

HM Revenue and Customs (HMRC) have actively sought to clamp down on tax evasion or avoidance and increasingly more businesses are subject to tax investigations without strong proof of wrongdoing. The tax authorities have very wide powers and are effectively self-governed by their own guidelines.

The minefield of constantly evolving tax legislation, littered with compliance and due diligence traps can seem daunting, complex and time-consuming for any director. However, tax disputes can be contested successfully if legal advice is sought: HMRC have lost many cases that are brought to court. The following is a brief guide on how your business can protect itself from being adversely affected by HMRC tax penalties and assessments.

Appealing against an Initial Tax Assessment

It is a misconception to suggest that HMRC always assess your tax liability correctly and in fact it is common that your liability may have been assessed excessively. Your first recourse is to complete an appeal form attached to HMRC's decision letter in which you essentially present what you believe the correct figures to be. It is essential to appeal promptly within 30 days and seek early specialist advice as a late response can be fatal to any appeal. Specialist solicitors have the competency to unblock negotiations with HMRC.

If you disagree with HMRC's review decision, your second recourse is to appeal to the First Tier Tax Tribunal. You can appeal immediately to the First Tier Tax Tribunal on HMRC decisions regarding indirect taxes such as VAT, excise duty or customs duty. The Tribunal is completely independent of HMRC and the court will consider the evidence of both parties, equally whilst the judge heavily relies on previous case law.

LEXLAW have highly experienced tax solicitors and barristers that are available to aid you at every stage of the HMRC appeal process. Members of our legal team have first-hand experience and working knowledge of the internal workings of HMRC. We can provide you with the very best representation in negotiations and in front of the Tax Tribunal. We staunchly protect our clients from being targeted with aggressive tactics. Our team specialises in successfully challenging HMRC decisions and will assist you in every aspect including

developing a strategy. We are experts in adeptly presenting evidence and employing bespoke arguments combining the facts of your case, previous cases and current legislation to ensure your appeal is a successful one.

Hardship Applications

When HMRC make an assessment of your VAT liability (often a considerable amount), normally this amount is due and must be paid before HMRC's decision can be appealed. Relief is available if you can show that you would suffer hardship if required to pay before the appeal. This is known as a hardship application.

Tax or VAT Evasion

VAT fraud is the simplest and most prevalent form of evasion uncovered by HMRC. VAT registered traders can face accusations of failing to declare their true liability on VAT returns by suppressing sales and/or inflating purchases. HMRC have an arsenal of legislative penalties to target businesses (in particular those that are primarily cash-based):

Code of Practice 8 (COP 8) Investigation

This is ordinarily a civil tax investigation if managed carefully by expert representation. This tax avoidance investigation is conducted if HMRC's Specialist Investigations team suspect a "serious" tax loss without evidence of tax fraud. Often, HMRC use these powers to challenge tax avoidance schemes. Tax avoidance structures are used to minimise tax exposure and can be considered perfectly legal if a particular interpretation of tax legislation is applied. If the planning of a scheme has been challenged by HMRC, it is essential to consult legal tax specialists as an adviser who promoted the scheme will lack the objective clarity to honestly review and defend the arrangement. LEXLAW have a deep understanding of the legal issues and will put forward strong technical arguments to defend the arrangement.

Code of Practice 9 (COP 9) Investigation

HMRC commence COP 9 investigations if they suspect "serious" tax fraud has been committed by deliberate action. HMRC have targeted particular professions and it is our understanding that over 1,300 doctors and dentists are subject to this investigation. HMRC offer a director a civil

solution for potentially criminal evasion by allowing a full disclosure under contract (Contractual Disclosure Facility) or one can deny the allegation of fraud. It is crucial that once under revenue investigation specialist tax solicitors are instructed as COP 9s are often poorly managed by non-specialist accountants. We regularly liaise with HMRC at formal meetings, agree what the scope of the disclosure should be and prepare the report on your behalf and reach a civil settlement with HMRC. LEXLAW have wide-ranging experience in assisting those facing a COP 9 investigation whilst helping to navigate the rigid time-limits and strict rules.

Criminal Investigation

Intentional evasion of VAT is a criminal offence and if your case meets the criteria for prosecution then HMRC will seek to commence proceedings in the criminal courts with the maximum penalty being 7 years imprisonment and an unlimited fine. HMRC have the power to: conduct dawn raids, freeze assets and damage your reputation. HMRC often use these strong powers where, amongst others, a business is suspected of: deliberately filing inaccurate tax returns; money laundering; missing trader intra community ("MITC") or carousel fraud (the abuse of VAT rules on cross-border transactions within the EU). LEXLAW have the expertise and knowledge to assist and defend allegations against our clients before the criminal courts.

VAT liability on Transfers of Assets

If you plan on selling your business or any part of your business, Capital Gains Tax ("CGT") will likely be at the forefront of your mind, but VAT should be right alongside it. Assets sold by a VAT registered business (your VAT taxable turnover is more than the £85,000 threshold in a 12-month

period or you expect to go over the threshold in a single 30 day period) are normally subject to VAT. However, certain legislative provisions provide that where a VAT registered/registrable business (or part of business) is transferred as a going concern (TOGC) (a business is operating and making a profit), the business assets if sold as part of the business fall outside of the scope of VAT – in other words, no VAT is required to be paid.

The law in this area can be complicated and it is advisable that specialist tax advice is sought, however generally speaking, the main conditions for when TOGC apply are:

- The assets are sold as part of a business which is a going concern.
- The assets are used by the buyer with the intention of carrying on the same type of business as the seller.
- If the seller is VAT registered, the buyer too must be (or become) VAT registered.
- In respect of land/buildings, the buyer must notify HMRC that they have opted to tax the land and notify the seller that their election to tax has not been disapplied (both notifications by the relevant date) (Unless the buyer is selling land/buildings in respect of which there has been no election to tax, in which case notification is not necessary).
- If only part of the business is sold, that part must be capable of operating separately; and
- There must not be a series of immediate transfers of the business.

While the business or part of the business may include assets, such as land or machinery, the buyer must be buying all or part of the business, not just the assets.

LEXLAW Case study:

Our client, the Appellant, was a special purpose vehicle ("SPV") which bought and sold a commercial property. The property was let out to tenants already in occupation at the time of the purchase and also to tenants entering possession after the purchase. The SPV later sold the property and was issued with a VAT assessment of over £1m. HMRC argued that the sale was not a transfer of a going concern (they alleged that the use of the property following the sale differed from the use before). The SPV instructed us as tax specialist lawyers to negotiate with HMRC and then prepare and represent them in an appeal before the Tax Tribunal.

We took the following successful steps:

- Appealed against the assessment outside of the 30 day limit
- Delayed payment of the assessment pending appeal; and ultimately
- Had the assessment withdrawn reducing the assessment amount to nil.

If you need HMRC tax investigation advice, LEXLAW Solicitors & Barristers can assist in dealing robustly with HMRC. We provide urgent advice and representation to clients from our unique expert team of established tax and duties specialist solicitors and barristers with a proven track record of delivering authoritative results. Just call us on 0207 1830 529, or email contact@lexlaw.co.uk.

Visit our website at www.taxdisputes.co.uk for more information.

