

‘Nudge letters’ – be very afraid...

Salman Anwar’s ‘how to’ guide explains the best way of responding to an infamous nudge letter from HMRC

Receiving a brown envelope from HMRC can be daunting at the best of times. But one containing a letter stating that HMRC has information and cryptically suggesting you may have an issue, and asking you to make a disclosure or submit a ‘Certificate of Tax Position’, can feel especially scary.

These types of letters are commonly known as ‘nudge letters’. This guide is designed to help both taxpayers and accountants navigate the intricacies of responding to these letters effectively.

What are nudge letters?

Nudge letters are not formal tax enquiries, but are rather designed to prompt taxpayers to review their tax affairs for potential inaccuracies. They are part of HMRC's broader ‘one-to-many’ approach, which targets large groups of taxpayers using data-driven insights to identify common errors or discrepancies.

The purpose of these nudge letters is to encourage taxpayers to voluntarily correct their tax affairs.

Recent examples of nudge letter campaigns

A quick glance at the news alerts published by the Chartered Institute of Taxation (CIOT) shows that HMRC has already notified the institute of initiating three campaigns in the first three months of this year (2024). This is in addition to further batches that are being sent out on previous campaigns, such as those that are part of the wider Let Property Campaign (LPC).

Some recent examples of nudge letter campaigns are:

- Asking landlords who completed the property pages on their 2021/22 Self Assessment tax return to check their repair and maintenance expenditure.
- Asking recipients to check they have correctly declared distributions/dividends.
- Individuals suspected of owing tax on their cryptocurrency investments.

Interestingly, HMRC was required to issue a correction in respect of the first campaign mentioned above as the original contained incorrect information with regards to expenditure on replacement of a boiler!

Where does HMRC get its data from?

In short, from a huge wealth of sources, both within the UK and internationally. Here are just three examples:

- Common Reporting Standard (CRS): This international agreement aids in the automatic exchange of information about bank accounts held by taxpayers residing in different countries.
- Virtual Street Sweep (VSS): As explained in OECD’s 2017 report, titled ‘Shining light on the shadow economy: opportunities and threats’, this tool aggregates data about

specific addresses to visualise compliance risks without physical inspections. This forms a cornerstone of the LPC activities in the author's experience.

- Automatic Exchange of Information (AEOI) Agreements: In addition to the CRS, the UK has reciprocal agreements with many jurisdictions, such as the US, Crown Dependencies and others, that allow HMRC to receive information about UK residents with financial accounts and investments overseas, aiding in the detection of undisclosed foreign income.

What should you do if a client receives a nudge letter?

The first thing to do is read the letter and understand whether it is a nudge letter or a compliance check letter. Where the letter is specifically asking for information (such as, for example, details of properties owned, rents received) to be provided as a response, it will generally be classed as a compliance check by HMRC.

A compliance check letter should also be handled with great care and many of the points mentioned in this article will also be apt. However, the recipient will generally not be eligible to use the Digital Disclosure Service or the Let Property Campaign to make a 'disclosure'. The Contractual Disclosure Facility (CDF) should still be considered in the more serious cases of under or non-declaration of tax liabilities.

Here are five crucial steps that should be taken by advisers:

1. Review the letter and determine what type it is.
2. Research for any commentary by the likes of the CIOT or other professional bodies or tax advisers to understand the impetus behind the campaign.
3. Discuss the contents with the client and have an open and frank discussion. This should not be limited to the topic of the letter but should be taken as an opportunity to consider all taxes that the client may be liable to.
4. Assess the situation – while it may be too early to do in-depth digging or gathering of information, in cases where a disclosure is required an idea of the amounts potentially at stake will be useful to determine the best route to making a disclosure. It will be especially important to consider some or all of the key points mentioned further on in this article.
5. Determine the best route to making a disclosure if one is required, or how to respond to HMRC to confirm none is required.

Disclosure routes

Here is a list of seven of the current routes to making a disclosure:

- Contractual Disclosure Facility (CDF)
- Digital Disclosure Service (DDS)
- Worldwide Disclosure Facility (WDF)
- Let Property Campaign (LPC)
- Electronic Sales Suppression (ESS) disclosure process
- Cryptoasset disclosure service
- Mid-Sized Business Support Portal/Mailbox

Which route is most appropriate for your client will be determined by the type of error or omissions, and the behaviour underpinning them. For example, if a client has deliberately

underdeclared their property income or failed to notify their chargeability to tax, then you would seriously need to consider whether the protection offered by the CDF is warranted. If you have a client that fits the criteria for use of the Mid-Sized Business Support mailbox and the liabilities arise from non-deliberate behaviour and/or are of a technical nature, then it would be highly desirable to use this route due to the nature of the support provided, in my experience.

Key points when making a disclosure

The following are key aspects that need to be considered as part of any disclosure making process:

- Behaviour – the need to consider why and how the errors or omissions arose is crucial to determining and advising on the best disclosure route. But it is also important for some of the other aspects mentioned below. Important not to get your reasonable care and reasonable excuse confused!

However, great care should be taken around how discussions are conducted based on the nature of the alleged discrepancies, especially if any criminal conduct could be suspected/pursued by HMRC. An important question to ask is if it would be in your client's best interest to have legal privilege in place.

- Nature of the offence – has the client submitted inaccurate Self Assessment tax returns to HMRC or failed to notify this liability to tax in the first instance? This is a rolling test for each year that needs to be considered as part of the process, up to a maximum of 20 years for most taxes. Although for IHT this can be longer under certain circumstances.

- Assessment time limits – how long is HMRC able to go back to recover the liabilities? Four years, six years, 20 years? This is determined by the behaviour and nature of the offence.

- Penalties – based on the nature of the offence different penalties can apply. Additional penalties may also need to be considered if the error or omission has an offshore element. Time taken from when the liabilities first arose to making a disclosure can also impact certain penalties.

- Onshore or offshore irregularity? Does the error or omission arise due to an offshore matter or transfer? This will impact penalties and assessment time limits.

Nothing to disclose?

If after reviewing no discrepancies are found it's important to respond to HMRC explaining that no disclosure is considered necessary. An explanation of why this is considered so should also be included. Not responding to HMRC at all will likely lead to a compliance check in the future.

However, it should be noted that there is no legal requirement to complete the Certificate of Tax Position included with many nudge letter campaigns. The period covered by the certificate is also not restricted to a particular tax year(s), therefore great care needs to be taken when considering completing such a certificate.

According to the Chartered Institute of Taxation (CIOT) guidance "...it is likely to be preferable to respond by letter to HMRC and not complete the certificate of tax position, unless the individual's tax affairs are very straightforward. It is also likely to be preferable to respond by letter and not complete the certificate of tax position, if, after reviewing

their tax affairs, the individual believes that their affairs are correct and up to date and they do not need to make a disclosure (given the serious consequences of making a false declaration completing a 'certificate of tax position' may be necessary to formally declare that all information is correct and complete. This helps prevent unnecessary enquiries."

If a disclosure is to be made it would be good practice to ensure the relevant references on the nudge letter are used in whatever notification is submitted to HMRC of the client's intention of making a disclosure, or that separate correspondence is sent to the address on the nudge letter telling HMRC of the intention to make a disclosure.

It will not come as a great surprise to seasoned practitioners that HMRC departments do not always talk amongst themselves!

Seeking specialist input

Navigating the complexities of responding to HMRC nudge letters can be challenging. It is crucial to seek specialist advice from a tax disputes specialist if the situation is complex. The CIOT and other professional bodies emphasise the importance of undertaking only those professional activities for which you are competent or obtaining appropriate expert advice in their respective Code of Conduct. It is also important to consider if your practicing certificate and Professional Indemnity insurance covers you for dealing with such matters.

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