HMRC gets a pizza the action

Anton Lane looks at a case where 'the Pizza Guy' didn't know that HMRC can obtain information from merchant acquirers

Introduction

The Pizza Guy was caught because HMRC has powers to collect data from merchant acquirers. They have a lot of other powers too, and in this case HMRC wanted to send a strong deterrent message to the wider public, resulting in the pizza guy being sentenced to two years' imprisonment. While we expect the wardens and other inmates will be pleased at the canteen improvements and revised eat-in menu, the Pizza Guy could have easily protected himself from prosecution.

Two years in prison

On 30 June 2021, the Crown Prosecution Service (CPS) reported that a takeaway owner (the 'Pizza Guy') was imprisoned for two years for submitting fraudulent tax returns and cheating the Exchequer out of £83,443. By way of quick calculation, I estimate that the number of pizzas subject to fraud was between 17,000 and 26,000, depending on whether they were stuffed crust or thin base.

The press release states that Mr Clark (of Hedgela Road in East Rainton) "was caught as HMRC do random checks and his returns did not add up so they began an investigation", but that is not true! The pizza guy was caught because evidence was "obtained from Just Eat and Merchant Acquirer, which shows credit card sales, revealed he had consistently under-declared his income".

Section 228 of the Finance Act 2013 provided powers to collect data from merchant acquirers: businesses that process credit and debit card transactions. The data is utilised by HMRC to identify traders that are not declaring or under declaring their income.

The information powers apply to data held by:

- Electronic payment providers: businesses that perform a similar function to merchant acquirers by handling monetary transactions; and
- Business intermediaries: businesses that allow customers to make orders, purchases or reservations, relating to goods, services or digital content.

Information relating to internet traders has also been flowing to HMRC following a consultation document published on 22 July 2015 and the subsequent amendment to HMRC's information powers. HMRC want more powers though and on 30 July 2021 they launched a consultation on the implementation of the OECD Model Reporting Rules requiring digital platforms to report details of the income of sellers on their platform to the tax authority. The consultation closes on 22 October 2021.

The model rules require those platforms to report information to tax authorities. The authorities will then exchange that information with other tax authorities. It will also be used by the reporting tax authority for its own compliance purposes. Information will also be given to the sellers to help them comply with their tax obligations.

Each reporting platform operator must provide the following information to identify the seller and the jurisdiction that they are linked to for reporting purposes:

- details of the seller.
- details of the payments made to them.
- Tax Identification Number.
- the ‘financial account identifier’ (account number and sort code, IBAN).
- the name of the holder of the account to which payments are made.
- if the name of the account holder name is different to the seller, any other available identifying information.
- the country in which the seller is resident on the basis of their address.
- the number of services and total consideration paid during each quarter of the reportable period.
- the amount of any fees, commission or taxes withheld or charged by the platform operator during each quarter.

There are additional reporting requirements where the seller provides immoveable property rental services:

- the address of each property.
- the number of rentals.
- the number of days each property listing was rented during the reportable period.
- if available, the type of listing.

Information is handled by HMRC’s Risk and Intelligence Service. RIS is responsible for:

- Collating information.
- Identifying those operating in the hidden economy.
- Receiving and exchanging information with other Government Departments.
- Researching and identifying campaign and taskforce targets.

So, the Pizza Guy’s merchant records were obtained and connected with his accounts and tax returns and anomalies identified. An enquiry ensued and I assume, the Pizza Guy did not hold his hands up and confess to the tax fraud hence the prosecution. If he had, he would have been able to represent the tax liabilities proactively and I suspect, the loss to the exchequer would have been less.

HMRC’s policy is to counter fraud cost effectively through civil fraud investigation procedures under Code of Practice 9 (‘COP 9’) wherever appropriate. Where COP9 is offered the taxpayer accepts a deliberate act and makes a full disclosure of tax irregularities and protects themselves from criminal prosecution. Criminal investigation is reserved for cases where HMRC desire sending a strong deterrent message to the wider public or where the conduct involved is such that only a criminal sanction is appropriate.

The Pizza Guy may have, when approached by HMRC, maintained silence on the tax fraud and this could have led to the case escalating to a criminal investigation. HMRC will consider starting a criminal investigation:

- in cases of organised criminal gangs, systematic frauds and cases including conspiracy.
- where an individual holds a position of trust or responsibility (i.e. a solicitor, accountant, tax adviser and not the Pizza Guy).
- where materially false statements are made or materially false documents are provided (maybe the Pizza Guy).
- where, pursuing an avoidance scheme, reliance is placed on a false or altered document or material facts are misrepresented.
- where deliberate concealment, deception, conspiracy or corruption is suspected (maybe the Pizza Guy).
- in cases involving the use of false or forged documents (maybe the Pizza Guy).
- in cases involving importation or exportation breaching prohibitions and restrictions.
- in cases involving money laundering with particular focus on advisors, accountants, solicitors and others acting in a 'professional' capacity.
- where the perpetrator has committed previous offences or there is a repeated course of unlawful conduct or previous civil action (the Pizza Guy was only 34 so I suspect not – but Senior District Crown Prosecutor Maqsood Khan said that "Mr Clark had two thriving pizza takeaway businesses and yet consistently understated the amount of money he was making from them".)
- in cases involving theft, or the misuse or unlawful destruction of HMRC documents.
- where there is evidence of assault on, threats to, or the impersonation of HMRC officials.
- where there is a link to suspected wider criminality involving offences not under the administration of HMRC.

Conclusion

On 25 June 2021, the Pizza Guy was jailed for two years but it didn't have to be that way – he could have easily protected himself from prosecution. The problem any trader seeking to hide a little money away is that HMRC have extensive powers and methods of finding undeclared profits from trades. A further worry is that imprisonment doesn't make the tax liability go away!

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