

Out of time?

Mark McLaughlin looks at the time limits for HMRC to open self-assessment tax return enquiries and to give individual taxpayers notice of its intention to do so

Taxpayers generally seek finality in their tax affairs as soon as possible, so that they need not worry about unwelcome HMRC enquiries and the possibility of unexpected tax liabilities.

How long does HMRC have to open an enquiry into an individual's tax return (in the absence of a discovery, which is not considered in this article)?

Enquiry time limits

In general, HMRC may enquire into an individual's tax return by giving notice to the taxpayer of their intention to do so, within the time allowed by statute. The 'time allowed' depends on whether the return was delivered before or after the filing date, or (if applicable) when the return was amended (TMA 1970, s 9A(2)):

- (a) Return delivered on or before the 'filing date' (i.e., normally the following 31 October for paper returns, or 31 January for electronic returns) – up to 12 months after the day on which the return was delivered;
- (b) Return delivered after the filing date – up to and including the quarter day next following the first anniversary of the day on which the return was delivered;
- (c) Return amended – up to and including the 'quarter day' next following the first anniversary of the day on which the amendment was made.

For the purposes of (c) above, the quarter days are 31 January, 30 April, 31 July and 31 October.

Are you sure?

HMRC often issues enquiry notices close to the statutory deadline. It is important to check that the enquiry notice has been received by the taxpayer within the statutory deadline for doing so. Lack of proof can be an area of potential dispute between taxpayers and HMRC. In such cases, reference is generally made to the Interpretation Act 1978 (IA 1978), s 7. This states: 'Where an Act authorises or requires any document to be served by post (whether the expression "serve" or the expression "give" or "send" or any other expression is used) then, *unless the contrary intention appears*, the service is deemed to be effected by properly addressing, pre-paying and posting a letter containing the document and, unless the contrary is proved, to have been effected at the time at which the letter would be delivered in the ordinary course of post' (emphasis added).

But what constitutes 'delivery in the ordinary course of post'? The Post Office states that for Royal Mail UK first class standard delivery, the aim is for delivery on the next working day, including Saturdays.

For UK second class postage, the intended delivery time is two to three working days, including Saturdays.

In its Enquiry Manual (at EM1506), HMRC informs its officers about the importance of retaining evidence that the enquiry notice has been posted, and states: ‘Unless the contrary is proved, the notice is taken to be delivered as it would have been through the ordinary course of post. Royal Mail’s published position is that second class post takes up to 3 working days to be delivered and first class post takes 1 working day. Working days include Saturdays but not Sundays or Bank Holidays. You should consider how long the post takes to leave the office when considering this. If you are ever in doubt as to whether a notice will be sent in time using Royal Mail, send it via tracked delivery instead so we have proof of receipt.’

Of course, if the enquiry notice was given by hand, or sent by recorded delivery, the ‘ordinary course of post’ issue should not arise. Otherwise, HMRC’s Claimant Compliance Manual recommends the following action to its officers (at CCM12120): ‘You should always make sure that you post your enquiry notice at least 4 working days and, wherever possible, 7 working days before the date on which the enquiry window will close. This is to allow for the possibility of the notice being returned RLS [returned letter service], or for an unexpected disruption to the postal service.’

Delivery in the ordinary course of post was considered in *Dennison v Revenue and Customs* [2024] UKFTT 364 (TC).

In *Dennison*, on 28 April 2011 the taxpayer claimed post-cessation trade relief of £250,000 by amending his tax return for 2009/10 (i.e., the forfeiture of the loan note of £100,000 and a settlement instalment of £150,000). This meant HMRC’s enquiry window closed on 31 July 2012. On 27 July 2012, the taxpayer was notified of HMRC’s intention to open an enquiry into his tax return for 2009/10, and subsequently disallowed the claim for post-cessation trade relief. On appeal, the First-tier Tribunal (FTT) considered whether HMRC’s enquiry was out of time. The taxpayer’s case was that HMRC’s notice of enquiry in their letter dated 27 July 2012 was out of time. In the absence of evidence about the date on which HMRC’s letter was posted, the FTT considered what date the enquiry notice would have been received in the ‘ordinary course of post’. The FTT found that HMRC’s letter of 27 July 2012 would not have been received by the taxpayer in the ordinary course of post by 31 July 2012. HMRC was out of time, so the tax return enquiry was not validly opened.

In reaching that decision, FTT judge Ashley Greenbank commented on the burden of proof regarding delivery in the ordinary course of post as follows (albeit not in the context of the enquiry notice, but the taxpayer’s submission of the tax return amendment): ‘Where a party seeks to rely upon the presumption in [IA 1978, s 7], it seems to me that that party must bear the burden of showing that the conditions for the presumption to arise are met. If the conditions are met, the presumption arises. The burden must also be on the party sending the notice or letter to show the date on which the letter or notice was posted and the manner in which it was posted, whether by first class or second class post or some form of special delivery, for the purpose of deciding when a letter should be treated as delivered “in the ordinary course of post”. It then falls to the other party to prove to the contrary – that is, that the letter did not arrive in the ordinary course of post.’

Does it comply?

The moral from *Dennison* (which, although not setting any binding precedent, is nevertheless helpful), and best practice generally, is for practitioners to check that tax return enquiry notices have been received by (or on behalf of) their clients within the statutory time limit. It is not sufficient for HMRC to merely post an enquiry notice before the time limit; it must be received by the statutory deadline. In some cases, the enquiry may effectively be over before it has begun.

On the other hand, failure to promptly establish that the enquiry notice has been correctly given can have unfortunate consequences. For example, in *Tinkler v Revenue and Customs* [2021] UKSC 39, the Supreme Court held that the taxpayer was prevented from challenging the validity of an enquiry into their tax return by HMRC, where both parties had proceeded for nearly a decade on the mistaken assumption that the enquiry was validly initiated by a letter sent to the taxpayer. HMRC had satisfied all the requirements for establishing an 'estoppel by convention' (i.e., broadly the parties acted upon a common assumption that a given state of facts or law was true; each would then be estopped against the other from denying the truth of their common assumption). The overriding message is: be thorough – and be careful.

- Mark McLaughlin CTA (Fellow) ATT (Fellow) TEP is Editor and a co-author of *HMRC Investigations Handbook* (Bloomsbury Professional)