

Concluding an HMRC enquiry (Lecture P1400 – 15.12 minutes)

This article will consider the various ways in which an HMRC enquiry into a taxpayer's tax return (whether under Self Assessment or Corporation Tax Self Assessment) can be brought to a conclusion. The article will also consider associated matters that may need to be dealt with when concluding an enquiry with HMRC.

Closure notice issued by HMRC

At the end of an enquiry into a tax return, HMRC may issue a formal notice, called a 'closure notice'. The notice will either state that no amendments are required to the return that was being enquired into, or it will state the amendments that HMRC believe are required to that return. The closure notice is usually issued after the position regarding the revised profits, etc have been agreed with the agent. HMRC will also issue any assessments, or other formal notices, that are required.

If agreement cannot be reached with the agent, HMRC may issue a closure notice in the figures which the officer considers to be correct, against which the taxpayer has the right of appeal. In those circumstances, the client can seek a statutory review of the decision or seek to resolve the matter through mediation (Alternative Dispute Resolution) or at the tribunal.

Closure notice application by client

The law permits taxpayers to make a closure application to the First-tier tribunal. This might be appropriate when an inspector continues to request information, or documents, beyond the point that the agent considers reasonable, or where all information requested by the inspector has been provided, but they are taking an unreasonable length of time to review it, and to reach a conclusion.

The tribunal is asked for a direction requiring the officer to issue a closure notice. Under the process, the onus is on HMRC to explain to the tribunal why the enquiry should be allowed to continue. However, it is important to be able to demonstrate to the tribunal that your client has co-operated with the HMRC enquiry, providing information that is reasonably required, and responding without unreasonable delay. If the tribunal agree to the application, they will direct that the closure notice is issued within a defined period of time.

It would be prudent to discuss the position with the enquiry officer to establish why they have not been able to close the enquiry, before making an application. The agent should also discuss the position with their client. The issue of a closure notice will not, necessarily, conclude the enquiry. The issue of a closure notice will, however, allow the client to bring an appeal against that notice, to allow the substantive issues to be brought before the tribunal, if necessary. There is a risk that if a closure notice is sought prematurely, and HMRC subsequently establish a significant tax irregularity, your client may be exposed to higher penalties than would otherwise be the case.

Contract settlement

Where a closure notice is not issued, your client may be invited to conclude the enquiry by a contract settlement. This method can be used where there is a tax liability and penalties arising and avoids the issuing of formal assessments and determinations.

The process involves the exchange of formal letters between your client and HMRC, which creates a binding contract. The client submits a letter of offer to HMRC, and HMRC responds with a letter of acceptance, assuming that the terms of the offer are acceptable. The content of the letter of offer is agreed with the inspector, and will cover the amount of the additional liabilities, interest and penalties, as well as other aspects, including the agreed instalment arrangements. The amount of any offer is for the client to decide, but the inspector will indicate an amount that will be acceptable to HMRC in the circumstances of the case.

A standard form is used for the letter of offer, which confirms that the statutory process will not be followed by HMRC, in exchange for your client making a monetary offer to HMRC, to cover the tax, interest and penalties due, which is payable within an agreed period.

An advantage of a contract settlement over the formal assessing route, is that it is possible to agree the repayment terms with the enquiry officer, rather than having to discuss those arrangements with a different part of HMRC.

The contract settlement will provide finality in most cases. HMRC may, however, seek to reopen a settlement where they establish that the taxpayer has provided incorrect information.

Advisers should note that a contract settlement cannot be used for VAT, or VAT penalties. Any such liabilities will be recovered by formal means.

Settlement deed

A Deed is an unusual method of concluding an SA or CTSA enquiry and will only be applicable in a limited number of circumstances, including when there is uncertainty about whether the consideration is adequate to form a binding contract. Further, the drafting of a Deed is a 'reserved legal activity' under the Legal Services Act 2007, meaning that the work must be undertaken by a qualified lawyer who is regulated by an approved regulator.

Accountancy expenses arising out of an enquiry

The costs of dealing with an enquiry can be significant, and a burden for clients, unless they have insurance which covers those costs.

HMRC will not allow the additional accountancy expenses arising out of an SA or CTSA enquiry into the accounts information in a particular year's return where there are discrepancies and additional liabilities for the year of enquiry, or any earlier year, which arise as a result of:

- Careless or deliberate behaviour (for periods beginning on or after 1 April 2008 where the filing date is on or after 1 April 2009), or
- Negligent or fraudulent conduct (for earlier periods).

The additional accountancy expenses will, however, be allowable, in certain, limited, circumstances. HMRC will allow the costs where the enquiry results in no additional to profits, or an adjustment to the profits for the year of enquiry only, and that adjustment does not arise as a result of careless or deliberate behaviour (or negligent or fraudulent conduct, for the historical periods noted above).

With a continuing business, normal practice is to allow the accountancy expenses as a deduction in computing the profits of the accounting period in which they were incurred. With a business which has ceased, the additional expenses can be allowed in the final accounts up to cessation.

The above position is confirmed in HMRC's Enquiry Manual (at EM3981).

Other considerations

When dealing with the conclusion of an enquiry, there are other aspects that the agent may need to consider, in addition to the method of closing the enquiry. These include the following:

- Consider using the Alternative Dispute Resolution process, or request a review by a senior officer, where agreement cannot be reached with the inspector, before the issue of a closure notice;
- Payments on account – consider the appropriate allocation of payments on account made to HMRC by the client during the enquiry process;
- Whether any non-financial sanctions (including, for example, the publishing of deliberate defaulters' details) may apply;
- The imposition of suspended penalties, and making sure that your client knows what he needs to do to meet the relevant terms;
- Settlement meeting – HMRC may request a meeting with the client to deal with the settlement formalities. The inspector cannot insist on such a meeting, and my view is that, unless there are exceptional circumstances, your client should not attend;
- Formal certificates – the inspector may request various formal certificates or statements (including a statement of assets and liabilities) as part of the settlement process. Any such requests should be carefully considered, and, where these documents are provided, it is important to remind that the client that the submission of a false statement or certificate can result in a criminal investigation;
- Voluntary restitution – this is where HMRC seek recovery of tax that they do not have a legal ability to assess.

In view of the complexities that can be involved, agents may want to seek a second opinion when concluding a case with HMRC. This may include whether it is appropriate to seek a closure notice from the tribunal, or where a client is considering making voluntary restitution.

Contributed by Phil Berwick