Covid-19: how is the taxman faring?

Sarah Mawson and Mike Walden examine HMRC's response to the Coronavirus pandemic.

It is often said that we are living in unprecedented times. HMRC's response to the pandemic has been nothing short of unprecedented. The crisis has sent shock waves through the department and it is clear things are not returning to 'business as normal' anytime soon. So how has HMRC's approach changed and what does the future look like?

Initial approach

HMRC's initial approach saw a dramatic suspension of all compliance activities. Cases were put on hold for the foreseeable future and caseworkers were not pursuing requests for information. Official policy stated that cases of tax avoidance and criminality were still being worked as normal, however in practice they were often agreeable to requests for an enquiry pause particularly where the health of the individual was concerned, judging each on a 'case-by-case' basis. We anticipate this approach will continue for some time, but it largely depends on the attitude of the caseworker you happen to be dealing with.

Given the soaring demand for HRMC to agree Time to Pay arrangements, they rapidly deployed a policy of providing a three-month PAYE deferral to anyone who requested it. This change bought HMRC time to re-evaluate their approach, and properly resource their helplines. It was clear HMRC was focused on helping businesses to stay afloat rather than calling in all debts.

This was mirrored by the Treasury's unparalleled decision to automatically defer VAT liabilities. This extraordinary shift in mentality happened almost overnight and signified a complete overhaul in approach. The introduction of the Coronavirus Job Retention Scheme (CJRS) and the SelfEmployment Income Support Scheme (SEISS) instigated the mass retraining and redeployment of compliance staff to the helplines, marking a further move away from enquiries.

In instances where clients wanted enquiry progress to continue in hope of reaching a swift resolution, caseworkers were often confused as a result of the general message that all compliance activity was to be postponed. In some of these cases we effectively had to appeal to HMRC to continue working the enquiry! This is some way from HMRC's historical approach, especially when there have been information requests.

Inconsistencies

The introduction of the Coronavirus helpline ran relatively smoothly, with HMRC even overestimating the resources needed to deal with incoming calls. However, the swift retraining of staff, in combination with the vagueness of the official guidance about both the CJRS and SEISS, resulted in large inconsistencies in the advice given to both agents and taxpayers. This was true of both the Coronavirus support schemes and established functions such as debt management staff agreeing TTPs. We learned that TTP for debts over £750,000 were being agreed by the helpline with little resistance.

However, conversations with our network of senior inspectors confirmed that arrangements exceeding this limit were not confirmed as agreed unless authorised by the Large Debt Unit. It is clear the usual levels of training and supervision provided to call handlers in the office environment could not be replicated virtually at such short notice. Taxpayers have found their ability to rely on agents has been curtailed by HMRC's internal policies for some of the coronavirus support.

For example, in claiming under the Coronavirus support schemes, such as Eat Out to Help Out, agents can assist with calculations but claims themselves must be made by the individuals. Given that these are new schemes with limited information available, we think that it's likely the error rate will be quite high, and these schemes will provide a target for future HMRC enquiries. Any suggestion of wrongdoing in use of these schemes is likely to have a negative impact on reputation given the hardship faced by so many. As mentioned earlier, requests for enquiries to be placed on hold have been met with some inconsistency, and the mass redeployment of staff has clearly contributed to this.

However, another difficulty faced was contacting caseworkers who are rarely provided with a work mobile. HMRC has now brought forward its online dialing roll out so this is getting easier every day, with most caseworkers reachable on their '03000' office number. Where clients have agreed to continuing enquiries, and you can contact HMRC, it is a great time for taxpayers to reach a settlement on favourable terms as caseworkers are able to focus on fewer cases, and HMRC is reluctant to cause further hardship.

Finding clarity

It is more important than ever for individuals, business owners and their agents to seek the support of tax dispute specialists to minimize the scope for future enquiries and ensure that agreements reached are viable. Our national tax dispute resolution team here at Grant Thornton has a breadth of senior contacts within HMRC because of the combined years spent working within the department.

As we were part of the consultation board on HMRC's coronavirus response we played a key role in advising on the published guidance. We encourage direct contact with senior individuals within HMRC wherever possible to gain clarity and agree deferral arrangements where contact with the helplines has caused confusion or agent assistance has been resisted. While assisting our clients with deferrals we encountered inconsistencies between the approach of different officers. In one case we were told that a taxpayer can 'always improve on the first offer'. We escalated this through our network and reached a pragmatic solution.

Such statements could encourage taxpayers to submit substandard offers in the first instance, which simply creates more work on both sides. Our approach in this case gave our client swift clarity about what they needed to pay and when, allowing them to focus on staying viable throughout the crisis. It is especially clear that following the initial period of respite on the payment of liabilities, HMRC have tightened the scope for TTP.

As such it is imperative that well-thought-out and detailed proposals are produced and delivered to key contacts to enable a quick and sensible solution. Having appropriate contacts within HMRC allows us to provide this support even where we don't already have authority to act, as we can email HMRC the appropriate forms rather than relying on posted forms and HMRC's internal processing.

Building relationships with key contacts at HMRC, or working with a specialist team with a strong network, can also provide a direct route into the relevant directorates for the purpose of making disclosures. Despite HMRC's general policy that disclosures must be made through the Digital Disclosure Service, constraints on the disclosure team due to Coronavirus, mean it is more beneficial than ever to reach out directly to senior inspectors to ensure it is handled appropriately.

<u>The future</u>

The way HMRC are working will continue to be somewhat removed from their historical practices. Remote working will continue for the foreseeable with most teams only returning to the office on a part-time basis after January. This will present a new raft of challenges for the department when running enquiries.

The COP9 process itself has changed dramatically in the past few months. Our team has found that new COP9 cases do not necessarily require face-to-face meetings; these opening meetings are now being conducted virtually and on a needs basis. These changes are anticipated to be permanent, meaning that going forward simple disclosures under the CDF may not require a traditional opening meeting.

This will present major challenges for both HMRC and agents, where virtual meetings may make supporting the client in real-time more difficult. For other enquiries, challenges will also arise from the changes to face-to-face meetings as well as visits to business premises. The identification of fraud through unannounced visits will not be possible for some time so HMRC will need to consider their alternatives. This could mean more reliance on their information powers, at a time when these powers are being reviewed. With caseworkers working from home, HMRC will also have to consider how it handles business' records as GDPR remains extant, however delays in the enquiry process are unlikely to be tolerated. By mid-July, HMRC received 4,400 furlough fraud reports. The corresponding enquiries have already begun and will likely uncover many businesses that got it wrong.

In the current environment, receipt of deliberate penalties will also impact public opinion, so we advise caution. We also anticipate that some people will have voiced their outrage at not being furloughed. While this may not seem relevant, it could be an indicator of wider payroll fraud, because employers need to have submitted records and paid the appropriate taxes to make use of the scheme. The SEIS scheme has its own risk factors, and while HMRC have intimated that errors in the initial round of payments will not be recouped, some individuals chose to amend their earlier returns to enable a larger claim under the scheme.

This action may have unwittingly opened the door to HMRC, giving the potential for assessments for a 20-year period given the deliberate behaviour. We always recommend expert support for handling HMRC disputes, and this pandemic offers both opportunity and risk.

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