

OLD SQUARE
TAX CHAMBERS

*Dealing with HMRC
Investigations*

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INTRODUCTION

- HMRC are responsible for collecting taxes
- Most people pay through self-assessment and PAYE
- HMRC investigations are the main way of checking the position

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Types of investigation

TYPES OF INVESTIGATION

- Statutory enquiries
 - Opened within a specific period
 - No time limit (Morris v HMRC 79 TC 184)
- Investigations preceding an assessment
 - Time limits
 - Limited scope to issue assessments

TYPES OF INVESTIGATION

- Need to enquire under correct provision
- Is the issue in a tax return? (*HMRC v Cotter* [2014] 1 All ER 1; *R (de Silva and another) v HMRC* [2017] 1 WLR 4384; and *R (Derry v HMRC)* [2019] 1 WLR 2754)
- Is the return voluntary? Patel v HMRC [2018] UKFTT 185 (TC)

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Issues which can arise
during an enquiry

ISSUES THAT CAN ARISE

- An absence of trust and co-operation
- HMRC's issue is not clear
- Discussions getting side-tracked
- An unrealistic level of evidence is demanded

ISSUES THAT CAN ARISE

- Dealing with legally privileged documents
- Desire to avoid litigation
- HMRC strategy

ISSUES THAT CAN ARISE

An absence of trust and co-operation

- Important to establish co-operation at outset
- Combative approach or failure to engage can lead to suspicion
- HMRC can be aggressive / dogmatic
- Can trust be regained or is it a lost cause?

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ISSUES THAT CAN ARISE

HMRC's issue is not clear

- What is the issue? Why is there an enquiry?
- Is it something the taxpayer can answer?
- Is it something which can be resolved?
- Dealing with avoidance schemes
- Is there scope for agreement

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ISSUES THAT CAN ARISE

Discussions getting side-tracked

- Identify the real issues
- Keeping discussion on relevant matters
- Approach matters on a reasonable basis
- HMRC investigative powers

ISSUES THAT CAN ARISE

An unrealistic level of evidence is demanded

- Taxpayer needs to prove his case on balance of probabilities
- What is level of proof in investigation?

ISSUES THAT CAN ARISE

Dealing with legally privileged documents

- Be aware of issue
- Legal privilege and without prejudice privilege
- No prejudice from asserting rights
- Don't waive unintentionally (Conegate Ltd v HMRC [2018] UKFTT 82 (TC))

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ISSUES THAT CAN ARISE

Desire to avoid litigation

- Realistic evaluation of prospect of agreeing issues
 - Are costs being sunk in negotiation
 - Will/ Can HMRC agree?
 - What is the most effective outcome?

ISSUES THAT CAN ARISE

Desire to avoid litigation

- Downsides of going to Tribunal
 - Cost
 - Bringing matters to a head
 - Wasting opportunity to negotiate
 - Intimidation
 - HMRC success rates

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ISSUES THAT CAN ARISE

Desire to avoid litigation

- Benefits of going to Tribunal
 - Show HMRC seriousness of position
 - Stop wasting costs on pointless negotiation
 - Matters are considered by other HMRC personnel
 - Costs regime for unreasonable behaviour
 - Better evidence if sooner rather than later

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ISSUES THAT CAN ARISE

HMRC strategy

- Often no rush to determine matters
- Aware of taxpayer costs
- Potential costs often leveraged into settlement

Steps to resolve matters

STEPS TO RESOLVE MATTERS

- Balance of power is with HMRC
- Taxpayer needs to be demonstrably reasonable
- Courts tend to be reluctant to push matters in a mere investigation

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STEPS TO RESOLVE MATTERS

- Hit the reset
- Consider what information has been provided
- Consider legal redress

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STEPS TO RESOLVE MATTERS

- Closure Notice
 - Is it reasonable for HMRC to continue?
 - Beneficial House (Birmingham) Regeneration LLP
[2017] UKFTT 801 (TC)
- Partial Closure Notice
 - Has a matter been decided
 - Epaminondas Embiricos v HMRC [2019] UKFTT 236 (TC)

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STEPS TO RESOLVE MATTERS

- Is there a stale discovery
 - HMRC v Tooth [2019] EWCA Civ 826
 - Hargreaves v HMRC [2019] UKFTT 244 (TC)
- Time limits and protective assessments
 - Notify appeal to the FTT

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STEPS TO RESOLVE MATTERS

- Nuclear option?
 - Cease to co-operate
 - Challenge everything
 - Judicial review
 - Demand fair dealing

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