

For your information

What should you do if you receive an information notice? Julian Hickey talks you through the steps to take

An information notice should tell you: (a) what documents and/or information are required, (b) how and when to give HMRC what is required, and (c) information about any appeal rights.

They are issued under Finance Act 2008, Schedule 36. Broadly, HMRC's powers enable them to issue:

- **Taxpayer Notice:** an HMRC officer may by notice in writing require a person to provide information, or to produce a document, if it is reasonably required by HMRC for the purpose of checking the taxpayer's tax position or for the purpose of collecting a tax debt of the taxpayer.
- **Third-party notice:** an HMRC officer may by notice in writing require a person to provide information, or to produce a document, if it is reasonably required by HMRC for the purpose of checking the tax position of another person whose identity is known to HMRC or for the purpose of collecting a tax debt of the taxpayer. Such a notice may only be issued with the agreement of the taxpayer or the approval of the First-tier Tribunal, and are subject to certain conditions (e.g. that the FTT is satisfied that HMRC is justified in giving the notice, and the third party has been given a reasonable opportunity to make representations) (para 3).
- **Financial Institution Notice:** HMRC may by notice in writing require a financial institution: (a) to provide information, or (b) to produce a document, if conditions A and B are met:
 - Condition A is that the information or document is, in the reasonable opinion of the officer giving the notice, of a kind that it would not be onerous for the institution to provide or produce.
 - Condition B is that the information or document is reasonably required by the officer: (a) for the purpose of checking the tax position of another person whose identity is known to the officer, or (b) for the purpose of collecting a tax debt of the taxpayer.

What is the purpose of an information notice?

The purpose of an information notice is to assist HMRC at the tax enquiry stage to obtain documents and information without providing an opportunity for those involved in potentially fraudulent or otherwise unlawful arrangements to delay or frustrate the investigation by lengthy or complex adversarial proceedings or otherwise. See generally: *Derrin Brothers* [2016] EWCA Civ 15 at [68].

The information must be reasonably required for the information notice to be valid.

HMRC may only obtain information and records from a taxpayer about the taxpayer's affairs (otherwise than by voluntary disclosure), if HMRC issues a notice that satisfies the conditions of Para 1 of Schedule 36 of Finance Act 2008, i.e. that the documents and information requested by the notice are reasonably required to check the taxpayer's tax position.

The test for validity "incorporates an obligation to consider whether [the requests] are proportionate". See *Gold Nuts Limited* [2017] UKFTT 84 (TC) at [202] and [204].

As to validity of the information notice, these points should be considered:

- The burden is on HMRC to show the documents and information were reasonably required;
- Whether a document is reasonably required depends on the context;
- It is relevant to consider whether the documents will provide anything useful;

- HMRC may not use their powers for a fishing expedition, preparing a broadly drafted notice in the hope of finding an issue;
- The Tribunal must balance giving HMRC sufficient latitude to allow them to properly do their job with the taxpayer's right to finality and privacy; and the FTT must accept that the taxpayer is honest unless there is reason to believe otherwise;
- Whether documents are reasonably required incorporates an obligation to consider whether the requests are proportionate.

What type of 'document' can HMRC require?

A 'document' includes anything in which information is recorded, such as a computer. HMRC can request information or documents in any reasonable form (e.g. a memory stick or printed copies).

HMRC may require documents to be produced at a place that is specified in the notice, or by email or post, provided the requirement is reasonable.

What information can HMRC require to be provided?

The notice can require the recipient to provide information, such as answering specific factual questions. HMRC's Compliance Handbook states:

"You cannot ask a person to create a document so that you can require them to produce it by an information notice, but you can require a person to provide information.

'Provide' in this context means "to give someone something that they need". It indicates the thing in question must reach you rather than simply be made available so you have to go and get it.

'Information' has, amongst other things, been defined as:

- knowledge acquired in any manner, and
- facts about a situation, person, event and so on.

It does not include opinion or speculation.

'Providing information' can be answering specific factual questions, but information can also be provided by creating a document that did not previously exist in order to conveniently provide the information required. For example, it can cover computations, calculations, analyses, translations of documents written in a foreign language, and so on."

What if I have filed a return?

Generally, where a tax return has been filed, an information notice may only be given for the purposes for checking that person's tax position in relation to the chargeable period to the extent that at least one of conditions A to D is met, which are broadly:

Condition A is that a notice of enquiry has been given in respect of the return, or a claim or election and the enquiry has not been completed.

Condition B is that HMRC has reason to suspect that:

- a) an amount that ought to have been assessed to relevant tax for the chargeable period may not have been assessed;
- b) an assessment to relevant tax for the chargeable period may be or have become insufficient; or
- c) relief from relevant tax given for the chargeable period may be or have become excessive.

Condition C is that the notice is given for the purpose of obtaining any information or document that is also required for the purpose of checking that person's VAT position.

Condition D is that the notice is given for the purpose of obtaining any information or document that is required (or also required) for the purpose of checking the person's position as regards any deductions or repayments referred to in paragraph 64(2) (PAYE etc).

What are the statutory restrictions and exceptions?

The principal restrictions, subject to meeting specific conditions, are:

Old documents. An information notice may not require a person to produce a document if the whole of the document originates more than six years before the date of the notice, unless the notice is given by, or with the agreement of, an authorised officer; (para.20)

- Information relating to the conduct of a pending tax appeal;
- Journalistic material in the possession of the person who acquired or created it;
- Personal records concerning the health, spiritual or welfare counselling or assistance in respect of an individual;
- Information for the purpose of checking the tax position of someone who died more than four years before the date of the notice;
- Information or any part of a document that attracts legal professional privilege;
- Subject to limitations, information held by that person in connection with his or her performance of a statutory audit or documentation created by him or her or on his or her behalf in connection with that function;
- Information held by a tax adviser about 'relevant communications' or documents belonging to the tax adviser, which are communications between the tax adviser and his or her client or any other tax adviser of the client.
- Information held by an auditor appointed by statute in connection with the performance of the person's functions.

Can I appeal against an information notice?

A taxpayer may appeal against a notice. The grounds of appeal will be that the notice is not valid. A third party can also appeal against an information notice. If a notice has been issued with the approval of the First-tier Tribunal there is no statutory right of appeal. However, it may be possible to challenge the notice on the basis of judicial review.

Are penalties imposed for non-compliance?

The short answer is yes. HMRC can charge a £300 penalty, followed by daily penalties of up to £60 a day for each day that you do not comply. If a person carelessly or deliberately provides inaccurate information or produces a document containing an inaccuracy, then HMRC may charge the person a penalty of up to £3,000 for each inaccuracy.

HMRC can also charge a penalty if the taxpayer or another person conceals, destroys, or disposes of any document that HMRC: have asked for in an information notice, told the person that they intend to ask for in an information notice.

It is a criminal offence to conceal, destroy or otherwise dispose of any document that HMRC have asked for in an information notice.

See HMRC's guidance at CC/FS2 (publishing.service.gov.uk)

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