

Fast forward

The Contentious Tax Group's Sarah Scala explains the steps to take to speed up an HMRC enquiry

There is no limit on how long HMRC can take to bring a tax enquiry to conclusion. It is therefore affected mostly by the actions taken and decisions made by HMRC, the taxpayer and the taxpayer's adviser.

In this article I suggest ways professional advisers might be able to progress a HMRC tax enquiry into their clients' UK tax position more quickly. This includes what can be done by you now, regardless of the attitudes of HMRC, and what can be done to influence HMRC's approach.

Sometimes, when considering how to speed up the enquiry process, we immediately look to HMRC and how we might get HMRC to accept our position or step in line with our proposed way forward towards resolution. That can be helpful and lead to a successful outcome. However, before that, let's first consider what you can do that is within your control.

1. Gather knowledge about the HMRC team and/or individual running the enquiry

Best approach can differ from one HMRC team to the next. Therefore, it is never too early to gain insights into the team and/or individual that has opened the enquiry. This is one of the key benefits of the Contentious Tax Group – to share experiences and gather data within this specialist area, to assist others.

2. Consider your fee

Any professional willing to manage a tax dispute for a taxpayer has a specialist skill, a (most likely) distressed customer – the taxpayer. There is a task to be completed to bring the matter to resolution and it will take time and expertise to complete that task. It is therefore reasonable that there will be a charge for that service.

Accountants and tax advisers will know that all clients are exposed to some extent to an enquiry from HMRC; therefore, an enquiry is not usually a reflection of the quality of the work completed when the original tax return was prepared and submitted. Some taxpayers will have taken out fee protection insurance to cover the professional fees associated with a HMRC enquiry. Some won't have. Make sure you are charging appropriately for your work and getting paid by your client. If that is happening then you are likely to work on that particular case and progress will be made.

3. Reconsider your deadlines

A HMRC letter usually requests a response by a certain date. A good adviser will note that date on their case tracker and in their calendar and may set aside the time needed to do that work. The trouble is that if the deadline that the adviser is working to is the actual deadline, should anything else occur unexpectedly the actual deadline is at risk of being missed. I suggest setting your own earlier planned response dates. There are two benefits to this. If you need longer then you have more time, and if you don't need longer the enquiry will progress more quickly because you sent your response in early.

4. Review your strategy

Ask yourself, if you had the opportunity to start over would you have handled this enquiry differently? If you wouldn't have changed a thing then with that renewed level of confidence you can then consider your current strategy and whether it remains the best strategy. For example, what matters to the taxpayer? Has that changed recently?

In my experience, no two enquiry cases are the same and what matters to one taxpayer may not be the driver of another. For example, what matters more – swift resolution, dragging it out for as long as possible or agreeing the lowest tax liability?

5. Be persuasive

Good practice after every interaction with HMRC is to ask yourself: "Is my communication persuasive and have I made it attractive to HMRC to close this enquiry." Also, I recommend reminding HMRC in every interaction what the tax would be if they were to accept your position now.

6. Seek a review

When an adviser considers seeking a second opinion, the adviser or taxpayer may quickly assume that means increased fees. Of course, the benefits of obtaining the second opinion will likely outweigh any additional cost overall; however, before considering whether to bring in external expertise you might find an internal review very helpful. For example, I was once part of a team where we often recruited out of HMRC. A recent hire from HMRC, not yet fully occupied on client work, was the perfect person to review one of our more challenging and/or long running tax disputes. That review could take a week, and it was a week well spent by our new recruit, documenting their thoughts and opinions on the case and presenting them to the engagement team following their review.

7. Understand the various stages of the enquiry process

Once you have considered what actions are within your control that could potentially influence the speed at which an enquiry is resolved, you could consider any ways you might be able to initiate change or further progress at HMRC.

Regardless of where the enquiry is up to, it will help to understand what happens next and the steps in the timeline where you might more likely be able to negotiate. For example, on receipt of a HMRC Closure Notice the taxpayer will have the option of appealing the decision at Tax Tribunal. At that point some taxpayers consider the cost and time needed to take the matter to Court. However, with knowledge of the process and what happens between receiving the Closure Notice and a day in Court, one might strategically appeal the Closure Notice, knowing that this is needed in order to apply for Alternative Dispute Resolution, where it is certainly reasonable that the adviser might be able to reach agreement with HMRC on all outstanding issues, removing the need to go to Court at all.

8. Appeal to the HMRC case worker's human side

Some people feel that generally HMRC lack empathy, are uncommercial and sometimes even technically incompetent. However, we must also acknowledge that there are individuals within HMRC who are hardworking, technically excellent and care about taxpayers. Let's not forget that there is always a chance that in our dealings with HMRC we could come across one of those individuals.

For example, I recently submitted a letter to HMRC in response to them opening an enquiry into my client's self-assessment tax return. My client had thought the issue in point had been resolved through the Courts over 10 years previously and he could not believe HMRC were now seeking the tax.

Three days after I sent my letter by email I received a five-page, considered response from the HMRC Inspector of Taxes leading the case. His cover email included the following: "Many thanks for your letter from the 26th. I'm sure this probably seems like an unusually quick turnaround from HMRC, but I'm off next week so I wanted to get something out to you as soon as possible.

"Please have a read over the contents in your own time and let me know your thoughts. You will see I closed the letter with a desire to work collaboratively to resolve the issue. Please don't doubt that. I am empathetic to the fact Mr XXX is essentially finding himself called to task for a potential debt that's almost 10 years old, so I am hopeful that we can put ourselves in an informed position and make a judgement call from there.

"As I said, I'm out of the office next week, but please don't hesitate to get in touch at your convenience thereafter."

This dispute is not straightforward, and we lack records to support our position. However, I have confidence that in dealing with this inspector we have a strong chance of reaching a fair outcome.

9. Keep a look out for useful HMRC contacts (or know who to ask)

Tax disputes experts usually have a handful of useful direct contacts within HMRC. We collect those contact details in several ways, and we always need to be on the lookout for more because turnover can be high in certain HMRC teams. The first way we find contacts is through our case work. If I have found someone particularly helpful, the individual mentioned above for example, I might, on a future case, approach them and see if there is any way they can get involved/intervene/ progress that other case. In my experience this approach is often successful. Good people who take pride in their work will be pleased to hear why you approached them and will try to help.

The second way is by keeping a look out and asking around. You don't need to work full time on tax disputes to do this. Any one in tax and accountancy can ask another person in tax and accountancy if they have come across any good HMRC contacts recently.

Some months ago I put a post on LinkedIn about a Let Property Disclosure I was working on. A gentleman called me by telephone and shared with me the contact details of two people at HMRC through

whom he had channelled such disclosures in the past. When my disclosure was ready I reached out to them both and they were extremely helpful. In the end I was able to send my disclosure directly to an individual within HMRC for review. This is of immense value because the alternative would have been to send it to the Digital Disclosure Service, with no idea who I would hear from, and how long it could take.

10. Shake up HMRC's usual timescales

Above, I shared my example of the Inspector who responded to me within three days. Far more common is for a HMRC response to land in your inbox about 30 days after you sent yours. I would suggest contacting HMRC a few days after you have made your submission and ask them when they expect to respond to you. This could bump your case nearer the top of their to-do list, resulting in a response coming through earlier.

Conclusion

When approached about contributing this article I was asked to offer my ideas on how to fast-track HMRC enquiries. I have provided my top 10 ideas above and readers should see that even tax disputes experts have no quick fix. This work requires thinking creatively, a desire to make things happen, resilience and arduous work. Those attributes, together with implementing my suggestions above, should go some way to expediting a HMRC enquiry and help advisers to get the right result for their clients sooner.

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If you feel that you might be a good fit for the group, please get in touch and we will pass your details on to Sarah – email Tony@hmrctaxinvestigation.co.uk. If you are an adviser wanting to keep up-to-date with group news, you can do so here with updates planned in future issues.