



HM REVENUE & CUSTOMS

MODERNISING POWERS DETERRENTS AND SAFEGUARDS

WORKING WITH TAX AGENTS: THE NEXT STAGE

Response by

THE SOCIETY OF PROFESSIONAL ACCOUNTANTS

APRIL 2010

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WORKING WITH TAX AGENTS: THE NEXT STAGE

1. Executive Summary

The Society of Professional Accountants (SPA) welcomes the opportunity of commenting on HMRC's consultation 'Working with Tax Agents: The Next Stage', and attach our commentary for your consideration. .

1. Existing HMRC Powers

We consider that HMRC already appear to have sufficient powers available to them to deal appropriately with the small number of rogue agents. In our experience very few agents within a professional body will risk their reputation and livelihood unless materially disproportionate financial gain is made: errors and omissions do occasionally occur which most agents will be at pains to remedy immediately once brought to their attention.

2. A level playing field

Whatever conclusions are drawn from this review by HMRC should provide a level playing field between those agents with a professional body and those without.

3. HMRC errors continue

The quality of service from HMRC to agents remains at an unacceptably low level, which is distressing to both agents and their clients, beside creating a most unwelcome volume of unproductive and unremunerated work.

4. Straining of Goodwill

The goodwill between Agents and HMRC is being severely strained by HMRC's current quality of delivery of service. HMRC would not survive as a business on the High Street given recent years' history of basic errors made, lack of accessibility to obtain reparation, plus unwillingness to compensate agents direct for the inconveniences and wasted time caused.

5. Compensating Agents

If a tariff is to be introduced by HMRC for levels of agent or client errors, then perhaps a compensation tariff from HMRC might be considered for agents put to unremunerated extra effort identified above.

We shall be pleased to discuss with your any or part of this letter and our attached answers to the specific questions asked.

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2. Background to SPA

- 2.1 SPA is a wholly independent society of small practitioners holding a qualification issued by a recognised professional accountancy Institute. It was formed in early 1996 and currently there are some 1800 principals in 1400 member practices. Our members provide accountancy and taxation services to an estimated 175,000 private businesses and approaching 500,000 individuals.
- 2.2 The Society's stated policy is to promote and improve the relationship between members and their Institutes by providing constructive criticism together with practical proposals for improvements. Further to provide commentary and proposals to other authorities influencing our practising environment.
- 2.3 SPA has previously made submissions on small businesses limited company activities to the DTI on Audit Exemption levels, to the Accountancy Standards Board on Financial Reporting Standards for Small Entities (FRSSE), to the DTI on Modern Company Law 'Developing the Framework'. Also to the Chancellor of the Exchequer concerning individual tax payers on 'Advancing Self Assessment Tax Return Filing Dates', and to HM Revenue and Customs on 'Payments, Repayments and Debt' and 'Income Shifting'.

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3. Detailed Response to Questions posed

Q.1 Would greater disclosure to professional bodies with a regulatory function be a proportionate way to achieve HMRC's policy aim?

A.1.1 Subject to the provisos below the disclosure by HMRC to professional bodies with a regulatory function of material wrongdoing by their members would be an acceptable process.

1.2 Comparable action needs to be developed for those without a professional body.

1.3 The deemed offence should be material in value, or of a continuing and repetitive nature caused by deliberate action or poor understanding of the law, and meet the burden of proof required by the professional body.

1.4 Where deliberate wrongdoing is deemed present it should also be evident that the agent has benefited from higher than normal fees.

Q.2 Are there any further safeguards that have not been identified?

A.2. All agents without a professional body should already be registered with HMRC for Money Laundering purposes, which register should form the basis of HMRC's monitoring standards of such agent as a parallel to (1.1) above. .

Q.3 Are there circumstances where HMRC should make a disclosure to a professional body directly, without first seeking to resolve the issue with the tax agent?

A.3 No. Because of the seriousness of a disciplinary action once commenced, it appears in equity that in all instances an approach to the deemed offending agent be made to determine whether acknowledgement and/or reparation were offered in mitigation.

Q.4 Are there issues concerning the interest of clients and employees of a tax agent or firm of tax agents that need to be reflected?

A.4 The overriding concern must be to protect client confidentiality unless it is deemed that clients have been compliant in the deliberate wrongdoing.

Q.5 Is access to the working papers of tax agents involved in deliberate wrongdoing a proportionate response to the problem HMRC has identified?

A.5 Yes, but only after application to the judicial authority.

Q.6 What reasons are there to exclude tax advice and audit papers?

A.6 None, given approval of access to working papers by the judicial authority.

Q.7/8 Should the application to the judicial authority for access to working papers be with notice to the other side, unless it agrees HMRC's application for this to be without notice?

A.7/8 Yes, in all instance notice of application to the other side should be provided, with the exception of those cases of deemed material criminal activity.

Q.9 Is access to the working papers of tax agents involved in deliberate wrongdoing but held by third parties a proportionate response to the problem HMRC has identified?

A.9.Yes.

Q.10 Are there further safeguards that should be considered?

A.10 We have identified in our answer to Q.1 (A.1.3) that definition needs to be provided of material loss of tax caused by an agent's wrongdoing, deliberate or otherwise:

- above 5% - material/deliberate/negligent
- Below 5% - immaterial/erroneous/careless

10.2 Our view is that HMRC should not initiate or continue enquiries that are not economic for HMRC to pursue in relation to the quantum of tax recoverable.

10.3 We have also identified in our answer to Q.7/8 that except in cases of deemed material criminal activity any action taken by HMRC should not impair or deny the deemed wrongdoing against a right of defence ab initio.

Q.11 Is a tax geared civil penalty for tax agents involved in deliberate wrongdoing a proportionate response to the problem HMRC has identified?

A.11 We suggest that applying the materiality clause outlined in our answer to Q.10 above should lead to a proportionate civil penalty based on that of the agent's gross annual income.

Q.12 Should the penalty be reduced to encourage disclosure?

A.12.1 Yes, as with the current regimes for taxpayers an agent's acceptance and full cooperation should be 'rewarded' with a reduced penalty.

A.12.2 It may be that provisions should be made for an agent to make a 'without prejudice' economic settlement given the time involved in managing an immaterial case.

Q.13 Should there be a maximum amount?

A.13 Where immaterial wrongdoing is found a warning as to future conduct should be given as well as a proportionate penalty being levied, together with any retraining needs being identified. We have identified in our answer to Q.10 that a penalty of 5% of the agent's annual gross turnover would be a proportionate penalty.

Q.14 Should there be a minimum amount?

A.14 We consider that a de minimus would automatically be set from the application of our answer to Q.10.

Q.15 Are there further safeguards that should be considered?

A.15 We can think of no other safeguards beyond those identified in our answer to Q.10 to Q.14 above.

Q.16 Is publishing the name of a tax agents involved in deliberate wrongdoing a proportionate response to the problem HMRC has identified?

A.16 Any proposed publication of an agent found guilty of deliberate wrongdoing should satisfy our requested priority of a level playing field for ALL agents, and should only be in cases of material loss of tax or criminal activity.

Q.17 Should there be a de minimis threshold?

A.17 Publication should only be made where public interest was being served and a material loss of tax had been found.

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