Litigants in Person left 'high and dry'

Taxpayers facing an investigation should seek expert help immediately, says Les Howard

This is a subject I have mentioned before. Litigants in Person (LiPs) will struggle at tax tribunal unless the matter in hand is fairly straightforward. The Irene and Attila Balazs case was certainly not straightforward!

The husband-and-wife partnership was involved in property management. An HMRC investigation was triggered by the VAT registrations of two of their suppliers being cancelled. As a result, HMRC denied input tax of around £43,000 on 'Kittel' principles – the taxpayer partnership knew or should have known that the transactions were connected with fraudulent evasion of VAT.

HMRC also issued a penalty for 'deliberate' behaviour at 63% of the 'potential lost revenue.' The assessment and penalty were upheld on review (anecdotal evidence suggests this almost always happens!). Only upon receiving the notification of an Appeal did HMRC 'downgrade' the penalty category from 'deliberate' to 'careless.'

There is some comment in the decision that the taxpayers' accountant advised that advice be sought from a VAT specialist. It is unclear how much involvement the VAT specialist had.

The taxpayer appears to have prepared their own grounds of appeal and skeleton argument. Paras 18-20 of the decision list a total of 21 contentions raised by the taxpayer. It has to be said that these are not professionally drafted, lacking precision. Any argument made in a skeleton argument must be supported by law, precedent, or evidence of fact. It is not sufficient to argue, "the case made no sense, but he did not want to go into detail about this" (para 18(4)).

Digging a little deeper, the taxpayer clearly made no proper checks of their suppliers. They argued that data protection prevented checks other than on the VAT number! No financial checks were undertaken; and no explanation for this omission was offered. Also, the practical arrangements between the taxpayers and the suppliers were unclear. The partner's evidence about these arrangements was inconsistent. The tribunal commented that there were contradictory statements about who was responsible for the purchase of builders' materials. Whilst many small and medium business may be quite relaxed about business relationships, the absence of proper checks will leave them vulnerable should things go awry.

The FTT concluded that the taxpayers' behaviour was "at least careless". HMRC appear not to have asked the FTT to reinstate the penalty for deliberate behaviour.

I did note that the taxpayer had not appealed the assessment, apparently because "he did not know the law". Whether this was following receipt of professional advice is unclear. The Tribunal pointed out that this did not equate to the taxpayer accepting that the assessment was correct. This is important. However, it did mean that the Tribunal had no opportunity to reduce the quantum of the assessment.

The decisions to assess VAT and to assess a penalty are distinct although inter-dependent. A Litigant in Person is unlikely to be aware of the legislative regimes behind each of these; such as the allowable grounds of appeal, time limits, etc.. That is why taxpayers should engage a professional at an early stage. It might be said that it is never too early to engage a professional. But it might be too late!

The lesson is clear. And readers will agree. Taxpayers should speak to their accountant promptly when HMRC open an investigation. And accountants should be quick to speak to a tax specialist.

The Balazs decision can be found at https://tinyurl.com/2p85jz3v

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• *Les Howard is a partner in vatadvice.org, a specialist VAT practice based in Cambridgeshire*