

HMRC Nudge Letters

*And it's a nudge to the left
And then a fish to the right....*



It's a fact that HMRC are not allowed to fish; it's equally well-recognized that HMRC fishes with impunity.

You'd want to be sure of your facts before telling the Revenue to get lost, and it'll cost you £10,000 to take them to tribunal.

The taxpayer's greatest protection is that untargeted canvassing for unpaid tax is inefficient. Familiarity breeds indifference. Post health crisis the politicians want to be seen as compassionate, while the Treasury is desperate for the cash. For once HMRC will be left to get on with its job. If you have committed tax fraud, the Revenue are generating some sophisticated traps.

Cue the nudge.

'Nudge letters' from HMRC's Risk and Intelligence Service are based on information from overseas tax authorities and intend to prompt taxpayers to make voluntary disclosures. The UK Revenue appears to be leading a coordinated global campaign to eliminate offshore tax evasion. All the evidence supports HMRC's PR, that they have evidence of improper disclosure of offshore activity. The emphasis is on offshore, but we can expect it to be extended to other dedicated initiatives.

The 'nudge letter' is the product of several factors, including rare fishing cases that the Revenue have lost. Increased intelligence has left the Revenue with profitable work-in-progress. Within the United Nations, the intergovernmental deliberations on international tax cooperation are undertaken by the Economic and Social Council (ECOSOC). International tax cooperation has been effective. The Mossack Fonseca security breach known as the Panama Papers which exposed

David Cameron's family, and others, released voluminous information. The nudge letter reduces the need for costly enquiries while covering all the bases.

What should you do if you receive a nudge letter? Other than celebrating the fact that you are almost certainly reasonably wealthy, and clearly you need to take advice from an enquiry specialist, you need to check your returns. It's still relatively early. The Revenue campaign seems to date from late 2019. Two highlighted statistics are that £200m has been collected and that compliance has improved from 68% to 83%, described by one commentator as a 16% improvement. The £200m isn't setting the world on fire but what is interesting is the cost-benefit: unlike many campaigns which are political and to encourage the others, this one's paying for itself. More importantly, it hasn't acquired the usual opprobrium.

It's hard to overstate the need to make a full disclosure, but if you receive the letter, it may be helpful to consider what not to do. People use offshore structures for perfectly legitimate commercial reasons and a significant percentage of the Mossack Fonseca cases were not overtly driven by tax evasion. It becomes problematic when a legitimate structure happens to save tax. Inevitably, the offshore structure will be deemed to be hiding the tax planning, not because it's illicit, but trying to avoid the question. This is where the nudge letter comes into its own. Contrary to popular opinion the Revenue doesn't want to launch enquiries. It knows that high profile cases don't encourage other taxpayers any more than hanging is a deterrent. It isn't answerable to a populist electorate, or at least not directly. Formal enquiries cost the earth and tie up their best officials, while running the risk of losing on appeal and creating chaos in the system.

The trick of the nudge letter, inspired by officials who one should never underestimate, is that responding to a nudge, in a timely and straightforward manner, is classified as a voluntary disclosure. You're going to pay the tax you owe, and HMRC is flexible, usually offering time to pay. Everything from the moment you decide to make a full disclosure is about reducing penalties, including incarceration. The more you co-operate the larger the reduction from the maximum. The rules are arcane but work on 200% of the tax avoided as a starting point.

In every major case my firm has handled over the last decade, the main problem has never been the subject of the original enquiry. It's worth stepping away from the textbook and looking at

what happens. You go off to an enquiry specialist with your nudge letter. The accountant asks you for a full and frank disclosure. You give her a highly selective version. The accountant knows you are being economical with the truth, spinning if not lying, because neither she nor the inspector of taxes was born yesterday. The accountant goes along with what you're saying to build trust, protect you from yourself, and in the fond hope that she'll get paid for keeping you out of jail. The accountant will conduct a detailed review of your recent returns and ask very uncomfortable questions. If you are more intelligent than the average client, you will be relieved that it's your professional advisor that is confronting you with the truth and not the inspector; or what for many is the existential threat: your own professional body. The accountant will then try to flush out what the Revenue hasn't mentioned but might well know.

The various disclosure options boil down to pretty much the same thing, packaged so that HMRC can develop in this case its offshore specialism with the Worldwide Disclosure Facility (WDF). It's like a game of chess with most pieces on the table. It's early days but Theatres of War might include a nudge to disclose a legitimate offshore structure with little or no tax implications on returns (there is a *de minimis* of £25,000) along with other un-nudged errors or omissions that HMRC might regard as fraud (in our experience perhaps a majority). The client is reluctant to disclose anything not being questioned directly. Taxpayers need to understand the implications of continuing to withhold other errors. The penalty regime will ratchet up as when inevitably HMRC finds out, the WDF will fail and all bets are off, including criminal prosecution. At the very least the errors will no longer be treated as voluntary, and will be deemed to have been concealed. Incarceration, particularly for anyone with a professional qualification is becoming a probable outcome.

I often end these articles with a dig at HMRC for following the politicians' lead, looking for glory instead of maximizing their returns. In this case I'd be doing the recipients of 'nudge letters' a disservice. It is a very effective approach with no perceptible technical flaws people like me can abuse. If you receive a nudge letter you need to take it very seriously indeed.

Doug of Loxley and the Metropolitans scratching their heads in wonder, contemplating a cunning plan from the Sheriff of Whitehall.

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