

In this edition

Welcome to the latest edition of the DTE tax investigations newsletter.

HMRC continue to pursue their programme of issuing Advanced Payment Notices (APN). Latest details from HMRC suggest £1bn has been paid to the Treasury to date. If you have clients who receive an APN it is important the limited options available are considered at an early date.

Increased HMRC activity

HMRC have increased the number of enquiries into 2014/15 sub-contractor repayment claims. The challenges made by HMRC revolve around claims for motor, travel and subsistence and accommodation, HMRC state on page one of a particular letter "you have claimed subsistence at a rate of £x per day. This is not an allowable expense. I would refer you to BIM37660 – The cost of food or drink consumed for the human requirement of sustenance is not allowable. It does not matter that work occasions a greater appetite or causes greater expense. The expenditure is at best dual purpose. There is no mechanism to allow an apportionment to give a business proportion or the extra cost imposed by the business. The whole cost is disallowed".

Notes issued by HMRC's Tax Agent Initiative Team in 2014 however state:-

"Where subsistence costs are incurred with overnight accommodation, receipts should be retained, as reasonable costs for subsistence alongside accommodation are allowable. See BIM37670 – wholly and exclusively, duality of, or non trade purpose: non travel topics: accommodation and subsistence: itinerant trades".

With HMRC taking more cases up for review it is important you take the time to discuss the deductions made against turnover with the client. Clients should be made aware that large repayments of tax claims are likely to be challenged. Guestimates and non-supported expenditure will be under scrutiny more than ever.

It is important for clients to appreciate that where a material revision is made to the repayment early years may also be reviewed by HMRC. If you have a client under enquiry do not hesitate to call me.

Special relief – A recent case

Under Sch 1AB TMA 1970 (special relief), HMRC can allow a claim for relief of overpaid tax when more than four years have elapsed since the end of their relevant tax year. The first condition is that it would be unconscionable for HMRC to seek to recover the amount.

S had made a formal request for special relief, explaining that the returns were late 'due to serious sickness over a prolonged period and subsequent death of his previous accountant'. He also contended that the determinations by HMRC had been excessive. HMRC had refused the claim for special relief, on the basis that he had previously been non-compliant in submitting tax returns.

The decision (FTT)

'Unconscionable' means 'completely unreasonable' or 'unreasonably excessive'; HMRC should assess the behaviour of any appellant as to whether it is what might be expected from any reasonable person in a similar situation.

The first-tier tribunal noted that 'the disparity between the sums determined and the sums due, as put to HMRC, was so striking that some further explanation and inquiry were called for'. But not considering the disparity, HMRC had failed to take account of a material factor which was relevant to the issue of unconscionability. Additionally, HMRC had taken an irrelevant factor into account: S's tax history. HMRC's decision was therefore not rational and special relief should have been given.

The point to take from this case is that poor tax history is not a factor relevant for a claim to succeed.



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Accelerated payment notices: HMRC notes

HMRC have issued further information for those receiving accelerated payment notices. The effect of a notice is to ensure that disputed tax or NIC rests with the Exchequer in an avoidance case, so removing the cash flow advantage enjoyed by users of tax avoidance schemes and the benefit they currently have over the majority of taxpayers who pay their tax and NIC upfront. HMRC have confirmed that they will send out a letter some weeks in advance of an APN being issued, to let the taxpayer know it is on its way, and to provide them with some information about APN's.

Here are ten things the recipient of an APN needs to know:

1. Recipients have a right to make representations against their APN's. They also have a right to appeal against the underlying tax or NICs that are in dispute;
2. They have 90 days to pay the amount shown on the APN, unless they make representations, in which case the period will be extended until 30 days after HMRC respond to the representations;
3. Representations, which HMRC will consider, can be made if the amount quoted is felt to be incorrect or the conditions have not been met. Representations should be made in writing to the address shown on the notice, within 90 days before payment becomes due;
4. Failure to pay an APN by the due date could lead to late payment penalties or surcharges becoming due and potential enforcement action being taken to recover the tax or NIC;
5. Those who think they will have a problem paying the APN should contact the HMRC telephone number shown on the notice or the earlier letter informing that HMRC are going to send out an APN;
6. APN's are being issued on a scheme by scheme basis, so those who are involved in a number of schemes may not get all the APN's that HMRC plan to issue at the same time;
7. APN's are sent out for each year of any avoidance scheme and for each type of tax involved;
8. The APN will only cover the tax or NI advantage relating to the specific avoidance scheme covered by the APN. The amount shown may not be the final liability agreed, which may be larger or smaller than the amount of APN. It will not include any interest, penalties or other tax that may be due in the year;
9. If an APN is received at the same time as a settlement opportunity is in place, the value of the APN will not necessarily be calculated on the same terms offered in the settlement opportunity. Settlement opportunity calculations may also include interest and penalties. The APN may therefore not be for the same amount as the figure requested in order to settle the matter in full with HMRC; and
10. Taxpayers can still settle their tax affairs after an APN is received; they should contact HMRC as soon as possible.

HMRC to introduce 'partial closure' power for tax enquiries

Following consultation, HMRC intends to develop a legislative power to issue 'partial closure' notices, as a means of speeding-up the tax enquiry process, although respondents expressed strong views that any such power should not rest exclusively with HMRC. As a result there is to be further consultation.

There was overwhelming disagreement with the suggestion that HMRC should be able to use the proposed legislative change unilaterally. It was felt that both parties involved in a tax enquiry should have the ability to approach the Tribunal, to seek closure of a particular aspect. The terminology of a potential "Tribunal Referral Notice" was not of great concern.

Respondents made a number of suggestions regarding how the process might work in practice, including whether the onus of proof should lie with the party seeking closure or the appellant, and whether the determining factor in closing an aspect should be the ability to qualify the tax. It was also considered that the appeal and payment process needed to be given further consideration. The majority of respondents also wanted greater and more explicit safeguards that the new power would be used appropriately by HMRC.



For further help or advice please email Alan McCann at amccann@dtegroup.com or telephone 0161 767 1200.