

HMRC powers to request documentation

Summary

Recent developments have highlighted the fact that HMRC is using its powers more rigorously to obtain documents from taxpayers in relation to their VAT affairs. Some of these powers have not been exercised previously.

In relation to VAT, HMRC has wide powers to demand documents from a range of people including:

- every person concerned (in whatever capacity) in the supply of goods or services, in the course or furtherance of a business;
- every person to whom such a supply is made;
- every person who is concerned (in whatever capacity) in the acquisition of goods from another Member State;
- every person who is concerned (in whatever capacity) in the importation of goods in the course or furtherance of a business; and
- any other person who appears to be in possession of documents which HMRC could demand from a person described above.

The documents HMRC seeks to obtain should be limited to those relating to the goods, services, supply, acquisition or importation of goods. For example, in *Lloyds TSB Group Plc v Commissioners for HMRC (19330)*, the Tribunal held that the appellants' monthly management reports related to their supplies, and therefore could be legitimately requested by HMRC.

However, other cases have gone against HMRC, highlighting that the law is ambiguous.

When a demand is made of a taxpayer, they must produce any documents relating to the goods, services, supply, acquisition or importation concerned and any profit and loss account and balance sheet relating to the business.

HMRC has previously said it will not normally seek documents from tax advisers that contain confidential advice or opinion on a client's past or future VAT affairs. VAT leaflet 700/47/93 covers this position in more detail.

If the taxpayer is deemed to have been physically obstructive and failed to comply with demands by HMRC for production of documents, civil or criminal penalties can follow.

In practice, the action taken by HMRC is a formal warning letter requesting the documents with the threat of penalties for failure to comply. If the documents are not provided, a notice of demand will be issued, followed by a civil penalty. In the *University of Glasgow Tribunal (17744, unreported)* it was held that HMRC was required to specify in a penalty demand which requirements to produce documents had not been met. Since they failed to do this, the penalty was invalid.

The information HMRC normally requests is contained in legislation under Schedule 11 VAT Act 1994. However, there have been recent cases of HMRC requesting financial information from taxpayers dealing in cash, such as retail outlets and restaurants, under a different enactment, Finance Act 1985.

HMRC has encouraged its officers to investigate electronic tills, as it believes taxpayers may be altering their till records to reduce their daily gross takings (DGT). Where taxpayers are required to record all payments as they are received, and where a till roll is used, it is the amount recorded - not the cash received - which forms the basis for DGT (*Courage Ltd (8808, unreported)*).

It should be noted that the basic record of DGT is usually adjusted for things such as refunds and void transactions. So what should clients with electronic data on tills or cash registers do when HMRC arrives to investigate using its powers under Finance Act 1985?

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The law is specific and, under s 10(2) Finance Act 1985, an authorised person is entitled, at any reasonable time, to have access to, inspect and check the operation of any computer, associated apparatus or material used in connection with any VAT-related document. HMRC considers the term 'computer' to include electronic tills with constant memories and processing functions, and that it is allowed to reprogramme machines if there is no other way to retrieve the data. This is a contentious area.

HMRC has been starting with visits to cash traders and sending written notice that a person could be liable to criminal penalties if they:

- obstruct access to a computer;
- obstruct an inspection or operational check; or
- fail to afford assistance without reasonable excuse within a reasonable time.

This is a significant development in the use of HMRC information powers and stretches the interpretation of Finance Act 1985 to its limits. It is questionable whether HMRC can reprogramme a till and there are issues around data retention and of potential accidental damage which may follow any reprogramming attempt.

Thankfully anyone facing this situation has the chance to consider their position and seek advice 'within a reasonable time'.