

## **When HMRC come to visit...**

*Sarah Scala and Michael Balmer explain the important role that a tax adviser, specialist solicitor and a business's work force has to play when faced with an unexpected visit from HMRC*

If HMRC show up unannounced, business owners often regret not having given more thought to the possibility of a visit from the tax authority and the steps that will need to be followed.

As professional advisers we need not only be mindful of what to advise clients if they call us in a panic because HMRC have just shown up with a warrant, but we and our staff must also know what to do if HMRC turn up at our own premises wanting to investigate our financial position or if they want access to our client files because one of our clients is being investigated.

With remote and hybrid working now common place, one must also consider the possibility that business owners or members of the management team may not necessarily be on the premises when the bell rings.

### **If you do nothing else, do this!**

Let's begin with the minimum that needs to be implemented for maximum effect and protection.

Implement a dawn raid procedure and ensure that all team members understand it and know where it is located. That procedure should include the contact details of the professionals who should be contacted in the event of a raid – for example, a tax dispute specialist, a criminal solicitor and the business's accountant. Their contact details should be saved to mobile phones.

By definition raids occur without warning, so it is possible that professional advisers may not be able to attend premises straight away. HMRC are unlikely to pause the raid while the business waits for solicitors, for example, to attend so it is important to have a procedure in place. Review and refresh it to ensure that anyone with responsibility is aware of the procedures in place.

Usually, HMRC will seize information and devices during their raid. Items will be returned once copied but this may take some weeks. Businesses should therefore back up their server regularly and have plans in place regarding business interruption to minimise any effects.

### **If a dawn raid occurs**

Despite being called 'dawn raids' the visits are unlikely to occur at dawn. They will be between 7am – 8am at the home addresses of directors, and/or 8.30am – 9.30am for business premises. My advice to anyone confronted unexpectedly by HMRC would be as follows:

Immediately call your specialist lawyer or tax adviser and ask HMRC to speak to them. Even if your appointed professional cannot attend immediately they will be able to speak with the investigating officers and advise you on what to do. They should also be able to speak with the lead officer to clarify the terms and scope of the raid and agree parameters.

Front-line staff should be trained and aware of the need to do the following:

- alert a senior member of the internal response team;
- arrange name badges clearly identifying the inspectors as visitors to the premises;

- ask the HMRC officers to show their authorisation documents, which may include a court warrant. Take a photograph with a mobile phone and send it to the appointed professional;
- prepare a list of members of the inspection team. Take a copy of their ID and contact details as this will be important for follow up as investigations usually take many months to conclude;
- most importantly, request a copy of the warrant information. This will set out (in brief) what the focus of the investigation is and under what provision the search is being conducted;
- request the name of the HMRC officers, set aside a room for them away from public view and request that they stay there until the arrival of a senior member of staff and/or the appointed professional. Ask but don't insist. Officers may be willing to wait a short time, but they are not legally obliged to do so. Refusal to cooperate until your adviser arrives could be viewed as obstruction;
- a senior member of the response team should go to meet the inspectors where possible.

### **Action required by a member of staff**

Once the immediate disruption has been brought under control by following the steps set out above, a member of staff should take responsibility for the following action points:

- immediately inform the in-house legal team and/or external legal advisers and senior management that a dawn raid is taking place;
- ascertain how long it is likely to be before the appointed adviser can be present;
- check the inspectors' authorisation documents. These should state the subject matter of the investigation and the legal basis for the dawn raid;
- appoint a team of 'shadowers' (at least as many as the number of inspectors) to accompany the inspectors at all times. The shadowers should be briefed as to the limits on the inspectors' powers, and to keep a record of which documents have been reviewed/copied and any questions asked/answers given.

### **Notifying other members of staff**

The reason HMRC have arrived in person is that they want the opportunity to seize information without warning. They will make various requests for information and the staff will need to be advised about how to deal with those requests.

Ensure senior members of the internal IT team are available to assist with complying with:

- any requests by the inspectors to shut down telephone and/or email systems during the dawn raid; and
- any issues which may arise when searching electronic documents/data.

Send an email to all staff at the premises to explain:

- what is happening;
- the need to be co-operative but to pass all questions/requests from the inspectors to the response team leader; and
- not to discuss the fact of the dawn raid with anyone outside of the business.

### **The handling of documents**

When considering the documentation that is of interest to HMRC, be mindful of HMRC's power to request what they are asking for and ensuring that the documents requested remain available for continuation of business.

With that in mind, the following is recommended:

- do not conceal or destroy any documents or tamper with anything;
- record everything that the officers do;
- make sure that what they are seizing is within the terms of the warrant and is not legally privileged. If in doubt contact your solicitor;
- it's likely that devices/documents, etc., will be taken and held for some time while they are copied and analysed. Offer to make copies of all hard copy documents that officers want to seize.

### **At the end of the dawn raid**

Check the search log provided and ensure it is accurate before signing. If you have an issue or objection to the log, ensure it is recorded.

Reserve the company's rights to challenge the seizure of items and to provide answers to questions at a later date.

Company officers might be invited to an interview under caution and should be accompanied to the interview by their solicitor.

### **Immediately after the dawn raid**

It is sensible to hold a debrief with lawyers after the officers have left, to review all the documents seized and to identify any documents which haven't been seized but which may be relevant to the investigation.

If the documents seized portray an unfavourable or misleading view of the company, consider how this impression can be corrected. Consider any reputational issues, for example, the likelihood that this may be leaked to competitors/customers/clients and then consider how any reputational damage can be minimised/controlled.

### **Summary**

The likelihood of a HMRC raid is small for most business owners; however, the consequences can be catastrophic for the business and can significantly impact on the mental health of the individuals involved and those close to them.

Some criminal investigations continue for several years before any individual is charged for alleged wrongdoing. That is an incredible amount of time to spend in limbo and having a complete file of copies of everything that was seized can be invaluable when preparing any defence.

As noted above, if a business does nothing else they should create a 'raids policy', ensure their staff know where to find it (and have read it!) and offer some basic training. A little time spent now can make a big impact if this scenario arises.

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