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The Chambers UK Guide 2023

A Briefing Guide to

HMRC Tax And Vat Investigations: Using Our Expertise To Protect Your Interests

RAHMAN RAVELLI

HMRC Tax And Vat Investigations

Nobody usually likes hearing from the tax man.

The tax affairs of corporates and individuals can often attract the attention of HM Revenue and Customs (HMRC) for a variety of reasons. If that happens, you need to be able to present your case in the clearest, most robust manner possible.

Rahman Ravelli is the obvious candidate for any person or company requiring such representation. Whatever the nature, size or complexity of the tax issue, we have the expertise to ensure your position is explained to the HMRC in a strong and intelligent way.

The solicitors in our tax investigations team have vast experience of all tax issues that may arise. Our lawyers advise corporates, professionals and high net worth individuals (HNWIs). They have spent years dealing with the HMRC at the highest level, often on some of the largest and most complex national and international tax-related cases. When it comes to representing the tax interests of a corporate or individual, Rahman Ravelli's widely-recognised ability to both challenge and negotiate with investigating bodies, such as HMRC, has been highlighted by national and worldwide legal guides. We can obtain the most favourable outcome and have been known to obtain civil conclusions to cases that could otherwise have ended with a criminal prosecution.

On these pages, we explain the nature of tax investigations and the way that HMRC operates. The powers that HMRC has are outlined, as is the impact of the Criminal Finances Act, which created the offence of failure to prevent tax evasion. We explain the value of proper coordination when responding to an HMRC investigation – including when a premises is raided – and how HMRC allegations can be challenged and its rulings appealed.

Many factors can have an impact on a tax investigation; especially one that may be large-scale and / or multinational; as much of our tax investigation work is.

Tax Investigations

Taxation has always been a major factor in business. At present, the UK government is placing more emphasis than ever before on identifying and tackling unlawful tax avoidance. It has spent much of this century strengthening its efforts to both prevent VAT fraud and prosecute it. This means that many companies and individuals are set to be the targets of HMRC investigations.

HMRC has made it a high priority to seek out the architects of what it believes to be large tax avoidance schemes. As one of the most experienced legal firms working in this specialised and important area, we are in

increasing demand to represent those that the HMRC believes are behind complex, international avoidance schemes.

HMRC does not just have the power to recover taxes it believes are owed. It can also impose fines and bring prosecutions and has a range of enforcement powers at its disposal: some of which we outline below. This is why any corporate or individual that comes under HMRC investigation needs to seek legal advice from specialists with the necessary expertise to challenge HMRC's assumptions. We provide that expertise.

An HMRC investigation can be lengthy, complex and involve vast amounts of evidence. It may cover the activities of many individuals, companies or limited liability partnerships. Business figures, investors, independent financial advisors, accountants and other professionals can all find themselves under scrutiny from HMRC investigators. We ensure that they respond in the most appropriate way.

HMRC's Search for Proof

In any investigation that is looking into the creation and operation of what is suspected to be a tax evasion scheme, HMRC will be looking for proof that it does what it claims to do. So, to refer to examples of cases we have been involved in, if a scheme is claiming tax relief as it is a vehicle for film investment or promoting carbon credits or a multinational conservation scheme, HMRC will be looking to see if genuine investment is being made or whether the whole process

is an elaborate way to avoid paying tax. This will mean HMRC examining all the activities of the individuals and corporate structures involved in a scheme; including the working relationships. It will analyse the business opportunities the scheme is supposed to be creating. The relevant trading agreements, invoices, accounts, work plans and records and any research carried out in support of the scheme will all be scrutinised.

HMRC's Case Building

HMRC will ask many questions, examine the authenticity of all the documentation that it acquires and assess the truthfulness of all statements made verbally or in the documents. It may place restrictions on the activities of those investing in or running a scheme, refuse to grant the tax relief being requested and even seek more detailed records of any expenditure that is the basis for such tax relief requests. From examination of the evidence, it may seek to interview those involved and search their home or business premises.

These are the reasons why it is so important that the subject of any such investigation seeks legal representation at the earliest possible opportunity. Anyone facing an HMRC investigation that comes to Rahman Ravelli will have our tax investigations team working swiftly and intelligently to produce and act on a strategy that counters the HMRC's allegations by use of evidence and strong legal argument.

HMRC will look to build a case slowly and meticulously in order to examine all issues regarding direct or indirect taxation of which it suspects wrongdoing. Any individual or corporation that is investigated must,

therefore, be equally diligent in building a case. That case has to rebut the HMRC's assumptions by using intelligence, fact and legal argument.

At Rahman Ravelli, we are adept at questioning the HMRC's claims and, when necessary, challenging its interpretation of a client's tax situation. We have a network of experts both here and abroad and use all relevant professionals and industry experts when assembling a team to establish the true status of a client's tax obligations in order to mount counter-arguments to the HMRC's interpretation of the circumstances. But we are also skilled negotiators, capable of identifying and pursuing opportunities to resolve any tax investigation in the most non-contentious way in order to avoid the possibility of a criminal prosecution.

Co-ordinating Your Response To A Multinational Tax Investigation

The nature of modern business means that many companies and individuals are often active in more than one country. The nature of Rahman Ravelli's caseload means that we are working at any given time on a wide variety of cases that cross borders and involve numerous jurisdictions and various tax regimes.

Co-ordination of evidence gathering and legal arguments is an essential attribute when responding to any tax investigation. We are capable of co-ordinating the most appropriate response to any multinational tax investigation, no matter how many tax

enforcement authorities are involved in it or which one is leading it. And we do this while working with a client's accountants, financial partners or advisers so that we can produce the most precise, comprehensive challenges to the allegations that have prompted the investigation.

Whether you are a person who is in business on your own, a HNWI or responsible for the tax affairs of a corporate or major organisation, Rahman Ravelli has the ingrained ability to identify the right steps to take to ensure the strongest response to a multinational investigation - and the best possible conclusion.

The Criminal Finances Act 2017

Failure to Prevent Tax Evasion

As of 30 September 2017, companies and partnerships can be held criminally liable if they fail to prevent the facilitation of domestic or overseas tax evasion – regardless of whether they were either aware of the misconduct or involved in it.

This is a piece of legislation that gives the HMRC a degree of extra power and could have a profound effect on those working in financial services as well as the legal and accounting sectors.

It creates two new offences:

- The facilitation of UK tax evasion. This applies to all businesses, whether based in the UK or overseas. The criminal facilitation can be conducted anywhere.

- The facilitation of overseas tax evasion. This offence only covers businesses with a UK connection or when the facilitation has been committed in the UK.

For either offence to be successfully prosecuted there has to be evasion of domestic or overseas tax by a company or individual, the facilitation of that evasion by an “associated person” of a firm and a failure by the company to prevent that person facilitating the offence. An “associated person” is an employee, agent or other person who performs services for or on behalf of the organisation. “Facilitation” means deliberate and dishonest action.

Both offences place a considerable responsibility on those in business to ensure they have procedures in place capable of preventing them being committed.

Adequate Procedures Defence

The Act allows for the defence that, at the time of the offence, the business had “reasonable prevention procedures” in place to prevent the offences taking place.

Any assessment of such procedures by HMRC investigators will consider the company's approach to due diligence and risk assessment, senior management's commitment to prevention, staff communication and training, whistle blowing systems and the arrangements for monitoring and reviewing the procedures.

There is no magic formula for avoiding a prosecution for failure to prevent tax evasion. But many companies will require advice on how to ensure that their procedures would be considered reasonable for the purposes of the Act.

As a firm that offers advice to companies of all types and sizes regarding preventative measures, Rahman Ravelli has the ability to assess such procedures and recommend introducing measures to make sure you are compliant with the Act.

When it comes to prosecutions under the Act, we use our expertise in dealing with high-level, in-depth tax investigations to mount a robust defence case that is tailored to your company and the situation it finds itself in. Our knowledge and experience of precisely what the authorities will regard as being adequate procedures for the purposes of an HMRC investigation can be key to a satisfactory outcome. Our skill in this field extends beyond the area of taxation, as we have advised extensively on adequate procedures in Bribery Act investigations; which is another legal field where having the right preventative measures can be a valid defence to allegations of corporate failure to prevent an offence.

Tax Tribunals

It should always be remembered that in most cases a decision made by HMRC can be the subject of an appeal if the subject of it is not happy with what has been decided.

The process for contesting an HMRC decision involves asking an independent tax tribunal to decide the matter. If your appeal concerns direct tax - taxes directly to the government by

an individual or corporation – an appeal should be made to HMRC before asking a tribunal to consider it.

When making an appeal against an HMRC decision, it should be made in writing within 30 days of HMRC giving notice of its decision. HMRC must then consider this appeal and either agree with it and change its decision or disagree and confirm its original decision. It will then notify the subject of its decision in writing. A review of the case can also be requested. This will be conducted by another HMRC officer who was previously had no involvement in the case.

If the subject is still not satisfied with HMRC's consideration of the case after the initial appeal was made or after a review (or if they do not want a review) they can appeal to the tax tribunal system.

Tax appeals are heard by a single, independent tribunal system, split into two tiers - the Tax Chamber of the First Tier Tribunal and the Tax and Chancery Chamber of the Upper Tribunal. If the result of an appeal to the First Tier tribunal is thought to be unsatisfactory by those who made the appeal, they can appeal against it if the decision is wrong in law and the tribunal gives permission. The Upper Tribunal will usually hear appeals against First-tier Tribunal decisions. But if it is decided that there is no right of appeal, there is the opportunity to apply for a judicial review.

But this latter option can be costly. And the majority of tax disputes are settled between the individual or organisation

and the HMRC well before this stage. The key is to make the strongest, most intelligent argument as early as possible.

Rahman Ravelli's extensive background in tax matters means we can immediately assess an appeal's chances of success. We work with diligence and intelligence to prepare a case and an accompanying strategy to maximise the likelihood of a successful appeal outcome.

HMRC Raids

HMRC has the power to search a premises if it suspects tax fraud. Where necessary, it will work with the Serious Fraud Office (SFO), National Crime Agency (NCA) and regional police forces to coordinate raids. These raids are usually carried out very early in the morning. The aim is to catch the suspect off guard and obtain any material that HMRC investigators believe could become evidence in an investigation. While HMRC will, if it has followed procedures properly, have legal authority for the raid it is important that the subject of the raid has access to a solicitor.

Anyone who finds themselves the subject of a dawn HMRC raid must:

- Notify their solicitor immediately.
- Ask the HMRC's senior investigator in charge of the raid for proof of their identification.
- Ensure they are given a copy of the search warrant authorising the raid.
- Keep the HMRC staff present in the reception area of the premises.

If the subject of the raid's solicitor is not present, the HMRC raid leader should be asked to speak with the solicitor on the phone.

The solicitor should also be sent a PDF of the search warrant.

The HMRC raid team does not have to wait for the solicitor to arrive before starting to search the premises. The search warrant may restrict the time the HMRC team members can be on the premises and so they may not want to incur any delay, which is why it is best to tell them when the solicitor will be arriving.

If HMRC will not wait, a member of staff should be allocated to follow each search team member so that a record can be kept of any digital data or hard copy documents that are copied, examined or taken away.

Those carrying out the raid cannot interview anyone at the scene of the raid. Only questions about the search or documents are allowed. But they can search anybody that they believe may have material on them that may be of substantial value to the investigation. The officers should not be physically obstructed as this can be an arrestable offence. It is important to note that concealing documents or other information is also an offence. However, if documents are protected by legal professional privilege these are not covered by a search warrant and cannot be seized by the HMRC.

COP 8 And COP 9 Fraud Investigation Procedures

The HMRC has a number of powers at its disposal. Its options go far beyond deciding whether or not to prosecute. This

is another reason why anyone facing an HMRC investigation must seek advice from those who know all the possible routes the HMRC may follow on a case - and how to respond to them.

Here we explain some of the ways HMRC can investigate a corporate or an individual and outline some of the approaches that can be adopted.

Code of Practice 8 (COP 8) Investigation Procedure

If HMRC believes that you are not paying the correct amount of tax or are involved in some form of tax avoidance scheme it can begin a COP 8 investigation. The purpose of this investigation is to claim the tax that HMRC believes it is owed.

A COP 8 investigation can be carried out into individuals and businesses and can relate to any type of taxation. Investment schemes, especially those based offshore, could attract HMRC attention. Pension schemes, employee benefit trusts, inheritance tax schemes and share loss relief and enterprise investment schemes are also possible targets for a COP 8 investigation.

If such an investigation finds that the correct amount of tax has not been paid on any such scheme then the tax due plus any penalties and interest must be paid. But what must be remembered is that the HMRC can and should be challenged over the penalties it seeks to impose. The right legal advice and properly-constructed arguments can ensure that the HMRC does not have it all its own way when it comes to investigations and penalties.

What is also very important to note is that if HMRC suspects the behaviour involves dishonesty or fraud then it can begin a COP 9 investigation or even a criminal investigation. Efforts should be made to avoid such an outcome, as it can be damaging from both a financial and a reputational perspective. Rahman Ravelli regularly advises in such situations to ensure the best outcome.

Code of Practice 9 (COP9) Investigation Procedure

A COP9 investigation will only be started by HMRC when it suspects that serious tax fraud has been committed. If HMRC does decide to investigate using the COP9 investigation of fraud procedure, the subject of the investigation is given one opportunity to make a comprehensive and accurate disclosure of all the conduct - legal or illegal - that has led to their tax affairs not being as they should be.

Whether it is an investigation into income tax, VAT, inheritance tax, corporation tax, capital gains tax, national insurance or customs duties, HMRC uses COP9 to give the subject of the investigation two clear choices:

Disclosure: A person can accept that they have committed tax fraud and say they want to co-operate with HMRC by entering into a Contractual Disclosure Facility (CDF); which involves them making a full disclosure of their tax fraud. This has to happen within 60 days of receiving initial communication from HMRC.

Denial: A person can deny any tax fraud.

If disclosure is made under a CDF and the HMRC then believes that a full disclosure of all irregularities has not been made it can begin a criminal investigation, which could then lead to a prosecution. But if HMRC is satisfied that the subject of the investigation has made a full and accurate disclosure of the tax irregularities, it will not begin a criminal investigation in relation to the behaviour that originally prompted the investigation.

The COP9 procedure can, therefore, be a means by which lenient treatment can be received when taxation failings have been identified. But the process is one that has to be approached with caution. Your response to the HMRC in such an investigation has to be carefully thought out and only acted upon after expert legal advice has been sought.

This is especially important now that the option of denying wrongdoing but cooperating with the HMRC is no longer being offered in a COP9 investigation. Any denial of wrongdoing effectively removes your ability to have any influence on the investigation.

The CDF process requires careful consideration. Even the HMRC recommends that anyone weighing it up as an option should seek specialist legal advice. Rahman Ravelli can both help you decide whether the CDF route is the most appropriate for you and, if it is, we can manage all stages of the process.

MTIC Carousel Fraud And Diversion Fraud

We have become acknowledged experts when it comes to managing HMRC investigations where MTIC (Missing Trader Intra-Community) VAT fraud - also known as carousel fraud - is suspected.

The legal changes that there have been in relation to such cases and the specialised nature of this area of law make it necessary for anyone facing such an investigation to be represented by solicitors with the relevant expertise and experience.

Rahman Ravelli has also long been regarded as the solicitors to go to when diversion fraud allegations arise relating to the import-export of products on which duty is due.

Our caseload sees us representing clients who move massive amounts of goods around the world and involves a vast range of commodities. Whether it be the likes of national steel producers, huge international manufacturers, state-of-the-art computer or electronic traders or those dealing in recently-developed concepts such as carbon credits, our expertise has been required by those who have been subject to some of the most complex, challenging, global investigations.

A Joined-up Approach

Tax investigations can be lengthy, complex and involve a vast amount of potential evidence, a large number of organisations and many challenging legal arguments. Securing the very best outcome requires a careful, rational and joined-up approach that leaves no stone unturned and no allegation unchallenged.

At Rahman Ravelli, we provide the intelligent, joined-up thinking that is essential in such cases.

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