

UK Tax Investigations



David Gough CTA

International Fiscal Association

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Introduction to Dixon Wilson

- Chartered accountants based in central London and Paris.
- 16 Partner firm across the two offices with over 100 staff.
- Exclusively act for individuals, families, their businesses and charities.
- Independent, objective specialist accountants in the private sector.
- International & UK families, offices, trusts, companies, estates & charities.

HMRC Focus on Investigations

- £26 billion raised from 235,000 compliance checks
- £7 billion more than previous year
- 2,500 more tax inspectors
- Target driven
- Need for Cash

Normal Enquiry deadlines

- **Individuals, Trusts and Partnerships (inc LP/LLPs)** – normal filing deadline is 31 January following end of the tax year (5 April).
- **Corporate entities** – Normal filing deadline is 12 months anniversary of the end of the accounting period.
- **Enquiry window** - 12 month anniversary following the submission of the return.

Extended Enquiry Deadlines

- Late or amended returns:
 - Quarter end date following the 12 month anniversary of the return being filed amended (quarter end dates being 31 January, 30 April, 31 July, 31 October).
 - Amended returns – extended enquiry window only applies to the amendment being made.
 - Example: an individual's return is submitted on 31 January. They have a 12 month window to amend their return. They amend their return in July to include some further capital disposals. HMRC have an extended enquiry window (only for those capital disposal) of the 12 month anniversary from 31 July.

Extended Enquiry Deadlines

- Discovery assessments (s29 TMA 1970).
- How to protect against HMRC making a “discovery assessment”
- 4 years from the end of the tax year concerned.
- 6 years from the end of the tax year concerned if it can be proven the loss of tax arose from carelessness.
- 20 years from the end of the tax year if it can be proven that the person deliberately avoided tax – change of enquiry conduct

Potential Sources of Information for HMRC

- Greater source of third party information
 - Banks;
 - Letting agents;
 - Land registry;
 - Internet
 - Overseas information exchange
- HMRC “Connect” Computer System.
- Common Reporting Standards.

Enquiry process

- Standard enquiry – Code of Practice (COP11)
- Purpose of the enquiry – to check records, claims and tax treatment.
- Sets out the information required and deadline in order to provide information.
- Typically 30 day deadline to respond, although can be extended through prior agreement with enquiring office.
- **Important** – Always check HMRC have met specific deadlines

Enquiry Process – Suspicion of Fraud

- Code of Practice 9 (COP9)
- Criminal investigation unless they wish to use Civil proceedings to recover tax under COP9.
- Gives taxpayer opportunity to make full disclosure.
- Criminal proceeding can commence if full disclosure not made.
- Criminal investigation usually pursued where it is in the public interest (criminality or persons in position of trust).

HMRC powers to obtain information

- Information reasonably required to check tax position.
- Para 10 sch36 FA2008
- call for delivery of document
 - 30 day limit - £300 fine for non-compliance;
 - Taxpayer or third party. Consider legal privilege;
 - Third party notice need taxpayer or tribunal approval;
 - Can be appealed (apart from when tribunal approves);
 - Criminal offence to conceal, destroy or dispose of documents.
- Inspect business premises – where reasonably required for the purposes of the enquiry
- Notice of an inspection
- Right to inspect business premises but not search

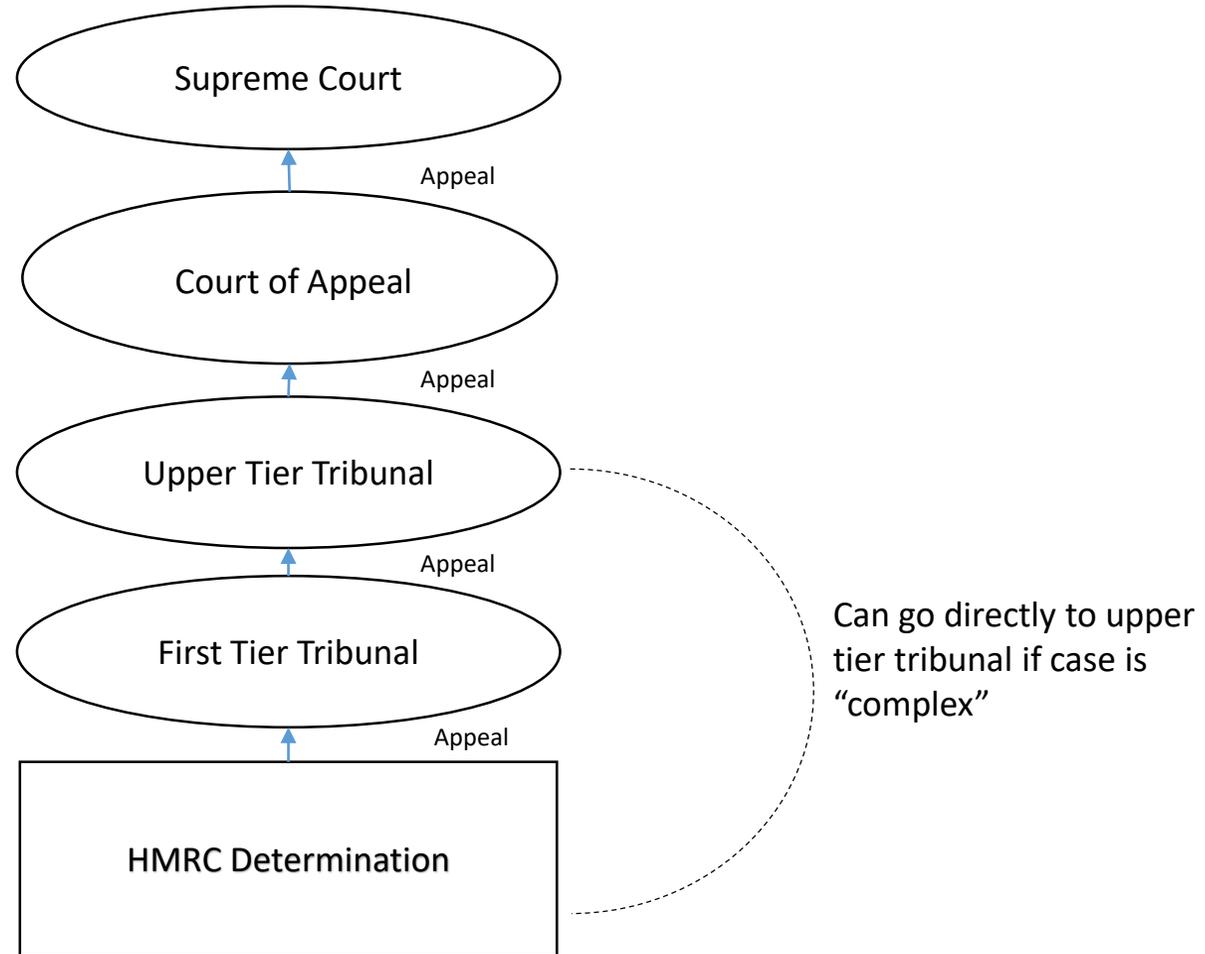
HMRC powers to obtain information

- Obtain papers of tax agents who engage in dishonest conduct;
 - Penalty and access notice;
 - Can be appealed.
- Apply to Court to obtain documents in serious fraud cases.
- Criminal Cases – Specific Inspectors have ability to use certain Police Powers to obtain information

Conclusion of the enquiry cannot be agreed

- Internal review
- HMRC's litigation and settlement strategy
- Commerciality
- Closure Notice/assessment
- Appeal closure notice/assessment and go to tribunal

Court Hierarchy



Judicial Review

- Can be used in conjunction with an appeal against a HMRC determination through the normal appeals process.
- **Don't delay** – 3 month deadline to apply to the Courts for Judicial Review to be considered.
- Challenge the lawfulness of a decision by HMRC (i.e. Does the law applied, actually apply in the taxpayers circumstances).
- More prominent due to recent new legislation.

Penalty Regime

- Interest chargeable on any tax due
- **Important** - Human rights notice
- Penalty determined by HMRC upon conclusion of enquiry and based on behaviour of taxpayer

	Unprompted	Prompted
Careless error	0 – 30%	15 - 30%
Deliberate error (not concealed)	20 – 70%	35 – 70%
Deliberate and concealed error	30 – 100%	50 – 100%

- Penalties can be suspended based on ‘SMART’ conditions

Managed Serious Defaulters Programme and Deliberate Defaulters List

- Consequences of defaulting on tax obligations
- Special measures imposed where default on tax obligations is considered serious
- “Name and Shame” list published by HMRC where tax default is considered deliberate

Accelerated Payment Notices ('APN') and Follower Notices

- Notices issued by HMRC to settle disputed tax in advance of the final tax position on “tax schemes” is determined. Introduced in 2014.
- APN – HMRC perceive scheme not to work but are yet to conclude enquiry.
- Follower notices – scheme has similarities to that of a scheme which the Court has determined does not work.
- Penalties for not complying with the notices.

Summary

- Ensure HMRC have met their deadlines
- Consider whether the information being requested is reasonably required for the purpose of the enquiry
- Care needs to be taken as there is inconsistency within HMRC practices
- Considerable pressure on Inspectors to collect higher taxes and therefore decisions are not always with technical merit
- Penalty suspension

Merci de votre attention!

Any Questions?

DAVID GOUGH

Senior Tax Manager

Telephone Number: 0207 680 5381

E-mail: davidgough@dixonwilson.co.uk



David joined Dixon Wilson in June 2013 to assist with the firm's private client tax practice.

David advises on both planning and compliance matters for a broad spectrum of clients. His portfolio ranges from entrepreneurs through to UK resident non domiciled individuals.

His main focus is assisting individuals on residency and domicile aspects of their affairs. This can range from pre-arrival planning, minimising exposure to UK taxation and advising clients on the practical aspects of the statutory residency test.

In addition to this, he assists small and medium enterprises with venture capital schemes (SEIS/EIS) and tax advantaged share schemes (EMI and CSOP). This includes advising them of the common pitfalls when implementing such schemes and the associated compliance processes.

David has 13 years' experience and has been a member of the Chartered Institute of Taxation since 2009.