

## **To meet or not to meet...**

*If HMRC requests a meeting with a taxpayer to discuss their affairs, what are their options?  
John Cassidy explains all*

A LinkedIn post of mine seems to have hit a nerve, with tens of thousands of views, likes and comments ([LinkedIn post](#)). The crux of the post was a written assertion by an HMRC officer in the Fraud Investigation Service, hence unlikely to be an inexperienced, junior officer, that: “You have repeatedly refused to meet with HMRC and we are entitled to reach an adverse view of that behaviour and that we have viewed the persistent non-cooperation as evidence of guilty knowledge and dishonesty.”

There may, of course, be reasons for agreeing to attend a meeting with HMRC but, equally, there may be good reasons why it is advisable to politely decline; it is a judgement call every time, based on the relevant facts and merits of the case. What refusal to attend a meeting most certainly is not is evidence of guilt and dishonesty, nor does it entitle HMRC to reach an adverse view about anything.

This particular inspector’s stance is also alarming given that a meeting with HMRC is entirely voluntary, something which their own guidance manuals clearly recognise.

### **Meeting guidance**

HMRC’s Enquiry Manual states, quite rightly, at EM1822 that: “Meetings are often the best way to find out the facts about a business and give you and the taxpayer the opportunity to discuss the identified risks and how you have arrived at any conclusions you have already reached... [it] will also help you establish facts, settle any points of disagreement and reach an agreed settlement with the taxpayer”.

The same guidance, however, also states: “Not all enquiries will require a meeting...[it] will depend on the circumstances, bearing in mind that face to face meetings can be expensive and inconvenient for the taxpayer.”

And EM1825 underlines the voluntary nature of any meeting by confirming categorically that: “Ultimately you do not have a power to compel a taxpayer or accountant to attend a face to face meeting.”

As already noted, the decision on whether to agree to a meeting or not is a judgement call in every case. One key issue for me is that the client should be fully prepared, which includes being told firmly that “I can’t recall” is a perfectly acceptable response when being questioned about specific or historic issues or transactions, even if HMRC continues to press for a more detailed answer. It is human nature to try to be helpful by providing a response or filling in the blanks, but it is far better to leave HMRC with an undertaking to check the old records rather than make an attempt to guess which may later turn out to be even slightly incorrect. The old 1968 case of *Onassis v Vergottis* summarised this neatly: “It is a truism, often used in accident cases, that with every day that passes the memory becomes fainter and the imagination becomes more active. For that reason a witness, however honest, rarely persuades a Judge that his present recollection is preferable to that which was taken down in writing immediately after the accident occurred.”

If HMRC persists, any advisor must be prepared to intervene and even take the nuclear option of ending the meeting. Attendance in the first place is, after all, voluntary. The possibility of unexpected questions is best minimised from the outset; in other words, that a proper, 'case-specific' agenda is agreed well in advance of any meeting.

### **Meeting agendas**

Whilst the HMRC guidance refers to an agenda not being exhaustive or restrictive, importantly it states clearly at EM1835 that: "You should prepare and issue an agenda. This should cover the main areas for discussion at a meeting with the taxpayer. This will allow the taxpayer and any agent to carry out any necessary preparation in advance of the meeting. The agenda should be case specific..."

Key points here are that the agenda should be issued in advance, it should be tailored to the specific case rather than a generic "to discuss the business/risks", and it should be of sufficient quality and detail to enable the taxpayer and his/her advisor to prepare properly. The same HMRC manual states that the Inspector must always: "Be prepared to explain to the taxpayer why you want the meeting".

One recent attempt at an agenda I have seen simply stated that the inspector had "additional questions", clearly nowhere near satisfying HMRC's own guidance. Not only had a large number of questions already been posed by HMRC (and fully answered) but, by definition the Inspector must already know what those asserted additional questions are, hence they are capable of being put in writing and included in a formal agenda.

In another recent instance the agenda was "to understand how business is operated", which is extremely vague and open ended, with no detail or case-specific issues identified. HMRC's own notes of an earlier meeting with the taxpayer also demonstrated that this same issue had already been discussed extensively, so a further meeting to discuss ostensibly the same thing seemed costly, time-consuming and inappropriate.

In summary, an agenda is vital not only to prepare for the meeting but also to give it structure, with any deviation from that agenda carefully managed and challenged as necessary by the advisor. If HMRC truly wants to get the best out of a meeting they should be happy to provide such an agenda rather than listen to potentially vague, off-the-cuff responses recalled (perhaps inaccurately) from dim and distant memories.

### **Conclusion**

Meetings with HMRC do, of course, have advantages. Meetings can help establish and agree facts; they can help understand transactions; and they can be used to clarify and address HMRC's perceived risks. As the meeting progresses it might also be useful to agree the scope of the investigation and future action points to progress the enquiry. It should, however, always be remembered that attendance at a meeting is voluntary and, without a proper agenda, has the potential to be a costly waste of time and may, in the extreme, feel like an ambush.

Refusal to attend a meeting, if that is judged to be the most appropriate response, is certainly not evidence of guilt, dishonesty or anything else, it is the taxpayer's right. Irrespective of any pressure applied by the HMRC Inspector, advisors should be prepared to take a robust stance, politely decline the offer of a meeting and, if one does go ahead, manage it carefully.

When engaging with HMRC the expertise and experiences of a seasoned tax resolutions specialist can be very useful. Such a specialist will be expert in matters such as taxpayer rights and HMRC's powers whether in relation to meetings or wider issues such as discovery assessments, penalties, time limits and tax strategy. In many cases the specialist can work alongside the taxpayer's usual advisor and/or 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 non-tax expertise such as accounting/company law, insolvency and forensics when appropriate.

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