

Conduct of HMRC enquiries (Lecture P1370 – 17.23 minutes)

This article covers various points for advisers relating to the conduct of enquiries by HMRC.

Overview of an enquiry

The notes in this session relate to full enquiries started by HMRC within the statutory framework for SA and CTSA tax returns. They are not intended to cover HMRC investigations under Codes of Practice 8 or 9, “nudge” letters, or any non-statutory compliance activity.

There are, typically, three phases to an enquiry, although they are not always distinct, and the timing for each part will vary from case to case. An enquiry will typically last a couple of years, although they can be settled quicker, or last longer, depending, in part, on the complexity of the case.

The beginning

An enquiry will start with the issue of a formal enquiry notice. Advisers should ensure that the enquiry notice is valid and has been issued within the relevant statutory enquiry window. Advisers should liaise with their client when an enquiry letter is received, to establish whether there is a disclosure to make. If the client indicates that there is a disclosure, advisers should refer to my session on making a voluntary disclosure.

In most instances, the opening letter will include a request for information and documents. Advisers need to consider whether the request is reasonable, and be prepared to challenge the inspector, where necessary. I know from experience that some advisers can be reluctant to challenge the inspector, but it is important to do so, where appropriate. It is important to ensure that you reply within the HMRC deadline for the provision of information (providing that is a reasonable one) or agree an extension to the deadline. HMRC will, typically, give a month for the provision of information, but advisers will not necessarily get a response within the same timeframe.

The opening letter may also include a request for a meeting with the client, and/or a request to visit the business premises to check the business records. HMRC cannot compel a taxpayer to attend a meeting under the provisions being considered here. My view is that a client should only attend a meeting if it is going to be in their best interests to do so. There are always better options than the client’s business premises for the HMRC review of records.

The middle

This phase of the enquiry will involve HMRC’s consideration of your response to the opening information request, and questions arising from the officer’s review of your response. This is likely to include a request for a meeting with the client, if one has not already been held, or there may be a request for a further meeting. In my experience, good progress can usually be made by meeting the inspector without the client present. One decent meeting can, potentially, take the place of months of correspondence.

The end

There will come a point at which you will have answered all the inspector's questions. The inspector will have to form a view as to whether there are any additional tax liabilities. The adviser should also form a view, and, where appropriate, agree the level of those liabilities with the inspector (in consultation with the client). Advisers need to be aware that, where it is established that there is an additional tax liability for the year under enquiry, the inspector will consider whether the same position arises in other years (both prior to, and after, the enquiry year). This issue may have been discussed in the earlier stages of the enquiry, depending on the facts.

There will, usually, be consideration as to whether a penalty should be charged, and the adviser should be mindful of this at the start of the enquiry. The case will, usually, be concluded either by the issue of a closure notice, and assessments for earlier years, or by a contract settlement. Where assessments are issued, formal penalty determinations will be issued, as necessary.

It will not always be possible to reach agreement with HMRC in every case. In those circumstances, the adviser will need to consider the various options. These will include a statutory review of the HMRC decision, or assessments, the use of Alternative Dispute Resolution (HMRC's mediation process) or appealing to the tax tribunal. Advisers might want to consider obtaining a second opinion on the strength of the client's case before dismissing a negotiated settlement with HMRC.

Managing the client's expectations

Many clients will, when they receive an enquiry notice from HMRC, ask you why. It is unlikely that you will know the answer, and HMRC are unlikely to tell you. However, it can be a distraction to try and answer that question. It is much better to focus on the enquiry, which HMRC are entitled to open, and establish with the client if there is anything about their tax affairs that they have not told you previously – is their tax return correct and complete? This is a sensitive issue, as you do not want to be accusatory, but it will help the client to make a voluntary disclosure (albeit that it will not necessarily be treated as unprompted by HMRC), where one is appropriate, because that will help with any penalty considerations.

Another question that is frequently asked by clients relates to the duration of the enquiry – how long will it last? Most cases will take in the region of two years to conclude, although sometimes cases can be settled sooner than this, depending on the circumstances. It is also possible that the case will take longer to settle. The client should be advised that they can impact on the duration of the enquiry by, for example, responding quickly to your requests for information, to enable you to reply to the inspector's queries in a timely manner.

The client is likely to ask about the likely level of professional fees. Dealing with an enquiry is labour-intensive, and costs can quickly escalate. Not all clients will be covered by fee protection insurance, and advisers might want to consider billing on a monthly basis to ensure that fees do not get out of hand. Advisers should also be aware that, depending on the actions of the client, the fee protection insurance may not provide cover.

As you progress through the enquiry, different options may be available, and these should be explained to the client. This may occur in relation to information requests, and whether to provide certain information to HMRC, or when discussing additional liabilities.

Practical points for advisers

It is important for the adviser to review any information that has been sent to HMRC. The adviser should also review any documents provided by the client in response to the inspector's queries, where those items have not previously been seen by the adviser.

Liaison with the client throughout the enquiry process is essential, and, as noted earlier, any options available to the client should be explained.

Where the client has indicated that there is a disclosure to make, a different approach to that outlined above should be taken. Advisers should refer to my session on making a voluntary disclosure for guidance in those circumstances.

Advisers should be mindful of the end phase of an enquiry as soon as they receive the opening letter. Action taken at that stage can impact on the outcome, particularly where penalties are in point. There is little advantage in only mentioning the advantages of co-operating with HMRC to the client shortly before the inspector issues the closure notice (or assessment).

Advisers should consider seeking external help where there is any gap in their knowledge when it comes to handling HMRC enquiries. This may extend to a discrete part of the process or handing the handling of the enquiry to a specialist. Another aspect to bear in mind is for the adviser to ensure that they have satisfactory internal procedures for dealing with, and monitoring, HMRC enquiries.

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