500000.

Implementation

The provisions come into effect from 1 April 2010.

The amount of the penalty

The penalty rates increase according to the degree of culpability of the person (para 6).

These rates are as follows:

<table>
<thead>
<tr>
<th>Culpability</th>
<th>Penalty rate</th>
</tr>
</thead>
<tbody>
<tr>
<td>Non-deliberate</td>
<td>30%</td>
</tr>
<tr>
<td>Deliberate but not concealed</td>
<td>70%</td>
</tr>
<tr>
<td>Deliberate and concealed</td>
<td>100%</td>
</tr>
</tbody>
</table>

The only exception is in connection with excise duties where a person supplies a product knowing that it will be misused. In this case the penalty is 100% (para 6(2)).

The penalty rate is applied to the ‘potential lost revenue’.

Potential lost revenue

In general terms the potential lost revenue (PLR) for failure to notify is the amount of any tax or duty that is unpaid or the tax the person is liable for as a result of the failure. Specific rules (para 7) apply as follows:

• for income tax and capital gains tax it is the amount of tax unpaid on 31 January following the tax year;

• for corporation tax it is the amount of tax unpaid 12 months after the end of the accounting period;

• for VAT where there is a failure to register, it is the amount of VAT from the date they should have been registered to the date when they advised HMRC of the need, or when HMRC became aware of the failure;

• for VAT on the acquisition of goods from another member state it is the amount of VAT on the acquisition to which the failure relates; and

• for all other duties and taxes the PLR is the amount of duties or tax unpaid.

See CH72660 for detailed guidance on calculating the PLR.

As regards VAT or excise wrongdoing the PLR is:

• the amount shown or included as VAT on the invoice issued (para 8); or

• the amount of excise duty due (paras 9 and 10).
### Table B

<table>
<thead>
<tr>
<th>Type of behaviour</th>
<th>Maximum penalty (no discount)</th>
<th>Unprompted minimum penalty</th>
<th>Prompted minimum penalty</th>
</tr>
</thead>
<tbody>
<tr>
<td>Deliberate</td>
<td>70%</td>
<td>20%</td>
<td>35%</td>
</tr>
<tr>
<td>Deliberate and concealed</td>
<td>100%</td>
<td>30%</td>
<td>50%</td>
</tr>
</tbody>
</table>

**Reductions for disclosure**

The maximum penalty can be reduced when the relevant act or failure is disclosed to HMRC. As for penalties for errors, disclosure is defined as:

- telling HMRC about it;
- giving HMRC reasonable help in quantifying the tax unpaid; and
- allowing HMRC access to records.

The relevant discounts are again indicated as being 30%, 40% and 30% respectively for each element of disclosure (CH73220 and CH94850 for VAT and excise wrongdoing).

A greater reduction is available for an ‘unprompted’ disclosure and the quality of the disclosure is defined in terms of ‘timing, nature and extent’ (para 12).

Paragraph 13 sets out the maximum reductions that can apply to each level of penalty for a prompted or unprompted disclosure, although the reductions can never reduce the penalty below the statutory minimum shown below. For a deliberate act or failure the penalty rates are highlighted in Table B above.

For any other type of failure to notify, that is one that was not deliberate, the penalty rates depend on whether HMRC become aware of the failure more or less than 12 months after the time when the tax first becomes unpaid. The penalty rates for non-deliberate failure are highlighted in Table C below.

The final amount of the penalty will be the subject of negotiation with HMRC.

**Computing the penalty**

The penalty is computed in the same way as for errors in returns discussed earlier.

The *Compliance Handbook* contains detailed examples at CH73500 and CH95500.

The assessing procedures are set out in para 16 and guidance is at CH74000.

**Reasonable excuse**

The penalty provisions do not apply to a non-deliberate act or failure if the taxpayer can satisfy HMRC that there was a ‘reasonable excuse’ for the act or failure and they put it right without unreasonable delay. Lack of money or reliance on another person are not normally accepted as reasonable (para 20).

### Table C

<table>
<thead>
<tr>
<th>Type of behaviour</th>
<th>Maximum penalty (no discount)</th>
<th>Unprompted minimum penalty</th>
<th>Prompted minimum penalty</th>
</tr>
</thead>
<tbody>
<tr>
<td>Non-deliberate – failure to notify</td>
<td>30%</td>
<td>More than 12 months</td>
<td>More than 12 months</td>
</tr>
<tr>
<td></td>
<td></td>
<td>10%</td>
<td>20%</td>
</tr>
<tr>
<td></td>
<td></td>
<td>Less than 12 months</td>
<td>Less than 12 months</td>
</tr>
<tr>
<td></td>
<td></td>
<td>Nil</td>
<td>10%</td>
</tr>
<tr>
<td>Non-deliberate – other VAT and excise wrongdoing</td>
<td>30%</td>
<td>10%</td>
<td>20%</td>
</tr>
</tbody>
</table>
There is no definition of reasonable excuse and what is reasonable will differ from person to person depending on their particular circumstances and abilities. HMRC gives technical guidance at CH71500 and CH92000 on what is and what is not a reasonable excuse, in its opinion.

**Penalties where an agent is acting**
A taxpayer generally remains liable for any failure by his agent. If, however, they can show that they took all reasonable steps to avoid the failure no penalty will be due (para 21).

**Appeals against penalties**
A taxpayer may appeal against a decision by HMRC to impose a penalty or the amount of the penalty. Any appeal would be to the First-tier Tribunal although as a first step an internal HMRC review would be offered (para 17).

7. **PENALTY FOR FAILURE TO MAKE RETURNS ETC**

**Introduction**
Section 106 and Sch 55, FA 2009 introduced a new penalty regime for the failure to make returns. The new regime will align penalties across a range of taxes for late or non filing of returns or the failure to deliver specified documents. The consultation document ‘Modernising Powers, Deterrents and Safeguards: meeting the obligations to file returns and pay tax on time’ set out the rationale for the proposals and highlighted the fact that the differing penalties across the various taxes meant that there was no equality of treatment even though the misdemeanour was the same.

The new provisions introduce:

- a single penalty regime for late (or non) filing;
- increasing penalties depending on the lateness of the return, ranging from a fixed penalty of £100 to a tax-geared penalty of 100% of the tax liability which would have been shown in the return;
- reducing the penalty for disclosure within a specified range; and
- a right of appeal against the imposition or the quantum of the penalty.

Although late (or non) filing of returns and failure to make payments on time are often interlinked in practice there are separate sanctions for failure to make payments on time, see the following section on Sch 56, FA 2009.

Schedule 55 introduces the new regime for the late filing of the following returns:

- income tax and corporation tax;
- PAYE, NICs and the CIS;
- stamp duty land tax;
- stamp duty reserve tax;
• inheritance tax;
• pension schemes; and
• PRT.

While broadly aligned across the taxes the rules are modified for CIS.

A consultation on proposed legislation for the second part of the reform which will extend the provisions to other taxes and duties, including VAT, was launched in July 2010. The legislation is likely to be included in autumn 2010 Finance Bill.

This schedule borrows many of the concepts introduced by Sch 24, FA 2007 in connection with penalties for errors in returns, particularly in the reductions for disclosure and consideration of taxpayer behaviour but there is no provision to enable a penalty to be suspended.

All references are to Sch 55, Finance Act 2009 unless otherwise stated.

‘There is no definition of reasonable excuse and what is reasonable will differ from person to person.’

Implementation
Implementation will be staged over the next few years with the provisions being brought in by Treasury Order. None of the provisions has been enacted to date although it is anticipated that those relating to CIS will be brought in from October 2011.

The Compliance Handbook does not yet include either technical or operational guidance on the changes.

Imposition of a penalty
A penalty will arise when any person fails to make a return or to deliver any other document specified in the table contained in para 1, Sch 55 on or before the filing date. This table lists forms and returns familiar to agents, such as the self-assessment tax return.

The amount of penalty
For all obligations, other than those under CIS, the penalties are as follows:

1. Failure to submit a return by the due date incurs a fixed penalty of £100 (para 3).
2. Where the failure continues after a period of three months beginning with the penalty date, which will normally be three months after the date of issue of the fixed penalty notice, a penalty of £10 is charged for each day that the failure continues (para 4).
3. If the failure continues after six months the penalty is the greater of 5% of the tax liability which would have been shown in the return in question or £300 (para 5). The tax liability for this calculation is the amount which would have been shown to be due and payable if a complete and accurate return had been made (para 24(1)). If penalties are assessed before the return is filed HMRC may determine the amount to the best of their information and belief until such time as a return is made (para 24(2)).
4. If after 12 months the failure continues there is a further penalty of the greater of 5% of the tax liability (as defined above) and £300. Where, however, the person by failing to make a return deliberately withholds information that would enable HMRC to assess his liability, higher penalties will apply:
   a. where the action is deliberate but not concealed the maximum penalty is the greater of £300 and 70% of the tax;
   b. where the action is deliberate and concealed the maximum penalty is the greater of £300 and 100% of the tax (para 6).

The rules relating to CIS returns are slightly different and the penalties are as follows:

1. Failure to submit a return by the due date incurs a fixed penalty of £100 (para 8).
2. Where the failure continues for a further two months after the imposition of the fixed penalty a further fixed penalty of £200 is due (para 9).
3. If the failure continues after six months the penalty is the greater of £300 and 5% of the tax liability, as defined in para 24, (para 10).
4. If the failure continues after 12 months there is a further penalty of the greater of 5% of the tax liability and £300. As with the other returns where it is deemed that the information enabling HMRC to assess the liability has been deliberately withheld higher penalties will apply:
   a. where the action is deliberate but not concealed the maximum penalty is the greater of £1,500 and 70% of the tax;
b. where the action is deliberate and concealed the maximum penalty is the greater of £3,000 and 100% of the tax (para 11).

Note that where the return relates only to persons registered for gross payment under Ch 3, Pt 3, FA 2003 only the fixed element of the penalty for deliberately withholding information applies, ie £1,500 or £3,000 (para 12).

One further refinement as regards late filing of a CIS return is that where returns are the first to be made under the CIS regime the total penalty for all defaults is a maximum of £3,000 and the tax-geared penalties cannot apply (para 13).

**Reductions for disclosure**

The maximum penalty can be reduced when a person discloses relevant information which has been withheld by a failure to make a return. A disclosure is defined as:

- telling HMRC about it;
- giving HMRC reasonable help in quantifying any tax unpaid; and
- allowing HMRC access to records.

Although the legislation does not indicate the relative weight of each of the elements of disclosure where similar penalties are already in force, the *Compliance Handbook* has indicated that the discounts should be:

- telling – 30% of the discount;
- helping – 40% of the discount;
- allowing – 30% of the discount.

The amount of the reduction is based on the quality of the disclosure in terms of timing, nature and extent and a greater reduction is due for an ‘unprompted’ disclosure (para 14).

Paragraph 15 sets out the maximum reductions that can apply to each level of penalty for a prompted or unprompted disclosure, although the reductions can never reduce the penalty below the statutory minimum as shown in Table D below.

The final amount of penalty in each individual case will thus be the subject of negotiation with HMRC.

Note that HMRC can reduce the penalty calculated because of special circumstances, but these do not include the inability to pay or the existence of an overpayment (para 16).

The assessing procedures are set out in para 18.

**Appeals**

A taxpayer may appeal against a decision by HMRC to impose a penalty or the amount of the penalty (para 20). Any appeal would be to the First Tier Tribunal, although as a first step an HMRC internal review would be offered.

A penalty will not arise if either HMRC or (on appeal) the Tribunals are satisfied that there is a ‘reasonable excuse’ for the failure and the failure is remedied without unreasonable delay after the excuse has ceased. It should be noted that neither insufficiency of funds nor a reliance on another person will constitute a reasonable excuse unless attributable to events outside the person’s control (para 23).

### 8. PENALTY FOR FAILURE TO MAKE PAYMENTS ON TIME

**Introduction**

Section 107 and Sch 56, FA 2009 create a new penalty regime for failure to make payments on time. The provisions introduce:

- a single penalty regime for late or non-payment of taxes;

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<td>Deliberate and concealed</td>
<td>100%</td>
<td>30%</td>
<td>50%</td>
</tr>
</tbody>
</table>
• a system of ascending penalties depending on the increasing lateness of the return;
• the opportunity for late payment penalties to be suspended where the taxpayer agrees a 'time to pay' arrangement with HMRC; and
• a right of appeal against the imposition or the quantum of the penalty.

The new regime applies for late payment of the following taxes:
• income tax and corporation tax;
• PAYE, NICs and the CIS;
• stamp duty land tax;
• stamp duty reserve tax;
• inheritance tax;
• pension schemes; and
• PRT.

The new rules are modified for taxes and deductions collected through the PAYE system and under the CIS regulations. The amount of the penalty in these cases is related to the number of defaults in a tax year. Penalties are to be applied for the first time to all employers who are late making monthly PAYE and NICs payments and companies paying corporation tax late.

As with penalties for late filing, the extension of the penalty provisions to other taxes and duties are included in the current consultation on proposed legislation launched in July 2010. The legislation is likely to be included in autumn 2010 Finance Bill.

All references are to Sch 56, FA 2009 unless otherwise stated.

Implementation
The provisions relating to PAYE, NICs and the CIS were brought in with effect from 6 April 2010.

The remaining provisions will be brought in over the next few years by Treasury Order.

The Compliance Handbook contains technical guidance at CH150000 for the application of the legislation to PAYE, NICs and CIS. As yet there is no operational guidance.

Imposition of a penalty
A penalty will be payable when there is a failure to make a payment of an amount of tax specified in para 1, Sch 56 on or before the date specified (see Table 2, Sch 56) and more than one penalty can be charged.

The amount of the penalty
In respect of payments for taxes other than corporation tax and payments under the PAYE and CIS regulations the penalty structure is as follows (para 3):

1. Where tax is not paid in full by the ‘penalty date’ as shown in the Table in Appendix 2 a penalty of 5% is charged on the unpaid amount. The ‘penalty date’ is normally 30 days after the due date for payment other than for inheritance tax where the penalty date is the filing date.
2. Any tax still unpaid five months after the penalty date attracts a further 5% penalty.
3. If tax remains unpaid 11 months after the penalty date there is a further 5% penalty.

For corporation tax, including quarterly payments, where the penalty date is the first day after the filing date, the penalty structure is (para 4):

1. Where tax is not paid in full by the penalty date a penalty of 5% of the unpaid tax arises.
2. Any tax still unpaid three months after the penalty date attracts a further penalty of 5%.
3. If tax remains unpaid after nine months after the penalty date there is a further 5% penalty.

As regards payments of tax under the PAYE and CIS regulations the amount of the penalty will depend on the number of ‘defaults’ in relation to the same tax during the tax year and is payable even if the fault is remedied by the end of the year. A default is defined as the failure to pay an amount of tax in full by the due date; however, the first failure to pay does not count as a default and so does not attract a default penalty. The penalties in respect of subsequent defaults are as follows (paras 5–8):

1. For 1, 2 or 3 defaults in a tax year the penalty is 1% of the total of those defaults.
2. For 4, 5 or 6 defaults in a tax year the penalty is 2% of the total of those defaults.
3. For 7, 8 or 9 defaults in a tax year the penalty is 3% of the total of those defaults.
4. 10 or more defaults in a tax year incur a penalty of 4% of the total of those defaults.
5. A further penalty of 5% is charged where the tax remains unpaid six months after the penalty date.
6. A further 5% is charged where there remains tax unpaid 12 months after the penalty date.

CH152550 and CH153250 give an example of how the default penalty works for PAYE and CIS respectively and CH152700 and CH153400 have detailed worked examples of the default penalty and the further penalties for PAYE and CIS respectively.

HMRC may use its discretion to reduce any of these penalties because of special circumstances, however the inability to pay or the existence of an overpayment do not constitute special circumstances (para 9).

The assessing procedures are in paras 11 and 12 and guidance is at CH157000.

Reasonable excuse
A person will not be liable to a penalty where they are able to satisfy HMRC that they have a reasonable excuse and they put right the failure without unreasonable delay after the excuse has ended (para 16).

Reasonable excuse is not defined in the legislation. In considering what might be a reasonable excuse the Compliance Handbook notes that what is reasonable differs from person to person depending on their particular circumstances and abilities (CH155550). The legislation does, however, indicate what circumstances HMRC would not usually regard as reasonable excuse, namely an insufficiency of funds or reliance on another person. HMRC gives examples of what it might consider a reasonable excuse at CH155650 and these include bereavement, serious illness and disruption to the postal service.

Deferred payment and suspension of penalty
A person who is unable to make a payment on time can apply to HMRC for that tax to be deferred. If HMRC agrees to the deferral then a new later payment date is set and during this ‘deferral period’ no penalties will be charged, unless the taxpayer breaks the agreement. There is also provision for the conditions of the deferral to be varied with the agreement of both parties (para 10).

CH156650 gives an example of how this provision might work in practice.

Appeals against penalties
A taxpayer may appeal against a decision of HMRC to impose a penalty or as to the amount of the penalty (para 13). Any appeal would be to the First-tier Tribunal, although as a first step an HMRC internal review would be offered (see CH157500 et seq).

9. LATE PAYMENT INTEREST AND REPAYMENT INTEREST

Finance Act 2009 introduced legislation to create a harmonised interest regime for all taxes administered by HMRC, with the exception of corporation tax and PRT. A consultation on proposed legislation to extend the rules to these taxes was launched in July 2010. The legislation is likely to be included in autumn 2010 Finance Bill, although the changes to the rules will require some changes to HMRC’s systems, so they will be phased in over a number of years by way of Treasury Orders.

The interest rules for quarterly instalments of corporation tax will remain excluded due to the particular nature of those payments. Interest will be charged from the date the tax was due to be paid to HMRC until the date it is paid. HMRC will pay interest on repayments from the date the tax was due to be paid or, if later, the date the payment was actually received, to the date the repayment is made.

The changes will affect taxpayers who:
- do not pay their tax liabilities on time;
- who overpay their tax; or
- who receive a refund from HMRC.

The legislation on late payment interest can be found at s 101 and Sch 53, FA 2009 and on repayment interest at s 102 and Sch 54, FA 2009.

The taxes affected are:
- income tax, including PAYE, Class 4 NICs and the CIS;
VAT;
- environmental taxes (aggregates levy, climate change levy and landfill tax);
- excise duties (alcohol, fuel, tobacco, oils) gambling and air passenger duty;
- stamp duties;
- inheritance tax;
- insurance premium tax; and
- pension schemes.

All references are to FA 2009 unless otherwise noted.

Implementation

The alignment of interest rates across the taxes came into force on 29 August 2009 under SI 2009/2032. Differential rates of interest will apply to interest charged and paid by HMRC.

The implementation of the harmonised regime for charging and paying interest requires changes to HMRC’s computer systems and will be phased in gradually over a number of years. As yet none of the new provisions has been implemented.

No guidance has yet been issued.

Late payment interest (LPI)

The general rule is that HMRC may charge simple interest from the date that the sum should have been paid to the date it was actually paid or satisfied by set-off. LPI will be paid without deduction of income tax and LPI is not payable on LPI (s 101).

Schedule 53 sets out the exceptions to the general rule in s 101 and details how interest will be charged in specific circumstances. Many of the provisions reproduce the effect of current legislation. The following is a guide to these exceptions.

Part 1 of the Schedule makes special provision as to the amount on which late payment interest is calculated where there are balancing payments and either a balancing payment or an overpayment. It deals with the situation where a person makes a claim to reduce payments on account which proves to be excessive and charges interest on the difference between what should have been paid and what was paid as a result of the claim.

Part 2 of the Schedule makes special provision as to the late payment interest start date when it is not the same as the due date for payment of the tax or of a transaction which falls to be taxed. It also legislates the concession ESC A17 as regards the death of a taxpayer.

Part 3 of the Schedule makes special provision as to the date to which late payment interest runs where there is deduction of income tax at source or where property is accepted in lieu of inheritance tax.

Part 4 of the Schedule defines how interest is to be treated where the taxpayer qualifies for reliefs.

Repayment interest

The general rule is that where an amount has been paid to HMRC the repayment interest will be paid from the later of:

- the date on which the amount was paid to HMRC; and
- the date on which the payment became due and payable (paras 2–4, Sch 54).

Where the repayment arises from a return being filed or a claim being made the repayment interest starts from the later of:

- the filing date for the return or the date the claim was required to be made; and
- the date the return was actually filed or the return made (para 5, Sch 54).

There is no repayment interest on repayment interest (s 102).

Part 2 of Sch 54 contains special provision as to the repayment interest start date where the general rule does not apply.

Where the repayment that arises is in respect of income tax the repayment is to be attributed to payments in the following order:

1. first to payments under s 59B, TMA 1970;
2. then to any payments under s 59A, TMA 1970 in equal amounts;
3. then to income tax deducted at source.
10. PAYMENTS, REPAYMENTS AND DEBT

Finance Acts 2008 and 2009 introduced a number of changes designed to help taxpayers to pay what they owe and to improve HMRC’s ability to recover tax unpaid.

In respect of payments the changes are:

- To enable HMRC to accept payment by credit card, with the fee being passed on to the taxpayer (s 136, FA 2008): this is now in force.
- To introduce voluntary managed payment plans (MPPs). These will eventually allow taxpayers to spread their income tax, capital gains tax and corporation tax equally over a period straddling the normal due dates without being charged interest or penalties (s 111, FA 2009). Large companies subject to the quarterly instalment scheme and those that have entered into a group payment arrangement will not be eligible for a plan. MPPs are not expected to be available before April 2011.

It was announced in the June 2010 Budget that although the legislation will remain in place, the Government has decided to defer implementation of managed payment plans.

We understand that the decision has been taken because of the cost of implementing the scheme. HMRC intends to revisit the managed payment plan idea when resources allow.

Sections 130–134, FA 2008 contain provisions whereby HMRC can set-off sums payable by a person against amounts owed by HMRC to that person. This includes any amounts paid or payable under a contract settlement. There are special provisions where an insolvency procedure has been applied to a person (ss 132–132) and where the right to be paid a sum has been transferred to another person (s 133).

New provisions have been introduced to allow taxpayers to reclaim overpayments of income tax, capital gains tax and corporation tax where there is no other statutory right and removes the requirement that the overpayment must be the result of a mistake in a return and that the tax was paid under an assessment (s 100 and Sch 52, FA 2009). The taxpayer determines the amount of the claim and claims must be made within four years of the end of the relevant tax year or the relevant accounting period. There are a number of circumstances where HMRC is not able to accept a claim. These are set out at para 2, Sch 1AB, TMA 1970 (inserted by FA 2009) as regards income tax and capital gains tax and para 51A, Sch 18, FA 1998 (inserted by FA 2009) for corporation tax. The new right also includes normal rights of appeal. The provisions cover claims made on or after April 1 2010.

Several changes have been made to enable HMRC to collect tax debt these are:

- The alignment of HMRC’s debt enforcement powers to collect unpaid sums by taking control of goods in England and Wales (s 127, FA 2008) or by taking action through the civil courts (s 137, FA 2008).
- The power to collect small debts through the PAYE system (s 110 and Sch 58, FA 2009). The maximum amount that can be recovered from an individual taxpayer without their consent is £2,000. The recovery of tax due under a contract settlement is expressly allowed. The recovery of child tax credit or working tax credit is, however, specifically excluded from these provisions. The changes needed to HMRC’s systems mean that this provision will probably not come into force until 1 April 2012.
- Allowing HMRC to issue notices to relevant third parties requiring them to provide contact details for those in debt to HMRC (s 97 and Sch 49, FA 2009). Relevant third parties include companies, local authorities and any person HMRC reasonably believes had a business relationship with the debtor. An appeal may be made by the third party to the tribunal on the grounds that it would be unduly onerous to comply with the notice. Failure to comply with a notice, however, incurs a penalty of £300 which itself may be appealed under para 48, Sch 36, FA 2008. This provision took effect from 21 July 2009.
PAULA CLEMETT

Paula Clemett, a chartered accountant, has spent a number of years with city firms advising on personal taxation matters. She specialised in HMRC investigations and residence and domicile. Paula has now left professional practice and is concentrating on writing.
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