

Employer audits – prevention rather than cure.

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Agenda

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- 1 → **What has been our recent experience of HMRC**
 - In reviews?
 - Where we have made disclosures?
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- 2 → **What are the hot topics we are seeing in reviews?**
 - IR35
 - Termination payments
 - Directors
 - PAYE Settlement Agreement review and
 - Qualifying travel and subsistence claims
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What has been our recent HMRC experience?

In reviews?

- HMRC are generally undertaking fewer cyclical reviews outside of their BRR+ regime
- Instead, HMRC appear to concentrate their resources on areas they regard as higher inherent risk
- This may then lead them to look at other areas also, but it depends both on the subject matter and on what they find

And in disclosures?

- There have been fewer queries raised as a result of the submission of unprompted voluntary disclosure prior to these being closed out
- Increasing trend of closing an unprompted voluntary disclosure without a formal contract settlement – pros and cons

Why would we recommend unprompted voluntary disclosure?



Generally, it gives us the initiative in negotiating with HMRC and the best chance of any errors identified being no worse than careless



Unprompted voluntary disclosures maximise the potential discounts available in terms of negotiating penalties



Telling (up to 30%)

Includes admitting that the document was inaccurate or that there was an under-assessment, disclosing the inaccuracy in full, explaining how and why the inaccuracy arose



Helping (up to 40%)

Reasonable help in quantifying, positive assistance, active engagement, volunteering information relevant to the disclosure



Giving access (up to 30%)

Responding positively to requests for information and allowing access to records and documents at a convenient and agreed location, with copies provided when

*For each of these, HMRC will consider the **timing, nature and extent**.*

What are the hot topics we are seeing in reviews?

Employment status

- Now that the continuance of the regime has been confirmed, we are seeing more reviews of **IR35 compliance and employment status** more generally
- Even where you have not engaged directly with any PSCs there can be risks where there are contractors with PSCs in more complex labour supply chains. HMRC also want to understand what processes are in place to ensure no PSCs creep into your supply chain
- Further complexities if there is an international element, including which law is in point
- **IR35 reviews** extend outwards to consider other possible employment status issues, e.g. engagement of sole traders, assessment of outsourced service, use of agencies/umbrella companies, etc.
- No agreement has been reached with HMRC regarding the wider issue of **IR35 settlements** and the potential set off of liabilities paid by the individual and the PSC

What are the hot topics we are seeing in reviews?

Termination payments

→ Revisions to the law in April 2018 and 2020, made under the badge of tax simplification have actually made it more complex and more expensive to terminate employment

→ **Particular issues include:**

- PENP and the potential need to reclassify amounts from being qualifying termination payments to earnings, i.e. subject to income tax and NIC in full
- Liability to Employer Class 1A NIC on qualifying terminations in excess of £30,000 from April 2020
- Whether HMRC can find some other basis to argue a payment is non-qualifying:
 - Contractual/expectation
 - 'Redundancy' payments made under non-UK law which may not use the term redundancy
 - Employer-funded retirement benefit scheme
 - Restrictive covenants

→ Also enquiry activity at an employee level in s9A enquiries

What are the hot topics we are seeing in reviews?

Directors

→ Particular issues include:

- **Non-UK resident directors**
 - earnings attributable to UK directorship, especially where global role held
 - Travel, accommodation and subsistence (both to and within the UK)
- Use of legacy ESC A37
- Temporary versus permanent workplace analysis, especially for NEDs
- Provision of consultancy services in addition to directorship duties

What are the hot topics we are seeing in reviews?

PAYE Settlement Agreements (“PSAs”)

- HMRC Guidelines for Compliance issued in 2022
- Focus on what is included because of change to recurring agreements
- Challenge on anything that could be subjected to PAYE
- Sometimes HMRC will argue that an item is not in one of the three categories that can apply (being minor, irregular or something difficult to allocate to individual employees) and so doesn't qualify, when it is in one of the others
- **Complications in calculations themselves:**
 - Nil rate band
 - Scottish and Welsh rates
 - Application of NIC to employees

What are the hot topics we are seeing in reviews?

Travel and subsistence

- Temporary versus permanent workplace analysis, including anti-avoidance measures which prevent a workplace from being treated as temporary
- Inconsistent assignment documentation
- Accompanied assignments
- Other reasons for a permanent workplace
- Business need and level of expenditure incurred
- Creation of multiple permanent workplaces as a result of regular travel
- Overseas aspects where some duties undertaken in the UK and some overseas

Key take aways....

Approaching HMRC with an unprompted voluntary disclosure where possible is a good idea, as it will minimise the risk of penalties, and put us in the driving seat in managing negotiations

Lean on your CCM (where possible) in situations where a more pragmatic approach may be appreciated

**Key
take aways**



Where HMRC start a review it can easily spiral into other areas, and managing it proactively will help to limit the risks associated with this

It is possible for a s9A enquiry to spike a wider employer review, if HMRC is dissatisfied with the position adopted on a number of tax returns

We are seeing fewer cyclical reviews but with a better focus, so they still deserve to be taken seriously



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