Accelerating resolution

Nicholas McLeman discusses strategies to minimise timescales in tax investigations

As we are all aware, HMRC has access to a wealth of first- and third-party data which drives their risk-based approach to enquiring into taxpayers' affairs. The majority of HMRC investigations (apart from mandatory random enquiries) are born from the risks that HMRC perceive to arise from this data.

In an ideal world, HMRC investigations would be a relatively brief and painless experience; HMRC would make it abundantly clear what tax risks they perceived to exist, the information relied upon to develop those suspicions would be shared with the taxpayer, and HMRC's request/s for information and documents would be limited to items reasonably required to address these. The client would then promptly provide all relevant information, HMRC's concerns would be alleviated, and a final position would be rapidly achieved in agreement between the parties.

Alas, the reality is far from ideal, and it is very rarely the case that an HMRC enquiry will be without pain. Deviations from the ideal path of progression often arise from miscommunications, misunderstandings, unnecessary delays, a particularly aggressive or inexperienced HMRC officer or even a defensive client. These can lead to simple enquiries growing into multi-year long disputes.

Systemic reform of HMRC's powers and enquiry processes may be a worthy conversation for another time. However, our immediate responsibility lies in what we can do to reduce timescales and to secure timely and commercially acceptable outcomes for those we represent.

Triage HMRC correspondence

Before any strategy can be deployed, the first step is to triage HMRC's correspondence. Whether it's a nudge letter, a formal opening notice or a further item of correspondence in a long-running dispute, how we interpret and respond to that contact will set the ongoing tone of the investigation.

Whilst HMRC rarely spell out the specific risks being addressed, a keen eye may read between the lines to determine the underlying points of contention.

Once we are able to quickly assess what HMRC are actually asking for (documents, explanations or a meeting), and the risk level (whether the correspondence suggests suspicion of deliberate behaviour or an inference of an inaccuracy), then we can then prioritise:

- Immediate client briefing to assess the facts and gather documentation.
- Clarification requests to HMRC if the scope or their rationale is unclear.
- Early engagement strategy to demonstrate co-operation and to narrow the enquiry.

Where the underlying issue is discernible, responding with a targeted clarification and offering a structured disclosure plan avoids unnecessary escalation and shaves months off the expected timeline. Remember that a well-organised start prevents reactive firefighting later.

Get ahead of the curve
It is not unusual for HMRC's initial suspicions to have a somewhat reasonable grounding, whether it be in relation to the specific risk area identified by HMRC or another aspect of the taxpayer's affairs. Where historical inaccuracies, omissions or technical missteps are identified, rather than waiting for HMRC to find them we can take the initiative and voluntarily disclose.

Best practice for an efficient pre-emptive disclosure include:

- A full quantification of the inaccuracy; prepare clear calculations and supporting documentation.
- Framing the context to the client's benefit; explain how the error occurred.
- Offering a resolution; including payment proposals or a timeline for settlement shows an intent to rectify.

This approach demonstrated good faith and can materially reduce the scope and duration for an investigation. HMRC is far more likely to take a co-operative stance and forgo further lines of enquiry when a taxpayer acknowledges errors and offers a structured plan to correct them, booking an 'easy win' for the caseworker.

Additionally, pre-emptive disclosure helps to protect clients from higher penalties, often easing HMRC's acceptance of a lower penalty behaviour and/or suspension of the penalty itself.

Own the narrative
One of the most effective strategies to reduce investigation length is to take control of the narrative from first contact.

By preparing and submitting a comprehensive response to HMRC's correspondence along with a clear chronology of relevant events, clear and complete supporting documentation, and a proactive explanation for the client's position, we can often pre-empt further rounds of questioning.

Where the information or documents provided to HMRC will likely prompt further queries on the same or on a tangential topic, these queries can be proactively addressed now instead of later. Personal experience, and placing yourself in the HMRC caseworker's shoes, will usually make these follow-on queries apparent to you.

Taking the lead in progressing risk areas and proactively pushing these to a conclusion not only reduces the need for HMRC to continue irrelevant fishing expeditions, but reduces the risk of HMRC developing a misunderstood or generally incorrect position on risk, helping to steer the enquiry towards resolution.

Tactical communication
Delays often stem from misaligned expectations and so it is important to agree a communication schedule with HMRC. Whether progress updates are provided monthly or within agreed response windows, it is important to keep dialogue open and the momentum going to avoid the radio silence that often leads to stagnation.

An action plan may also be jointly agreed with the caseworker to detail the open tax risks, action points and deadlines, and responsibilities for all parties. Keeping as alive document to be updated throughout the enquiry will ensure that time is spent progressing the important matters.

Where HMRC do not meet agreed deadlines and/or begin to stray from agreed action plans without reasonable justification, this provides firm footing for escalation to the officer's manager in order to get the enquiry back on track, to HMRC's complaints department where appropriate, and in severe cases to support an application to the Tribunal for a Closure Notice.

Flag vulnerability early

Where clients are vulnerable, whether due to mental health, financial distress or other financial circumstances, it is essential to formally flag this to HMRC as early as possible. Where supporting medical evidence or a vulnerability statement is available, this should be provided to the HMRC officer. HMRC caseworkers are often sympathetic to vulnerability, but will need a formal justification to act differently.

Technical precision

An investigation may start broad, with HMRC requesting extensive documentation, raising multiple concurrent lines of enquiry, or casting suspicion across several tax years or heads of tax. We must cut through the noise and help HMRC focus on what actually matters.

This begins with a forensic understanding of the technical issues at play. Whether it's VAT treatment, employment status, the interaction between assessment time limits and offshore matters, or capital gains, we must be able to identify the precise tax point under scrutiny and challenge scope creep when it arises.

Key tactics include:

- Clarifying the legal basis for HMRC's requests. If HMRC appear to be fishing, ask them to justify the relevance of their requests.
- Offering sampling or representative data instead of full disclosure, where appropriate.
- Submitting technical position papers early to pre-empt misunderstandings and avoid unnecessary escalation.

The goal is not to obstruct HMRC, but to guide them down the most efficient path of enquiry.

Break deadlock with ADR

ADR is a powerful tool to be used where investigations become entrenched, communication breaks down or progress generally grinds to a halt.

ADR aims to provide a flexible, cost-effective resolution to disagreements and can be used at any stage of an enquiry; both before and after HMRC has issued an appealable decision. The process is voluntary, confidential and led by a trained HMRC facilitator who helps both sides explore the issues and identify common ground. Crucially, it's not binding, which means there's no downside to trying.

Prepare for court

Litigation is very rarely the preferred route, being the last resort for disputes that cannot be resolved at an earlier stage.

The ideal HMRC caseworker should aim to work every investigation at a level of quality that would support HMRC's position at Tribunal. Our work representing clients should aim to reach the same standard, if not higher.

Where an appeal is made to the Tribunal, opportunities arise to negotiate with HMRC's Solicitors Office and Legal Services Department (SOLS) to scope HMRC's appetite for a pre-litigation settlement. A well-drafted Statement of Case or skeleton argument often prompts HMRC to consider its position, especially where their legal footing is weak.

Often, HMRC's solicitors have a much more commercially focused head on their shoulders, as well as the authority to agree LSS-compliant settlements that the caseworker may not.

Ultimately, we are not just tax advisers but advocates, tacticians and problem-solvers. Our role should not simply be to respond to HMRC but to take the strategic lead. From identifying vulnerabilities, narrowing scope and preparing for litigation, every step should be geared towards resolution, not reaction.

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