

Play your card right

Closure notice applications are an ace up the advisor's sleeve, writes Gary Brothers

As many tax advisors will know only too well, an HMRC enquiry into a self-assessment return can be a long, time-consuming, and frustrating process, with Inspectors seemingly more and more eager to play their statutory cards, such as issuing formal information notices, if they don't get their own way.

The increasing use of the heavy-handed tactics, often without any real dialogue or understanding, can cause worry, confusion or even anger for clients, and possible friction between the clients and advisors, with concerns that the Inspector is prolonging the enquiry with no good reason, or is embarking on a 'fishing expedition' to widen the scope of enquiries into new areas.

In general, our approach to HMRC enquiries is simple. If HMRC ask for something that is reasonably required for their consideration of our client's tax returns, we provide full answers and documentation to help the Inspector understand the position, establish the salient facts and then address any concerns.

Conversely, however, if anything appears to be not reasonably required, or is otherwise outside of HMRC's statutory scope to obtain, we will challenge this appropriately.

Unfortunately, our day-to-day experience is that this challenge is an increasingly common occurrence, with Inspectors feeling that that they have the right to ask any questions they like, without sensible reason, which of course they don't. For example, in one of our recent case, the Inspector felt that it was appropriate to ask our (high net worth) client for such information as the names of the schools attended by his children and how much money the family had spent on holidays for the past five years; all of this without the Inspector being able to demonstrate, in any way, that our client's returns were inaccurate or incomplete or that any such concerns might be well founded.

Seeking closure

Fortunately, there is an important protection available to taxpayers in such circumstances, at Section 28A of TMA 1970 (or Paragraph 33 of Schedule 18 FA 1998 for companies).

This legislation allows taxpayers to make a request to Tribunal that the Tribunal should direct HMRC to close their enquiries.

The real value to the request, however, is that, if such an application is made, it is for HMRC to convince the Tribunal that there are reasonable grounds for the enquiry to be allowed to continue; otherwise the legislation requires Tribunal to direct that HMRC issues the closure notice within a specified period. In short, HMRC have to justify to the Tribunal there are goods ground for continuing.

Points to note

While undoubtedly a hugely valuable tool for the beleaguered advisor looking after a client, there are a couple of cautionary points to note.

Firstly, although the advisor or taxpayer can apply to the Tribunal for a closure notice at any time following the commencement of HMRC's enquiry, it is very much a strategic decision and the temptation to apply too early or at the wrong time should be resisted. Tribunal are unlikely to instruct HMRC to close their enquiry unless they believe that the Inspector has been provided with all reasonable information and, although more than one application can be made in relation to the same enquiry, timing is important to success.

Secondly, Tribunal's instruction to HMRC to close their enquiry does not mean that the Inspector must "walk away with nothing". Although this is a possibility, and something we have seen in a number of cases, if the Inspector believes that HMRC have a case to do so, they can issue assessments to their best judgement. But even if this happens, it forces the Inspector to put HMRC's cards on the table, and

crystallises an appealable position that can, if necessary and suitable, be progressed further via ADR or Tribunal. Not so much “the end”, but certainly “the beginning of the end” and the client will at least see some positive closure movement on the investigatory stage.

Conclusion

Making an application to Tribunal for their instruction that HMRC should close their enquiry is a useful but, in our experience, seldom used card for any tax advisor to have in his or her hand.

However, as with so many things in life, playing the card at the right time can be vital to winning the game!

We are currently offering a free no obligation case triage service for any issues with HMRC enquiries/disputes. If you or one of your clients are in a similar situation to the above and require some help or would like a second pair of eyes on the matter, please contact us – see below for details.

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