**HMRC Powers and Safeguards Evaluation**

**Forum Questionnaire**

***The Financial Secretary to the Treasury has committed HMRC to evaluating the implementation of powers introduced since 2012 against the powers and safeguards principles that underpinned the 2005-12 powers review.***

***Evaluating the implementation of HMRC’s post-2012 powers includes considering how HMRC ensures the correct tax is paid, and whether there is best practice the department can learn from. It is focused on HMRC’s operational approach – i.e. how do our processes, procedures and internal safeguards ensure we intervene appropriately with our customers.***

***The findings of this evaluation will be published in early 2020 and will draw on evidence – including (anonymised) case studies and quantitative data. Where possible, it should highlight where HMRC has, is or intends to take action to improve our service for our customers.***

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# **Guidance**

* This evaluation:
	+ **Considers HMRC’s implementation of its post-2012 powers** against the powers and safeguards principles that underpinned the 2005-12 powers review (provided in Annex A); and
	+ **Calls for evidence** of how HMRC has implemented the powers.
* As powers will be evaluated individually, it would be helpful if you could please complete a separate questionnaire for each power that you wish to provide evidence on, however, if you would prefer to provide case studies which cover multiple powers, please enter (at question 1) which powers are covered in your questionnaire.
* Please provide as much detail as possible about **how and where you have seen HMRC implement its post-2012 powers in practice, and whether this adheres with the principles or highlights scope for improvement**. Please provide:
	+ **As much detail as possible** to answer each question (text boxes can be extended);
	+ **References where possible** – including facts, figures or links to public statements/documents;
	+ **Anonymised case studies**, drawing on actual cases. Please do not include customer details or anything that would make a customer easily identifiable. **Sample case studies are provided in Annex B**); and
	+ **Actual evidence,** as opposed to hypothetical examples or opinions.

# **Questions: Feedback on HMRC’s implementation of a power**

1. *Please provide the name of the power (and the number on the list) that you are evaluating. If you are providing a case-study/ studies which cover multiple powers, please provide the name and numbers of each of the powers covered:*
2. *Please enter your evidence or case study/studies to describe where you have seen HMRC implement the power(s) noted in your answer to question 1, please:*
	* *Draw on the model case studies provided in Annex B;*
	* *Describe HMRC’s engagement with the customer and, where appropriate, the agent, highlighting specific points that demonstrate compliance (or non-compliance) with the principles, or scope for improvement. In particular:*
		+ *Did HMRC prepare customers and agents for introduction of the power, and ensure the preparation was appropriately:*
			1. *Comprehensive;*
			2. *Accurate;*
			3. *Proportionate;*
			4. *Kept up to date; and*
			5. *Received by hard to reach customers or agents?*
		+ *How did HMRC ensure the customer and the agent were aware of their rights and obligations prior to the implementation of the power (e.g. through guidance or public communications) – was this fit for purpose?*
		+ *How did HMRC ensure the customer was aware of their rights and obligations whilst the power was being exercised – was this useful; and*
		+ *Did you seek additional information from HMRC – was this useful;*
	* *Highlight if you provided HMRC with feedback on its approach and the outcome of that feedback; and*
	* *Note whether HMRC’s guidance was helpful in this case – if not, why not?*
3. *Please describe your recommendations for how HMRC should change the way that it implements this power to make it fairer/ more transparent for taxpayers (or powers, if you are providing a case study which covers multiple powers):*
4. *Do you have other feedback on HMRC’s implementation of this power, or know of external analysis or evidence that HMRC ought to consider (e.g. as a part of a literature review)? If so, please provide it here:*

# **Annex A: the 2005-12 powers and safeguard principles**

*These principles should be considered with the mandate of the evaluation in mind – i.e. focusing on the elements particularly relevant to the appropriate implementation of a power. These elements are underlined.*

Powers and the statutory obligations they impose need to be:

* set within a clear statutory framework,
* easily understood—by taxpayers, their agents and HMRC staff,
* straightforward to comply with,
* proportionate to what HMRC needs to discharge its responsibilities or to protect the Exchequer from the risk assessed,
* used consistently,
* effective in providing the information HMRC needs to assess risk, and
* effective in discovering and dealing with non-compliance and in helping people to return to compliance.

Safeguards for citizens and businesses must be:

* clear,
* publicised,
* accessible,
* effective,
* responsive to the nature and purpose of particular powers and sanctions, and
* conformant with human rights and other relevant non-tax legislation.

Sanctions for non-compliance must be:

* set in statute,
* clear and publicised,
* proportionate to the offence,
* used consistently, and
* effective in deterring non-compliance and returning the non-compliant to compliance.

# **Annex B: example case studies**

*These case studies are intended to illustrate how HMRC adapted its approach to reflect the customers’ behaviour. We are keen to see similar (ideally more detailed) case studies – drawing on real life examples – to illustrate how HMRC’s existing approach took into account a customer’s circumstances, reflected the behaviour and/or demonstrates scope for improvement.*

*Source: No Safe Havens 2019 (available* [*here*](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/802253/No_safe_havens_report_2019.pdf)*)*

**Case study: HMRC recognises those who choose to voluntarily correct their affair**

Mrs P and her late husband had been using a complex structure to deliberately hide money overseas for many years. However, Mrs P recognised it was only a matter of time before HMRC detected her evasion. Mrs P came forward to declare her evasion in 2016. HMRC recognised Mrs P had come forward entirely voluntarily to put it right, and accordingly reduced the penalty from potentially around 100% to 30% of the tax owed. Mrs P also paid substantial interest, as she had been evading tax for many years. In total, the tax, interest and penalty amounted to £1.2 million — nearly double the tax due had Mrs P paid the correct tax in the first place. HMRC always recognises voluntary disclosure and will reduce the penalty accordingly.

**Case study: HMRC responds robustly those that don’t co-operate**

Mr W owned a small business selling kitchens in the UK. He diverted some of his business’s income to his personal bank account in Spain in an attempt to hide it from HMRC and evade over £277,000 in UK tax. In line with HMRC’s criminal investigation policy, we initially opened a civil enquiry after our analysis indicated potential discrepancies. However, Mr W still chose not to come forward to declare and pay the tax he owed. Mr W was given the opportunity to disclose the irregularities and reduce potential penalties, as well as the risk of prosecution, on a number of occasions during HMRC’s investigation, but refused to cooperate. As a result, HMRC escalated the enquiry by launching a criminal investigation. Mr W was prosecuted for tax fraud. He now faces a 21 month prison sentence — suspended for two years — and if he fails to pay the tax and penalties he owes within three months of his conviction, he will go to prison for five years.