

A day in the life

Sean Wakeman describes the many and varied work experiences enjoyed by the tax resolutions specialist

Ever fancied a job as an accountant (understanding of double entry bookkeeping), lawyer (ability to read and interpret legislation), advocate (ability to convey persuasively a client's position) and negotiator (ability to measure the strengths and weaknesses of a client's position)? Take all these skills and add to them the skills of a strategist, and you will come close to understanding the role of a tax resolutions specialist.

Meeting with clients often feels like the confessional box or a consultation at a GP's surgery. The skills of a tax resolutions specialist involve more than tax, including listening, testing, challenging, diagnosing and reassuring as well as, on occasion, persuasion, stubbornness and a thick skin. The angst felt by an 'offender' can vary from horror of the elderly or inadvertent transgressors to casual disregard from the serial tax evader.

The role of a tax resolutions specialist is primarily to navigate those clients back to full compliance, the road chosen being dictated by many factors including the behaviour admitted or extracted. Broadly speaking, the chosen route may be a simple disclosure through a managed facility (digital disclosure, let property campaign or worldwide disclosure facility) through to a complex financial investigation culminating in a detailed report in more serious cases.

Accountants, bankers, solicitors, trustees and other intermediaries often ask about 'typical' clients, to which the answer is each case is different, depending both on the tax facts and matters such as the client's personality, age, vulnerability, nationality and profession. Clients can be individuals (UK resident or not, domiciled or not), a partnership/LLP, company (onshore or offshore), trust (onshore or offshore) or any other entity which has a tax issue that needs resolving.

Many tax resolution specialists are 'poachers turned gamekeepers'. It can help to have experienced the job from one side before moving to the other, allowing the former poacher to have insights into practices and procedures, particularly if that includes time spent with the specialist team now badged as Fraud Investigation Service. The modus operandi of HMRC generally may have changed over the years, but any such changes in the tax investigations arena are not that noteworthy, although the relevant legislation has changed a lot.

Opening approaches include standard self-assessment enquiries under Section 9A or 12AC Taxes Management Act 1970, or Para 24 Schedule 18 Finance Act 1998. On receipt of such enquiries, standard defence mechanisms kick in, checking that an enquiry is both validly opened and notified to the taxpayer. Attention then turns to whether the data requested is 'reasonably required' by the enquiring officer to enable him/her to check the particular tax return. There can follow a medieval jousting competition debating what is genuinely required, and relevant, and what is not.

Getting these preliminary stages wrong can be costly to a client who may otherwise respond to questions that are just not justifiable under the legislation. Experience shows that where an officer goes unchallenged, she/he will take advantage and extend her/his enquiries, sometimes to extraordinary lengths. The relevant legislation is both subtle and complex and certainly not all stacked in HMRC's favour; over the years I have seen many cases where inappropriate data has

been provided when valid challenges could have been made much earlier. If that leads to a higher bill for tax, interest and penalties there is an obvious PI exposure for the advisor.

Departing from the 'bread-and-butter' enquiries, there are many one-offs where tax resolution specialists apply themselves and their hard-earned experience. I had a case recently where a company had adopted incorrect treatments based on the advice of two reputable firms of accountants. As uncertainties arose, a provision was made in the accounts which was rolled forward each year. When Crowe was appointed to provide tax advice to the entity, the history was reviewed by the tax resolutions team; there was a definite error which needed rectifying, leading to potentially significant tax consequences. The error, however, arose in an accounting period over a decade earlier so HMRC could not assess the tax unless the entity had done something 'deliberately' wrong. We opined that this was not the case as the entity had at all times sought and followed professional advice. This did not (and rarely does) sit well with HMRC, which asserted a different view. Over several rounds of correspondence we had to explain in detail the legislation, its application and case law, with HMRC eventually forced to agree. The client was saved duties of more than £1.4m.

Another memorable case concerned a senior ex-employee who received a gift of £1m a few years after he had retired. HMRC asserted that the gift was received by virtue of the employment. The gift was made by the very wealthy owner of the group who met my client at a convention some time after he had retired. She gave him a cheque for £1m suggesting that he use it wisely, and that Christmas was a time of giving. It transpired that the individual was one of a very few who had supported the woman during her divorce from, at the time, the joint owner of the group. She had never forgotten his loyalty and gave him the sum as an expression of her gratitude. Inevitably, the role of a tax resolutions specialist sometimes requires an element of acting as defence counsel with a robust stance taken to challenge HMRC's attitude or action. That was needed in this case as, despite the clear facts, HMRC persisted all the way to the First Tier Tax Tribunal, which rightly ruled that the receipt was a gift and not taxable. If the result had gone the other way, then the individual concerned would have been financially ruined.

In a case where HMRC demonstrated more common sense, a woman was physically and emotionally abused by her soon to be ex-husband. He was caught up in a Ponzi type scheme and was fearful that aggrieved investors might come knocking at his door. His solution was to hide his business activities behind his wife, who was a home builder with little financial acumen and no knowledge of the problems. He took care of all the household and business finances, even signing official documents by forging her signature. One of his ventures, a partnership allegedly 99% controlled by his wife, made a profit of £900,000 which was not declared by the wife to HMRC, as she knew nothing about this venture. Much time passed in discussions with HMRC, but eventually a review of the officer's decision was arranged by an HMRC officer not previously involved in the case. Most such reviews result in an HMRC officer rubber-stamping the colleague's original decision, but it is also an opportunity for us to make representations to the review officer. Before the review was completed, witness statements were taken from friends and associates to evidence the coercive behaviour, including one from an employee who had witnessed the signature forgeries. The witness statements were submitted to HMRC, leading to the investigating officer agreeing with our technical construction of events and the assessment raised was reduced to nil.

Another area which invariably throws up tax issues is where a business is the victim of an employee fraud. In such circumstances, the tax resolution specialist will work with Crowe's forensics team to help quantify the amounts stolen and to trace the destination of the extractions. A holistic solution will usually involve teaming up with a white-collar fraud firm of lawyers to start

(inter alia) recovery proceedings. It will then be for the tax resolutions specialist to address the tax consequences that flow from the fraud typically focussing on corporation tax, PAYE and VAT.

In such situations there is usually a decision to be made regarding where to take the disclosure. This will, where complexities and significant sums are involved, be a disclosure to HMRC's Fraud Investigation Service under Code of Practice 8 (cases other than suspected serious fraud) or, if the fraud involves an officer of the company, usually under Code of Practice 9 (cases of suspected tax fraud), otherwise known as the Contractual Disclosure Facility.

Other memorable cases have involved an officer going through a cobbler's bin with plastic gloves which she said she always carried in her bag. It was pointed out that the officer had illegally 'searched' the trader's premises when powers under Schedule 36 Paragraph 10 FA 2008 only allow 'inspections' of the business premises, assets and documents. The broad distinction is that you search by hand and inspect by eye hence, for example, HMRC is not entitled to open a filing cabinet on the business premises and rifle through it but can request for relevant business documents it contains to be shown to HMRC. While the faux pas was not sufficient to close the enquiries due to the existence of undeclared takings, it did hasten proceedings and enabled a more favourable, negotiated settlement.

Alternative Dispute Resolution (ADR) – mediation in common parlance – is a refreshing innovation in recent years specially in cases which are not black and white. The HMRC mediators with whom I have worked have generally been impartial and came with a genuine desire to unblock a stalemate position. However, there are some worrying trends noted by the writer (a CEDR qualified mediator himself), namely a move away from face-to-face mediations which allows HMRC to include multiple mediators. Mediations are not interrogations and should not be threatening or intimidating; equally, both sides must enter the process as willing participants, although sometimes HMRC seem to have been dragged there 'kicking and screaming'. If handled well by the mediator, HMRC and the tax resolutions specialist, ADR provides a useful route to find common territory and quid pro quo agreements. A successful negotiation is often one where both sides leave the table feeling aggrieved!

The duties of a tax resolutions specialist are many and varied; no two days or cases are the same and there is simply not enough space here to illustrate the hundreds of different scenarios seen over many years. An experienced tax resolutions specialist should be an expert in matters such as taxpayer rights, HMRC's powers, assessments, penalties, time limits and tax strategy as well as a certain level of expertise across the different taxes.

The tax code is so vast that it is of course not possible for anyone to be expert in all aspects of it, which is why it is important for a tax resolutions specialist to be supported by other expert teams, as we are within Crowe, specialising in specific taxes such as PAYE, VAT, private client, trust or corporate taxes as well as bringing in non-tax expertise such as accounting/company law, insolvency and forensics when appropriate.

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