

Tell me why!

Mark McLaughlin considers whether HMRC should be open and explain the reasons for commencing a tax return enquiry

When HMRC opens an enquiry into a taxpayer's self-assessment tax return, it is perhaps understandable that the taxpayer wishes to know why HMRC is enquiring into it. For example, the taxpayer might speculate that there is an error in the return, or that something has been inadvertently omitted from it.

Random or targeted?

Historically, when self-assessment was introduced in the 1990s, HMRC stated that a proportion of tax return enquiries would be selected at random, in order to test the self-assessment system. HMRC's policy from the outset was to decline indicating whether an enquiry was targeted or selected at random.

The vast majority of tax return enquiries begin because HMRC suspects there is something wrong with the return. Such enquiries are 'risk based' to the extent that there is potential loss of tax to the Exchequer. However, as indicated a small number of returns are selected at random. HMRC will aim to proceed with random enquiries in exactly the same way as risk-based full enquiries.

HMRC guidance (in its Enquiry manual at EM1503) confirms that an HMRC officer can enquire into any return and instructs its officers: "Do not tell the person if the enquiry is a random one." On the other hand, HMRC encourages its officers to hold meetings with taxpayers during enquiries if appropriate, and states (at EM1822): "Meetings may enable you to... explain the reasons for your enquiry."

So which guidance is correct? The answer would appear to come from HMRC's Compliance Handbook manual, which contains guidance for HMRC officers when starting a compliance check (see below).

Compliance checks and enquiries

Compliance checks are similar to tax return enquiries in the sense that the majority of checks are undertaken because risk has been identified, and also as some compliance checks are carried out at random to test HMRC's understanding and assessment of risk. HMRC should never start a compliance check unless there is a risk to address or the person has been selected at random (CH206200).

If compliance checks are carried out into taxes that do not have a self-assessment enquiry framework (e.g. income tax, corporation tax, stamp duty land tax) it is not necessary for HMRC to open a formal enquiry. However, if the compliance check identifies risk that extends to (say) income tax, it may be necessary for HMRC to open a self-assessment tax return enquiry to address those risks.

If HMRC identifies a risk relating to a period for which the enquiry window has closed, and either it is unlikely that the risk will affect another period(s) or the risk will be identified by checking the current period or a period for which the enquiry window is open, HMRC can generally undertake a compliance check only if there is a potential discovery position (e.g. under the discovery provisions in TMA 1970, s 29).

Right to know?

As a compliance check can develop into a formal enquiry, it would seem to follow that the same approach to openness and early dialogue with HMRC should be applied to both procedures.

HMRC's Compliance Handbook manual states (at CH206150): "At the start of your compliance check you must tell the person the risk or reason for your check. It may be that the person can explain and offer evidence to satisfy the risk identified." It adds: "When requesting documents or further information you must provide the person with an explanation of why you need these. Explaining why you require certain information will... help the person to provide it; prevent requests for unnecessary records."

If an HMRC officer does not freely explain at the outset of an enquiry (or compliance check) why it has been opened, the taxpayer (or representative) should not be shy in asking for the reason(s). If the HMRC officer refuses to share this information (or is unreasonably vague), they should be asked to confirm their actions in writing. Consideration should then be given to making a complaint (www.gov.uk/complain-about-hmrc).

Don't be shy!

Of course, a complaint should generally be avoided where possible. It may be sufficient to remind the HMRC officer of 'Your Charter' (www.gov.uk/government/publications/your-charter/your-charter), which lists

several 'taxpayer rights' (i.e. what the taxpayer can expect from HMRC). Those rights include HMRC respecting the taxpayer and treating them as honest ("We'll treat you even-handedly, with courtesy and respect") and being professional and acting with integrity ("We'll act within the law and... help you to understand your rights").

HMRC recently consulted on a revised Charter. The revised HMRC commitments in the draft Charter include being responsive – "When you get in touch with us, we aim to answer your questions and resolve things first time, or as quickly as we can."

Hopefully, HMRC officers can be persuaded that the Charter extends to explaining the reasons why a tax return enquiry has been opened.

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