

Dealing with the opening enquiry letter (P1335 – 21.13 minutes)

This article will provide advice on dealing with an opening enquiry letter from HMRC, whether in relation to an individual, a partnership or a company.

The basics

Whenever you are dealing with an enquiry, it is important to consider the basics. The first of these is to determine the status of the letter received from HMRC. A formal enquiry notice must be in writing, and the letter should state that it is an enquiry. With HMRC's increased usage of nudge letters (for which see the separate session) and other intervention methods, it is important to establish whether HMRC have started a formal enquiry.

It is also important to determine the type of enquiry that is being started by HMRC. An enquiry into an individual's tax return is permitted under s 9A, TMA 1970, a partnership under S12AC TMA1970, and that into a company under Para 24, Schedule 18, FA 1998. This session is aimed at dealing with those types of enquiries. If HMRC are starting an investigation using Code of Practice 8 or Code of Practice 9, different considerations apply, and reference should be made to the sessions on those topics. Similarly, the position is different in relation to a criminal investigation.

Content of the enquiry letter

If you have established that the letter is a formal enquiry notice, the next step is to determine whether the notice is valid. There is a statutory framework governing the enquiry process, and HMRC must adhere to those rules. A common issue is where the enquiry notice has been issued late. HMRC have 12 months from the submission of a tax return to start an enquiry (when that return is filed on time). The notice must be received by the taxpayer before the time limit. HMRC should allow sufficient time for the enquiry notice to be received, although the date of delivery should be checked with the client. Failure to issue the enquiry notice in sufficient time renders the notice invalid. Although HMRC typically issue letters by second class post, at times they may use an alternative method.

If the enquiry notice is invalid, the adviser should establish whether HMRC have started an aspect enquiry or full enquiry. The former considers one or more specific aspect of a tax return, whereas the latter encompasses all parts of the return. This session will focus on dealing with a full enquiry, although the general principles discussed will also apply to an aspect enquiry.

The opening letter will, typically, include a request for information and documents, usually on an informal basis, although, exceptionally, the officer may issue a formal information notice. The adviser should consider what is being requested, and whether they are statutory records, other records, or information, as different appeal rights apply in the event that HMRC issue a formal notice.

The officer should provide a deadline for the submission of the information or documents requested, unless they are seeking to inspect the documents, etc at, for example, the client's business premises. HMRC guidance (at EM1580) states that, usually, 30 days, as a minimum, should be given. The officer is expected to show flexibility in this matter and has specific instructions to allow a longer time if their request is issued in December or January.

The officer may include a request for a meeting with the client, which could be at HMRC offices, or the client's home or business premises. Any such requests must be given careful consideration, and further comment is made later in the session.

Liaison with the client

When an enquiry notice is received, it is important to liaise with the client, firstly to check if, and when, they received the document. It is prudent to explain the enquiry process to the client, including case selection by HMRC. Although HMRC conduct certain enquiries at random, they make up a very small percentage of the enquiries undertaken, and, in the vast majority of cases, the enquiry will have started following a HMRC risk assessment. The penalty regime should also be explained to the client, so they understand the benefit of co-operating with HMRC if additional liabilities are established. From the dialogue with the client, it is important to establish if there are any irregularities to be addressed.

After liaising with the client, ideally at a meeting, the adviser should consider what further work, if any, is necessary before responding to HMRC.

Preparing your response

The adviser needs to consider whether the information requested by HMRC will be provided to the officer. I have covered how to deal with information requests in another session, but, in summary, items requested by HMRC should be "reasonably required" for the purpose of checking the taxpayer's tax position. This needs to be determined on a case-by-case basis, as it what is reasonable for one taxpayer may not be so for another. Advisers should note that the position can change during the course of an enquiry as to what is reasonable.

The same considerations apply to documents as for information. If the officer has asked for documents to be produced at, say, the client's business premises, the adviser needs to consider whether this is likely to be beneficial for the client. In most cases, the answer to that question will be "no", and the adviser should make alternative arrangements for the provision of documents to the enquiry officer.

The adviser should consider any requests for a meeting with the client. In most circumstances, it will be far better, if a meeting is considered necessary, for the adviser to attend a meeting with the enquiry officer without the client present. The adviser should, if necessary, remind the officer that he does not have a legal right to meet with the taxpayer.

In the event that the client has indicated to the adviser that there is a disclosure to be made, it will, generally, be better for the adviser to take a pro-active approach in the matter, rather than submitting information or documents for the officer to review. The subject of voluntary disclosures has been covered in a separate session.

Practical considerations

Advisers should be prepared to challenge HMRC, as necessary, in relation to enquiry letters, including if the notice is invalid because it has been issued late.

When dealing with information requests, my view is that if the information or document is something that the officer is entitled to, that item should be provided in response to an informal request, rather than the officer proceeding down a formal route. Where HMRC have requested documents not previously seen by the adviser, they should be reviewed before being sent to the officer.

There will, inevitably, be contentious areas. Typically, these can include the provision of personal information or documents, or items relating to a director in the context of a company enquiry. A request for personal bank statements is a common source of contention. In other cases, an officer may seek information or documents for a period beyond that covered by the tax return under enquiry. In such circumstances, the officer should be asked to justify their request, rather than the adviser handing over whatever is requested by the officer.

The adviser should consider whether he will be able to comply with the deadline from the officer for the provision of information. If necessary, a realistic extension should be sought, and adhered to. It is important to avoid delay, by the adviser and client, as any unreasonable delays are likely to impact on the penalty charged, if additional liabilities are established and they arise from careless or deliberate behaviour.

As a final point, it is always worth considering getting input from a specialist, even if the case is considered to be low-risk.

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