

Calling in the experts

Why should you use a tax investigations specialist and when? Mala Kapacee shares her thoughts on these important questions

Someone once said to me: “I feel that not enough accountants avail themselves of specialist tax investigations services, usually on the false premise of cost or even fear that their relationship with a client will be undermined.” It’s time to set the record straight.

Have you ever been on a walk where you start off going in the right direction, you are fairly confident you need to turn left at the next tree and the next thing you know you’re in quicksand, the sun is sinking and you’re completely lost?

You may not have been in that exact predicament but the metaphor applies to any situation where someone starts out in complete control and slowly gets out of their depth, without realising it. The key is to understand when to ask for help and who best to contact. Being in this magazine, we are of course talking about HMRC tax investigations.

As tax investigations specialists we are regularly referred work by accountants and lawyers (in this article ‘advisers’), typically in situations where the investigation requires a skillset beyond what they can comfortably offer. Usually by this time, HMRC have a lot of information (which they may or may not have been permitted to ask for) and have sometimes opened fraud cases on the basis of it. By responding to HMRC, the adviser wanted to close down the enquiries as soon as possible but instead the opposite has happened.

To find out how this happened and to prevent it recurring, we look at how advisers and clients get into such a situation, what their options were and when they could have acted differently without jeopardising their client relationship.

The client comes first

You receive a letter from HMRC, copied to you as their agent, a request for information perhaps. The client receives the same letter and starts panicking – what do you do? In our experience, we have seen responses to HMRC sent by the adviser ranging from “we can’t help you and we are no longer acting for the client” to “here is everything you requested”. In both of these extreme cases, the adviser is thinking (quite rightly) about their own relationship with HMRC. If I continue to act for a client under investigation, will HMRC open an investigation into all my clients? Or, alternatively, if I provide HMRC with everything they requested, will they see we are cooperating and leave me and my client alone. In general, neither of these approaches work.

A client who has to find a new adviser becomes more stressed and may respond to HMRC themselves, which usually leads to even more questions and tax technicalities they do not understand and are not in a position to respond to. Sometimes, HMRC respond with an assessment the client cannot pay, on the basis of the little/no information they have been given.

On the flip side, providing HMRC with everything they have asked for can open a can of worms (and may result in a future PI claim if the client discovers more information was given than required – read this article for more on Sch 36 information notices). HMRC will go through the information on a line-by-line basis and they will ask more questions. In this case, you need to think like an investigator – if I provide this information to HMRC, what will they make of it and how do I pre-empt additional questions. Front loading the work in this case saves time (and money) overall. This is usually the ‘tree’ referred to in the first paragraph. You are fairly confident you should respond to HMRC, but perhaps you don’t know exactly where the path is leading.

This is where specialists can be helpful and we do not need to take on the client to assist. We can review the letter/information request and advise on what you are required to give to HMRC and more importantly, what HMRC are not permitted to ask for. We can ask the questions HMRC would ask so that when you do respond, HMRC become aware they are dealing with someone who will not let HMRC ride roughshod over their client’s rights. Suddenly, the conversation becomes less ‘you give, I take’ and more collaboration and negotiation.

It’s ok to ask for help

In conversation with accountant friends and colleagues, there is one thing that comes up regularly. If I refer my client to you, that client might not come back when the investigation is done.

In fact, the opposite is true. The client has come to the adviser and stayed with them so long because they trust them. To build and retain that trust, the adviser needs to demonstrate that they will put their client’s interests first.

Admitting there are areas beyond your expertise is only a weakness if you don't know where to obtain the expert advice. In our experience, clients are much less likely to stay with an adviser who tries to advise beyond their expertise, particularly if they end up (rightly or wrongly) with a tax bill and especially if they feel the matter could have been handled better.

The majority of tax investigations specialists are not practising accountants. We do not do tax return compliance, payroll or accounts preparation. For us at LTN, the thrill is in the negotiation with HMRC and trying to get the best result for the client. We do not want your clients beyond the tax investigation.

When do you need a tax specialist?

From our perspective, the answer is as early as possible and definitely before you get to quicksand. Remember that instructing a specialist does not mean you hand over your client. It means working with a specialist to provide the best service for your client.

We provide the strategic advice and understanding of the procedures that have to be followed. You provide the understanding of your client, their personal tax affairs and their business. In an ideal world, you need both to be able to respond fully to HMRC, without compromising the client and to obtain the best outcome as soon as possible.

You, the adviser, are our client and we want to help you provide the best service. That could be anything from reviewing HMRC letters to looking at a suggested response to HMRC and making comments/suggestions to reviewing detailed information (e.g. bank statement) and giving you an idea of the questions HMRC might ask.

At the end of the day, tax investigations specialists are there to support you: think of us as the guide steering you around the swamp and back on to solid ground. Handled correctly, navigating your client through an investigation and resolving it with a mutually agreeable settlement will end with you having a client for life; one with greater respect for the work you do and the value you add.

Takeaways

Asking for help is a strength. Clients respect you for saying "I know who can help and I will work with them to make sure we get the best outcome for you".

You are our client. If in doubt, you can always ask for an opinion, guidance or for us to review correspondence with HMRC. We do not necessarily need to engage with the client or front the case.

Clients stay with advisers they trust. Referring a client to a tax investigations specialist means you are more likely to retain the client. If things do not go to plan, you are protected and if things do go to plan, your decision to refer is vindicated. The client will always remember you had their best interests at heart.

Earlier is better. Speak to a specialist before you get to the murky swamp stage. Even before making that turn you are 'fairly confident' about. One of the skills we have is to strategise; to understand where HMRC are coming from and where they might go in response to your proposed letter.

Specialists save time and money. Asking for external specialist advice means that the investigation is likely to end quicker, which saves the client money and stress in the long term.

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