



Nudging the Taxpayer

All the signs are right for a future surge for HMRC investigations. Firstly, and maybe a little cynically, when times are hard more people commit tax evasion. Secondly, the grants and support offered by the Government have inevitably been the subject of tax abuse. Thirdly, HMRC has since 2016 been in receipt of information through the international exchange of information agreements, which it has largely not acted on.

During the pandemic, HMRC has been busy with administering various grants and the furlough scheme. It has also adopted a sensitive approach towards taxpayers during a period where mental health suffering has been greater. With a vaccine in sight, the FTSE has made a marked recovery and despite being in another lockdown, we can genuinely see regaining our freedom soon.

Maybe HMRC knew the Pfizer vaccine was due to be approved when in November last year they issued nudge letters to encourage that 2019/20 UK tax returns include offshore income and/or gains and are completed correctly. A nudge letter is one that HMRC send to encourage a disclosure or to let you know, they're onto you (if there is something to be onto you about). Some letters concerned domicile status and the statutory residence test:

- HMRC outlined the deemed domicile rules that came into effect from 6 April 2017 and the need to report worldwide income and gains. The letters also cover how the deemed domicile status affects offshore trusts.
- In another letter, HMRC commented on the need to consider the statutory residence test and the need to keep records to determine residency status.

Other nudge letters were specifically targeted at both the continued use of tax avoidance schemes as well as the historic use and liabilities within the loan charge. For a number of our clients not caught by the loan charge due to being pre disguised remuneration, the acting HMRC officer confirmed they would seek to amend a return and issue a closure notice. Admittedly, the officer had initially sought voluntary restitution.

When the media is heavily focused on a subject such as a pandemic, legislation appears to be introduced largely unnoticed. Will people wake from lockdown with the introduction of new laws they never knew about? For example, Finance Bill 2021 is to introduce legislation to bring in a new Financial Institution Notice.

HMRC will be able to obtain information and documents from financial institutions for the purposes of checking the tax position of a taxpayer. There would be no need for approval from the independent tribunal.

HMRC consider there are a number of safeguards, including:

- information sought will have to be reasonably required for the purpose of checking a known taxpayer's tax position.
- documents that are legally privileged cannot be requested;
- telling the taxpayer why the information is needed, unless a tax tribunal rules otherwise;
- an authorised officer of HMRC (someone with the relevant experience and training) will need to approve issuing the notice

- The Financial Institution may appeal against penalties should they not comply with the notice.

The notice may be made for international requests although will need to be relevant to the administration or collection of tax and HMRC would need to have exhausted all reasonable domestic ways to get the information.

The new information power will remove the current need for HMRC to obtain approval from the tax tribunal before obtaining information from financial institutions. Whilst there may be justifications for the new power, there is always a risk that powers will be abused. It is not uncommon for a HMRC officer to request information within a notice that they are not entitled to or is not 'reasonable'. Will the financial institution be aware of what HMRC is entitled to and what is reasonable? Will they elect to commercially provide information rather than risk a penalty being issued that subsequently requires appealing. If the taxpayer and client of the financial institutions becomes aware that information was provided to HMRC that they were not entitled to, would they have any recourse? Hopefully, Financial Institutions will put processes in place to have notices reviewed by an appropriate expert.

For taxpayer's receiving nudge letters and those who face enquiries: Be aware that HMRC's powers have grown substantially over the past decade and the information available to them is likely to greatly assist establishing whether you are tax compliant.....or not.

Article Key Points Content Late last year, HMRC began to warm up their engines for tax investigations. Judging by the nudge letters issued, it would appear likely that enquiries or investigations will commence early in the new tax year. For those with known irregularities, a proactive approach to sorting your affairs out is advisable. For those who are not sure, it is time to have a no obligation discussion with a friendly tax specialist.

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