Have you had a 'nudge' from HMRC?

Danielle Ford and Riocard Hoye explain the proliferation of so-called 'nudge letters' from HMRC, and have some advice on what to do if a client receives one

HMRC's 'One to Many' approach, commonly referred to as 'nudge letters', is well-established by now. However, we have recently seen a flurry of new communications covering a range of issues. It seems sending a nudge letter is now HMRC's go-to approach for any matters where they perceive there may be a tax loss or risk.

What is a nudge letter?

A nudge letter is where the same letter is sent to many individuals or corporates who meet certain criteria, either at once or in batches.

HMRC receives data from several different sources and checks this data against information it holds, including tax returns, before the nudge letter is sent.

The letter can relate to a potential loss of tax identified by HMRC, or can be sent for educational purposes in relation to a specific area of tax. However, this communication does not always come in the form of a letter and can alternatively be sent as an email or even by SMS text message. Above all, it's important to note that the communication will not always be sent to the agent.

The rationale behind nudge letters is clear – HMRC is in receipt of more information than ever before, which is progressively greater in both detail and quality. Because of this, HMRC's resource is increasingly strained, and it would simply not be possible to open full investigations into each individual or entity it identifies.

The use of nudge letters allows communication with many taxpayers in a cost-effective manner for HMRC, with the aim of encouraging the taxpayer to review their own tax affairs and, where necessary, voluntarily disclose any errors or omissions.

Sources of information

HMRC receives data from multiple sources, including:

- Information held internally within HMRC i.e. Coronavirus Grants, SDLT, P60s and P11Ds.
- Internal projects and/or risk reviews of tax returns by HMRC's Connect software and their Risk and Intelligence Service (RIS).
- UK government sources i.e. Land registry and Companies House.
- Automatic exchange of information (AEOI) from other jurisdictions, of which the Common Reporting Standard (CRS) is the information standard for overseas financial accounts.

UK mutuals and other financial institutions.

Types of nudge letters

HMRC have seemingly found this method of communication to be successful, as it is increasingly difficult to keep up to date with their latest nudge letter campaign. Some of the recent campaigns we have seen at the time of writing include:

- The Annual Tax on Enveloped Dwellings (ATED) April 2022 revaluation.
- Offshore owners of UK property – both in respect of ATED and 60-day capital gains tax (CGT) reporting disposals of UK property.
- Persons of Significant Control earning below £100,000 or who have not submitted a tax return.
- Foreign tax credit relief on employment income.
- Non-resident taxpayers who attributed exceptional circumstances and/or coronavirus related workdays, in excess of the 60 day and 57 day limits in their 2020/21 UK Tax Return.
- Customers of Euro Pacific Bank.
- Landlords who have submitted deposits into the Tenancy Deposit Scheme but do not appear to have declared rental income.
- Taxi and private hire drivers who work through booking apps, identified following the introduction of tax checks when applying for licences earlier this year.
- Share fishermen.
- Coronavirus Job Retention Scheme.
- Research & Development credits.
- CGT on deferred consideration for business disposals.

The most common type of nudge letter we have seen has been in relation to offshore income and gains. These are issued based on the information HMRC receives every year, under AEOI, from overseas financial institutions in relation to UK resident individuals.

Accuracy of information

HMRC's Connect system compares the information held by HMRC to personal tax returns. If HMRC chooses to issue a nudge letter, it means a potential inconsistency has been identified by HMRC.

Our experience has shown that there can be inaccuracies with some of the information held by HMRC or the way in which the information has been interpreted. Some inaccuracies can be easily explained, however, receipt of a nudge letter in these circumstances leads to unnecessary burden on the taxpayer – from the review of their records and tax filings through to the response to HMRC. Understanding the process and the actions to take following a nudge letter is essential.

What do I do if I receive a nudge letter?

A nudge letter is not a statutory enquiry and does not automatically mean that there is an error or omission in your tax affairs. It is important that the taxpayer firstly undertakes a thorough review of their tax affairs, to consider if a disclosure to HMRC is necessary.

Regardless of whether a disclosure is required or not, it is best practice to provide HMRC with a full response by letter within the required 30 days. If this is not possible, it is recommended to give HMRC a call to agree a more convenient timescale.

Even though a full response is advised in respect of the nudge letter, a taxpayer should not sign and return the certificate of tax position. This is because there is no statutory obligation for the certificate to be returned to HMRC. The certificate applies to all tax years and is for any size of mistake, no matter how small. Therefore, care should be taken - failure to notify HMRC of an inaccuracy could lead to greater penalties.

If a taxpayer has deliberately evaded tax or is suspected of fraud, professional advice should be sought immediately.

Nudge letters are here to stay

Even if you do not agree with HMRC's use of nudge letters and believe it should exercise it's statutory powers instead, it is clear HMRC's use of nudge letters is here to stay. The number of campaigns launched by HMRC highlights the success of nudge letters, persuading taxpayers to correct their tax returns with limited HMRC resource input.

Overall, we have seen nudge letter campaigns become increasingly specific; care must be taken.

How can we help?

We recommend individuals immediately seek professional advice following receipt of a nudge letter, statutory enquiry, or where an individual has found a mistake or omission in their filings to HMRC.

If HMRC opens a statutory enquiry and finds an error, failure to act following receipt of a nudge letter can lead to higher penalties being charged.

If you have identified an error in your tax affairs, irrespective of whether you have received a nudge letter or not, you should consider making a voluntary disclosure to HMRC.

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