

HMRC to trial new approach to enquiries

Summary

HMRC announced on 29 October 2007 its intention to launch a pilot scheme offering a different approach to how it conducts enquiries. The new approach is called 'Openness and Early Dialogue' and it will be trialled between November 2007 and April 2008. The key to the proposed scheme is open communication. Mark Howard, PwC Tax Investigations comments here.

HMRC has been reviewing its compliance processes over the last 18 months. As part of that review, it published this update setting out its approach to openness and early dialogue. In essence, HMRC is seeking to improve the communication process between itself, the taxpayer and their advisor(s).

Implications for business

The background to more formal and serious enquiries needs to be considered. HMRC has recently admitted it is expecting more confrontation with advisors following the publication, on 1 September 2007, of Public Notice 160 which sets out its policy on the investigation of "lower end" civil VAT fraud (usually below £75,000 VAT). The confrontation is expected to arise when HMRC alleges dishonesty/fraud by a taxpayer but does not indicate where the dishonesty has arisen. The taxpayer then has to disclose the wrongdoing and quantify it, to qualify for maximum penalty mitigation.

There is a similar approach in the Code of Practice 9 (CoP9) enquiries, where HMRC will guarantee immunity from prosecution where it offers CoP9 and the taxpayer has to commission a report. This is usually prepared by their advisors and should disclose all tax and VAT arrears. Failure to comply and disclose all arrears renders the taxpayer liable to prosecution.

For enquiries not covered by procedures such as CoP9 or Notice 160, the new openness and early dialogue approach is intended, under "openness", to indicate to taxpayers or their advisors whether an enquiry, not covered by the above, is either full or aspect, and why the enquiry has been opened.

"Early dialogue" is aimed at agreeing with the taxpayer/their advisor, timescales for meetings, production of information, examination of records and eventual reports of findings. This approach could be seen as a 'backdoor' approach to pressurising clients into early disclosure of information which ordinarily they would not, or should not, consider disclosing. HMRC has said in the document that the early meeting between both parties is to encourage and focus the enquiry on the key points of risk and therefore eliminate less important elements at an early stage.

This is an interesting turn around by HMRC, telling the taxpayer the reasons for the enquiry. Presently, it is quite usual for inspectors to point out that they do not have to give a reason for the enquiry. This has left many businesses frustrated in understanding the point of the inspector's questions. It has long been felt that, if HMRC was to advise the taxpayer of its grounds for concern, then an enquiry could be dealt with more efficiently.

This proposed approach should be welcomed. It should mean all processes of the enquiry could be dealt with at one meeting where HMRC explains its concerns, reviews documents and is then prepared to discuss its findings. This can only be a good thing for the business concerned, who will be put to the minimum of inconvenience and cost. Also generally welcome are the proposals that HMRC will offer a plan of action and a timetable for working the enquiry, and having a benchmarked standard of what a business can expect from the enquiry process.

It remains to be seen whether this shift in approach by HMRC works as well as it should. The key message for business is to seek specialist advice where any formal enquiries are opened, as this document indicates

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there will be a more structured approach (through meetings) and HMRC will be seeking information and documents.

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