

Are you aware of the latest developments regarding tax investigations? Christina Brennan brings you up to speed.

tax investigations

do you know what to expect?

'Practitioners need to be prepared for full and aspect enquiries that may have been poorly selected with inspectors aggressively pursuing yield to satisfy their superiors'

■ **All practitioners know that tax investigations are one of the most challenging areas of the profession. But recent actions by inspectors across the UK suggest that practitioners need to be more alert than ever before.**

HMRC has always had targets for the number of enquiries undertaken, but there is now a greater emphasis being placed on HMRC to achieve a targeted 'yield' from each enquiry. In order to achieve the expected yield, different Revenue offices are adopting different approaches and we are now seeing little consistency across HMRC – making it increasingly difficult for practitioners to predict the likely course of an investigation.

An added problem is that Revenue inspectors – or 'higher officers' as they are now known – are having their authority to agree settlements curtailed as the final agreement for all settlements now has to be approved by their line manager, who may already have pre-ordained the outcome of the enquiry.

time limits

Recent experience suggests that in certain offices within the southern region, inspectors are ensuring yield targets are achieved or indeed exceeded with the use of 'extended time limit' assessments. Normal time limit assessments (Section 34 TMA1970) are used by the majority of inspectors across the country to settle enquiries but certain Revenue offices now almost routinely are using extended time limits (Section 36 TMA1970) in every possible case.

Faced with this approach from HMRC it is incumbent on the practitioner to fight the case even harder on behalf of their client, which generally speaking will mean that the enquiry will last longer and will certainly increase the fees incurred. The effects of this are demonstrated most clearly in a recent consultation paper from HMRC stating that an average corporation tax full enquiry now takes 23.8 months to complete.

information powers

There has been a noticeable shift in emphasis in the use of information powers – especially Section 20(3) TMA 1970 notices requiring third parties to provide documents and information. The powers are now used almost routinely in company enquiries where a request is made to examine the directors' private financial records.

The major problem for practitioners is that in any formal application made by HMRC under Section 20(3), it needs only to convince one commissioner of the merits of their request during a face to face meeting. Unfortunately, the practitioner and client are prohibited from attending the hearing and are limited to providing a written 'defence'. With the Revenue in control of the situation and with attendance denied to present a well constructed reasoned defence, inequitable decisions can be made.

risk selection

The selection of cases for enquiry by HMRC is also making life difficult for practitioners as the headlong rush for additional yield means senior management of the department have considered the cost/yield ratio of enquiries. Based on the fact that statistically corporation tax and income tax aspect enquiries produce the highest yield compared with cost, some operations have recently been directed towards aspect enquiries in the expectation of greater yield.

Worryingly though, the vital area of case selection seems to have been overlooked. With the HMRC 'risk & research' teams being moved to several main locations (including Bristol & Nottingham) the local knowledge that had previously been vital in aiding case selection has been lost.

General trading expectations of a pub or chip shop in a city centre (for example) will often bear no resemblance to the same trades in a small town or village. Competition may be fierce or non-existent, customer volumes will vary as will premises costs and business rates.

Local knowledge at the point of selection would immediately flag up potential risks with a level of certainty, but with case selection taking place over 50 miles away this knowledge is lost and can result in badly selected cases. However, once selected for an enquiry, the inspector will be duty bound to carry out a full investigation and this will bring with it any preconceived ideas of the likely yield that is to be achieved.

Currently the selection of suitable full and aspect enquiries of adequate quality and quantity is proving difficult within some offices and so the number of enquiries opened in the current year is currently lower than expected. However, with the Revenue targets running to 31 March each year, it can be expected that the volume of enquiries will increase from the end of the summer, regardless of the quality of the cases, to ensure that coverage targets are met.

Practitioners therefore need to be prepared for full and aspect enquiries that may have been poorly selected with inspectors aggressively pursuing yield to satisfy their superiors.

A strong, well argued defence is the best tactic during investigation, but this can be difficult if clients struggle to pay the costs of their defence over a long period. Professional Expenses Insurance covers the costs of your fees when defending clients under investigation. To find out how a scheme can benefit your practice, contact Abbey Tax Protection on 0870 166 6270 or sales@abbeytax.co.uk. ■

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