

## Protecting yourself when handling an enquiry

**(Lecture P1230 – 21.24 minutes)**

### *Why protect yourself?*

When faced with a tax enquiry, the initial thought may be to consider the client's position. However, accountants should be considering how to ensure that they protect their own position. This may seem obvious but is often overlooked.

A change of focus, by considering your own position first, can increase the likelihood of a satisfactory outcome to the enquiry. The approach can also help to maintain the relationship with the client, which can sometimes be strained, particularly where the client has been known for a long time. Another, and not to be under-estimated, reason of taking this approach is to help avoid professional indemnity insurance claims.

### *Enquiry management*

Key to protecting yourself is effective management of the enquiry. In this regard it is essential to recognise your level of competence in this area. I have seen numerous cases over the years where an accountant has continued to handle an enquiry long after the point at which they should have sought specialist advice.

Handling an enquiry is not rocket science, but it is essential to check the basics. This includes checking that any notices or assessments (including the initial enquiry notice) have been correctly issued. Where HMRC have missed a statutory deadline, or the notices or assessments are not otherwise considered valid, the investigating officer should be challenged.

Many practitioners take a reactive approach to an enquiry. It is far better to be proactive. When the enquiry notice is received, it is important to discuss the position with your client, to establish whether there are any issues or problems that need to be resolved. This should be done before any response is sent to HMRC.

The same considerations apply when it comes to the provision of information or documents. You should, however, consider whether the HMRC officer is entitled to the items they have requested. There is not a prescriptive list that can be given to assist in this regard, and this is one area where it may be prudent to seek assistance. Giving documents or information to HMRC that the officer is not entitled to can, at best, lead to additional questions from the officer, which unnecessarily extends the duration of the enquiry.

Another key element of enquiry management is making sure that you stick to any agreed deadlines with the investigating officer. It can be helpful to agree a timetable, for you and the officer to adhere to, which will enable adequate progress to be made. Where it is not possible to meet a deadline, you should notify the officer and agree a revised timetable.

It can be helpful to establish a protocol for handling enquiry cases, which will help to ensure that the basics are covered. In addition, in larger firms it is worthwhile considering establishing an enquiry register, to assist with the management of cases.

### *External assistance*

When considering your level of competence for dealing with enquiries, you may conclude that you need assistance from day one of the enquiry. Other accountants may feel comfortable dealing with the whole enquiry, and may not feel the need for external assistance. However, it is always wise to consider whether specialist assistance should be sought, even if only for a second opinion, or on a particular aspect of a case (for example, HMRC's entitlement to certain documents or information). Consulting a specialist investigator may help to reduce the extent of HMRC's enquiries. I was recently asked to assist in a case where HMRC had sent an extensive information request. After my intervention, HMRC agreed to restrict their initial enquiries, with an understanding that the other issues could be re-visited later in the enquiry, if necessary.

Where advice is needed, it is better to seek it sooner rather than later. A specialist adviser can usually have a greater impact the earlier they are engaged.

I am often asked to assist in the questioning of a client where the accountant knows that there is, or believes there may be, a disclosure to make. As a specialist investigation consultant, I can ask questions that the accountant does not feel comfortable in doing, which can help to maintain the accountant's ongoing relationship with his client.

The use of external specialist assistance can help to prevent claims of negligence, and subsequent claims on professional indemnity insurance. As with any area, it can be very difficult to be familiar with the rules of enquiry work unless you are dealing with them on a daily basis.

*Contributed by Phil Berwick (Director, Berwick Tax)*