



Dealing with an HMRC enquiry

HMRC Enquiries

HMRC enquiries are never good news but the majority can be progressed without becoming un-necessarily time consuming and stressful if we have a good understanding of how HMRC works.

Is it an Aspect or Full enquiry?

An aspect enquiry focuses on one or two aspects of the return whilst a full enquiry involves checking the whole of the return and commonly the business accounts.

Most aspect enquiries are straightforward and settled within a few exchanges of correspondence. Full enquiries are rarely simple and often last 12 months or more, involving examination of records and substantial correspondence.

First steps

HMRC has access to a vast amount of information from financial institutions and other sources so you should always ensure the client understands the potential seriousness of the enquiry to avoid any nasty surprises. If a disclosure is necessary then it should be made without delay to secure the maximum reduction in any penalties.

Ensure you have a good understanding of HMRC's rights and powers. HMRC's Charter commits them to a collaborative approach, checking only what is reasonable and minimising the cost to the taxpayer.

Check the validity of the enquiry notice and that HMRC's enquiry is in time.

Provide only what is 'reasonably required' to check the return under enquiry. It is not unusual for HMRC to informally request information that refers to earlier years, such as the acquisition or funding of assets, or which is not reasonably required at that time such as private bank statements.

Provision of Information

It is important to prioritise enquiry cases but HMRC should allow reasonable extensions to time needed to respond where necessary.

Caseworkers are encouraged to formalise their requests under Schedule 36 FA 08 to negate undue delay and so it is advisable to liaise with the caseworker to avoid the use of formal Sch 36 Notices where possible, as that brings the risk of penalties if we fail to fully respond within the time allowed.

You can appeal requests for non-statutory records on the basis they are not reasonably required however there is no right of appeal against a request for statutory records. There is no legislative definition of statutory records but it includes all normal business records.

Working the enquiry

HMRC ask questions to which the answers often lead to further questions meaning enquiry cases can quickly expand into un-necessary areas. Remain objective to ensure the focus is on the stated risks and what is reasonably required to address them. Recognise where risks are genuine and work with HMRC to satisfy their concerns but resist any inappropriate extension of the enquiry.

HMRC will often suggest a meeting as caseworkers are trained in interview techniques. Meetings are not compulsory and the majority of enquiries can be progressed without one, thereby enabling the agent to retain control of the flow of information to HMRC and avoid any misunderstandings.

If a meeting is appropriate then request a detailed agenda, ensure HMRC do not stray from it and fully prepare the client for the questions HMRC are likely to ask. Understand the burden of proof lies with the taxpayer to prove the return is correct but with HMRC where they assert an alternative figure is more reasonable. The test is on 'balance of probability' and requires a balanced view of all the evidence.

HMRC caseworkers prefer documentary evidence however where that is lacking, or inconclusive, the client's testimony carries substantial weight providing it is credible. HMRC's Litigation and Settlement Strategy (LSS) applies to every enquiry and requires the caseworker to constantly review whether the risks justify further pursuit – is there sufficient evidence to support a decision or does the tax or principle at risk merit incurring further costs?

Be mindful of HMRC's ability to assess earlier years through discovery or presumption of continuity and tax geared penalties when providing any information to HMRC.

Penalties

If HMRC's enquiry results in additional tax they will ask specific questions about the behaviours that led to the errors at the end of the enquiry.

Behavioural penalties, such as Schedule 24 FA 07, can be highly contentious and Tribunal decisions continue to inform our understanding. HMRC are seeking more deliberate penalties so remember it is only the taxpayer's behaviour which is relevant and have a good understanding of the definitions for each behaviour.

Resolving disputes

If you reach a genuine impasse at any point then ensure HMRC have provided a detailed summary of their position/decision to include the evidence they are relying on and their reasoning.

You can request Alternative Dispute Resolution (ADR); this is HMRC's own mediation process but it works and results in c90% of accepted cases being resolved by agreement.

You can request the involvement of the caseworker's manager or make a formal complaint, although these are often last resorts as they can detrimentally impact future working relations with the caseworker.

You can request a Statutory Review of HMRC's decision but only after a decision has been made. The majority of Reviews uphold HMRC's decision but a significant number vary or cancel it so it remains a credible option.

Settlement

Where additional tax is significant HMRC will consider requesting completion of a Statement of Assets/Liabilities and a Certificate of Full Disclosure. It is important to ensure these are accurate as (substantive) errors could result in prosecution at a later date.

HMRC will want to agree payment terms and it is usually better to negotiate these with the caseworker than to have the debt passed to HMRC's collection department. Caseworkers have scope to agree time to pay arrangements over a number of years if necessary which is enough in most cases.

If you have a case like this, are having difficulties with HMRC and would like to speak to one of the consultancy team please email consultancy@cronertaxwise.com or call the team on 0844 728 0120



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