

HMRC criminal investigations activity: an update

George Gillham and Jade McCauley crunch the numbers, and offer some practical advice on dealing with an HMRC investigation

This article is aimed at tax advisers and accountants. It is not a substitute for legal advice. It is a warning about the fact that legal advice is necessary!

In 2013 Keir Starmer, then Director of Public Prosecutions (DPP), stated that the aim of the CPS was to increase prosecutions for tax evasion five-fold from a 2010 baseline.

Fieldfisher has tracked (and reported on) HMRC's progress ever since. We doubted then whether the DPP's arbitrary aim was achievable. It has not been achieved. However, that should not be seen as a failure, because the world has changed around it, rendering the aim unnecessary.

Fieldfisher tracks a number of figures that reveal the extent of HMRC's criminal investigations activity, and the extent of its success (or failure):

- search warrants executed by HMRC ('raids');
- decisions by the CPS to charge for tax offences ('decisions to prosecute');
- individuals prosecuted ('prosecutions'); and
- convictions for tax offences in the courts ('convictions').

The table below updates these figures for the 2021/2022 tax year using the above definitions (these figures exclude tax credits offences) with data obtained by way of a request under the Freedom of Information Act 2000.

Year	Raids	Decisions to Prosecute	Prosecutions	Convictions
2011/12	657	430	364	333
2012/13	787	664	471	439
2013/14	784	874	713	674
2014/15	759	1247	681	617
2015/16	761	1065	843	773
2016/17	752	1063	844	767

2017/18	641	946	896	815
2018/19	495	831	749	648
2019/20	183	573	691	608
2020/21	421	304	163	157
2021/22	441	336	215	197

Raids

The bounce-back in the number of raids we saw in 2020/21 has continued in 2021/22. We are now back to 'business as usual' with HMRC having resumed normal compliance activity after its substantive suspension due to the Covid-19 pandemic.

Decisions to prosecute

Whilst the number of decisions to prosecute for 2021/22 has risen by 11% from 2020/21, it has not returned to the sorts of numbers seen before the pandemic. We think there has been a change in HMRC's behaviour and approach reflecting a declining trend seen in the number of raids. Figures for 2021/22, when compared to pre-pandemic numbers, further affirm that we were right to infer in [2019](#) that HMRC have reduced their focus from gathering evidence through raids as a precursor to prosecutions for tax evasion.

Prosecutions and convictions

Whilst figures for 2021/22 for both prosecutions and convictions have increased slightly from last year, the overall trend reflects a decline. With an overall reduction in raids and decisions to prosecute, the number of prosecutions for 2021/22 has dropped 69% when compared to figures for 2019/2020. Not surprisingly, the number of convictions also dropped sharply, when compared to pre-pandemic figures. However, 92% of prosecutions resulted in a conviction, which is really impressively high. HMRC, and the CPS, are to be commended for focussing their resources on bringing to trial high quality cases with a realistic prospect of conviction.

What do these statistics tell us?

What we can derive from the above is that if a taxpayer is the subject of a raid by HMRC, they are in serious trouble because the chances of a decision to prosecute, prosecution, and conviction resulting from the raid are all extremely high. The taxpayer needs immediate, specialist support from a solicitor with experience of HMRC raids. Our experience is that any delay in obtaining legal representation – before any interviews, and before any raid on any premises is complete – can seriously damage, and sometimes destroy, a client's business.

Change in rhetoric and change in approach

We noted in 2020 further signs of HMRC reducing their focus on gathering evidence through raids as a precursor to prosecution for tax evasion. Over the past year there appears to have been a further shift in

tone by HMRC. In particular, in December 2021, HMRC published a policy paper on their approach to tax fraud. The paper sets out that HMRC would expect to utilise their criminal investigation powers:

- to fight serious fraud involving large losses or organised crime groups;
- to send a strong deterrent message and reassure the honest majority there is a level playing field;
- when HMRC's civil powers aren't enough to uncover the truth or recover the tax that is at stake.

Finally, the policy paper states that HMRC focus is "reaching the right outcome for the UK, rather than chasing arbitrary targets for arrests and prosecutions".

To put it another way, the aims stated by the DPP in 2013 have been quietly abandoned. We think that this is the right thing to do, for two reasons. Firstly, criminal cases are very expensive and very time consuming, so it is only right that HMRC use them selectively and focus on the most harmful, complex and sophisticated frauds. Secondly, as we alluded to above, the matrix of information and powers available to HMRC is much more sophisticated now than it was.

Have HMRC become a soft touch?

No, emphatically not. While there is a decline in the number of raids, this does not mean that HMRC have reduced their attention on, or are applying a softer touch to those who commit, tax evasion. Other parts of the matrix of civil and criminal powers available to HMRC have changed, enabling them to deploy their resources differently in the fight against tax evasion.

The Common Reporting Standard (CRS) introduced from 2014 calls on jurisdictions to obtain information from their financial institutions and automatically exchange that information with other jurisdictions on an annual basis. It sets out the financial account information to be exchanged, the financial institutions required to report, the different types of accounts and taxpayers covered, as well as common due diligence procedures to be followed by financial institutions. Because it is a common reporting standard, it facilitates the exchange of information between countries which allows HMRC to obtain data and information from over 100 tax authorities yearly.

Additionally, HMRC have enhanced powers to challenge tax evasion under the Criminal Finance Act 2017. Organisations are required to put reasonable measures in place to prevent tax evasion. Failing to prevent the facilitation of tax evasion is a corporate criminal offence. This compliance pressure enables HMRC to refocus on deliberate bad actors in the space.

Finally, HMRC are now furnished with a wealth of information from numerous international sources, which allows them to target their searches, making carrying out the raid the final step in the investigation rather than, as was the case 15 years ago, an early step. Canada, the Netherlands, Australia, the UK and the US work together through the Joint Chiefs of Global Tax Enforcement (J5) umbrella to combat transnational tax crime through increased enforcement collaboration. They work together to gather information, share intelligence and conduct operations. This is a serious operation. The most recent example of this was coordinated raids across the UK, US and Australia on 9 December 2022 in relation to Electronic Sales Suppression (ESS) software. Those raids are the beginning of the end of an investigation, not the first step in one.

Consequently, HMRC are now able to carry out its raids much more effectively than they were 10 years ago, resulting in the very high prosecution and conviction rates noted above. If HMRC deem it necessary to carry out a raid on a business or property, they are more likely than not to have reasonable grounds to suspect serious fraud.

Practical steps on dealing with raids

Above all, ensure now that all your clients have an offsite backup of all their data. In these data-driven days, the business could be in really serious trouble if HMRC turn up with a warrant and uplift everything. If HMRC do that, it is too late to take this precautionary step.

But, subject to that, assuming you to be the trusted adviser, the first port of call, of a client who has HMRC turn up with a warrant we recommend the following practical steps. You:

- Call specialist lawyers with practical experience of HMRC raids immediately. Ask the HMRC team leader to speak to them on the phone.
- Ask for a copy of the search warrant.
- Ask HMRC to wait until the lawyers you have called arrive on the premises before starting their search. HMRC do not have to wait but may do so if you ask.
- If HMRC refuse to wait, ask them not to take anything away until the lawyers arrive, and ensure one of the staff shadows each member of the search team and takes a detailed note of what the search team are doing.

The business's staff

The staff should be told not to obstruct the search team and not to destroy or conceal information or documents. All of these can be criminal offences and can lead to arrest.

However, the search team cannot interview anyone at the premises about the alleged offences which have led to the issue of the warrant. Questions asked of the staff should be restricted to matters relating to the search (i.e. "where would I find document x?", "what is the password for y?").

The search warrant may allow HMRC to search the staff without arrest. Searches must be carried out by an officer of the same sex.

An HMRC officer can arrest any member of staff – without a warrant – if they have reasonable grounds for suspecting that an offence has been committed and that that person is guilty of it.

It is possible that connected persons (such as the business managers) may have been arrested at home in advance of the search of the premises. If this is the case, they will also need legal advice, including about whether to answer questions in any interview under caution.

The business's data

HMRC are entitled to remove or copy documents stored electronically as well as in paper form. They will usually take an image of a major server on-site, but they can take it away instead if they wish. Mobile electronic devices - including personal devices which receive work communications - routinely will be confiscated for imaging later.

Your client is unlikely to see any document or device the search team do take away for many months.

If the client has documents (including electronic documents) which may be protected by legal professional privilege, that should be asserted. Where HMRC do not agree that privilege should apply, the item should be held separately ('blue-bagged') until its status is determined.

Conclusion

We hope this has been an interesting read, and that it enables you to help your clients. Feel free to give us a call – our contact details are above – should you want to discuss any element of this.

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