

Responding to HMRC Nudge Letters

(Lecture P1225 – 13.02 minutes)

What is a “nudge” letter?

A nudge letter is correspondence that HMRC send to a taxpayer which is designed to encourage a certain type of behaviour. The letters are issued in their thousands by HMRC, sometimes in batches. The letters are designed to encourage the taxpayer to review their tax affairs, and to disclose any irregularities. Alternatively, the taxpayer is asked to confirm that their tax affairs are correct. The nudge letter comprises the letter and, usually, a certificate of tax position. The certificate asks the taxpayer to make a declaration about their tax affairs, and carries a warning about the risk of criminal prosecution in the event that a false statement is provided to HMRC.

The request to review the taxpayer’s affairs is broad – it is without limit of time, and without regard to any materiality limit. Standard wording is used, although HMRC sometimes use different versions when sending letters addressing the same issue. Taxpayers are usually given 30 days to respond.

The key issue to note about a nudge letter is that it does not constitute a formal enquiry notice, and is non-statutory.

A sample nudge letter, together with a certificate of tax position, is included with these notes. The sample is indicative of those issued in July 2020 in relation to information received by HMRC under the Common Reporting Standard.

A brief history of the nudge letter

Nudge letters have been used by HMRC, in various forms, for about ten years. Sometimes the letters have been sent to taxpayers in specific business sectors (for example, painters and decorators), and at other times they have been sent to address particular risk issues (including use of the remittance basis, income from rental property and the use of tax planning schemes). The use is often backed by the receipt of information received by HMRC. This has included those relating to the Foreign Account Tax Compliance Act (FATCA) provisions, and the Common Reporting Standard (CRS) (including a batch of nudge letters issued in July 2020). More recently, in August 2020, HMRC issued nudge letters encouraging businesses to consider their furlough applications.

Why do HMRC issue nudge letters?

HMRC have limited resources to enquire into every taxpayer where they consider there may have been an underpayment of tax. There is an ongoing desire within HMRC to change taxpayer behaviour, so that there is a greater level of compliance. In addition, the nudge letters are a cost-effective way of dealing with the large volume of information that is provided under the Common Reporting Standard provisions, and similar sources.

HMRC do not automatically issue a nudge letter where they are in receipt of bulk information, and is one of several options available. As an alternative to issuing a nudge letter, HMRC may commence an enquiry or investigation under their civil provisions (which could include the use of the Contractual Disclosure Facility, where fraud is suspected), or they could start a criminal investigation.

How to respond to a nudge letter

The key point to remember is that a nudge letter does not have any statutory basis, and your client does not have a legal obligation to respond. The letter does not provide any of the protections associated with a formal enquiry.

However, it is important that the letter is not ignored. HMRC will not go away, and there will be an escalation of the matter by HMRC, which may result in one of the alternative options noted above. Advisers need to be aware that, in the past, HMRC have not always issued a copy of the letter that is sent to taxpayers.

The issue of a nudge letter does not mean that an incorrect return has been submitted, or that there has been an underpayment of tax. Advisers should note that cases are not always risk-assessed before the nudge letter is issued.

There can be numerous reasons why there may not be a reportable issue. However, it is important to assess the position with the client. As noted above, the nudge letter is without limit of time, and advisers should establish whether there is a disclosure to make. Where there is a disclosure, consideration should be given as to the most effective option to use (the Worldwide Disclosure Facility, which the nudge letters direct the taxpayer towards, is not necessarily the best route). Specialist advice should be taken, particularly where the disclosure is significant.

Any disclosure made in response to a nudge letter is likely to be treated by HMRC as “prompted” for penalty purposes. However, it is important to establish the facts, and it may be possible to argue a different position, depending on the disclosure being made.

A response should be sent by letter, and advisers should not be asking their clients to sign the certificate of tax position, irrespective of the outcome of the discussions with the client.

Summary

Nudge letters are here to stay, as part of HMRC’s armoury, and it is important that advisers know how to respond.

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