

Dealing with information requests from HMRC (Lecture P1250 – 15.01 minutes)

This article considers information requests from HMRC in the context of an enquiry into a tax return. It focuses on HMRC's civil information powers at Schedule 36, Finance Act 2008.

Informal requests for information and documents

Information is an intrinsic part of a HMRC enquiry. Although the investigating officer has access to numerous information sources, he will seek further information, and documents, from the taxpayer as a part of the enquiry process.

HMRC should, generally, issue any information requests on an informal basis, at least initially. However, this cannot be guaranteed, and the inspector may start with a formal request (see below). Although an information request is usually sent with the opening letter from the officer, they can also be issued at other times of an enquiry, as the case progresses.

The first action on receiving the initial information request should be to establish from the client whether there is a disclosure to be made. It is far better from a case management perspective to take a pro-active approach if there is a disclosure to be notified to HMRC. A voluntary, albeit prompted, disclosure, will help to mitigate the position if penalties are in point, rather than having the inspector raise the question of a disclosure following a review of information or documents provided.

Advisers should consider the information request, and apply the rules, as they relate to a formal notice, to determine whether the officer is entitled to the items they are requesting. My view is that, if the adviser is satisfied that there is not a disclosure to be made, and the inspector is entitled to the items being requested, the information or documents should be voluntarily supplied to the inspector.

Officers should only be requesting information or documents that can be the subject of a formal notice. The onus is on advisers to make sure that officers are observing this requirement and ensure that they are not giving information or documents that the officer is not entitled to. To do otherwise can lead to claims against the adviser's professional indemnity insurance, particularly where the client suffers a loss.

Where the justification for the items cannot be established, the inspector should be asked to clarify. The comments, below, regarding formal requests in relation to deadlines, etc, equally apply to informal requests.

Formal requests for information and documents

The comments, above, about a pro-active approach equally apply if HMRC start with a formal information notice.

Although an informal information request can be made by telephone, particularly in the context of an aspect enquiry, a formal notice must be in writing. The issue of a formal notice should be avoided, if possible, because of the impact on the penalty position, if penalties are subsequently imposed.

The statutory position is that an officer of HMRC can issue a notice requiring a person to provide information or to produce a document if the information or document is "reasonably required" for

the purpose of checking the taxpayer's tax position (Sch 36, para 1). There are separate provisions regarding information notices issued to third parties (Sch 36, para 2), and those relating to persons whose identity is not known (Sch 36, para 5).

What is "reasonably required" is a subjective condition, and there may be disagreement between the adviser and HMRC officer as to what items on the information request meet this criterion. If agreement cannot be reached, the officer may agree to "park" the request for disputed items and review the position later in the enquiry process. Ideally, this should be done prior to the issue of the formal notice. What is "reasonably required" is likely to change as the enquiry progresses.

Typical contentious items include statements and other items relating to private bank and building society accounts, and a director's bank statements requested in the context of a company enquiry.

The notice should specify the period for which the information or documents are required. This should relate to the tax return(s) under enquiry. However, the requirement that the information relates to the officer's ability to check the taxpayer's position means that the request is not restricted to historical liabilities. Advisers should be satisfied that any request for information or documents outside the enquiry period is justified or seek clarification from the officer.

Advisers should make sure that they adhere to any timetable for the provision of information, where that is considered reasonable. HMRC officers should, generally, be giving a minimum of 30 days to comply with any information request, and longer in relation to notices issued during December and January. In practice, that does not always happen, particularly with informal requests. Advisers should seek to agree an extension with HMRC, where necessary, for the provision of the information requested, or those items which are going to be provided.

It is prudent to review any items to be sent to HMRC, even where the client has not indicated that there is a disclosure to make, particularly where those items were not provided when the accounts or tax return was being prepared.

Advisers should be aware that an officer can ask the tribunal to approve the issue of a taxpayer notice (Sch 36, para 3(2)), subject to certain conditions (Sch 36, para 3(3)). This will have an impact on a taxpayer's right of appeal (see below).

Elements of an information request

If an adviser is to effectively deal with an information request, he must consider the various elements of a typical request. An information request will vary depending on the circumstances of the case, but there are common elements, which the adviser must consider:

- Who has the request been sent to?
- What taxpayer does the request relate to?
- What information has been requested (including the period covered)?
- What documents have been requested?
- How is the information to be presented, and where are the documents to be produced or made available (if specified)?
- What is the deadline for compliance?

Restrictions on formal notices

Aside from the “reasonably required” condition, there are various restrictions and safeguards on the issue of a formal information notice. The information or documents requested must be in the person’s “possession or power” (Sch 36, para 18).

Other statutory restrictions apply to the issue of information notices, including where old documents are requested (Sch 36, para 20), where documents benefit from legal professional privilege (Sch 36, para 23), and certain information or documents relating to auditors and tax advisers (Sch 18, paras 24 to 26).

Appeals and penalties

The taxpayer has the right of appeal against a formal information notice. However, the right of appeal does not extend to statutory records, although there may be debate as to what constitutes statutory records.

There is a penalty regime to encourage compliance. Failure to comply with a formal information notice can render the person liable to an initial penalty not exceeding £300, against which there is the right of appeal. When an initial penalty has been assessed, a daily penalty of up to £60 a day can be imposed for each day that the failure continues (after the date the initial penalty has been assessed). There are other penalties that may apply, including for concealing, destroying or otherwise disposing of documents, or for providing inaccurate information in response to an information notice.

There have, as might be expected, been mixed outcomes when taxpayers have appealed, and sought clarification from the tribunal on the validity of an information notice. Where there is any doubt as to the nature of an information request, whether formal or informal, advisers are recommended to seek specialist advice. Ideally, this should be taken on receipt of the request, and before any information or documents have been provided to HMRC.

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