

The taxman cometh...

From 1 April 2009 officers of HM Revenue and Customs (HMRC) have significant new powers to obtain information from taxpayers and to carry out inspections of business premises. This briefing outlines those powers and the rights of taxpayers.

Checking the tax position

The new powers can be exercised by HMRC in any situation in which they wish to check the 'tax position' of a person. The concept of 'tax position' is a new one and basically covers the past, present and future liabilities of a person. So for the first time HMRC have the power to carry out real time checks on a taxpayer whereas in the past (apart from VAT and PAYE) they have generally always had to wait until a return has been submitted and an enquiry opened.

HMRC have said that, in most cases, the formal powers that they have will only be exercised after the taxpayer has been given an informal opportunity to provide the information. It is clear, however, that HMRC will not hold back from using the new powers where they perceive that there is no positive response from the taxpayer.

Information from a taxpayer

HMRC officers have the power to require a taxpayer to provide information in writing or produce a document that is in their possession or power, if it is reasonably required for the purpose of checking the taxpayer's tax position. This is referred to as a 'taxpayer notice'. The requirement for a notice does not preclude oral requests but such requests are not enforceable until formalised in a written notice.

The written request can be made directly by the officer or they can obtain the approval of the First-tier Tribunal (FTT) which is the formal appeal Tribunal to deal with tax disputes. If the request comes with FTT approval there is no right of appeal. An appeal can be lodged against a notice from an officer although there is no right of appeal against what are termed 'statutory records'. Unfortunately this term is open to wide interpretation.

The key requirement against which any request should be tested is that the information is reasonably required to check the tax position. The law states also that a document can only be required if it is in the possession and power of the taxpayer.

To comply with an information order, the information has to be produced to the officer within a specified period of time (this will usually be 40 days). The information can be supplied at any reasonable location and time.

Information from a third party

HMRC also have a power available to obtain information and documents from a third party, for the purpose of checking the tax position of the taxpayer whose identity is known to HMRC (a 'third party notice'). In the first instance, the taxpayer concerned will usually be asked to give their consent to the third party being approached. This could be a sensitive issue if the third party is an important customer or supplier for a business. In the absence of taxpayer consent, HMRC can obtain a third party notice from the FTT.

Compliance with the notice follows the same rules as for a taxpayer notice. If the taxpayer receives a request from HMRC for information about someone else, the taxpayer should seek advice on how to respond.

Power to inspect premises

This is undoubtedly the most controversial part of the new legislation. Previously, VAT legislation gave the right of access to premises but no equivalent power existed in direct tax. HMRC consider this power to be a very important part of the new investigation process and it is to be expected that they will use it as much as they can. It obviously helps them to understand a business better by seeing it in operation rather than simply working from a set of accounts and other descriptions.

Whose premises can be inspected?

Generally, the only premises that can be inspected are those of the taxpayer whose tax position is being checked. This limitation does not apply in connection with visits to premises where HMRC have reason to believe that taxable VAT supplies are on the premises, or the premises are used in connection with the acquisition of goods from another member state, or are used as a fiscal warehouse. In these cases any business premises can be inspected.

What can be inspected?

The power enables HMRC to inspect the business premises and any business assets and documents that are on the premises. This could include looking at stock as well as at capital equipment. Business records such as sales invoices or purchase information can also be inspected. It is important to stress that this is not a search warrant, the officer can only look. If a visit takes place care should be taken about what is visible and the inspection should be limited to only what the officer has asked to see. The officer should also be escorted around the premises.

I run my business from home so can the officer visit that?

The short answer is 'yes'. The power cannot be exercised in respect of premises which are used 'solely as a dwelling' but where any part of a home is used for the business then that part of the home is open to inspection. The officer has no right to see any other part of the home and there may be practical issues involved in ensuring that this does not happen.

Will the officer tell me that he is coming?

In most cases the answer will be 'yes'. The normal approach will be to ask the taxpayer to allow a visit to take place and if they agree then arrangements will be made for that visit to take place.

Alternatively HMRC could give the taxpayer written notice of such a visit seven days ahead of a visit date. This notice should state:

- the date, time and place of the visit
- the name of the HMRC visiting officer(s)
- which records the officer(s) would like to see.

If the visit has not previously been agreed and the time is not convenient, or if the taxpayer does not want the visit to go ahead, HMRC should be informed immediately. They may then arrange another, more convenient time, or may decide on a more forceful approach – the unannounced visit.

So the officer can simply turn up without warning?

Yes. They can do this if they either have the authority of a senior HMRC officer or the authorisation of the FTT. HMRC have indicated that they will take this approach

- in serious cases where they believe that notice would allow the taxpayer to effectively cover their tracks and
- also in cases where the taxpayer persistently refuses to allow agreed access.

Where an unannounced visit is made, the officer must provide a written notice to the taxpayer. If they are not on the premises then that notice must be given to someone who appears to be in charge and, if no one is on the premises, the notice must be left in a prominent place.

Do I have to let them in if they turn up unannounced?

No. This is not a search warrant and the officers have no power to force entry. Taxpayers have the right to turn them away. It should be pointed out that if HMRC's authority for the visit has come from the FTT a fine of £300 may be incurred for refusing entry. Even if entry has been allowed, the taxpayer can ask the officers to leave at any time and they must do so.

What should I do if officers turn up unannounced?

The first thing is to check that they are who they say they are. Ask for the written notice and check exactly who has authorised the visit. Note particularly if it has come from the FTT because of the potential penalty position. Officers should be asked for their identity which they should produce and if necessary check this with their office. If there is a suitable reception area, offer the officers refreshments and ask them to wait until a professional advisor has been contacted.

If there is a reception desk it may be prudent to have written instructions for the reception staff that they should contact a nominated person to attend and deal with the officers.

If you need any further guidance on the matters addressed in the briefing or have any concerns as to the operation of other HMRC powers please do contact Linda Warner our Tax Partner on 01483 416232 or email her on lwarner@roffeswayne.com us for assistance.

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