

Taxpayer notices (Lecture P1450 – 12.26 minutes)

This article considers taxpayer notices, issued by HMRC under the provisions of Paragraph 1, Schedule 36, Finance Act 2008. Advisers should note that there are certain provisions relating to the issue of taxpayer notices following the submission of a land transaction return, or returns relating to annual tax on enveloped dwellings, which are outside the scope of this session.

What is a taxpayer notice?

An HMRC officer may, by notice in writing, require a taxpayer to provide information or produce a document to HMRC, that is 'reasonably required by the officer for the purpose of checking the taxpayer's tax position or for the purpose of collecting a tax debt of the taxpayer', (Paragraph 1, Schedule 36, Finance Act 2008). A notice issued in accordance with this provision is called a 'taxpayer notice'.

The provision is widely drafted, and enables HMRC to obtain information and documents regarding a taxpayer's "past, present and future liability to pay any tax", (Paragraph 64(1), Schedule 36, Finance Act 2008).

Paragraph 21, Schedule 18, Finance Act 2008, imposes certain restrictions on the issue of a taxpayer notice where a person has made a return (under Section 8, 8A or 12AA of TMA 1970 (tax returns for the purpose of income tax and capital gains tax), or under Paragraph 3, Schedule 18, Finance Act 1998 (company tax returns)). Where a tax return has been made in respect of a chargeable period under one of the above provisions, a taxpayer notice may not be given for the purpose of checking that person's tax position in relation to the chargeable period unless any of certain conditions are met.

The relevant conditions are:

- Where there is an open enquiry into the tax return (or claim or election);
- Where an HMRC officer has a "reason to suspect" an under-assessment, an insufficient assessment, or excessive tax relief, in relation to the relevant period;
- Where the information or document is required so HMRC can check the taxpayer's position in relation to a tax other than income tax, CGT, or corporation tax;
- Where the information is required to check the taxpayer's position in relation to deductions or repayments of tax or withholding of certain income;
- Where the information is required for the purpose of obtaining specified transfer pricing information or documents.

The provisions of Paragraph 21, Schedule 18, Finance Act 2008, also cover the submission of a return under Schedule 2, Finance Act 2019 (return for disposals of UK land, etc), by virtue of paragraph 21ZA, Schedule 18, Finance Act 2008.

An HMRC officer can issue the notice directly to the taxpayer, without the need for the approval of the tribunal, or other judicial authority. However, the officer can choose to seek the approval of the tribunal before issuing the taxpayer notice, under the provisions of Paragraph 3 (3), Schedule 36, Finance Act 2008.

The relevant provision states that the tribunal may not approve the giving of a taxpayer notice “unless

- a) an application is made by, or with the agreement of, an authorised officer of Revenue and Customs,
- b) the tribunal is satisfied that, in the circumstances, the officer giving the notice is justified in doing so,
- c) the person to whom the notice is to be addressed has been told that the information or documents referred to in the notice are required and given a reasonable opportunity to make representations to an officer of Revenue and Customs,
- d) the tribunal has been given a summary of any representations made by that person”.

The requirements at paragraphs c) to d) of sub-paragraph (3) do not apply where the tribunal is satisfied that taking the action specified in those paragraphs might prejudice the assessment or collection of tax.

Advisers should note that, crucially, where the tribunal gives approval for the issue of a taxpayer notice, the taxpayer does not have the right to appeal against the notice.

When do HMRC issue taxpayer notices?

In the context of a Self-Assessment enquiry, an HMRC officer will, typically, issue an information request at the start of that process. The request will, usually, be an informal one, although there is nothing to stop the officer issuing a formal notice at the outset (this would likely be where there is a history of poor co-operation from the taxpayer).

If the items are not provided to the officer in response to the informal request, they can be expected to issue a taxpayer notice, and this typically happens shortly after the deadline in the informal request has expired. Officers are instructed to ensure that progress is made in an enquiry, and the issuing of a formal notice is a part of that process.

Advisers should note that there is not a restriction on the number of notices that can be issued to a taxpayer. Where a taxpayer has responded to, and complied with, a taxpayer notice, the officer may issue a further such notice to obtain other documents which may be referred to in the taxpayer’s response. Alternatively, the officer may issue a further notice later in the enquiry process.

What can be requested in a taxpayer notice?

An officer can request any information or document that they consider to be “reasonably required”, as noted above, as well as meeting the other relevant criteria. Schedule 36, Finance Act 2008, does not contain a statutory definition of “reasonably required”, so those words have their everyday meaning. It is not possible to provide a definitive list of what is “reasonably required”, as that will not only differ from case-to-case, but also at different stages during the course of an enquiry.

Various First Tier Tribunal cases have determined that the burden of proof for establishing that information or documents are “reasonably required” under a taxpayer notice lies with HMRC.

A taxpayer notice can include an extensive list of information to be provided or documents to be produced, and can be expected to cover all items that the HMRC officer is seeking at that stage of their enquiry.

The tribunal has been critical of HMRC where broad information requests have been included in a taxpayer notice, and advisers should consider whether a notice extends beyond what might be reasonable, and what has become a “fishing expedition”.

The general restrictions on the use of information notices, at, Part 4, Schedule 36, Finance Act 2008, apply to taxpayer notices. These restrictions will be covered in a separate session, but include the requirement that a person is only required to produce something which is in their power or possession, and cannot, generally, require the production of old documents.

Appeals and penalties

The taxpayer may appeal against the taxpayer notice “or any requirement in the notice”, (Paragraph 29, Schedule 18, Finance Act 2008). However, the taxpayer is prevented from appealing against a requirement in the notice to provide any information, or produce any document, that forms part of the taxpayer’s statutory records. As noted earlier, the taxpayer is also unable to appeal against the notice, or any requirement in the notice, if the tribunal has approved the issue of the notice.

Statutory records are records that a taxpayer is required by a statute to maintain. There may be a dispute with HMRC as to whether records requested by an officer are part of a taxpayer's statutory records. Where agreement cannot be reached, the matter will, potentially, have to be resolved by appeal to the tribunal. Where the tribunal has approved the issue of the taxpayer notice containing the request, the taxpayer’s remedy is by judicial review, or, potentially, by an appeal against a resulting penalty assessment for failure to comply.

Practical considerations

My view, generally, is that, where there is a valid enquiry into a Self-Assessment tax return, and information or documents have been reasonably requested by an HMRC officer, and they are relevant, those items should be provided voluntarily, without the need for the officer to issue a formal notice. In other circumstances, care should be taken before providing information or documents to HMRC, and specialist advice taken, as necessary, to protect you and your client.

Where a formal notice has been issued to the taxpayer, it is important to review the document in detail, including the items requested, the time to comply with the notice, and any requirements in relation to the place at which documents are to be produced.

The adviser should check each piece of information that has been requested, and each document that must be produced, and consider whether they meet the relevant statutory criteria. Where any requirements are considered to fall short of the statutory position, they should be discussed with the officer. In such circumstances, the officer may agree to put on hold part of the request, or may, for example, grant further time for the provision of the items requested, where that is the adviser’s concern. It is important that any such exchanges, or at least the outcome of such discussions, are noted, whether by email or in other written correspondence. In any event, it is important that an appeal is made, to protect the taxpayer’s position. It is essential that an appeal is made within the time limit for making an appeal, being 30 days from the date of issue of the taxpayer notice. I have seen numerous instances where an adviser has either not made an appeal, or has miscalculated the relevant 30-day deadline.

Where a taxpayer receives notification that an officer is seeking the approval of the tribunal for the issue of a taxpayer notice, it is important that any appropriate representations are made. This includes where there is a dispute about whether a document requested is a statutory record.

Advisers should note that they, or their client, do not have the right to attend the tribunal hearing at which the approval is sought by HMRC. Also, HMRC are only required to provide the tribunal with a summary of any representations made.

Contributed by Phil Berwick