

Keep it to yourself

Mark McLaughlin looks at HMRC requests for private records during an enquiry into a self-employed individual's accounts

Any taxpayer who submits a tax return can be selected for an HMRC enquiry at random. Those taxpayers unfortunate enough to be selected may find HMRC's tax return enquiries rather intrusive.

For example, HMRC sometimes request a taxpayer's private records. A controversial topic in enquiries is whether HMRC is entitled to access those records. Self-employed taxpayers (and those with rental property businesses) are particularly at risk of being asked by HMRC to provide copies of private bank and credit card statements, especially if those accounts have been used for both business and private purposes.

Is HMRC entitled to see a self-employed taxpayer's private records, and if so, to what extent?

It's the law

HMRC has extensive information and inspection powers. The taxpayer has a general right of appeal against HMRC's information notices, such as if the information requested is not 'reasonably required' (see below). However, there is no right of appeal if the information or document forms part of the taxpayer's statutory records.

Information or a document forms part of the taxpayer's 'statutory records' broadly if the tax legislation requires the taxpayer to keep it (FA 2008, Sch 36, para 62). For example, in the case of a self-employed taxpayer, the records to be kept and preserved include the following (TMA 1970, s 12B(3)):

- Records of all receipts and expenditure 'and the matters in respect of which the receipts and expenditure take place'; and
- Records of all sales and purchases of goods (in the course of a trade involving dealing in goods).

It is important that business transactions are not made through private accounts. For example, in *Beckwith v Revenue and Customs* [2012] UKFTT 181 (TC), over 90 business transactions went through the taxpayer's personal account during the tax year under enquiry. The personal account was therefore held to be a 'business record' and formed part of the taxpayer's statutory records. Accordingly, the taxpayer had no right of appeal against HMRC's information notice to the extent that it asked for his personal bank statements.

Let's be reasonable

Even if private records do not form part of the taxpayer's statutory records, there is still a requirement to provide information or produce a document that is 'reasonably required' to check the taxpayer's tax position.

Whether private records are 'reasonably required' has caused many disagreements between taxpayers and HMRC. Keeping business and private transactions entirely separate should help to avoid such disagreements arising.

Don't get 'personal'

Even if information or documentation would otherwise be reasonably required, there are certain restrictions on what HMRC can require or inspect. These include 'personal records' (as defined in the Police and Criminal Evidence Act 1984, s 12), which broadly means records concerning an individual's physical, mental, spiritual or personal welfare. The scope of 'personal records' is therefore relatively narrow.

For example, HMRC guidance (in its Compliance Handbook manual at CH22180) points out that some medical professionals keep mixed medical and fee records in respect of patients. Where personal records contain mixed information, HMRC can require the medical professional to provide information which does not relate to any individual's welfare, by omitting the information that makes the document 'personal records' (FA 2008, Sch 36, para 19(3)).

In *Smith v Revenue & Customs* [2015] UKFTT 200 (TC), the taxpayer received rental income from various properties, but unfortunately did not operate separate business and private bank and credit card accounts. The First-tier Tribunal (FTT) held that HMRC's information notice should be varied, such that the appellant was required to provide the bank and credit card statements but omitting any personal information.

It would therefore seem (albeit that FTT decisions do not create legally binding precedents) that HMRC can request private bank and credit card statements used for mixed (personal and business) purposes, with the omission of only a limited amount of personal information, if the statements are considered to be reasonably required.

The 'private side'

In the context of an HMRC enquiry involving a taxpayer's business accounts, if HMRC establishes that the business records contain inaccuracies, this is often used as justification to extend the scope of the enquiry into the 'private side'. HMRC adds (at EM3560): "No full private side examination can be undertaken without access to private bank account statements." However, the guidance instructs HMRC officers: "You should not routinely call for them in the opening letter of an enquiry. Exceptional circumstances might be a voluntary disclosure of undisclosed business receipts into a private account."

Even if business transactions have been fully recorded and private accounts have not been used, HMRC sometimes ask to see private account statements if drawings from the business have been lodged in them. However, it should be noted that drawings do not form part of the accounts required for self-assessment purposes.

Keep them apart!

The message for taxpayers is short and clear: avoid using private accounts for business transactions.

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