

TAX INVESTIGATIONS



In this newsletter, we will update you on the latest HMRC activities, discussing examples of poor service and standards that are being seen more regularly, along with how we have countered these to our clients' benefit. We will also share tips on how to successfully make formal complaints to HMRC and then share some recent successes where all cases initially appeared to be lost to the taxpayers - a must read!

As for the tax investigations team, it's been all change. Firstly we said goodbye to Dave Williams earlier this year who has embarked on his well-earned retirement. Dave was instrumental in shaping our tax consultancy offering for over 15 years and I wish him all the best for the future.

However, I'm delighted to introduce our newly expanded tax investigations team. Alongside their individual expertise, we work closely with the ever expanding team of tax specialists within the newly created FC Tax Advisory team, which now takes the

place of Francis Clark Tax Consultancy Ltd (FCTC as we were more commonly known). You can find out more about the full team on the back page.

As always, if you have any questions or would like to discuss anything related to tax investigations please get in touch with one of our specialists and we'll be more than happy to help.



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MEET OUR NEW TEAM

For a full team overview, please refer to the back page. However, here is a bit more about our new team.



Steve Ashworth recently joined our newly opened Bristol office from Smith and Williamson. Steve specialises in employment taxes and matters, including CIS, IR35 and the national minimum wage.



Dave Wase has recently joined us from HMRC counter avoidance department and has already proven to be a formidable opponent to his old employers, ensuring they abide by the legislation, as well as their own internal guidance when dealing with tax enquiries.



Our indirect investigations team has also expanded, headed up by Simon Anslow, with Mark Bishop and Kirsty Martin, both of whom are ex-HMRC VAT Inspectors, bringing a wealth of experience to the team.



And finally, Nigel Popplewell has also been recruited into the FC Tax Advisory setup. Nigel has previously worked for a leading firm of solicitors and is an appointed judge to the first-tier tax tribunal. He brings his expertise and knowledge to help taxpayers in preparing for hearings.

HMRC LATEST ACTIVITIES

HMRC continue to aggressively pursue the areas where they believe a high risk of non-compliance exists, or where there are established cases and information available to them. These in particular relate to loan schemes, offshore non-disclosure and high risk businesses run by SMEs.

We are seeing a rise in general incompetence and dubious tactics being used by HMRC in an attempt to win arguments and extract tax. We have been referred cases from our general practice and from our network of professionals, where it is evident that HMRC are seeking to pressure and bully people into accepting that tax is due or information is required when it is not, as well as seeking penalties where they are not due.

It is vital to block HMRC at the earliest opportunity from continuing with these tactics during an enquiry. Please refer any queries to the investigations team where you think HMRC are overstepping the mark and you wish to discuss the appropriate response to HMRC.

Targeted higher level tax enquiries, including counter avoidance, COP8 and COP9 cases continue to rise, so it is expected to see more of these over the coming year. Advice from the team should be sought immediately by anyone who receives such a notice from their clients.

HMRC continue to make good use of their Connect system which is an integration tool that uses data available.



TIPS ON HOW TO SUCCESSFULLY COMPLAIN TO HMRC

Dave Wase discusses how effective use of the HMRC complaints process can yield results, provided they are done on the correct basis.

In the short time I have been with FC Tax Advisory, I have come across a number of complaints about the handling of a tax investigation, where HMRC's formal complaints process has not been followed and communications have not been directed to the correct person.

The problem with this is that it renders complaints ineffective and HMRC will do their utmost to ignore it, wasting time and potentially incurring costs to the taxpayer when the complaint is either not upheld or even dealt with by HMRC.

For the best chance of success with a complaint against HMRC, you need to take account of the HMRC complaints handling guidance and follow the HMRC complaints process laid down at CHG315: www.gov.uk/hmrc-internal-manuals/complaints-handling-guidance/chg315.

In a nutshell, HMRC operates the following tiered system which has four steps of increasing gravity:

1

Tier one

This is your initial complaint and will be HMRC's first stab at resolution. You should address your complaint to the office or officer dealing with the matter and head the email or letter 'Tier one complaint' so there can be no doubt as to the nature of your correspondence. With avoidance cases, I would go for either the Technical Lead or Channel Lead as a tier one target. The complaint will be directed to HMRC's specialist complaints handling team for that business unit or channel.

2

Tier two

If you do not achieve the desired outcome at tier one and the client is still dissatisfied, then you can ask HMRC to review the matter once more. This should be a fresh review by a separate complaints handler from whoever responded to the tier one complaint, so that HMRC undertakes a completely fresh review. Tier two complaints are taken very seriously as the next step is recourse to the Adjudicator. Complaints referred to and upheld by the Adjudicator become a matter to which the head of HMRC is made aware. I would direct your complaint to the person named within the footer of the HMRC letter. For avoidance cases this will be the Director of Counter-Avoidance.



3

Independent Adjudicator

The adjudicator is completely independent of HMRC, but has an office within HMRC as part of their service level agreement.

4

Ombudsman

Complaints to the Parliamentary Ombudsman should be made through the client's local MP in a letter for the attention of the Parliamentary and Health Service Ombudsman.

AVOID EMOTIVE LANGUAGE AND KEEP IT PROFESSIONAL

Examples of complaints I have seen often include what an old inspector used to term 'too much red meat' i.e. they are very emotive and personally directed at the perceived ineptitude of the officer concerned. Complaints of this nature cannot help but result in HMRC raising their defences.

To achieve the best chance of a successful outcome, I would recommend taking out any of the fire and fury, no matter how satisfying it might be to let the officer know the strength of feeling towards them.

Rise above any perceived goading or bullying behaviour from HMRC. Keep the complaint on a professional level, run through the facts (step by step), reference HMRC guidance if possible and respectfully point out the incorrect treatment or failure to adhere to the guidelines laid down. Additionally, make certain that you press home the unnecessary distress caused to the client.

When resolving a complaint, HMRC should be pressed to consider compensation not only for distress (likely to be a small sum, so manage client expectations), but also for additional costs in relation to the fees incurred for the additional works. Better still, if the complaint relates to basic maladministration (do use the term maladministration when writing to them), or inappropriate behaviour, you could also press for some or all of the tax to be written off, or an ongoing tax enquiry to be closed.

Maladministration for enquiry cases comprises failures in correctly handling matters by reference to the guidance within the compliance handbook or enquiry manual. It also covers scenarios where you can demonstrate that officers have not acted in a fair and reasonable manner and therefore failed to adhere to the taxpayers' charter: www.gov.uk/government/publications/your-charter/your-charter. The main thrust of the charter is a reliance on mutual trust; therefore if you feel HMRC have acted in a way that demonstrates a lack of trust on their part, then state it, loud and clear.

SUBJECT ACCESS REQUESTS (SAR)

Under the EU GDPR/UK Data Protection Act, taxpayers are entitled to access the information HMRC hold on them. You can do this via a SAR, which can be included with your letter or email of complaint. These are very useful tools when mounting a complaint as you can ask HMRC directly for their record of actions on an enquiry case or simply for a copy of the self assessment (SA) notes for a client. HMRC will resist, but eventually should relent and supply you with a copy of their actions.

In a recent case, the entries within SA notes demonstrated that the client had sent in a letter when HMRC had repeatedly denied receipt. This led to a six-figure repayment.

The main point here is to consider a SAR in tandem with your complaint. If nothing else, it will raise the profile and urgency of the complaint within the complaints team handling it.

CONCLUSION

If there is no avenue to directly appeal a decision from HMRC, then complain in the first instance and follow the procedure. If you or the client are unhappy with HMRC actions, then complain. If you feel there is something HMRC is holding back, or they have acted outside of their guidance, complain and consider a SAR in tandem with that complaint. The FC investigations team has a lot of experience in mounting complaints, so engage with us at an early opportunity and together we can look to make sure the best chances of a positive outcome.



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Dave Wase has previously worked for HMRC in a range of enforcement roles, including counter avoidance, giving him in-depth knowledge of HMRC procedure and therefore the best way to successfully lodge a complaint.



TAX INVESTIGATION TEAM CASE SUCCESSES

Our more prominent case successes have been summarised to demonstrate the importance of getting the correct advice and knowing which buttons to press when dealing with HMRC, especially where they are pursuing an unreasonable attitude.

The issues at stake were all fundamental points of fact in each case that HMRC were initially ignoring, but demonstrates that continued reasoned arguments and representations to them can result in very good outcomes for the taxpayers and that HMRC will not take forward cases where it is clear their basis of argument is not sound.

1. We've had successful appeals against Schedule 36 information notices resulting in HMRC backing down on a request for private bank statements as well as information for earlier years to which they admitted they were not entitled to ask for.
2. A client had applied for enhanced settlement terms offered by HMRC to settle a long running avoidance scheme enquiry. HMRC subsequently closed the enquiry stating that they had not received the client's application. Our team took this case on and through incremental use of the HMRC complaints protocol and repeated subject access requests under UK DPA/EU GDPR we established that HMRC did indeed receive the application from the client. This despite HMRC denying knowledge of the application and attempting to redact the very record of receipt.

Our client has now received a refund of his professional fees, compensation and a sum exceeding £150,000 from HMRC in respect of part of the settlement that he was not liable to pay.

3. HMRC has backed down on an 18 month dispute over a taxpayer's behaviour on the non-disclosure of offshore income and assets, following a voluntary disclosure made by the client. They now accept the client was careless as opposed to deliberate and have dropped assessments seeking additional taxes and penalties for tax years before 2011/12. This was an argument that should never have taken place. HMRC's reasoning for deliberate behaviour was based on the client answering some fairly standard questions set by HMRC about the cause of the errors, which resulted in them considering he had made a conscious decision to make those errors on his tax return. We refused to answer further questions on the basis HMRC would then make out that he had made further conscious decisions because he was attempting to clarify to HMRC the reasons for the errors.

On a challenge to take the matter further, HMRC agreed to accept careless behaviour.

4. Protracted discussions with HMRC, including a complaint against the handling of a valuation aspect against the District Valuer, resulted in HMRC backing down on an argument that Entrepreneurs Relief was not available on the associated disposal of four acres of land used by a family run commercial lorry park and operating centre. HMRC eventually agreed that the business was more than just land used as an investment and that there was in fact a trade taking place and also accepted the returned values on parcels of land, split between PPR and business use was correct.

This saved the client over £500k in CGT had HMRC's case on both fronts been successful.

In many cases, it is not just the potential tax at stake that causes stress to the client, it's the ongoing pressure of having a tax investigation running in the background. Many cases could be brought to a speedier conclusion by adopting the correct stance against HMRC, which in the majority of cases is good co-operation and dialogue, but also ensuring they are working within both the legislation and their own internal guidance manuals to prevent enquiries being unnecessarily dragged on if HMRC are not getting what they thought they should.

HMRC'S ATTACK ON THE RESTAURANT AND FAST FOOD SECTOR

These have become a major focus of HMRC interest as they often yield tax liabilities because HMRC are able to 'break' the records with comparative ease. However, when HMRC seek to issue excessive assessments off the back of this, then help is required. Our investigations team has experience in both the food & drink sector and in challenging the results of such assessments.

In most cases HMRC will do unannounced spot visits, where they sometimes pose as customers, or observe a business from outside, and take notes of customer visits and orders taken etc.

In two specific cases, HMRC had based VAT and direct tax assessments upon the outcome of covert operations at the business addresses, both of which operated as restaurants.



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Mark Bishop, an ex-HMRC Inspector who specialised in the restaurant sector, managed both of these cases on behalf of the clients and should be contacted if you have clients in a similar situation.

CASE STUDY 1

Restaurant one had been assessed for VAT, corporation tax, interest and penalties totalling £230,000.

Whilst the company accepted that business controls were less than perfect, they believed that they were powerless in the face of the huge 'best judgement' assessments raised by HMRC.

Having met with the new client, our team reviewed the case and identified multiple issues where it was considered HMRC had not discharged the burden of proof required by them in order to support their decisions.

A detailed alternative case was prepared based upon business economics, market data and challenging the evidence HMRC relied upon to support the 'presumption of continuity' into previous tax years. This was presented in a meeting hastily arranged with the HMRC officers responsible for the various taxes.

Whilst initially steadfast in defending the basis and outcome of their original decisions, the weight of evidence presented forced them to re-examine their own case.

We were then in a position to agree an outcome acceptable to all parties, resulting in a settlement of all tax, interest and penalties of just £11,000, a reduction of over 95% of what was originally faced.

CASE STUDY 2

Restaurant two was subject to a tax enquiry where there was no dispute that VAT and income tax arrears existed. Again, HMRC had proven their case that the business records were incomplete and had used the information collated covertly to arrive at assessment values totalling over £370,000; a sum that would inevitably result in insolvency for the owner and the subsequent loss of all personal assets.

Through face to face discussions and by presenting an alternative interpretation of the data collated, we were able to highlight weaknesses and assumptions in the HMRC case. Similar information which undermined their position would have been produced at any future VAT and duties tribunal. HMRC were fully aware of this and therefore were open to reaching a settlement that would avoid entering into that process.

Total tax liabilities including VAT, corporation tax, penalties and interest were proposed by us and accepted, totalling just over £50,000, an 85% reduction from the initially assessed values.

The lower settlement amount allowed the taxpayer to enter into payment arrangements with HMRC and avoid the previously anticipated bankruptcy proceedings.

In each of these cases, our team were engaged when all appeared lost to the taxpayers ; leading us to wonder how many HMRC decisions have been accepted on the basis that they were seemingly impossible to challenge.

Ideally, specialist tax investigation advisers should be engaged at the earliest opportunity to avoid HMRC officers becoming entrenched in defending their initial conclusions. However these enquiries show that HMRC decisions are not always the right ones, even when all seems lost.

MEET THE TEAM



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- Handling complex technical and multi-faceted disputes with HMRC including statutory interpretation, case law and share and business valuation issues
- Over 30 years' experience of negotiating with HMRC on behalf of clients and agreeing settlements
- Supporting appellants at First-tier and Upper Tax Tribunals and acting as an expert witness on enquiry matters



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- COP 8 and 9
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- HMRC VAT disputes and assessments
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