

SO WHAT DID THE POWERS REVIEW EVER DO FOR US?

Francesca Lagerberg considers the fifth anniversary of the review of HMRC powers

In the classic Monty Python sketch a disgruntled Palestinian local is questioning what the Romans have ever done for him. A flood of answers follows leaving him to reply 'All right ... all right ... but apart from the sanitation, the medicine, education, wine, public order, irrigation, roads, the fresh-water system and public health, what have the Romans ever done for us?' Stepping back and reviewing the five years of the HMRC powers review it's hard not to imagine yourself in a script penned by Palin and Cleese. There are many significant cornerstone improvements – not unlike building better roads – but the occasional and extraordinary element has tended to overshadow the whole. The most recent example being the poorly targeted and badly drafted 'deliberate wrongdoing' by tax agent provisions.

The powers review was born out of necessity. The combination of the old Inland Revenue and Customs & Excise had highlighted almost immediately that simply ring-fencing all the existing powers and leaving them alone was not a long-term strategy for success. With the move to closer working across the department it was only a matter of time before it became operationally impossible to hold enquiry meetings or even write letters that covered all taxes without asking questions that were appropriate for say indirect tax but not allowed for direct tax purposes. The new-look HMRC was sitting on a time bomb and a disgruntled taxpayer might have taken it on in court arguing that it was discriminating by having different approaches depending on which tax was at issue.

There were also a number of laws that had sat languishing on the statute book and bore no relevance to modern-day life. One example was 'Writs of assistance' which were documentary authorisations to search unspecified premises for smuggled goods. These powers played a part in what was to become the American Revolution in the eighteenth century and yet still remained largely unaltered in the UK legislation in the twenty-first century.

Consultative approach

Clearly there was a need for an overhaul of what we had and the Review of HMRC's Powers, Deterrents and Safeguards began. One element of this was the setting up of a Consultative Committee, which consists of a number of tax professionals, lawyers and HMRC officials. I have sat on this from the outset in 2005. The full minutes of this Committee can be found on the HMRC website at www.hmrc.gov.uk/about/powers-meetings.htm.

The powers review turned into a significant project that included legislation in Finance Acts 2007, 2008 and 2009 and this will carry on into this year's Finance Bills and probably next year's as well.

It soon became apparent that there was an opportunity to undertake one of the biggest shake-ups of this area in a generation. The Tax Faculty called for an independent review to take place to help put the roadmap of the future in place. This idea was not followed and I still believe that the whole project would have benefited from that external oversight at the outset. Nevertheless, what we have had in terms of consultation has, in comparison to many other projects, been good. There have been numerous consultation papers and some genuine shifts as a result. For example, when the controversial Schedule 36 provisions to the Finance Bill 2008 were proposed there was an absence of clarity around business premises visits where the property had home and business use. This was addressed as a result of consultation. Another result was to replace 'HMRC thinks' – a recurrent phrase in the early draft legislation – with something rather more objective.

The various ideas have been put through many outlets to seek input. These include the formal public consultations but also working groups and meetings with tax representative bodies. The HMRC powers team has been very excellent at getting out around the country to explain measures and at times taking very testing questions and acting on them. The other big win has been that nearly all the HMRC training material on powers is available to all on its website. This is an invaluable information source.

Table 1 – A reminder of the penalty regime for all incorrect tax returns (bar tax credits) from April 2010

Reason for penalty	Maximum penalty	Possible minimum reduced penalty for unprompted disclosure	Possible minimum reduced penalty for prompted disclosure
Careless action	30%	0%	15%
Deliberate but not concealed	70%	20%	35%
Deliberate and concealed	100%	30%	50%

You also cannot fault the hard work and dedication of the powers team at HMRC whose members have remained relatively constant over the last few years. This has provided a stability of approach and an understanding of the issues.

But what did we get?

But what have we really got from this for our clients? I believe there have been some very good wins. Most notably:

- Consistency – Having all taxes broadly following the same rules does provide a consistency of approach. For example, from April 2010 any penalties for incorrect tax returns will work on the same behaviour-led approach (apart of course for the strange world of tax credits). As a reminder the penalties will follow the pattern set out in Table 1 above. The key driver here is whether someone has taken 'reasonable care'. The more care you have taken (and can evidence) the lower the penalty.

Interest payments will soon also be fully aligned and we now have consistency in time limits for claims and elections. The wide variations of approach that were previously found in the UK on all the above issues are slowly being removed.

- A genuine review – If nothing else, the review has made us all look very closely at and question all the existing powers of HMRC.
- Engagement – This may seem a strange win but one of the offshoots of the whole powers process has meant that a lot of change is happening in a short time and the tax authority and tax advisers are on the same learning curve. This has led to a large number of HMRC officials and tax advisers in the same room, studying the same changes, in meetings that have taken place all over the UK.

If we are to have a better understanding of the challenges we all face, this is not a bad place to start. Watch out for the many further HMRC/adviser events that are being set up for 2010: details will be on the HMRC website.

What we have not got

Of course not all has been ideal with this review. At times it has been hard to see exactly where it is heading and the announcements, re-announcements and changes can make it hard for people to keep track of what is happening and when.

Another significant point has been that despite all the consultation and good intentions, it often appears more led by the stick than the carrot. Who cannot sympathise with HMRC for trying to tackle the difficult cases it sees of poor tax advice, but the blunderbuss approach of the draft legislation of 'deliberate wrongdoing by tax adviser' in February of this year raises the hackles of those in the tax profession who want to improve the system.

Similarly, some of the earlier legislation introduced wide-ranging new powers but was less able to show matching safeguards.

More worryingly, the impression has been given of an ever-increasing number of powers and as we all take stock after five years of frenetic activity it would be very welcome if HMRC could clearly set out for all what it envisages its continuing approach will be, so we can see what the powers review has really done for us.

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