

Picking up the tab

When things go wrong as the result of HMRC errors, *Carl Parker* suggests that the department should settle the bill.

TEN SECOND SUMMARY

- 1 HMRC office closures, staff reductions and restructuring appear to result in an increasing number of mistakes.
- 2 When persistent errors occur, HMRC have a responsibility to reimburse the taxpayer's costs.
- 3 Maintain records of correspondence, phone calls and abortive time spent to enable costs to be calculated

I am sure that I am not alone among my fellow colleagues in practice who are often placed in difficult positions in dealing with clients' tax affairs. It is becoming increasingly common for problems to arise when dealing with HMRC and, because of the departmental changes over the past few years in connection with restructuring and the closing of local offices, it is often very difficult to speak to anyone when things do go wrong.

As a practice, we have been keeping records of the problems and persistent errors that we have encountered with taxpayers' affairs when dealing with HMRC and our experiences make me think that we may be able to provide some hints and tips for fellow IFA and FTA members.

Departmental responsibility

All accountants should be aware that, when persistent errors occur with HMRC, the department has a responsibility to reimburse the taxpayer for any costs that may be chargeable as a result of errors on their part. Naturally, I would be the first to admit that we all make errors and I am not suggesting that trivial errors should be tackled in this way. However, if errors are persistent and can be regarded as serious then I do believe that the adviser has a responsibility to recover costs on behalf of clients as far as possible.

The alternative approach for the adviser is not to charge the client any fees and to write the time off. However, if that course of action were taken I am sure that many of us would agree that there would be considerable wasted and unbilled time at the end of each year. I tend to the view that if costs are reclaimable from HMRC we should pursue them. If there are circumstances where the department will not repay costs, our general policy is not to charge clients for this time. We then write off the time to try to be fair to existing clients.



CIS confusion

In a recent case a client advised us that he had spent several hours on the telephone trying to set up a construction industry scheme (CIS) as a main contractor. He had been unable to contact HMRC and wondered whether we could register with them on his behalf.

We spent about two and a half hours trying to get through, but were unable to do so. We were lucky enough to have a contact telephone number of a department employee who dealt with construction industry matters, but were advised that we would have to register the client through the CIS helpline and there was no way of bypassing this. After several more days of phoning we gave this up as a waste of time and contacted HMRC in writing to express our concern.

At this point, I believe that no charges would have needed to be paid by HMRC because there had been no persistent errors. As we had been unable to speak to them, how could there be? However, we received no response and wrote again about four weeks later asking for a reply and sent a copy of the original letter. Again, no reply was forthcoming so we wrote a third time. We then received a reply; in fact, two replies. Unfortunately, these came from two tax offices and gave contradicting statements.

Correspondence and complaint

Briefly, over six months we became embroiled in correspondence with two tax offices which were saying different things. Unable to resolve matters, we formally wrote to their respective complaints departments. Because all the correspondence was sent to both offices we received a reply confirming that HMRC would be responsible for our costs because their errors were persistent. The client was invoiced and we received a cheque from him in settlement and then made a claim on the client's behalf to HMRC. Eventually, after further correspondence, the claim was paid. To be honest, the bill was not charged out at our normal commercial rates, but at least it made a point; if the department's service is bad, taxpayers should not have to foot the bill for this inefficiency.

Nursing a sore head

In another case, our client had a nursing home business that was sold in mid-2011. The self-assessment partnership tax return for the year ended 5 April 2012 was completed and submitted on time to HMRC and the cessation date was entered on the return. Bearing in mind past problems, we included a note in the additional information box to request that no future tax returns should be issued to the partnership because the business had ceased. The return was filed by internet and an acceptance was

received. The following year, the client received a partnership reminder to complete a return for the year ended 5 April 2013 even though they had ceased trading in 2011. I telephoned HMRC to ask why this reminder had been issued when I had stated clearly on the previous return that the business had ceased.

Warning and recording

I received little joy from an unhelpful member of staff who advised that my telephone call could not be dealt with because we were not agents for this client. I explained that there was no longer a client to be an agent of and asked that the matter should be dealt with in a sensible manner. The officer refused and in the telephone conversation, which I noted would be recorded, I advised her that, if I was forced to send in an authority form and write in about the tax return reminder, I would make a claim against the department for the additional work which would be caused as a result of their failure to deal with the original correspondence. This request was refused and I had to then formally write to the client, submit further authority forms and lodge an appeal. This letter was ignored and I had to write again to have the return – and the subsequent penalty that had been charged for failure to submit a return that was not due – removed. Our claim to HMRC in respect of the additional work was paid in full.

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Putting things right

If advisers have cases that seem to be dragging on because of mistakes, my recommendation would be to record in full any telephone calls and any time spent dealing with clients and correspondence caused purely as a result of HMRC's errors. If these are charged commercially, the department is obliged to repay these.

As stated at the outset, I am not suggesting that HMRC should be pursued for simple errors because we all make these and there must be some give and take on both sides. However, when things do go wrong and these errors are not put right but simply drag on, taxpayers should have some redress.



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